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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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DATE: October 1, 2008

TO: Commissioners and Interested Persons

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

SUBJECT: Revised Findings for **Proposed Amendment 1-07** to the Channel Islands Harbor Public Works Plan (PWP) for Public Hearing and Commission Action at the October 2008 Commission Meeting in Ventura, CA.

DATE OF COMMISSION ACTION: February 8, 2008 in Oceanside

COMMISSION DECISION: Approval of the PWP Amendment (PWPA) with suggested modifications

COMMISSIONERS ON PREVAILING SIDE:

To certify PWP Amendment 1-07 with suggested modifications: Commissioners Achadjian; Blank; Lowenthal; Secord; Liberman; Reilly; Shallenberger; Neely

PROCEDURAL NOTE:

Adoption of the Revised Findings requires a majority vote of the Commission members from the prevailing side who are present at the vote on the revised findings, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The associated motions and resolutions are located on page 6 of this report.

Staff recommends that the Commission adopt the following revised findings in support of the Commission's decision on February 8, 2008 to approve the PWP amendment subject to 32 suggested modifications. The standard of review for adoption of the revised findings for the proposed PWP amendment is consistency with the Commission's February 8, 2008 action. Changes to the staff report findings based on the February 8, 2008 Commission hearing are shown in ~~strikethrough~~ and underline. Changes to the suggested modifications, as explained in Section III of this report, are shown in both ~~strikethrough~~ and underline and **bold underline** and **~~bold strikethrough~~**.

SUMMARY AND STAFF RECOMMENDATION COMMISSION ACTION

The Ventura County Harbor Department (Harbor Department) proposes to amend the certified the Channel Islands Harbor Public Works Plan (PWP). The Harbor Department has been developing a comprehensive update and revision of the PWP. Although the PWP document is not separated into different waterside and landside components, the proposed amendment currently before the Commission proposes changes throughout different sections of the PWP that relate almost exclusively to the use of water areas of the Harbor. The Harbor Department decided to bring forward an update of the waterside provisions of the plan in advance of the landside provisions in order to allow for the replacement of aging marinas and docks. As representatives of the Harbor Department indicated to Commission staff, in the Harbor Department's view, marina replacements need to be undertaken more expeditiously than the comprehensive landside PWP amendment could be certified. For example, it is anticipated that a future landside amendment could potentially involve building height and density increases, addition of public walkways throughout the harbor, expansion or addition of park areas, and various other significant changes. Therefore, this PWP amendment proposes revising portions of the PWP which mainly relate to waterside uses.

Revisions to the PWPA approved by the Ventura County Board of Supervisors and submitted to the Coastal Commission by the Harbor Department include a proposal to extend pierhead lines (lease lines) throughout several portions of the harbor (shown on Exhibit 1) to allow for redevelopment of aging dock infrastructure, to minimize overall loss of slips due to compliance with the Americans with Disabilities (ADA) Act requirements, and up-to-date safety standards required by the California Department of Boating and Waterways, and to add additional boat slips where possible. The proposal also includes the addition of plans of several individual marina development and redevelopment projects to be included in the Appendix of the revised document. Throughout the document, changes are proposed to various descriptive sections, including the description of the process for submitting development proposals to the Coastal Commission, the jurisdictional history, the County lease program, descriptions of boating facilities, commercial fishing, waterways circulation, and maintenance dredging, and various other sections of the document. Some of these changes relate to both landside and waterside uses of the harbor. In reviewing the subject PWPA, the Commission has, to the extent possible, considered (on the merits) only those changes relating to waterside uses, without addressing landside development, except to suggest postponement of changes related to the landside until the comprehensive landside amendment is proposed. This is because the County has not yet completed its planning effort, including review of project alternatives and mitigation measures, for future landside development. As such, consideration of modifications that relate solely to landside development would be premature at this time.

To that end, several suggested modifications are proposed in order to review issues related to landside development in the Harbor in a comprehensive manner in the forthcoming landside amendment. The Commission's other suggested modifications include the addition of several important policies for waterside use and development not originally proposed by the Harbor Department for this amendment, such as policies

related to the protection of marine resources, water quality, low-cost boating, recreational boating, and commercial fishing and commercial sport fishing, explained in detail below in Sections C through G below.

The suggested modifications considered herein do not address any changes that may be made by the Commission to PWP Amendment 1-04 and Notice of Impending Development (NOID) 1-05 for the Boating Instruction and Safety Center (BISC), when they are considered by the Commission at the February 2008 hearing. If the Commission's decision regarding PWPA 1-04 and NOID 1-05 results in further revisions to the PWP, those changes will need to be reflected in the PWP, as it is ultimately amended in PWPA 1-07, required by Suggested Modification 31 below.

The Ventura County Harbor Department submitted the amendment to its certified Channel Islands Harbor PWP on March 30, 2007. On October 1, 2007, the Executive Director determined that the County's amendment submittal was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Section 30605. Pursuant to Coastal Act Section 30605, any proposed amendment to the certified PWP shall be submitted to, and processed by, the Commission in the same manner as prescribed for amendment of a local coastal program, and the amendment shall be approved only if it is found to be in conformity with the local coastal program covering the area affected by the plan.

Coastal Act Section 30517 and California Code of Regulations Section 13535(c) state that the Commission may extend for good cause any time limit for a period not to exceed one year. Pursuant to this provision, the Commission extended the 60-day time limit by one year in order to allow adequate time to review and analyze the amendment. The one-year time limit will expire on November 14, 2008.

At the February 8, 2008 hearing, the Commission denied the proposed PWP amendment as submitted and followed by Staff recommends approval of the PWP Amendment with 32 suggested modifications related to recreational boating, low-cost boating, slip size mix, commercial fishing and commercial sport fishing, water quality, and biological resources.

EXHIBITS (COPIES OF EXHIBITS 1-6 ARE AVAILABLE FOR REVIEW AT THE VENTURA COMMISSION OFFICE AND AVAILABLE ON THE COMMISSION'S WEBSITE)

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| Exhibit 1 | Pierhead line expansion areas | |
| Exhibit 2 | Correspondence from Interested Parties | |
| Exhibit 3 | Appendix A revisions | |
| Exhibit 4 | Heron Reports | |
| Exhibit 5 | Redline version of PWPA 1-07 | click on link to go to exhibits 5-8 |
| Exhibit 6 | Correspondence from Harbor Lessees | |
| Exhibit 7 | Reporter's Transcript of Proceedings, Friday, February 8, 2008, Agenda Item No. 5.a. after public comment (pages 71-112) | |
| Exhibit 8 | Correspondence Received from Interested Parties Regarding Revised Findings | |

I. PROCEDURAL ISSUES

STANDARD OF REVIEW

Section 30605 of the Coastal Act and Title 14, Section 13356 of California Code of Regulations provide that where a public works plan (PWP) is submitted prior to certification of the Local Coastal Program (LCP) for the jurisdiction affected by the plan the Commission's standard of review for certification is Chapter 3 of the Coastal Act. Although the land area within the Harbor is owned by the County, it lies within the jurisdiction of the City of Oxnard. The Commission certified the Channel Islands Harbor Public Works Plan in September 1986 prior to certification of the LCP for the Harbor area, which was certified in December 1986. Therefore, the Commission's certification was based on consistency with Chapter 3 of the Coastal Act.

Section 30605 and Section 13357 of Title 14 of the Code of Regulations also state that where a plan or plan amendment (PWPA) is submitted after the certification of the LCP for the area any such plan shall be approved by the Commission only if it finds, after full consultation with the affected local government(s), that the proposed plan is in conformity with the certified LCP for the jurisdiction(s) affected by the plan. However, in this case, the PWPA is intended to be a comprehensive update of the water areas of the harbor. As discussed in more detail below, the PWPA also included revisions that would affect land areas, but the Commission has included suggested modifications to eliminate the landside changes. This is because the County has not yet completed its planning effort, including review of project alternatives and mitigation measures, for future landside development. Thus, consideration of modifications that relate solely to landside development would be premature at this time.

As such, the revisions to the plan that will be approved by PWPA 1-07, subject to suggested modifications, apply exclusively to the water areas of the harbor. While the standard of review for the proposed amendment to the Public Works Plan, pursuant to Section 30605 of the Coastal Act, would ordinarily be that the proposed plan amendment is in conformance with the certified Local Coastal Program for the City of Oxnard, in this case, the changes at issue apply solely to an area (submerged lands) that is within the retained jurisdiction of the Coastal Commission, pursuant to Coastal Act section 30519 (development review authority "shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands ..."). Because the certified LCP for the City of Oxnard does not govern the water area within Channel Islands Harbor, the LCP cannot be the standard of review in this case. So, although the applicable policies and implementation measures of the Oxnard LCP serve as guidance, the standard of review for PWPA 1-07 is the Chapter 3 policies of the Coastal Act. PRC Section 30605 also states that any proposed amendment shall be processed in the same manner as prescribed for an amendment to a Local Coastal Program.

A. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any Public Works Plan. The County of Ventura Board of Supervisors held a public hearing and approved the PWP amendment on March 13, 2007. Written comments were also received regarding the project from public agencies, organizations and individuals. The hearing was duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

B. PROCEDURAL REQUIREMENTS

If the Commission accepts staff's recommendation that the approval of the PWP amendment be subject to suggested modifications, the County will need to act to accept the adopted suggested modifications pursuant to the requirements of Section 13544 of Title 14 of the California Code of Regulations. That section provides that the Executive Director must make a determination that the County's action is legally adequate, within six months from the date of Commission action on this application before the PWP amendment shall be effective.

II. STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS FOR DENIAL OF PWP AMENDMENT 1-07 AS SUBMITTED AND CERTIFICATION WITH SUGGESTED MODIFICATIONS: MOTIONS & RESOLUTIONS

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on February 8, 2008, certifying Public Works Plan Amendment 1-07 to the County of Ventura Channel Islands Harbor Public Works Plan if modified as directed by the Commission*

STAFF RECOMMENDATION OF APPROVAL OF THE PWP AMENDMENT:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 8, 2008 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote: Achadjian, Blank, Lowenthal, Secord, Liberman, Reilly, Shallenberger, Neely

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for certification of the Channel Islands Harbor Public Works Plan Amendment 1-07 if modified as directed by the Commission on the ground that the findings support the Commission's decision made on February 8, 2008, and accurately reflect the reasons for that decision.

III. SUGGESTED MODIFICATIONS TO PWP AMENDMENT 1-07

Language presently contained within the certified PWP is shown in straight type. Suggested deletions that were part of the January 24, 2008 staff report and February 7, 2008 addendum are shown in ~~striketrough~~. Suggested additions that were part of the January 24, 2008 staff report and February 7, 2008 addendum are shown in underline. Language suggested to be added or deleted by the Commission during the February 8, 2008 hearing is shown in **bold underline** and **~~bold striketrough~~**, respectively. The related pages in the transcript of proceedings from February 8, 2008 are identified and can be found in Exhibit 7. Other instructional Commission approved suggested modifications to revise maps or figures are shown in *italics*. Page numbers referenced refer to the red line version of the Draft PWPA as proposed by the Harbor Department.

Modification 1

List of Technical Appendices

Appendix A – Inventory of Existing Uses/Intensities by Parcel

Appendix B – Approved BISC Plan

Appendix C – Approved Vintage Marina Plan

Appendix D – History of Channel Islands Harbor

Appendix E – Master Plan Marina Map

Modification 2

The entire "Process" section on page 2, under Section 1.1, all of which is proposed for deletion, shall be retained in the PWP.

Modification 3

The 5th and 7th paragraphs within Section 1.2, which are shown on page 5 of the proposal, shall be modified as follows:

~~With the completion of already approved projects along the West Channel, the Harbor will be completely built out. The existing development is presented in Table I and Figure III. The Harbor Department. The County of Ventura does not have plans for any major expansions or reconstructions of the Harbor area. There will be, therefore, no previously~~

~~undisclosed environmental impacts associated with implementation of this proposed Public Works Plan.~~

~~...~~

~~The Harbor, as developed, contains no natural resources of environmental significance.~~

Modification 4

The proposed new Section 1.4 ("Process for Review of Projects Pursuant to the PWP"), which appears on page 12 of the proposal, shall be deleted.

Modification 5

The General Description of the County Lease Program, Section 2.1 on Page 16, which is proposed for deletion, shall be retained in the PWP.

Modification 6

The Master Plan Map on page 6 shall be retained in the PWP. The Master Plan Map shall be revised to include the following statement: This Map shall only be used to reference landside parcels in the harbor. The waterside portions of this map are no longer applicable. The Master Plan Marina Map in Appendix E applies only to the waterside parcels.

Modification 7

Page 26, under Section 1.6 Waterside Facilities and Uses for Boating, the following paragraph shall be deleted and the following language added:

~~The County accommodates a "dry stack" recreational boat storage facility on Parcel Q. Details of this facility will be coordinated through the landside amendment. Appendix A reflects this opportunity on Parcel Q.~~

A temporary boat storage facility on Parcel Q is allowed for a period of five years after the certification of Public Works Plan Amendment 1-07 to allow for a Public Works Plan Amendment to authorize a permanent boat storage facility. If such an amendment is not processed within five years, the temporary boat storage facility shall be removed.

Modification 8

Waterways Circulation and Utilities Systems, beginning on page 29, under Section 1.7 Waterside Facilities and Uses for Boating, shall be retained in the PWP.

Modification 9

Page 28, Section 1.6 Waterside Facilities and Uses for Boating, after Support Facilities, shall be modified as follows:

Commercial Fishing

Commercial fishing vessels are accommodated on Parcel X-1-A within the Harbor, as shown on Table I in Appendix A and on the Master Plan Marina Map in Appendix E. Commercial fishermen have the first right of refusal on all parcels designated for commercial fishing uses. Commercial fisherman are fisherman who hold a valid commercial fishing license issued by the California Department of Fish and Game. Commercial fishing is heavily regulated through the California Department of Fish and Game and National Marine Fisheries Services.

Commercial Sport Fishing

Parcel RS is designated for commercial sport fishing vessels, as shown on Table I in Appendix A and on the Master Plan Marina Map in Appendix E. Commercial sport fisherman have the right of first refusal on parcel RS. The commercial sport enterprises within the Harbor operate from approximately 600 feet of floating dock at Murre Way on the eastern side of the main channel. A variety of boating enterprises operate from the dock, including Harbor tours and commercial sport fishing boats. Commercial sport fishing includes partial and full-day sport fishing excursions and commercial sport diving excursions. Whale watching trips are also included in this use category.

~~Commercial sport dive boats also operate from the commercial sport docks. These enterprises provide diving excursions to the Channel Islands for spear fishing, lobster and abalone.~~

~~During the migration season for the Grey Whale, whale watching excursions are also operated from this dock.~~

On this parcel, commercial sport fishermen have first right of refusal for slip use.

Modification 10

Page 39, Section 3.0 Coastal Issues and Development Policies, shall be modified as follows:

~~2. Special policies apply to the performance of improvements to buildings, as enunciated in Appendix K. It is the intention of Appendix K to allow modifications and repairs of a minor nature without a NOID or PWP amendment in order to fulfill the continuing recreational boating and visitor serving needs of the Harbor.~~

Modification 11

Page 40, the 4th and 5th paragraphs under Public Recreation, Section 3.0 Coastal Issues and Development Policies shall be retained in the PWP.

Modification 12

This PWPA submittal contained an error, which changed the meaning of a visual resource policy. Although this policy is related to the landside area only, the following modification shall be made to Visual Access Policy c. on page 51:

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

Modification 13

The following modifications shall be made to the policy 1 on page 56 under Section 3.2 Recreational Boating:

WATERWAY AND BOATING POLICIES

~~In order to maintain the uncongested nature of the Harbor waterways so that permitted water uses of not conflict with each other, the following measures should be implemented by the County:~~

1. When either congestion occurs or the future critical number of berthed boats is reached, then the Harbor will consider and implement any of the following measures or other appropriate measures to eliminate significant congestion problems:

Modification 14

The following modifications shall be made to the policies in Section 3.2, Recreational Boating, to correct language to conform to the language previously approved by the Commission in PWPA 1-05.

Policies 2.b and 2.g on page 57 shall be modified as follows:

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

...

b. dry boat storage spaces shall be provided on Parcel P to accommodate a minimum of 400 vessels;

...

- g. the existing open water areas in the inner Harbor, as depicted on the Land Use Map as "Waterways" (Figure IV) shall not be developed with surface structures of any kind, floating or otherwise, except in cases of emergency where temporary structures are required, or unless authorized pursuant to an amendment to the Public Works Plan certified by the California Coastal Commission.

Modification 15

Policies 4-9 on page 58 shall be renumbered as follows:

- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Modification 16

The following modifications shall be made to Policy 7 on page 58 in order to accurately reflect the name of the project:

7. Vintage Marina Pierhead Line

The Vintage Marina pierhead line shall conform to the pierhead line depicted on the "Waterways" Land Use Map (Figure IV) and on the Vintage Marina Plan (Appendix C).

Modification 17

The following Waterways and Boating Policies shall be added on page 59:

9. Extension of Boat Slips

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

10. Slip Size Distribution for New or Reconstructed Marinas

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

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

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

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

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

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

12. Low Cost Boating

a. The development or redevelopment of marinas or boat slips (not including commercial fishing or commercial sport fishing slips) shall include the provision of an in-lieu fee to the County, or a non-profit organization acceptable to the Executive Director of the Coastal Commission, to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. **A NOID submitted for the development or re-development of marinas or boat slips shall include a calculation of the applicable in-lieu fee and a detailed description of the lower cost boating program that the fee will be provided to.** (See Reporter's Transcript of Proceedings, February 8, 2008, Agenda Item 5a, pages 83-88)

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

c. The Harbor Department shall provide (or shall cause the appropriate non-profit organization to provide) an annual report, for the review and approval of the

Executive Director of the Coastal Commission, detailing the in-lieu fees that have been collected, the lower cost boating programs developed and operated, and the number of people participating in such programs. The report shall be provided annually, no later than January 15th of each year for the proceeding calendar year.

Modification 18

The following modifications shall be made to Section 3.3, Commercial Fishing and Commercial Sport Fishing on page 66:

COMMERCIAL FISHING AND COMMERCIAL SPORT FISHING POLICIES

1. The County will protect the Harbor's existing commercial fishing slips and facilities and lease them at reasonable rates to Commercial Fishermen.

2. Commercial and commercial sport fishing facilities shall not be reduced or changed from the parcel locations and slip numbers outlined in Appendix A unless the absence of need for such facilities can be demonstrated or equivalent substitute facilities are provided elsewhere and the PWP is amended accordingly.

3. Commercial vessels have the first right of refusal on all commercial fishing parcels and commercial sport fishing vessels have the first right of refusal on all commercial sport fishing parcels as outlined in Appendix A.

4. A berthing and mooring allocation system providing for the equitable determination of active commercial fishing status and enforcement of the provisions above shall be developed and implemented by the Harbor Department.

5. In the event that any portion of the commercial slips outlined in Appendix A cannot be rented to commercial fishing boats then the slips may be rented on a month-to-month basis to other vessels.

6. Facilities provided to serve the commercial fishing industry shall be in accordance with coastal permit no. 178-15, included in Appendix D, History of Channel Islands Harbor.

7. No time restrictions may be placed on the vehicles used by active commercial fishermen provided a parking permit is obtained from the County.

a. A permanently designated public parking lot area within the Harbor, having a minimum of 80,000 square feet, shall be restricted from automobile use on

non-holiday weekdays to allow active commercial fishermen to spread out nets for drying and repair. Active commercial fishermen may reserve this area upon 24-hour advance notice. A reasonable deposit, refundable upon satisfactory performance, may be charged by the applicant to a user of this area to insure that the user will appear and that the reserved area is left in the same condition as it was prior to use by the fishermen. If a special event requires use of this reserved area then said area may be temporarily located elsewhere. The commercial fishermen shall be given adequate notice of such an event and relocation and shall be relocated for no more than a total of 30 days per calendar year.

b. A fuel dock available 24 hours a day shall be provided in the Harbor. A reasonable surcharge may be added to the cost of fuel pumped during off-hours.

c. ~~i. A pump-out facility~~ Pump-out facilities adequate for all marine needs (i.e. bilges, holds, oil changes) ~~shall be provided for at any location within Channel Islands Harbor.~~

8. The County of Ventura shall consolidate fish offloading operations to the Commercial Fishing Wharf. This Wharf shall be equipped with two cranes of varying sizes to accommodate the various fish catch in the Channel Islands Harbor area. At least one working crane shall be in place at all times.

Modification 19

The following modifications shall be made to Section 3.4 Biological Resources beginning on page 69:

The California Coastal Act, Cal. Pub. Res. Code §§ 30000 to 30900, mandates the protection of the water quality and biological productivity of coastal waters.

Modification 20

The policies under Section 3.4 Biological Resources have been separated into two different policy sections, one for Marine Biological Resources, and one for Water Quality.

The POLICIES section, beginning page 73, shall be modified as follows:

BIOLOGICAL RESOURCE POLICIES

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

Modification 21

The following modification shall be made on page 74 in order to show the correct language of the modification that the Commission approved in PWPA 1-05:

8. Construction of the Vintage Marina

The restrictions specified below shall not apply to construction of docks and piers on the opposite side of the Harbor from the Vintage Marina, and construction that does not exceed an ambient noise level, not to exceed 65 dB, at any potential or active nesting tree within the Vintage Marina reconstruction area (basins D & E and the adjacent linear park).

Construction of the Vintage Marina shall not take place within the existing Vintage Marina dock reconstruction area (basins D and E) or the adjacent linear park during the nesting season for black-crowned night herons, great blue herons, or egrets (February 1 through August 15). A qualified biologist, approved by the Executive Director, shall monitor the site during construction for herons and egrets prior to, during (at least once weekly), and after construction. The monitor shall be present during all pile driving to assess the impacts on bird foraging and feeding. Should nesting activity at either of the two existing nesting sites located within the linear park adjacent to the reconstruction area be observed at any time during construction throughout the non-nesting season then all construction within 300 feet of the nest site shall cease and not resume until the end of the nesting activity. The biologist shall submit a monitoring report after each nesting season during construction and after final construction is completed which addresses the status of heron or egret nesting and foraging in the immediate vicinity of the Vintage Marina.

Noise generated by construction (including but not limited to pile driving) shall not exceed ambient noise levels at the construction site and in no case shall construction noise exceed 65 dB. A qualified independent monitor, approved by the Executive Director, shall be present on site during construction to measure noise levels. During 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. Bubble curtains shall be employed beneath the surface during pile driving. Bright upward shining lights shall not be used during construction and construction employees shall be prohibited from bringing pets (e.g. dogs and cats) to the construction site.

Modification 22

The following biological resources policies shall be added:

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

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

In the event that the surveys identify any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 500 feet of any construction activities), then the following measures shall be included in the development:

Within 300 feet of any identified active nesting sites, noise monitors shall be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed ~~ambient noise levels at the construction site and in no case shall construction noise exceed 65 dB, as measured by an average CNEL over 5 minutes~~ 65 dB at any point in time, at any active nesting site. If construction noise exceeds the standard above, sound mitigation measures shall be employed. If these sound mitigation measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete. (See Reporter's Transcript of Proceedings, February 8, 2008, Agenda Item 5a, pages 95-97 and 103 -109)

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

11. All new development or redevelopment that involves disturbance to marine water substrate within the Harbor and other shallow waters (up to approx. 250 ft. depth) shall minimize impacts to marine resources through the introduction and/or spread of non-

native invasive aquatic species. All such projects shall provide a survey, prior to the commencement of development, for the presence of *Caulerpa taxifolia* (*C. taxifolia*) or other non-native invasive aquatic species within the project site and extending to the surrounding area at least 10 meters beyond the project area. The survey shall be prepared consistent with the survey protocol required by the Southern California *Caulerpa* Action Team (SCCAT). If *C. taxifolia* or other non-native invasive aquatic species is found within or in close proximity to the project site, it shall be eradicated prior to the commencement of the project.

12. All new development or redevelopment that involves disturbance to shallow water marine substrate within the Harbor shall avoid impacts to marine resources, including eelgrass. Such projects shall provide a pre-construction survey conducted during the active growth period to determine the presence of eelgrass (*Zostera marina*). If eelgrass is present within the project site, the project shall be redesigned to avoid impacts to eelgrass. If it is not feasible to avoid impacts to eelgrass on the project site or nearby, the Harbor Department shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in conformance with "Southern California Eelgrass Mitigation Policy" Revision 8 adopted by the National Marine Fisheries Service.

13. For all new development or redevelopment of marinas, the Harbor Department shall 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.

14. Trimming or Removal of Trees (See Reporter's Transcript of Proceedings, February 8, 2008, Agenda Item 5a, pages 94 and 100-103)

The purpose of this policy is to ensure the long term protection of breeding and nesting habitat of birds protected by the Fish and Game Code, the Migratory Bird Treaty Act, and all bird species of special concern. The trimming or removal of any tree that has been used for breeding and nesting within the past 5 years, determined by a qualified biologist, shall be undertaken in compliance with all applicable codes or regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act and shall require approval through a Notice of Impending Development undertaken pursuant to the parameters listed below. Tree trimming or removal can also be accomplished through a harbor-wide programmatic NOID that incorporates the parameters below.

Tree trimming or tree removal shall be prohibited during the breeding and nesting season of the bird species referenced above (January - September) unless the Harbor Department, in consultation with a certified arborist, determines that a tree causes danger to public health and safety. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in imminent danger of collapse or breaking away. Trees or branches with a nest

that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.

The removal of any breeding and nesting tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree locations, tree size, planting specifications, and a five-year monitoring program with specific performance standards. An annual monitoring report for tree replacement shall be submitted for the review and approval of the Harbor Director and maintained on file as public information.

A. Tree Trimming During Non-Breeding and Non-Nesting Season (October-December)

1. Prior to tree trimming or removal, a qualified biologist shall survey the trees to be trimmed or removed to detect nests and submit the survey(s) to the Harbor Department. Tree trimming or removal may proceed if a nest is found, but has not been used within the prior 5 years.

2. In the event that any of the bird species referenced above return or continue to occupy trees during the non-nesting season, trimming shall not take place until a qualified biologist has assessed the site, determined that courtship behavior has not commenced, and given approval to proceed within 300 feet of any occupied tree.

3. Trimming of nesting trees shall not encroach within 10 feet of an unoccupied nest of any of the bird species referenced above. The amount of trimming at any one time shall be limited to preserve the suitability of the nesting tree for breeding and/or nesting habitat.

B. Tree Trimming or Removal During Breeding and Nesting Season (January-September)

If tree trimming or removal activities cannot feasibly avoid the breeding season because a health and safety danger exists, the following guidelines must be followed:

1. A qualified biologist shall conduct surveys and submit a report at least one week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/ or removal plan shall be prepared by an arborist in consultation with the qualified biologist. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the Harbor Director and maintained on file as public information. The plan shall incorporate the following:

a. A description of how work will occur (work must be performed using non-mechanized hand tools to the maximum extent feasible).

b. Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.

c. Insurance that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding and nesting bird's and their habitat.

2. Prior to commencement of tree trimming and/or removal the qualified biologist shall notify in writing the Department of Fish and Game and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.

Modification 23

The following modifications add a Water Quality Policies section and replace Water Quality Policies 13 and 14 on page 76 with policies reflecting a more current approach to the reduction of pollutants and runoff from new development or re-development:

WATER QUALITY POLICIES

~~13. Ensure that development is designed and managed to minimize the introduction of pollutants into the Channel Islands Harbor and surrounding coastal waters to the maximum extent practicable.~~

~~14. Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs) to reduce pollutants and runoff from proposed development to the maximum extent practicable. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.~~

1. All new development or redevelopment shall be designed to prohibit the discharge of pollutants that would cause or contribute to receiving water impairment or exceedance of state water quality standards.

2. Water Quality Management Plan

All new development or redevelopment shall include a Water Quality Management Plan (WQMP), prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the

specifications above, the plan shall be in substantial conformance with the following requirements:

a. The proposed development shall reduce or maintain pre-development peak runoff rates and average volumes to the maximum extent practicable.

b. Appropriate structural and non-structural BMPs (site design, source control and treatment control) shall be designed and implemented to minimize water quality impacts to surrounding coastal waters. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

c. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.

d. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized.

e. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.

f. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants (including trash, debris and vehicular fluids such as oil, grease, heavy metals and hydrocarbons) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner.

g. Parking lots and streets shall be swept on a weekly basis, at a minimum, in order to prevent dispersal of pollutants that might collect on those surfaces, and shall not be sprayed or washed down unless the water used is directed through the sanitary sewer system or a filtered drain.

h. The detergents and cleaning components used on site shall comply with the following criteria: they shall be phosphate-free, biodegradable, and non-toxic to marine wildlife; amounts used shall be minimized to the maximum extent practicable; no fluids containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye shall be used.

i. Post-construction structural 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 storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

j. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season.

k. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.

l. It is the Harbor Department's responsibility to maintain or ensure that its lessee maintains the drainage system and the associated structures and BMPs according to manufacturer's specifications.

3. Material used for construction of piers, pilings, docks, dolphins, or slips shall not include timber preserved with creosote, (or similar petroleum-derived products.) Pilings treated with Ammoniacal Copper Arsenate (ACA), Ammoniacal Zinc Arsenate (ACZA) or Chromated Copper Arsenate (CCA) shall be used only if wrapped or coated prior to installation with a water tight plastic sleeve, or similar sealant. To prevent the introduction of toxins and debris into the marine environment, the use of plastic wrapped pilings (e.g. PVC Pilewrap) and reinforced plastic for pilings (e.g. high density polyethylene (HDPE) pile armor), shall conform to the following requirements:

a. The material used shall be durable and a minimum of one-tenth of an inch thick.

b. All joints shall be sealed to prevent leakage.

c. Measures shall be taken to prevent ACA, CCA and/or ACZA from dripping over the top of plastic wrapping into State Waters. These measures may include wrapping pilings to the top or installing collars to prevent dripping.

d. The plastic sleeves shall extend a minimum of 18 inches below the mudline.

e. Plastics used to protect concrete or timber piers and docks or for flotation shall be subject to regular inspection to prevent sloughing of plastics into the waterway. A comprehensive inspection and maintenance plan shall be a requirement of any approval for projects involving plastic/or similar material wrapped piles.

f. The lessee shall be made responsible for removal of failed docks or materials.

g. If federal or state regulatory agencies, through new or better scientific information, determine that environmentally less damaging materials or methods are available for new piles or piling replacement, the least environmentally damaging materials and/or methods should be required for such projects, where feasible.

Modification 24

The following modification revises policy 15 on page 76 and adds a more specific policy for construction and maintenance responsibilities and debris removal:

4. All new development or redevelopment shall be designed to minimize erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Development or redevelopment shall minimize land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

5. Construction and Maintenance Responsibilities and Debris Removal

All new development or redevelopment (including exempt development in the Harbor shall include the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to ESHA, wetlands or their buffers.
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located within the coastal zone, a separate Notice of Impending Development shall be required before disposal can take place.
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related

- petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- L. The least damaging method shall be used for the construction of pilings and any other activity that will disturb benthic sediments. The suspension of benthic sediments into the water column shall be minimized to the greatest extent practicable.
 - M. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
 - N. All BMPs shall be maintained in a functional condition throughout the duration of the project.

Modification 25

The following existing water quality-related policies within the Biological Resources section of the PWP (Section 3.4) shall be modified as follows:

~~10. 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.~~

6. Activities which produce, handle or transport petroleum products or hazardous substances within Harbor water areas shall be discouraged. This policy does not apply to retail fuel sales/operations for boaters and commercial fishermen in the Harbor.

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

8. Pump-out facilities adequate for all marine needs (i.e. bilges, holds, oil changes) shall be provided by the Harbor Department.

Modification 26

The following modification modifies policy 9 on page 74 and policy 16 on page 76 and adds up-to-date detailed policies regarding appropriate management practices to minimize adverse impacts to water quality from boating activities

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

10. Best Management Practices

The Harbor Department shall take the steps necessary to ensure that the long-term water-borne berthing of boats in the Harbor will be managed in a manner that protects water quality through the implementation of the following BMPs, at a minimum:

A. Boat Maintenance and Cleaning Best Management Practices

- Boat maintenance shall be performed above the waterline in such a way that no debris falls into the water.
- In-water top-side and bottom-side boat cleaning shall be by hand and shall minimize the discharge of soaps, paints, and debris. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
- Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
- Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
- In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be prohibited and shall not occur.
- Boat repair and maintenance shall only occur in clearly marked designated work areas for that purpose.
- All boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters shall also use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas.

B. Solid and Liquid Waste Best Management Practices

- All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene, and mineral spirits shall be disposed of in a proper manner and shall not at any time be disposed of in the water or a gutter.

C. Sewage Pumpout System Best Management Practices

- Vessels shall dispose of any sewage at designated pumpout facilities provided by the Harbor Department.

D. Petroleum Control Management Measures:

- Boaters shall practice preventive engine maintenance and shall use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
- If the bilge needs more extensive cleaning (e.g. due to spill of engine fuels, lubricants, or other liquid materials), the boaters shall use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
- Bilge cleaners which contain detergents or emulsifiers shall not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

E. Public Information

These best management practices shall be provided in writing to all marina operators for dissemination to the boating public.

11. In order to monitor the water quality of Harbor waters the County will conduct a monitoring program, which includes:

- Quarterly sampling for dissolved oxygen, turbidity, pH, coliform bacteria, heavy metals, nitrates/phosphates and visual inspection of the waterways (for pollutants such as trash and oil). Sampling will be conducted at a minimum in the East Channel, in the West Channel, and 3) at the Harbor entrance. Sampling shall follow protocols and methods approved the Los Angeles Regional Water Quality Control Board.
- ~~b. A biological monitoring program to sample the Harbor waters (including benthic areas) that will be performed simultaneously with the water quality sampling monitoring program.~~

~~Both programs will be designed and undertaken by a qualified marine biologist.~~

~~If negative impacts to the Harbor's marine communities by the monitoring program, then the City and the County shall undertake mitigation measures in their respective waterways to reduce the level of pollutant input. This shall include, but not be limited to:~~

If any of the samples exceed the Los Angeles Regional Water Quality Control Board ("LA Regional Board") Basin Plan objectives or any other standards adopted by the LA Regional Board for the Channel Islands Harbor, the County

shall investigate the source of the problem and document the exceedance and any corrective actions taken to resolve the problem. If a continual exceedance exists for any parameter sampled (2 or more samples that exceed standards in a 12-month period), the County shall undertake mitigation measures to reduce the level of pollutant input. This shall include, but not be limited to:

- an enforcement program, with monetary fines, to eliminate intentional or negligent discharge of boat effluent and engine fluids into the waterways;
- provision of additional pump out facilities within the Harbor, particularly in areas used by live aboards;
- implementation of Best Management Practices that will treat the polluted runoff;
- reduction of fertilizer use on adjacent landscaped areas; and
- ~~containing and moving runoff away from the waterways and into City storm drain systems; and~~
- a public education program outlining the effect of Harbor generated pollutants on the marine life and measures that can be taken to prevent it.

An annual report shall be submitted to the Executive Director by March 1 of each year. This annual report shall include a summary and analysis of all water quality monitoring conducted during the previous calendar year. In addition, the annual report shall discuss any exceedances of water quality standards and any corrective actions taken to remediate the problem.

12. Marina Inspection and Maintenance Program

The Ventura County Harbor Department shall exercise due diligence in periodically inspecting each marina facility approved pursuant to a NOID. The Harbor Department shall immediately require the lessee to undertake any repairs necessary to maintain the structural integrity of the docks, pilings and utility connections, and to ensure that pieces of debris do not enter the marine environment. On a revolving five year basis, following the date that the first dock is installed or remodeled, the Harbor Department shall conduct an inspection of the marina to ensure the integrity of the docks, pilings and utility connections, and to ensure that all corrective actions have or will be immediately undertaken to maintain the integrity of the facility. The inspections shall be undertaken by boat, during periods of extreme low tides. All periodic reports shall be submitted to the Executive Director for review and approval. If the Harbor Department or the Executive Director concludes that the inspections confirm that the material used in the marina is impacting marine resources, the use of such materials shall be stopped.

13. In order to prevent significant adverse impacts from existing or new development, either individually or cumulatively, on coastal water resources the County shall, within one year of approval of the Harbor Public Works Plan by the Coastal Commission, implement a water conservation program within the Harbor which includes incentives for the public and private users to reduce water consumption. The program will include a list of implementation measures to reduce water demand and an annual report to the Board of Supervisors. This shall include:

- a. use of drought resistant landscaping in all new developments;
- b. use of water saving devices in all new development including restaurants and fish cleaning facilities; and
- c. charging of fee for water use at public boat ramps and private slips.

Modification 27

Figure V – Distribution of Marine Organisms on page 70 is outdated shall be deleted in its entirety and subsequent Figures shall be renumbered accordingly.

Modification 28

The following changes are suggested for Appendix A: Table I shall be modified to delete changes to references to landside parcels to the extent possible. Also, Table I shall be modified to explain that the slip numbers listed are a minimum and that the maximum number of slips possible under the proposed pierhead expansions that will be constructed is 2150. Table II shall be modified in order to accurately reflect the number of proposed commercial fishing slips for the Harbor as proposed in Table I. The specifics of all of these proposed modifications are shown in Exhibit 3

Modification 29

Proposed Appendix K, Activities to be Undertaken Pursuant to an Administrative Process, shall be deleted in its entirety.

Modification 30

Coastal Development Permit 178-15 shall be included in Appendix D, History of Channel Islands Harbor.

Modification 31

If the Commission's decision regarding PWPA 1-04 and NOID 1-05 at the February 2008 meeting makes further revisions to the PWP, those changes must be incorporated in PWPA 1-07.

Modification 32

The Master Plan Marina Map added to the PWP through Suggested Modification 1, Appendix E is incorrectly named on exhibit 7, attached hereto as CHANNEL ISLANDS HARBOR PUBLIC WORKS PLAN AMENDMENT NO.3 EXHIBIT "A". This map shall be renamed as the MASTER PLAN MARINA MAP.

IV. FINDINGS FOR THE DENIAL OF PROPOSED CHANNEL ISLANDS HARBOR PUBLIC WORKS PLAN AMENDMENT 1-07 AS SUBMITTED AND APPROVAL OF THE PUBLIC WORKS PLAN AMENDMENT IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the PWP amendment as submitted, and approval of the PWP amendment if modified as indicated in the *Suggested Modifications*. Changes to the staff report findings based on the February 8, 2008 Commission hearing are shown in ~~strike through~~ and underline. The Commission hereby finds and declares as follows:

A. PUBLIC WORKS PLAN AMENDMENT 1-07 DESCRIPTION AND BACKGROUND

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The stated purpose of the PWP, as certified, is to provide "a detailed and specific planning document to guide future Harbor development." PWP § 1.1. Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard's City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission's certification of the Public Works Plan, the County assumed planning and permitting authority within the Harbor. Under the certified PWP, the County is responsible for issuing all approvals for development within the Harbor permitted by the plan, and providing a Notice of Impending Development (NOID) for the review and approval of the Coastal Commission.

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

The County of Ventura Harbor Department (Harbor Department) has been developing a comprehensive update and revision of the PWP. Although the PWP document is not separated into different waterside and landside components, the proposed amendment currently before the Commission proposes changes throughout different sections of the PWP that relate almost exclusively to the use of water areas of the Harbor. The Harbor Department decided to bring forward an update of the waterside provisions of the plan in advance of the landside provisions in order to allow for the replacement of aging marinas and docks. As representatives of the Harbor Department indicated to Commission staff, in the Harbor Department's view, marina replacements need to be undertaken more expeditiously than the comprehensive landside PWP amendment could be certified. For example, it is anticipated that a future landside amendment could potentially involve building height and density increases, addition of public walkways throughout the harbor, expansion or addition of park areas, and various other significant changes. Therefore, this PWP amendment proposes revising portions of the PWP which mainly relate to waterside uses.

Revisions to the PWPA approved by the Ventura County Board of Supervisors and submitted to the Coastal Commission by the Harbor Department include a proposal to extend pierhead lines (lease lines) throughout several portions of the harbor (shown on Exhibit 1) to allow for redevelopment of aging dock infrastructure, to minimize overall loss of slips due to compliance with the Americans with Disabilities (ADA) Act requirements, and up-to-date safety standards required by the California Department of Boating and Waterways, and to add additional boat slips where possible. The proposal also includes the addition of plans of several individual marina development and redevelopment projects to be included in the Appendix of the revised document. Throughout the document, changes are proposed to various descriptive sections, including the description of the process for submitting development proposals to the Coastal Commission, the jurisdictional history, the County lease program, descriptions of boating facilities, commercial fishing, waterways circulation, and maintenance dredging, and various other sections of the document. Some of these changes relate to both landside and waterside uses of the harbor. In reviewing the subject PWPA, the Commission has, to the extent possible, considered (on the merits) only those changes

relating to waterside uses, without addressing landside development, except to suggest postponement of changes related to the landside until the comprehensive landside amendment is proposed. This is because the County has not yet completed its planning effort, including review of project alternatives and mitigation measures, for future landside development. As such, consideration of modifications that relate solely to landside development would be premature at this time.

To that end, several suggested modifications are proposed in order to review issues related to landside development in the Harbor in a comprehensive manner in the forthcoming landside amendment. Many provisions relating to landside development that were proposed to be deleted by the Harbor Department are suggested to be added back into the PWP. For example, **Suggested Modification 2** recommends that the Harbor Department not delete the discussion about "Process"; **Suggested Modification 3** recommends that it delete language in the "Area Description" relating to Harbor wide development, **Suggested Modification 4** recommends it not delete the discussion for the "Process for Review of Projects"; **Suggested Modification 5** proposes not to delete the "General Description of the County Lease Program"; **Suggested Modification 6** proposes not to delete the Master Plan Map; **Suggested Modification 7** proposes to delete language relating to the provision of dry stack storage; and **Suggested Modification 9** proposes not to delete the description of "Waterways Circulation and Utilities Systems." Additionally, **Suggested Modification 29** deletes in its entirety proposed Appendix K, "Activities to be Undertaken Pursuant to an Administrative Process" and **Suggested Modification 10** deletes the reference to that appendix. The exemptions proposed by the Harbor Department will impact both landside and waterside development, which will be addressed in a future PWP amendment. Suggested Modification 11, recommends that the Harbor Department retain the 4th and 5th paragraphs under Public Recreation, Section 3.0 Coastal Issues and Development policies on Page 40 in the PWP. As explained above, the Harbor Department is currently in the process of preparing a PWP Amendment for the landside area of the Harbor. Therefore, although many of these suggested modifications propose not to delete language from the PWP that may now be outdated and inaccurate, these sections will be comprehensively addressed by the Harbor Department and the Coastal Commission when the PWP landside amendment is brought forward. The Commission's other suggested modifications include the addition of several important policies for waterside use and development not originally proposed by the Harbor Department for this amendment, such as policies related to the protection of marine resources, water quality, low-cost boating, recreational boating, and commercial fishing and commercial sport fishing, explained in detail below in Sections C through G below.

The suggested modifications considered herein do not address any changes that may be made by the Commission to PWP Amendment 1-04 and Notice of Impending Development (NOID) 1-05 for the Boating Instruction and Safety Center (BISC), when they are considered by the Commission at the February 2008 hearing. If the Commission's decision regarding PWPA 1-04 and NOID 1-05 results in further revisions to the PWP, those changes will need to be reflected in the PWP, as it is ultimately amended in PWPA 1-07. **Suggested Modification 31** requires that the PWP be changed to reflect PWPA 1-04 and PWPA 1-07 accordingly, if necessary.

The public has expressed several concerns regarding the PWP amendment, including the BEACON foundation and the Channel Islands Beach Community Services District (CIBCSO). These organizations submitted letters to the County Board of Supervisors and the Commission discussing their concerns, which are attached as Exhibit 2. The organizations assert that one amendment should be submitted to comprehensively address both waterside and landside development, not just waterside development. As discussed above, the Commission has considered only those changes relating to waterside uses without addressing landside development, to the extent possible. This amendment will allow for the redevelopment of marinas on the waterside, while the County conducts a comprehensive update of the landside provisions of the PWP.

Additionally, concerns are raised that the subject waterside PWPA will allow extensive redevelopment throughout the harbor without thorough environmental review and without the need to amend the PWP. Objection is made to the deletion of statements (not policies) within the PWP regarding future development within the harbor. For instance, the PWP states that:

With the completion of already approved projects along the West Channel the Harbor will be completely built out; the existing development is presented in Table 1 and Figure III. The Property Administration Agency does not have plans for any major expansions or re-constructions of the Harbor area. There will be, therefore, no previously undisclosed environmental impacts associated with the implementation of this proposed Public Works Plan.

The Beacon Foundation's December 10, 2007 letter gives the interpretation that deleting this and other similar provisions will allow for new development projects in the harbor without requiring a PWP amendment. The Commission disagrees. As noted previously, Section 30605 of the Coastal Act provides that a PWP may be amended if certified by the Commission. Such amendments are to be processed in the same manner as amendments to certified local coastal programs (LCP) or long range development plans (LRDP). It is clear that it must be permissible to amend such plans in order to respond to future land use needs, changing circumstances, new technology, and new scientific knowledge. The ability for plans to thus be "living" documents is, in fact, a strength, and one that is shared by all manner of planning documents prepared by local governments, such as general plans, specific plans, and zoning codes. It is also clear that addition of new facilities or changes to existing facilities within Channel Islands Harbor must be approved by the Commission in a PWP amendment and the Commission must find that such changes are consistent with the policies of the Coastal Act or the City of Oxnard LCP, as applicable.

Arguments are also made against the Harbor Department's proposal to include an exemption process and the proposal to include several individual marina redevelopment projects in the PWP Appendix. The attached letters from these organizations explain these and other issues in more detail. Commission staff has had several meetings with representatives from the Harbor Department, as well as a joint meeting with representatives from the BEACON foundation to address opponent's concerns. The issues raised by opponents have been taken into consideration in drafting the

recommended modifications to the PWP amendment and many suggested modifications address opponents concerns. However, several issues raised by opponents will be considered and addressed in the forthcoming landside amendment.

B. Consistency with the Chapter 3 policies of the Coastal Act

The Oxnard LCP was effectively certified by the Commission in April 1985; however, certification of an LCP for the Channel Islands Harbor was deferred creating an Area of Deferred Certification (ADC). The PWP for the Harbor was certified by the Commission in September of 1986 prior to certification of an LCP for the area. Subsequently, the Commission certified an LCP for the City's Harbor ADC in December 1986. As previously stated, pursuant to PRC Section 30605 of the Coastal Act and Title 14, Section 13357 of the California Code of Regulations, where a plan or plan amendment is submitted after certification of the LCP for the jurisdiction affected by the plan (in this case, the City of Oxnard LCP) any such plan amendment shall be approved by the Commission only if it finds, after consultation with the affected local government, that the proposed plan amendment is in conformance with the certified LCP. As stated previously, PRC Section 30605 also states that any proposed amendment to the PWP shall be processed in the same manner as prescribed for an amendment to a Local Coastal Program. Thus, while the standard of review for the proposed amendment to the Public Works Plan, pursuant to Section 30605 of the Coastal Act, would ordinarily be that the proposed plan amendment is in conformance with the certified Local Coastal Program for the City of Oxnard, in this case, the changes at issue apply solely to an area (submerged lands) that is within the retained jurisdiction of the Coastal Commission, pursuant to Coastal Act section 30519 (development review authority "shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands ..."). Because the certified LCP for the City of Oxnard does not govern the water area within Channel Islands Harbor, the LCP cannot be the standard of review in this case. So, although the applicable policies and implementation measures of the Oxnard LCP serve as guidance, the standard of review for PWPA 1-07 is the Chapter 3 policies of the Coastal Act.

C. Marine and Biological Resources

Sections 30230, 30250, 30240, and 30233 of the Coastal Act provide for the protection of marine resources, coastal resources, and Environmentally Sensitive Habitat Areas. Section 30230 of the Coastal Act mandates that marine resources shall be maintained and where feasible restored. Section 30250 requires that new development be located in proximity in proximity to existing development to avoid significant adverse effects on coastal resources.. Section 30240 provides for the protection of Environmentally Sensitive Habitat Areas. Section 30233 of the Coastal Act provides for allowable uses in coastal waters or wetlands, including the fill of coastal waters for boating facilities.

Section 30230

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

Section 30250 (In part)

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

Section 30240

(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 30233 (in part)

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

Marina expansions and other types of development contemplated in this PWP amendment have the potential to adversely impact marine and biological resources, especially during the demolition and construction phases associated with the

development. Other biological impacts are associated with pierhead extensions, such as increased shading of the sea floor. Therefore, several biological resources policies are included in **Suggested Modification 22** in order to ensure that these resources are protected.

1.Nesting Birds

Several bird species, such as great blue herons, black-crowned night herons, and snowy egrets utilize trees in the Harbor for roosting and nesting. Although none of these species are listed as threatened or endangered, the presence of these birds, particularly their nesting in the area, 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. Although most of the trees are not native trees, they do contribute to the viability of the above-mentioned bird species in that they provide nesting and roosting habitat near the areas where they forage in the harbor. The height of the trees and the dense foliage provide protection from disturbance and predators. Such habitat areas have become much more rare in the Southern California area owing to development.

Great blue herons and black-crowned night herons use various locations throughout the Channel Islands Harbor as nesting sites. It is recognized that these birds may return to the same trees for nesting from year to year, or they may use different trees. The County has contracted with a biologist, Dr. Jeffrey Froke, to survey nesting areas in the Harbor. Nesting tree sites have been documented monthly from 2003 to the present by Dr. Froke. The most recent Dr. Froke Report, dated January 11, 2008, states that during the entire study period, 43 individual trees Harbor-wide were used for nesting. The report defines tree “use” to mean that one or more pairs of a species used the tree for nesting in a given year and, whether 1 or 2 pairs nested in a tree, the event is a single “use.” The report notes the following distribution of bird species: Black-crowned night herons accounted for 63 of the total 90 tree uses, Great Blue Herons accounted for 26 tree uses, and snowy egrets accounted for 1 tree use in 2003. The most recent report prepared by Jeffrey Froke, Ph.D. and map showing locations of bird nesting sites is shown in Exhibit 4.

In its consideration of earlier site-specific PWP amendments [PWPA 1-04 (BISC) and PWPA 1-05 (Vintage Marina)], the Commission required the addition of Policies 5, 6, and 7 to the PWP in order to avoid or mitigate impacts to black-crowned night herons, great blue herons, and egrets. However, these policies only apply to these two specific project areas. The proposed PWPA 1-07 does not provide any additional policies that would require the protection of birds in other areas of the harbor.

The trees that have been utilized or may be used in the future by sensitive bird species are located on the landside of the harbor, within park areas, landscaped areas, and parking lots. As such, redeveloping existing marinas, developing new marinas, or replacing individual docks on the waterside of the harbor will not directly affect trees or their availability for nesting. However, the construction of such waterside improvements can impact birds, either causing them to leave established nests or preventing them

from nesting or other reproductive activity, through the introduction or increase in the levels of human activity, noise, light, etc.

In order to provide policies to protect avian species that may be impacted during construction of marina developments or re-developments in the Harbor, several changes to the PWPA are recommended. **Suggested Modification 22** adds biological resource policies to assure that avian species are adequately protected during new marina development or redevelopment. First, Policy 9 requires that all new marina developments minimize impacts to sensitive bird species. Additionally, Policy 10 in Suggested Modification 22 requires a pre-construction survey by a qualified independent biologist to determine whether black-crowned night herons, great blue herons, snowy egrets, or other sensitive species are nesting on or near the project site (within 500 feet of any construction activities), if construction will occur between December 1st and September 30th. While the Commission has previously required that surveying and monitoring reproductive or nesting activities be carried out for a shorter period (February 1st to August 15th), more recent information indicates that the potential breeding and nesting period for these birds is actually longer. Commission staff biologist, Dr. Jonna Engel, has found that the appropriate monitoring period is December 1st through September 30th, consistent with the Commission's past actions in other locations. Should the surveys identify any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 500 feet of any construction activities), then the following measures are necessary: within 300 feet of any identified active nesting sites, noise monitors shall be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed 65dB at any point in time, at any active nesting site. If construction noise exceeds 65 dB at any point in time, sound mitigation measures shall be employed. If these sound measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete. A qualified independent monitor is required to monitor the site during all such construction and noise reduction measures are required to be used to the maximum extent feasible. Additionally, Policy 10 requires further bird protection measures, including a requirement prohibiting bright upward shining lights during construction and prohibiting construction employees from bringing pets to the construction site. Should nesting activity be observed on or near the project site in the pre-construction survey, then several restrictions will apply to the construction, including: 1) that construction may not commence in the areas within 300 feet of any identified nest(s) until the reproductive or nesting behavior has ceased, 2) that weekly surveys must be conducted during construction, and 3) that noise reduction measures [such as sound shields and silt and turbidity reduction measures, e.g. silt curtains] will be employed during construction. This policy is critical to protect sensitive avian species from impacts due to marina construction and redevelopment activities. The Commission finds the requirement to prohibit noise levels from exceeding 65 dB at any point in time during construction necessary to protect sensitive birds from excessive noise levels that could disturb nesting and breeding behavior. This noise level limit will ensure that excessive noise disturbances will not be averaged over time, thereby giving an incomplete assessment

of maximum noise impacts occurring at any discrete point in time that could disturb bird nesting and breeding behavior.

Every tree in the harbor is a potential nesting site for sensitive avian species. Although not required as a suggested modification to the subject waterside PWP, it will be critical to evaluate the historical use of trees for nesting in the upcoming landside PWP amendment and comprehensive monitoring data will be necessary to provide up-to-date information regarding the numbers and locations of nests established by sensitive bird species within the harbor and to establish a baseline for designation of ESHA.

The information provided by pre-construction surveys will be critical in the County's consideration, through NOIDs, of siting and design alternatives and mitigation measures that can minimize impacts sensitive birds. Therefore, the Commission finds it necessary to require the County to modify the PWP, as suggested in **Suggested Modification 22**, to add Policies 9 and 10 that will protect sensitive bird species and species that are critical to the maintenance of a balanced marine ecosystem.

Additionally, the Commission is concerned that the trimming and removal of trees throughout the harbor may impact habitat of nesting and breeding birds protected by the Fish and Game Code, the Migratory Bird Treaty Act, and all bird species of special concern. In order to protect coastal resources, including nesting and breeding habitat of the bird species mentioned above, the Commission finds that it is necessary to include a tree trimming and removal policy in the PWP. Policy 14 in **Suggested Modification 22** requires a NOID or programmatic NOID for the trimming or removal of any tree that has been used for breeding or nesting within the past five years within the harbor. This policy also identifies certain parameters for tree trimming during the breeding and nesting season (January-September) and outside of the breeding and nesting season (October-December). Tree trimming and removal is prohibited during the breeding season of the bird species mentioned above, except where a danger to public health and safety is documented by the Harbor Department, in consultation with a certified arborist. Additionally, the removal of any breeding or nesting tree requires a replacement tree as mitigation and a five-year monitoring program to ensure success of the replacement tree.

Therefore, Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

2. Aquatic Plants and Seabird Foraging Habitat

Eelgrass

Development contemplated in the PWP has the potential to directly impact sensitive resources, including eelgrass that may be present in the project area. The waterside PWP amendment includes a proposal to extend pierhead lines into the waterway for marina expansion in the east channel of the Harbor, on the east and west side of the peninsula, and on the south side of the west channel, as depicted in Exhibit 1. Installation and driving of piles can directly remove and disturb eelgrass. In addition,

the piers and vessels moored above these resources can reduce the light available to eelgrass or kelp by shading portions of the ocean floor. While there is potential habitat area for eelgrass, it has not previously been identified in Channel Islands Harbor. Staff notes that the Commission has routinely required surveys for eelgrass to be carried out prior to construction of marina improvements, as a condition of approval on NOIDs. Surveys required for previous dock replacement projects in the Channel Islands Harbor have not identified the presence of eelgrass. Further, routine dredging of the Channel Islands Harbor also reduces the likelihood that eelgrass is present. However, it is possible that eelgrass has established in portions of the Harbor not shaded by vessels.

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (DFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

In order to address these potential impacts from extending the pierhead lines where eelgrass habitat may exist, Policy 13 in **Suggested Modification 22** requires that all new development or redevelopment that involves disturbance to shall water marine substrate avoid impacts to marine resources, including eelgrass. A survey is required to be conducted before construction during the active growth period to determine if eelgrass is present. If eelgrass is present within the project site, the project must be redesigned to avoid impacts to eelgrass. If it is not feasible to avoid impacts to eelgrass on the project site or nearby, the Harbor Department shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in conformance with "Southern California Eelgrass Mitigation Policy" Revision 8 adopted by the National Marine Fisheries Service. Therefore, the Commission finds it necessary to require the County to modify the PWPA, as suggested in Suggested Modification 22, to add Policy 13 that requires that impacts to eelgrass be reduced or mitigated for marina development or redevelopment. The Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

Caulerpa Taxifolia

The Commission further finds that the demolition and driving of piles on the sea floor could disturb and cause the spread of non-native and invasive species, such as *Caulerpa taxifolia* and Japanese kelp (*Undaria pinnatifida*). *Caulerpa taxifolia* is a tropical green marine alga that spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. Because of toxins in its tissues, *Caulerpa taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation of *Caulerpa taxifolia* has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial

fishing in places such as the Mediterranean¹. Because of the grave risk to native habitats, in 1999 *Caulerpa taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California Caulerpa Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several States, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia*, Japanese kelp or other non-native invasive aquatic species is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that marina development or redevelopment projects that would be allowed by the proposed PWPA do not cause the dispersal of *C. taxifolia* and other non-native species, the Commission is requiring the addition of Policy 12 in **Special Modification 22**. Policy 12 requires, prior to commencement of development for boat slips, a survey of project area for the presence of *C. taxifolia*, Japanese kelp, or

¹ **References:**

Meinesz, A. (Translated by D. Simberloff) 1999. *Killer Algae*. University of Chicago Press

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Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

other non-native invasive aquatic species. If *C. taxifolia*, Japanese kelp, or other non-native invasive aquatic species is present in the project area, no work may commence until it is eradicated. The Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

3. Fill of Coastal Waters

The PWP amendment will allow pierhead lines to extend further into the waterway in some areas of the Harbor for marina expansion and reconstruction, including piers, docks, and pilings. Pierhead expansions are proposed to occur in the east channel, along both sides of the peninsula, and on the west side of the Harbor entrance, as depicted in Exhibit 1. As the Commission has previously found in PWPA 1-05 and NOID 1-06 (Vintage Marina), when existing, old marinas in the harbor are demolished and replaced with new marinas, there can be an overall reduction in the number of boat slips. This is because up-to-date safety standards required by the California Department of Boating and Waterways and accessibility requirements based on the Americans with Disabilities Act result in less area available for the actual boat slip. The extension of the pier head lines is in part to allow individual marinas to retain the same number of slips after redevelopment. Additionally, as in the Vintage Marina project, the marina operators identify an increased demand for larger boat slips which can result in a reduction of the total number of boat slips (as discussed below, this also raises issue with regard to lower cost boating opportunities). Further, the proposed pier line extensions will allow for an increase in the total number of boat slips in several marinas.

The east side pierhead line will extend approximately 65 feet into the eastern channel past the main turning basin. The east side of the peninsula pierhead line expansion will extend from between 5 and 20 feet into the waterway in the eastern channel, as depicted in Exhibit 1. After these east channel pierhead extensions, the channel width will be an average of 165 feet in the widest area of the channel and will narrow to a width of 135 feet at the narrowest point. The boat slip expansion on the west side of the peninsula will expand approximately 5 feet into the west channel. The pierhead at the Harbor entrance will extend approximately 80 feet into the waterway and the width at the Harbor mouth will remain approximately 450 feet. The Harbor Department submitted letters from the United States Coast Guard stating that the pierhead expansion on the west side of the Harbor near the entrance and the pierhead expansions in the east channel will not have a significant impact on the safety of navigation within the channels. The Harbor Department has not submitted Coast Guard approval of the pierhead line expansion at the western tip of the peninsula.

The portion of the proposed development or redevelopment of marinas outside of the existing pierhead lines (or in other words, the existing “footprint” of marina development) is development that constitutes fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters is only allowed when several criteria are met, including: a) the project must fall within one of the allowable use categories specified; b) the proposed project must be the least environmentally damaging alternative; and c) feasible mitigation measures to minimize adverse environmental effects must be provided. The proposed project meets the first criteria (allowable use) because it is for

a public boating facility. Fill of open coastal waters for the construction of a public boating facility is an allowable use under Section 30233(a)(4) of the Coastal Act. Next, the proposed project must be the least environmentally damaging alternative. As discussed above, the expansion of marina development into areas that are open coastal water can have impacts on eelgrass habitat, if it is present. Installation and driving of piles can directly remove and disturb eelgrass. In addition, the piers and vessels moored above these resources can reduce the light available to eelgrass or kelp by shading portions of the ocean floor. While there is potential habitat area for eelgrass, it has not previously been identified in Channel Islands Harbor. The Commission has routinely required surveys for eelgrass to be carried out prior to construction of marina improvements, as a condition of approval on NOIDs. Surveys required for previous dock replacement projects in the Channel Islands Harbor have not identified the presence of eelgrass. Further, routine dredging of the Channel Islands Harbor also reduces the likelihood that eelgrass is present. However, it is possible that eelgrass has established in portions of the Harbor not shaded by vessels.

As required by **Suggested Modification 22**, underwater surveys must be carried out of each marina development site just prior to construction in order to determine if eelgrass is present. The timing of the surveys is important because eelgrass can establish itself in areas where it has not been identified previously. If eelgrass is identified within the project site, the marina project must avoid impacts to eelgrass if feasible or mitigate any impacts. If modified as suggested, the PWP Amendment will ensure that impacts to marine resources are avoided or reduced and mitigated to a level of insignificance. Alternatives to this aspect of the proposed PWPA include the no project alternative, and alternatives that include reductions in distance pierhead lines will expand further into the waterway. Under the proposed PWP amendment, extending pierhead lines in the Harbor, as depicted on Exhibit 1, will not result in significant adverse long-term impacts. The proposed PWPA will result in the fill of open coastal waters for boating facilities, which is an allowable use under Section 30233 of the Coastal Act. The proposed is the least environmentally damaging, feasible alternative, and includes policies requiring feasible mitigation measures as outlined in **Suggested Modification 22** and **Suggested Modifications 23** and **24**, explained below.

Therefore, the Commission finds the proposed PWPA, if modified as suggested, is consistent with Section 30233 of the Coastal Act.

4. Resources Agencies

In addition, in order to ensure that all projects contemplated in the PWP are consistent with all California Department of Fish and Game and other agency regulations. Policy 14 under **Suggested Modification 22** requires that all requirements, requests 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 are implemented prior to commencement of construction.

5. Conclusion.

Marina development and redevelopment projects contemplated in the proposed PWP amendment have the potential to impact marine biological resources. Suggested modifications relating to nesting birds, aquatic plants, and foraging habitat that will minimize these impacts have been required. Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with Coastal Act policies 30230, 30250, and 30240 and 30233.

D. Recreational Boating and Fishing Facilities

Coastal Act Sections 30213, 30220, 30224, and 30234 relate to the provision and protection of recreational boating and fishing facilities in the Harbor.

Section 30213 (in part)

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

Section 30220

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

Section 30224

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

Section 30234

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

In addition, the City of Oxnard LUP provides policy guidance regarding recreational fishing and boating.

Policy 14 (in part)

The harbor is administered by Ventura County and within the city limits of Oxnard. The City shall encourage the protection and expansion of facilities for commercial fishing, sport fishing, recreational boating, and other harbor-related activities within the Channel Islands Harbor...

Policy 20

Fifty percent of the harbor's water surface area shall be restrained as open water channels, in order to assure the safe circulation of a variety of commercial and recreational boats.

Policy 27 (in part)

Commercial fishing, sport fishing, and recreational boating facilities and areas shall be designed and situated so as not to interfere with each other or existing residential uses.

1. Pierhead extensions

Sections 30224 and 30234 of the Coastal Act encourage the provision of recreational boating opportunities. As explained in x above, this PWP amendment proposes pierhead extensions in several locations around the Harbor to allow for marina redevelopment or new marina development. The expansions are shown in Appendix E, the Master Plan Marina Map. Policy 9 in **Suggested Modification 17** provides that the maximum extent of new or reconstructed boat slips shall extend no farther than the waterside parcel line, also referred to as the pierhead line, as depicted on the Master Plan Marina Map in Appendix E. The increased area for expansion will minimize the overall loss of slips due to compliance with up-to-date safety standards required by the California Department of Boating and Waterways and ADA accessibility standards. The increased area will also allow for additional slips to be constructed. The Harbor Department has conducted boat slip counts and states that the current slip count in the Harbor is about 2,150 slips and that the increased area for slip expansion will result in about 60 additional slips, with a maximum of 2,210 slips. The total slip numbers are provided in Tables I and II in Appendix A. Table I establishes a minimum number of slips and as many slips as possible will be built within the pierhead lines. **Suggested Modification 29** proposes modifications to Table I to indicate that the number of slips outlined is the minimum number, but that 2,210 will be the maximum number of slips possible. The Coast Guard has reviewed and approved the pierhead extensions, with the exception of the expansion on the western tip of the peninsula, as previously explained. The pierhead extensions are unlikely to result in traffic congestion both as a result of a narrower waterway and an increase of approximately only 60 boats if all slips are occupied. With the expansions, the east channel will be from 135 feet wide in the narrowest part to 165 feet on average. The west channel will be 250 feet in width. The Commission finds it necessary to require **Suggested Modifications 17** and **29** in order to ensure that the extension of pierhead lines and total number of boat slips are specified. The Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

2. Slip-size mix

Regionally, since the early 1990's, marinas have been reconfiguring their slip sizes and slip distribution to favor larger boats – boats 36 feet and larger – because of the decrease in demand for small boat slips and the increase in demand for larger slips. The continued loss of slips could have an adverse impact on boating opportunities within the Harbor by reducing the number of slips available to the public, however.

In prior permit actions² as well as in PWPA 1-05 and NOID 1-06 (Vintage Marina), the Commission has been concerned about the trend towards larger slips in marinas at the expense of the smaller slips. As larger slips occupy more space in a marina, there is less space for the smaller slips and the result is fewer overall slips and fewer slips available for the owners of small vessels. As the trend for larger boats continues and marinas convert their small boat slips to larger slips, berthing opportunities for the small boat owner will be reduced. While it is difficult to contend that recreational boating is in fact a lower cost recreational activity, in general, smaller boats are less expensive, and therefore more available to a larger segment of the population than are larger boats. The Commission does not regulate the rates at which marinas rent their slips to the public. The Commission can, however, regulate the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing the correct balance between the size of slips and the boaters' demand for slips in order to encourage increased recreational boating and protect existing boating opportunities including the provision of smaller slips. In approving the site specific PWPA 1-05 for the Vintage Marina site, the Commission found it necessary to require the addition of Policy 8 which specifies the minimum percentage of smaller sized slips that must be provided only in Vintage Marina.

The subject PWPA, as proposed, does not include any policies regarding slip size mix that would apply to other marinas, harbor-wide. The Harbor Department subsequently proposed to include a policy which would establish a slip size mix, similar to Policy 8 (Vintage), except that the minimum slip sizes would apply to all marinas, overall. The Commission finds that such a policy is necessary in order to assure that slip distribution will not favor larger boats and will avoid the loss of lower cost smaller slips. To avoid the loss of lower cost boating opportunities within the Harbor for small boat owners, Policy 10 in **Suggested Modification 17** provides that, for the development or redevelopment of marinas, each individual marina must conform to the following slip size distributions standards: a minimum of 25% of the total number of slips shall be 32 ft. or under in length and a minimum of 25% of the total number of slips shall be 32 ft. 1 in. in length to 38 feet in length. The slip size mix policy applies to individual marina development or redevelopment rather than Harbor-wide because it will be difficult to implement on a Harbor-wide basis as development plans for marinas are usually submitted through a NOID on a project by project basis. If for instance, a NOID for a marina replacement contained a lower (less than 25 percent) percentage of smaller slips was considered, it would be impossible to predict when, if ever, a NOID for a

² 5-05-245, Portofino Hotel Partner, LB; 5-01-143, Marina Two Holding Partnership & County of L.A. Department of Beaches & Harbors

marina with a higher percentage of smaller slips would be approved to ensure that the percentages harbor-wide meet the required standard. The Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

3. Low-cost boating

Section 30224 of the Coastal Act encourages increased recreational boating use of coastal waters, and Section 30213 of the Coastal Act encourages developments with lower cost visitor and recreational facilities providing public recreational opportunities. The redevelopment of existing marinas that will be allowed under the PWP, as proposed to be amended will result in an increase in slip rental fees and a reduction in the number of lower cost boat slips in the harbor. As described above, one way to ensure that recreational boating will remain more affordable is by ensuring a slip mix that includes slips for smaller boats. Additionally, the provision of other lower cost boating opportunities will provide mitigation for the inevitable increase in slip fees as marinas are rebuilt. PWPA 1-05 and NOID 1-06 (Vintage Marina) included the annual contribution of an amount equal to 75 percent of the annual rent chargeable for two 35 foot boat slips to the County, or a County-approved non-profit organization. These funds are designated to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, for transportation of youths to the harbor, and for similar programs to enhance access for lower income persons to the coast.

The subject PWPA, as proposed, does not include any policies regarding lower cost boating opportunities that would apply to other marinas, harbor-wide. The Harbor Department subsequently proposed to include a policy which would require the marina redevelopment projects to include an in-lieu fee to provide lower cost boating opportunities. In order to assure the provision of low-cost recreational boating opportunities, the Commission finds that it is appropriate to require Policy 12 in **Suggested Modification 17**. Policy 12 requires that the development or redevelopment of marinas or boat slips (not including commercial fishing or commercial sport fishing slips) include the provision of an in-lieu fee to the County, or a non-profit organization acceptable to the Executive Director of the Coastal Commission, to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. A NOID submitted for the development or redevelopment of marinas or boat slips shall include a calculation of the applicable in-lieu fee and a detailed description of the lower cost boating program that the fee will be provided to so this information is available to the Commission in its consideration of each project. The in-lieu fee must be the equivalent financial value of one 30-foot boat slip (based upon the listed per-foot rental rate posted at the marina on July 1 of each year for 30-foot slips) for each 100 slips that are redeveloped. For marinas containing fewer than 100 slips, the in-lieu fee shall be prorated based on the number of slips. The payment of the in-lieu fee to the County will commence upon completion of the marina redevelopment construction and continue annually, throughout the course of the ground lease. According to the Harbor Department, based on the most

recent information available, the current average value of a 30 ft. boat slip rental for one year is about \$5,184.00.

The policy also requires the Harbor Department to provide (or shall cause the appropriate non-profit organization to provide) an annual report, for the review and approval of the Executive Director of the Coastal Commission, detailing the in-lieu fees that have been collected, the lower cost boating programs developed and operated, and the number of people participating in such programs. The report shall be provided annually, no later than January 15th of each year for the proceeding calendar year. The Commission finds it necessary to require such a report to provide information on the adequacy of the in-lieu fees to fund lower cost boating programs and the use of the program by members of the public. The Commission finds that only as so modified will the PWP, as proposed to be amended, be consistent with the policies of the Coastal Act.

4. Commercial Fishing and Commercial Sport Fishing

Coastal Act Section 30234 requires that commercial fishing and recreational boating shall be protected, and where feasible, upgraded. Commercial fishing is the designated use on parcel X-1-A on the west side of the Harbor and commercial sport fishing is the designated use for parcel RS on the east side of the Harbor. The total number of commercial fishing slips in the Harbor is currently 66 and the total number of commercial sport fishing slips is currently 31. These use designations are depicted on Table I and Table II in Appendix A. **Suggested Modification 9** proposes revisions to the description of commercial fishing and commercial sport fishing in the discussion of “Waterside Facilities and Uses for Boating” in order to clarify the description. In the section describing commercial fishing, the definition of a commercial fisherman is suggested to be defined as “one having a valid commercial fishing license issued by the California Department of Fish and Game.” This modification is suggested to clarify those entitled the first right of refusal on the commercial fishing parcel.

Additionally, **Suggested Modification 18** proposes several changes and additions to the Commercial Fishing and Commercial Sport Fishing Policies. These policies have been modified to assure that commercial fishing and sport fishing facilities are protected. Policy 1 proposes not to delete the portion of the existing policy which states that the County will protect the Harbor’s existing commercial fishing slips and facilities and lease them at reasonable rates to commercial fisherman. Additionally, Policy 2 provides protections for commercial fishing and commercial sport fishing facilities by assuring that the facilities will not be reduced or changed from the parcels identified in Appendix A unless the absence of need for such facilities is demonstrated or equivalent facilities are provided elsewhere and the PWP is amended accordingly. Policy 3 provides that commercial fishing vessels have the first right of refusal on commercial fishing designated parcels and commercial sport fishing had the first right of refusal on commercial sport fishing parcels. Under suggested policy 4, the Harbor Department is responsible for the enforcement of a berthing allocation system for those with commercial fishing status. Policy 5 would allow commercial fishing slips to be rented out on a monthly basis if they cannot be filled with commercial vessels. Further, to provide

additional protections for commercial fishing, suggested policy 6 prevents commercial vessels from being excluded from parcels not specifically designated for commercial fishing. A permit issued prior to the 1986 PWP outlined various requirements for commercial fishing in the Harbor. The most important provisions to protect commercial fishing have been incorporated into the policies of the PWP. The provisions of this permit which have not been incorporated are no longer relevant or outdated. However, the permit is incorporated into Appendix D, the History of the Channel Islands Harbor, under **Suggested Modification 31**.

Additionally, the Harbor Department proposed to add a policy, as part of the subject PWPA to consolidate commercial fish offloading to the Commercial Fishing Wharf on the Westside of the harbor. Policy 9 under **Suggested Modification 18** changes this policy to delete references to the maintenance of two cranes in working order as long as offloading weights are reported "at 75% of 2005 levels or greater." This standard will be difficult to enforce and does not impact the remainder of the policy, which requires two cranes be available, and at least one working crane at all times. This policy will not impact the slips available for commercial fishing and commercial fishing vessels, as explained above, because such vessels are permitted in other areas of the harbor other than the designated commercial fishing parcel.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with Coastal Act 30213, 30220, 30224, and 30234 relate to the provision and protection of recreational boating and fishing facilities in the Harbor.

E. Public Access

Coastal Act Sections 30210, 30211, and 30212 relate to the provision and protection of public access.

Section 30210

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

Section 30211

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.

Section 30212(a) (in part)

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects 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.

In addition, the City of Oxnard LUP provides policy guidance regarding public access.

Policy 21

Maximum access, which shall be conspicuously supported and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, right of private property owners and natural resource areas from overuse.

Policy 22

Development shall not interfere with the public's right of access to harbor waters where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky harbor beaches to the first public right-of-way.

Public access to the water and landside recreational opportunities will be comprehensively addressed in the forthcoming landside amendment. However, marina development and redevelopment has the potential to impact public access to the shoreline. Pierhead expansions are planned in order to re-develop or add slips to marinas already in existence, which will not add additional impacts to public access to the shoreline in these areas. However, the pierhead expansion proposed for the west side of the Harbor entrance will occupy water area directly adjacent to land where no slips have previously existed. This is the only area where public access to the shoreline may be impacted from marina development. Adjacent to this proposed pierhead expansion area, near the harbor entrance, a small strip of land located between the access road and the rip-rap slope has been used as an area for recreational fishing. A small park with benches is also adjacent to the proposed location for pierhead expansion. Members of the public have raised concerns that the public will be prevented from accessing to this area for recreational fishing due to marina development. However, the marina expansion is not proposed to take up the entire length of this portion of the Harbor and public access for fishing will still be possible. As depicted on the Master Plan Marina Map in Appendix E, sufficient area will still exist

along the Harbor mouth at the entrance for public access and recreation.(also shown in Exhibit 1).

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with Coastal Act Sections 30210 and 30212 that relate to the provision and protection of public access

F. Water Quality

Coastal Act Sections 30230 and 30231 provide for the protection of water quality:

Section 30230 Marine resources; maintenance

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

Section 30231 Biological productivity; water quality

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

The Public Works Plan presently contains policies to protect the water quality and biological productivity of Harbor waters. Several water quality policies have been added since the 1986 PWP, including project specific policies for PWPA 1-04, the BISC and PWPA 1-05, Vintage Marina. The subject PWPA does not include any additional policies related to the protection of water quality in the Harbor. However, the Harbor Department subsequently worked with staff on some of the water quality policies.

As discussed above, the subject PWPA is intended by the County to be a comprehensive update to the water areas of the harbor. In order to ensure that impacts to water quality from the construction of new or redeveloped marinas, and from the maintenance and operation of boats, it is necessary to require the avoidance of impacts, the implementation of best management practices, and the incorporation of mitigation measures. Therefore, **Suggested Modifications 23-26** recommend several policies related to the protection of water quality. These policies include requirements for: a water quality management plan for all new development or redevelopment in Harbor

waters; specifications for the types of material to be use for construction of piers, pilings, docks and slips; construction and maintenance responsibilities and debris removal requirements; requirements for adequate pump out facilities; requirements regarding best management practices to minimize adverse impacts to water quality from boating activities; a water quality monitoring program and reporting requirement; and a marina inspection and maintenance program.

Boating Activities

Potential sources of pollutants associated with boating activities such as chemicals, petroleum, cleaning agents and sewage result in potential adverse effects to water quality to the Harbor and coastal waters. 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. Such cumulative impacts can be minimized through the implementation of boating Best Management Practices (BMPs). Therefore, Policies 1 and 2 under **Suggested Modification 23** require the Harbor Department to implement a Water Quality Management Plan to assure that all new development or redevelopment of marinas incorporates BMPs and other design standards. Additionally Policies 9 and 10 under **Suggested Modification 26** require the Harbor Department to follow BMPs regarding boating facilities and activities in the Harbor. Additionally, policy 8 under **Suggested Modification 25** requires that adequate pump-out facilities be provided by the Harbor Department. Currently there 3 pump-out facilities and one bilge pump-out facility located within the Harbor. Policies 6 and 7 under **Suggested Modification 25** provide that activities which produce, handle, or transport petroleum products are discouraged and that adequate cleanup procedures must be provided by the Harbor Department.

In addition, there is the potential for the materials used in the marina to degrade over time. Piles and fenders use plastic and other materials for protection and are constantly subject to abrasive forces from boats and ships. If the plastics were to become brittle, they may splinter or chip upon impact and would introduce plastic debris into coastal waters, and thus would adversely affect water quality resources. Because of the potential for pieces of unattached plastic or other materials to enter into the marine environment due to damage or degradation, the docks must be routinely inspected to ensure that the facility is being maintained in an environmentally safe operating condition and so that any damaged or degraded facilities are replaced in a timely manner. To minimize the potential of plastics and other debris from entering the water due to damage or deterioration of the docks, Policy 12 under **Suggested Modification 26** requires that the Harbor Department periodically inspect all docks, at least every five

years. If monitoring confirms that the use of plastic or other materials in the marina is damaging marine resources, the use of such materials shall be stopped, as more environmentally friendly products are developed. The results of the inspection reports are required to be submitted to the Executive Director of the Coastal Commission.

Demolition and Construction Activities

The demolition and redevelopment of marinas and docks in the Harbor that would be allowed by the PWP, as proposed to be amended, 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 such projects, Policies 4 and 5 under **Suggested Modification 24** requires that development or redevelopment is designed to prevent erosion, sedimentation, and other pollutants in runoff. Policy 5 requires that all new development or redevelopment in the harbor follow the "Construction and Maintenance Responsibilities and Debris Removal" procedures outlined. This includes measures such as the use of least damaging method for construction and removal of pilings, floating booms to contain debris or spills, minimization of bottom disturbance, removal of bottom debris following demolition and prior to construction, recovery of any non-buoyant debris by divers as soon as possible after loss, 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, materials used for construction of marinas can introduce pollutants and debris into the marine environment. Policy 3 under **Suggested Modification 23** requires that materials used for construction of piers, pilings, docks, dolphins, or slips shall not include timber preserved with creosote, (or similar petroleum-derived products.) Pilings treated with Ammoniacal Copper Arsenate (ACA), Ammoniacal Zinc Arsenate (ACZA) or Chromated Copper Arsenate (CCA) shall be used only if wrapped or coated prior to installation with a water tight plastic sleeve, or similar sealant. To prevent the introduction of toxins and debris into the marine environment, the use of plastic wrapped pilings (e.g. PVC Pilewrap) and reinforced plastic for pilings (e.g. high density polyethylene (HDPE) pile armor), shall conform to specific requirements outlined in the policy. Further, if federal or state regulatory agencies, through new or better scientific information, determine that environmentally less damaging materials or methods are available for new piles or piling replacement, the least environmentally damaging materials and/or methods should be required for such projects, where feasible.

Therefore, Commission finds that the proposed PWP amendment with the suggested modifications is consistent with the applicable policies of the Coastal Act Sections 30230 and 30231 regarding protection of water quality.

G. California Environmental Quality Act

Pursuant to Public Resources Code Section 21067 and Sections 15050 and 15051 of Title 14 of the California Code of Regulations, the County of Ventura is the lead agency for CEQA purposes, as it is the public agency with principal responsibility for carrying out the Channel Islands Harbor Public Works Plan (and one of the agencies, if not the agency, with principal responsibility for approving it and supervising it as well), it is a local government with general powers, and it acted first on the subject PWPA. Nevertheless, the County of Ventura did not prepare any environmental documentation addressing the subject PWPA 1-07.

As an agency with a certified regulatory program under CEQA section 21080.5, the Commission must consider alternatives and mitigation measures that would substantially lessen any significant adverse environmental effects that the proposal would otherwise have on the environment. Sections 13371 and 13356(b)(2) of Title 14 of the California Code of Regulations require that the Commission not approve or adopt a PWPA unless it can find that , "...there are no feasible alternatives, or feasible mitigation measures, . . . available which would substantially lessen any significant adverse impact that the development . . . may have on the environment."

The Commission incorporates its findings on Coastal Act 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. For the reasons discussed in this report, the PWP Amendment No.1-07, if modified as suggested, is consistent with Coastal Act requirements. As modified, the PWP Amendment will not have any significant environmental effects. There are no other feasible alternatives or mitigation measures available that would further lessen any significant adverse effect that the approval would have on the environment. The Commission has suggested modifications to the PWP Amendment to include such feasible measures as will reduce the environmental impacts of new development. As discussed above, the Commission's suggested modifications bring the PWP Amendment into conformity with the Coastal Act, if amended in accordance with the suggested modifications. The Commission further finds that the PWP Amendment No. 1-07, if modified as suggested herein, is consistent with CEQA.

Pierhead Extension



EXHIBIT 1

Channel Islands Harbor

PWPA 1-07

Pierhead line expansion locations

Exhibit 2

Channel Islands Harbor PWPA 1-07

Correspondence from Interested Parties

25 Pages



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED
JAN 16 2008

Gary Timm, Assistant Director
Amber Tysor, Coastal Program Planner
California Coastal Commission
89 So. California Street, Suite 200
Ventura, CA. 93001

January 15, 2008

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Channel Islands Harbor
Public Works Plan
1. BISC, Amend 1-04
2. Waterside Amend 3

REQUEST TO POSTPONE ACTION PENDING MARINA DEL REY FINDINGS

Dear Mr. Timm and Ms. Tysor:

On January 10, 2008, the Coastal Commission unanimously approved fundamental policy positions regarding protection of avian species and comprehensive disclosure of future development plans. The policies were developed in the Marina Del Rey LCP Periodic Review. These policies are directly relevant to development of the Channel Islands Harbor by Ventura County.

At the conclusion of the seismic Commission action on January 10th, Executive Director Douglas stated staff would need to develop new findings. Pending the approval of these findings, action should be postponed on both of the above the referred Ventura County proposals. In both instances, no new Commission action is needed for postponement. The BISC amendment was continued to an indefinite time at a Commission hearing on October 10, 2007. Action on the "Waterside" Amendment was extended up to a year by Commission action in November.

Approved Marina Del Rey finding will inform staff recommendations on many aspects of the Ventura County harbor development plans. Two key areas of Ventura proposals affected are:

1. Protection of Avian Species.

The Commission adopted a policy that in a densely developed urban landscape, even non-native trees used by avian species can be recognized as an Environmentally Sensitive Habitat Area (ESHA). Staff suggested that ESHA might be found for trees in a more natural and less urban land use area but not in one like Marina Del Rey. For a setting like Marina Del Rey, staff suggested crafting new protections for "sensitive biological resources." Under staff's concept, avian species might be relocated to separate nesting areas with buffers and set back and that might employ special roosts or other devices to encourage nesting. Either approach necessitates a whole site specific biological protection assessment. Under either the policy adopted by the Commission or the one recommended by staff, protection of avian species in Channel Islands Harbor must be rethought. There has been no on site study by the Commission's biologists; avian observations done by consultants working for the County have been only partially provided to the Commission; there is no tree trimming policy; there is no policy for buffers; there is no pro-active County policy to preserve or protect this resource. Assumptions were made in the staff report for the October BISC hearing that are scientifically unsupported including that part of a nesting grove can be removed without consequences and that a distance of ten feet from a nesting tree is adequate "buffer". The policy adopted by the Commission requires a more rigorous and scientific framework. Please see our attached letter of October 16, 2007 further on these needs.

2. Comprehensive Disclosure of Development Plans

Channel Islands Harbor is far less urbanized than Marina Del Rey. In the proposed third, "waterside" Amendment to the certified Public Works Plan, the County is seeking to excise development restrictions to facilitate extensive new development. The PWP requires preservation of open space in the Harbor that existed at the time the PWP was certified. Existing structures may be redeveloped but only within strict expansion limitations. New structures require a PWP amendment.


The County practice has been to submit development plans parcel by parcel without any comprehensive disclosure of development plans. For more than four years it has promised that a comprehensive PWP amendment proposal is in the works but it has yet to offer one. The "waterside" Amendment proposal is an expanded piecemeal approach. It purports to deal just with the water areas and the County promises to follow it with another Amendment that will deal comprehensively with the land areas. There is no rational way to divide development standards for the water from those for the land. They are interdependent and changes in rules for one affects rules for the other. We have filed extensive comments objecting to broad PWP changes proposed in the so called "waterside" amendment. Among these proposed changes is the attempt to excise entirely the concept that the Harbor is built out and that new development on land or water require a PWP Amendment.

The policy adopted by the Commission that Los Angeles County should follow an overall comprehensive approach rather than a piecemeal one for marina development should be applied to Ventura County and the Channel Islands Harbor. Piecemeal pursuit of Coastal Commission project approval is bad planning and contrary to sound management of the asset and to consideration of cumulative impacts that affect compliance with the Coastal Act. Further consideration of the "waterside" amendment should await finalization and staff guidance by the Marina Del Rey findings.

CONCLUSION

The policies adopted by a unanimous Commission on January 10th have enormous relevance to consideration of Harbor development elsewhere. The policies adopted in evaluating the Marina Del Rey LCP Periodic Review are recommendations to Los Angeles County. They do not initially direct County action. However, it is expected the policies will mold Commission consideration of future development proposals brought to the Commission by Los Angeles County.

In the context of the Channel Islands Harbor, the Commission policies have greater practical effect. These policies can be applied to guide staff recommendations and Commission decision making on actual project proposals. To apply these policies, there needs to be a clear record provided by the findings. Until the findings are written and certified it is inappropriate to proceed with either pending Ventura County PWP amendment.


Lee Quaintance

Encl.
CC: Peter Douglas



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

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

December 10, 2007

Re: "Waterside" PWP Amendment
Channel Islands Harbor

RECEIVED
DEC 10 2007

Dear Gary :

We appreciated the opportunity to meet with you and your staff and County representatives on December 5TH. Some areas of agreement were identified. This was positive. However, very significant differences remain. We look forward to your staff consideration of the points we have raised in our letter of March 7, 2007 and in the discussion on December 5TH.

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Our greatest concern taken from the meeting was an indication that you might be receptive to the County proposal to expunge from the PWP its provisions that (Section 1.2):

"With the exception of already approved projects along the West Channel, the Harbor will be completely built out."

and (Section 4.8):

"The Harbor development is complete and should require no additional development."

These provisions are the very essence of the PWP. The PWP does not bar new development but it does require that new development not already scheduled must be added by amendment to the PWP. Development of two parcels, X-1-B and X-3 are scheduled in PWP Table 1. Also specifically allowed is reconstruction of existing development provided that public walkways and other public access requirements are added if not already in place.

At our meeting, Director Krieger and Ms. Miller urged you to accept the County position that, even for the waterside amendment the "built out" provisions of the PWP should be stricken because (Miller e-mail of December 6, 2007):

"It is contradictory to the intent of having a planning document in the first place. Any additional development, or replacement development, in the Harbor is subject to the control of both the Board of Supervisors and the California Coastal Commission. Removing this statement does not give Harbor staff a 'free pass' to increase development."

We could not disagree more. The signature feature of the certified Public Works Plan is that it designs a very low density small boat harbor that restricts taking of existing parks, open space and public view corridors without amendment to the PWP. The PWP says what it means and means what it says. The inclusion of a requirement for amendment to add wholly new is a quality of life measure that protects low cost and no cost public access and enjoyment.

By requiring an amendment for new development (not already scheduled in the PWP) the bar was raised to require a full public review process not afforded by a NOID process.

The provision that the Harbor is built out is an integral part of PWP mission stated in Sec. 1.1:

"The purpose of this Public Works Plan is to provide Channel Islands Harbor with a detailed and specific planning document to guide future Harbor development."

It is not alien or novel for planning documents to restrict future development in order to protect quality of life. Such restrictions often fetter maximum economic exploitation of public or private land.

Analogies abound for this type of restriction. The most prominent example in Ventura County is the countywide SOAR (Save Open-Space and Agricultural Resources) initiative adopted in 1988. SOAR protects key agricultural land. It is a deliberate choice by government to restrict over development. This is an extremely strong restriction on land use but no one would say it is "contradictory to the intent of having a planning document." Planning document can and do place restrictions of many kinds on development.

The present attempt by the County to expunge the "built out" provisions of the PWP is a replay of its same attempt in the BISC proceedings. Commission staff was initially receptive but staff reversed its view in light of the full Commission finding that the BISC required an Amendment to the PWP.

The staff report you authored on the BISC dated May 26, 2004 details the reasons for Modification 9 rejecting the County attempt to expunge the "built out" concept. Your staff report notes (page 6) there is some ambiguity and even contradictory language in the PWP but concluded:

"Where a plan or policy contains contradictory language or policy direction the plan must be interpreted in a way that best carries out the intent of the plan."

Your staff report attaches a letter of December 16, 2003 by the County consultants, Stanley & Associates, who drafted the PWP. Their letter, as noted in your staff report, affirms the "build out" provisions as PWP intent and policy.

The Coastal Commission approved the BISC with Modification 9 restoring the original language of the PWP and rejecting the County attempt to expunge this policy.

In her letter to Director Douglas of November 21, 2007, Director Krieger stated a goal for the Waterside Amendment is to:

"... isolate PWP sections identified for amendment that could be left alone at this time without jeopardizing the renovation of waterside improvements."

Clearly, the "build out" provisions can be left alone without jeopardy to a truly limited Waterside Amendment.

Removal of the "built out" provision is contrary to parallel provisions in the Oxnard Local Coastal Plan (see, among others, LCP pages III-18, III-19 and III-31). Amendment of the LCP to remove the "built out" policy would require Amendment to the Oxnard LCP.

Removal of this planning policy would fundamentally alter the PWP and the quality of life it was designed to protect on a continuing basis. Such a change would also run contrary to the CEQA obligation of the Coastal Commission pursuant to Section 21080.9 of the Coastal Act.

We have devoted this letter to a discussion of the County attempt to expunge the "built out" policy because we see it as an attempt to break the backbone of the PWP. We will separately comment on other issues raised by the December 6th e-mail from Ms. Miller.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Quaintance", written over a horizontal line.

Lee Quaintance
Secretary

Cc: Amber Tysor
Barbara Carey
Peter Douglas



The Beacon Foundation

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3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED
MAR 07 2007

Ventura County Board of Supervisors
c/o Roberta Rodriguez, Clerk of The Board
800 S. Victoria Avenue
Ventura, CA 93009

March 7, 2007

OFFICE OF CLERK
BOARD OF SUPERVISORS

Re: Amending the PWP

Dear Board of Supervisors:

These comments are provided for the administrative record of the County Harbor Department proposed "Draft Recreational Boating (Waterside) Amendment to the Channel Islands Harbor Public Works Plan (PWP)." The Beacon Foundation is a nonprofit and all volunteer environmental organization that for the past thirteen years has focused on protection of the coastal resources of Ventura County.

Deceptive Notice. The Harbor Department distributed a Notice of a February 22nd Harbor Commission "workshop" and a March 13th Board of Supervisor's hearing on its proposed amendment. The Notices mislead the public regarding the proposed action. They state the amendment:

"... will allow the rehabilitation and reconstruction of many of the marinas in the Harbor, particularly along the east channel. The County is proposing an expansion to the pierhead line in several areas, addition of docks and slips where possible, updating the slip count in the entire Harbor, and clarifying the permitting process for repair and replacement construction work. The recent heavy winds and high wave action in the Harbor have damaged many of the older dock facilities, and serves as a reminder that the existing marinas must be replaced."

A very few pages of text would be needed to propose specific changes to the PWP to accomplish the stated limited purpose. Instead, this 3rd Amendment to the PWP is a total rewrite of the document running more than 100 pages. This rewrite, as will be detailed below, goes far beyond authorization of the waterside changes stated in the Notice. It decimates the purpose of the present certified PWP and enables massive new waterside and landside development.

Gutting of Development Limitations. A fundamental provision of the existing Public Works Plan, as approved by the County and certified by the California Coastal Commission, is that the harbor serves boating and free public coastal access while maintaining low density development. As stated in Section 1.1:

"The purpose of this Public Works Plan is to provide Channel Islands Harbor with a detailed and specific planning document to guide future Harbor development."

In keeping with this purpose existing PWP Section 1.2 states this key restriction:

"With the exception of already approved projects along the West Channel, the Harbor will be completely built out. The existing development is presented in Table I and Figure III."

This policy is also stated in existing PWP Section 4.8:

"The Harbor development is complete and should require no additional new redevelopment."

The PWP restriction does not prevent new development but does require that the PWP must be duly amended to allow any such proposals.

Without explanation, the proposed 3rd Amendment strikes out the parts of Section 1.2 and 4.8 quoted above. This is an attempt to break the Harbor open to all forms of development, waterside and landside, without the need to amend the PWP.

In 2004 the County attempted gutting Section 1.2 in the PWP amendment it proposed for the Boating Instruction and Safety Center (BISC). It sought to amend Section 1.2 to say that only the Harbor "basins" were built out. The Coastal Commission rejected this change as inconsistent with the PWP and required reinstatement of the original language. Having been rebuffed in its prior attempt to partly gut the restriction, it is disingenuous for the Harbor Department to now go for removing the restriction altogether under cover of a 3rd Amendment that purports to be limited to waterside development.

County Development Intentions Are Falsely Stated. By gutting the PWP development restrictions, the 3rd Amendment makes a lie of the following language it preserves in Section 1.2:

"The County of Ventura does not have plans for any major expansions or reconstructions of the Harbor area. There will be, therefore, no previously undisclosed environmental impacts associated with implementation of this proposed Public Works Plan."

This statement of County plans is untrue. The Board of Supervisors has conducted scores of closed sessions on development plans for various parcels including Fisherman's Wharf and the Casa Sirena. County CEO, Johnny Johnston in a speech reported in the Star of January 19, 2007, indicated that "\$170 million is in the wings" awaiting deployment in Harbor redevelopment.

Oxnard is Ejected From Harbor Jurisdiction. Without explanation, the Jurisdictional History of the PWP is excised from the document by the proposed 3rd Amendment (see pages 1 and 2). In addition, references are deleted to shared Oxnard/County jurisdiction over Harbor resource protection (see pages 8, 39, 51-56, 59, 62, 72, and 81-82).

Excising the Jurisdictional History removes text stating that all County amendments to the PWP must be found consistent with the City of Oxnard's Local Coastal Plan. The Oxnard LCP was certified before the County PWP and this jurisdictional history is what mandates City involvement in the amendment process. PWP Section 1.1 (deleted by the 3rd Amendment) states that PWP amendments:

"... shall be approved by the Coastal Commission only if it finds, after full consultation with the affected local governments, that the proposed public works plan amendment is in conformity with the local coastal programs for the attached jurisdictions."

This requirement has been consistently enforced by the Coastal Commission. The certified Oxnard Local Coastal Plan mirrors key environmental and harbor growth protections of the PWP. Some LCP restrictions including those on the percent of allowed development not directly related to boating, are more protective than the PWP. The check on County actions by a required City LCP conformity review cannot be simply air brushed out of the document. This deletion is highly significant and is an attempt to eliminate the constraint on County action provided by the City LCP. Indeed, the proposed 3rd Amendment contains changes that are inconsistent with the City LCP.

The unexplained excising of references to shared County/City involvement in Harbor resource protection appears to be an attempt to eliminate a City say and also to relieve responsibility for joint undertakings to deal with important identified needs including waterway congestion and water quality monitoring and control.

Process For PWP Amendment Is Subverted. As noted above, the PWP restricts new development by requiring a PWP amendment to add new projects to ones existing or approved at the time the PWP was certified. Without any explanation, the proposed 3rd Amendment deletes in its entirety the existing Section 1.3 titled "Potential Long Term Planning Options for the Harbor." As certified, this Section sets out detailed process steps, including environmental review and extensive public involvement, required for amending the PWP.

The 3rd Amendment deletes the entire process for amendment and in its place inserts a Notice Of Impending Development (NOID) process as the exclusive means to review and approve project. As is very well known to the Harbor Department,

a NOID is only appropriate for projects that are already specifically contained within the existing PWP. This exact point was impressed upon the County when the Coastal Commission rejected the County attempt to add the Boating Instruction and Safety Center (BISC) by a NOID. The Commission determined the BISC was not a project contained in the PWP and required the County to first process addition of the BISC by a PWP amendment.

The substitution of a NOID procedure for the Amendment process is the most far reaching and insidious change attempted by the proposed 3rd Amendment. As defined by the Coastal Act (Pub. Resources Code Section 30605) a Notice of Impending Development is a fast track review process properly limited to projects that have already been approved as part of a Public Works Plan. For a project to properly be reviewed by a NOID it must be both contained in the PWP and consistent with the PWP considered as a whole. The 3rd Amendment substitutes a NOID process for an Amendment process for any and all new development. This is an improper attempt to circumvent important environmental safeguards. Unlike a NOID, an Amendment requires detailed analysis of impact and specific findings regarding conformity with the Coastal Act.

It is noteworthy that the new language inserting the replacement NOID process is not underlined in the draft 3rd Amendment circulated for review. Only those who do a line by line comparison will discover that the NOID language is new and is being added by the 3rd Amendment without disclosing it is new.

Altering State Law By Proposed Appendix K . This Appendix to the 3rd Amendment has the stated purpose (new Section 1.4) of listing activities that can be undertaken pursuant to an administrative process. The California Coastal Act (Public Resources Code Section 30610) defines the specific types of minor actions that may be authorized without a Coastal Permit issued by the Commission. Appendix K embellishes and alters the statute to broaden what the County may do administratively:

1. Part 3 of proposed Appendix K deletes a key portion of Coastal Act Section 30610 (f) that provides: *"... the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources."*
2. Part 5 of proposed Appendix K alters Coastal Act Section 30610 (h) to state a NOID will not be required in certain circumstances when the statute says nothing about NOID requirements.
3. Part 6 of proposed Appendix K deletes the role specified by Coastal Act Section 30610 (i) of the Coastal Commission Executive Director and the Commission in determining whether temporary events require a coastal permit.

Surely it is obvious (or should be) to the County's preparer that State Statute cannot be changed by approval of an amendment to a Public Works Plan. Coastal Act Section 30610 speaks for itself and need not be quoted in the PWP. The attempt to re-write it by a PWP Amendment is impermissible and futile.

Abridgement of Land Use Designations and of General Public Access to Slips.

Without explanation, PWP Section 2.1 describing the County Harbor lease program is deleted entirely by the 3rd Amendment. The elimination takes from the document two important lease policies that the PWP made binding on the County. They are:

1. *"All uses not specified are prohibited. Lease holders may seek amendments to the leases in order to add uses or change intensities. However, the County has specific land use designations for each parcel and does not permit amendments to leases which would allow additional uses which are not consistent with the underlying designation."*
2. *"Each lease of boat slips contains a provision providing for the availability of the slips to the general public on a first come first serve basis. Leases to yacht clubs for the operation of slips specify a maximum number of the total slips which can be reserved exclusively for rent by members of the club; the remainder must be available to the general public."*

Both of these policies are integral to the overall dedication (stated in Section 2.1 and proposed for deletion by the 3rd Amendment) that:

"The Channel Islands Harbor water and landside areas are primarily committed to recreational boating and marine related uses."

If the Harbor Department is allowed to strip these protections from the PWP, then land use designations may no longer control and inconsistent uses may be approved. Additionally, removing a right of the general public to slip rentals raises the specter of allowed linking of slip rental to those also holding landside leases. This economic discrimination would favor those with greater means.

Harbor Channel Widths Are Arbitrarily Reduced. Section 1.2 of the PWP states the Harbor is in the form of a "Y" and that the two northerly main channel segments known as West Channel and East Channel "...are 400 and 300 feet wide respectively." Without any explanation, the 3rd Amendment changes this to say the two northerly main channel segments "are 200 to 300 feet wide." This arbitrary reduction of 100 feet or more in West and East channel width would allow expansion of marina slips into these waterways throughout the Harbor without PWP Amendment If the pier head expansions is 100 feet or less.

Ironically, the 3rd Amendment leaves in place the existing prohibition of any encroachment of new docks further into open public waterways. This prohibition, in Policies section 3g, (page 57), is made meaningless by the hat trick of changing Section 1.2 to arbitrarily trim 100 feet off the width of the defined public waterways. Another existing PWP provision not so easily subverted is the statement in Section 1.4 (page 9) that *"Extension of boating slips into the eastern channel would reduce the width of the navigable channel to only 125 feet, a width which would lead to congestion and navigation problems."* The 3rd Amendment deals with this inconvenient truth by simply deleting Section 1.4.

Aside from the failure to explain or document the arbitrary reduction in width of public waterways, there is no analysis of the direct or cumulative impacts of narrowing the waterways on boating congestion or safety. Those sections of the PWP that identify congestion issues are simply excised from the document by the 3rd Amendment.

Narrowing the defined public waterways is the second attempt by the preparer to open up the whole Harbor to slip extensions. The Harbor Department sought Coastal Commission approval to expand all marinas by 20 feet in its proposed 2005 PWP Amendment for the Vintage Marina project. In Findings approved on July 12, 2006, the Commission rejected the County proposal and required a modification to the PWP expressly limiting the 20 foot expansion to the Vintage project:

*"The current CIH PWP does not allow for an expansion of structures into existing open water areas, as depicted on the current Land Use Map as 'Waterways' and as defined by the existing pier head lines at the time of original approval of the PWP. The Harbor Department is proposing to allow for up to a 20-foot expansion for marina reconstruction projects in the Harbor. **There has been no analysis regarding this proposed expansion harbor-wide, and the Commission recognizes that this type of expansion may not be appropriate in certain locations in the harbor. Without a detailed analysis of the entire harbor, the Commission cannot allow for the proposed change to the PWP.** Therefore, PWP Suggested Modification 4 is required, which deletes the language proposed by the Harbor Department that would allow a 20-foot expansion of marinas harbor-wide."*
[emphasis added]

The Commission rejected harbor wide slip expansion into the waterways. Now the preparer is attempting to gain the same objective by arbitrarily redefining the width of public waterways without any analysis of the impacts of doing so.

Appendix B, D, E, G, H, I, and J Erroneously Claim to be "Approved" Projects.

Each of these development projects is said to be "Approved" but only two projects the Boating Center (Appendix B) and Vintage Marina (Appendix C), has ever been subject to any environmental review or submitted to the Board of Supervisors or the Coastal Commission for approval. Not even a diagram is provided for Appendix G.

Appendices D, E, F, H, I, and J contain diagrams that are either illegible or incomplete. In each case there is no project description and no way for the decision maker to discern from the diagrams alone what parts are new and what parts are existing.

The Boating instruction and Safety Center (BISC) went through an approval process. However, due to failure to comply with environmental review requirements, a Court judgment set aside approval of this project on October 16, 2006 (Habitat for Hollywood Beach v. California Coastal Commission.). Recital of this project as one that has been "Approved" without recognition of the court judgment is misleading and inappropriate.

It is absurd to deem projects "Approved" by their mere inclusion in an Appendix. None of these new developments is now contained in the certified PWP. Each of these projects requires a coastal permit and each appears, even on the fragmentary information provided, to require one or more amendments to the certified Public Works Plan. Any such approval process must include environmental review documentation that will allow the Commission to discharge its California Environmental Quality Act (CEQA) equivalent review obligations. The Commission obligation includes a required finding that no less environmentally damaging feasible alternative exists.

The Court decision in the Habitat case found that cumulative impacts and alternatives were not adequately considered. Based on that experience, it would be foolhardy and a waste of resources to sally forth and seek approval of the projects in the Appendices without environmental review.

Commercial Fishing Is Squeezed Out. The 3rd Amendment scuttles protections for commercial fishing. Its proposed new Section 1.3 describing projections of demand for boat slips contains no consideration of future slip needs to support commercial fishing. In addition to other changes, the 3rd Amendment deletes Policy 1 from Section 3.3 that provides:

"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."

The intention of the Harbor Department to diminish and eventually squeeze out commercial fishing is revealed in new Section 3.3 4 providing:

"Within 5 years of certification of this amended plan (2006), the County of Ventura shall consolidate fish offloading to the Commercial Fishing Wharf. This Wharf shall

be equipped with two cranes of varying size to accommodate the various fish catch in the Channel Islands Harbor area. Two cranes shall be maintained here as long as fish offloading weights are reported at 75% of 2005 levels or greater. At least one working cranes shall be in place at all time."

It must be obvious to the preparer that weights and market value can vary greatly by species from year to year. Tonnage alone is an arbitrary measure of the vitality of commercial fishing or its offloading needs. No explanation is provided for choosing 2005 (or for the selection of any time frame) as a drop dead criteria for depriving commercial fishermen of essential off loading facilities.

Failure To Implement PWP Conditions Throughout the 3rd Amendment, portions of the original PWP that require actions still not completed are simply reprinted without setting a new time for completion. Typically, the PWP as originally certified, set a time frame of one year from certification for conditions to be implemented. That would require completion in 1987. As detailed below, at least six of these conditions actually remain unfulfilled twenty years later.

The 3rd Amendment, as now drafted, merely repeats the original time set for completion without reviving a new time frame for completion of those conditions the County has to date failed to implement. This mere regurgitation of past due obligations that have not been met mocks the purposes of a PWP update. All required conditions in the PWP that have not been implemented need to have new time frames set that run from certification of the 3rd Amendment. These include:

1. The 3rd Amendment retains the section (page 46 et seq of the 3rd Amendment) regarding County initiation of an access program with specified features including expansion of public walkways and public bikeways in areas not so served at the time the PWP was certified in 1986. The PWP and the 3rd Amendment call for submission of such a plan to the Coastal Commission "Within one year of approval of the PWP." No such plan was ever submitted and most of its specified features, have never been implemented by the County. The 3rd Amendment should now state the timeframe for actions as "Within one year of approval of the 3rd Amendment to the PWP."
2. The 3rd Amendment retains the section (page 49 of the 3rd Amendment) regarding a beach parking monitoring program. This required the County to submit a program "One year after approval of the Public Work's Plan by the Coastal Commission..." The 3rd Amendment should now state the timeframe for action on this never completed requirement is "One year after approval of the 3rd Amendment to the PWP by the Coastal Commission."
3. The PWP contains a requirement (page 55 of the 3rd Amendment) for the County to initiate "within one year of approval" of the PWP a Boat Traffic Monitoring Program analyzing effects of development on Harbor congestion.

The 3rd Amendment deletes this never implemented requirement. It should be reinstated in the 3rd Amendment and the completion obligation should be measure "within one year of approval of the 3rd Amendment to the PWP."

4. The PWP contains a provision (pages 72-73 of the 3rd Amendment) requiring a water quality and benthic monitoring program to be conducted on a semiannual basis by a qualified marine biologist and requires enforcement steps to mitigate any negative impacts disclosed. A time frame needs to be placed by the 3rd Amendment on implementation of this program "within one year of approval of the 3rd Amendment to the PWP."
5. At page 74 of the 3rd Amendment a new requirement is added for the County to implement a defined water conservation program "within one year of approval of the Harbor Public Works Plan by the Coastal Commission..." The 3rd Amendment should specify implementation "within one year of approval of the 3rd Amendment to the PWP by the Coastal Commission..."
6. The PWP contains an existing provision (page 79) requiring:

"Within one year of approval of the Harbor Public Works Plan by the Coastal Commission, the County will submit for review and approval of the Executive Director of the Coastal Commission, the Harbor Area Allocation Traffic System (HAATS) program, including a schedule for implementation of the program."
This has never been done and the 3rd Amendment should restate the timeframe to say: "Within one year of approval of the 3rd Amendment to the PWP"

CONCLUSIONS

In nearly every section of our comments we note fundamental changes are proposed "without explanation." The decision maker and the public should not have to guess the purpose of changes. The Notice for the hearing on this document is deceptive. It says the amendment is limited to waterside improvements and this is manifestly untrue. In fact, the 3rd Amendment enables unrestricted new waterside and landside development.

Many of the changes contained in the 3rd Amendment dilute or remove significant public access and environmental protections of the existing certified PWP. The 3rd Amendment decimates Coastal Act process controls over changes to the PWP and destroys the existing structure for public involvement in consideration of these changes.

This document is unworthy of Ventura County and we urge its rejection.

For The Beacon Foundation


Lee Quaintance, Secretary



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A PUBLIC ENTITY SERVING CHANNEL ISLANDS BEACHES AND HARBOR

March 7, 2007

Ventura County Board of Supervisors
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Ventura, Ca. 93003

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Subject: Channel Islands Beach Community Services District (CIBCSO) comments on the Draft Channel Islands Harbor Public Works Plan 3rd Amendment (PWPA)

In response to the Draft Channel Islands Harbor Public Works Plan 3rd Amendment (PWPA) the Channel Islands Beach Community Services District (CIBCSO) wishes to express concerns on various issues which will impact our constituents and functions of the District alike.

Under the current Public Works Plan there is specific language protecting public involvement and public notice of development within the Channel Islands Harbor. Additional, protections require the notice and involvement of surrounding Public Agencies, Service Providers and Countywide stakeholders. These protections and processes have been stricken completely from the PWP.

The CIBCSO recommends the County Board of Supervisors direct Staff return an inclusive PWPA that addresses both waterside and landside development. Additionally, the District supports the suggestion by members of the Board of Supervisors to utilize an inclusive planning process such as a charrette.

Please accept the following comments on the current draft.

Page 5-Area Description:

The County has proposed deleting the following sentence, "With the completion of already approved projects along the West Channel, the Harbor will be completely built out." The paragraph now reads: "The County of Ventura does not have plans for any major expansions or reconstructions of the Harbor area. There will be, therefore, no previously undisclosed environmental impacts associated with implementation of this proposed Public Works Plan."

Whether or not this statement at this point in time is intended to cover only the waterside of Channel Islands Harbor or the entire land and water portions, it is inaccurate to state there will be not major expansions or reconstructions when expansion of the Fisherman's

Wharf parcel along with relocation of the existing public boat launch or the complete waterside reconfiguration of the X-3c parcels, for example, are being proposed concurrent with the proposed PWPA.

The proposed PWPA is supposed to be a clearer, more consistent, and accurate representation of all facilities and uses and policies in the Harbor at the time of its approval and certification than what is now contained in the current PWP language. Elimination of the sentence stating the Harbor is completely built out implies future major development, but then the sentence is probably describing a condition of the harbor that was true for 1986 but is not accurate today. The County is indeed contemplating additional major reconstruction and renovation of the harbor and the language and policies of this new amendment should accurately describe and create appropriate policy to address this.

A suggestion would be to eliminate the sentence as proposed, but add "other than those proposed in the appendices to this Public Works Plan." following the words "any major expansions or reconstructions". Thus the plan, as approved, would then contain provision for all expansions and reconstructions proposed to date, including whatever appropriate CEQA approval would be necessary to ultimately certify such proposed projects.

The last sentence on page 5, which states: "The Harbor, as developed, contains no natural resources of environmental significance." should be stricken, or a listing, instead, of all the natural resources, including migratory bird species, fish species in the harbor, natural grasses and other flora and fauna should be listed. It is suggested that it would be easier to simply delete the sentence, as the natural resources affected by any proposed projects will, as part of the CEQA review, be examined in any case. Additionally, page 67, Biological Resources, contains language regarding important species in or near the harbor inconsistent with the last sentence on page 5, further justifying its deletion or modification for consistency.

Page 6-Channel Islands Harbor Master Plan-

This diagram, showing all lease programs in the harbor, with each waterside and landside parcel identified on the plan with a parcel designation that corresponds to the parcel listings in Appendix A is being deleted and apparently not replaced in the proposed PWPA. This diagram appears to be a critical element of any harbor plan and should be amended and replaced in the proposed PWPA.

Page 8-Process for Review of Projects Pursuant to the PWP

The first paragraph refers to activities, "minor in nature" that would not require a Notice of Impending Development nor a PWPA and are listed in Appendix K.

While the County retains most language describing the Notice of Impending Development (NOID) process for those projects specifically listed and eventually certified within the current proposed PWPA, it is deleting, in its entirety, all language in

the existing PWP that describes the Public Works Amendment process for major developments or reconstructions that would not be eligible for a NOID.

The CIBCSO recognizes that both the County and the Coastal Commission may agree that some of the existing language in the current PWP describing the PWPA process is now obsolete, but deleting from the PWP the policy language that delineates a clear process for those projects that exceed that which is described in the current PWPA is undesirable. It implies that the County intends to never contemplate any project beyond rehabilitation or repair of existing uses, which is unrealistic. Or worse, it implies that the County is attempting to prohibit the Coastal Commission from exercising its right to require that a new project that is not included in or inconsistent with the proposed PWPA must be certified through an amendment process rather than simply be limited to approving it with conditions as in the case of a NOID.

The PWP Amendment process, corrected to include current procedure, should be retained in the PWPA to assure the Commission and the public that on projects that are not currently included in the PWPA or redevelopment projects that are expanded beyond the limits of what is allowed in a NOID there will be adequate environmental review of impacts and consistency with the Coastal Act.

An example of a project that, under the currently proposed PWPA should not be allowed with a NOID process, but should require a PWPA process, would be the proposed dry stack operation at parcel Q. The County has recently amended Appendix G, Marina Dry Stack Plan on page 101 to read "Intentionally Left Blank". Such a plan, with no description, and no opportunity for either the County or Coastal Commission to assess environmental impacts or consistency with the Coastal Act, could not possibly qualify for future development under a Notice of Impending Development. Either the current PWPA fully describes this new project for this parcel, currently listed in the certified PWP as a parking lot for the former public launch ramp and adjacent Public Park and shown as a view corridor receiving special protection in the proposed PWPA's Land Use Plan on page 34, or its development must be accommodated at a later date through the Public Works Plan amendment process and not a NOID.

Page 25-Boating Support Facilities-

The last paragraph should be changed to replace "accommodates" to "plans" or "recommends". Since the proposed PWPA only indicates that "Details of this facility will be coordinated through the landside amendment" there is, thus absolutely no details of this proposed change in usage of parcel Q within the proposed PWPA. If the future proposed separate PWPA described here as "the landside amendment" is somehow never commenced or certified, the County cannot effect an authorization for any use of this parcel other than that allowed in the current PWP by simply stating that the County "accommodates" it.

Page 27- Commercial Sport Fishing

The 300 feet designation for commercial sport fishing at the floating dock at parcel RS near Murre Way should be retained. The County is proposing to change it to 600 feet. They attempted this in 2005 as part of the first amendment to the PWP to facilitate the proposed west side BISC by eliminating the RS parcel as a potential alternative site for the BISC. The attempt was not agreed to by Coastal Commission staff and the 300 feet description was retained.

A related possible attempt to prevent the RS parcel from being considered as an alternative to the proposed BISC site is the new last sentence on page 27. Without identifying what parcel they are referring to, the County inserts this sentence: "On this parcel, commercial fishermen have first right of refusal for slip use". It is not clear whether the County is referring to only the RS parcel or also the adjacent docks waterside of parcel Q. Commercial fishing and commercial sport fishing are not the same thing although they receive similar protection under the Coastal Act. They are described in the both the existing PWP and the proposed PWPA as separate operations. One is a commercial operation to bring fish to market. That operation and accommodation for commercial fishing slips is described in the first paragraph on page 27 as being located within the 60 designated slips at Parcel X-1-A where the commercial fishermen are being given first right of refusal. Letting this type of commercial fishing berthing proliferate further onto the east side of the harbor and displace recreational boating uses there is contrary to current policies and is especially damaging as wholesale loss of recreational boating access slips are proposed within this PWPA. The existing PWP described as a possible solution to lack of recreational slip access the dredging of parcel Q into a new marina. While that may not be feasible, converting this parcel's waterside to exclusive commercial fishing use is counter to the recreational use priority policies in the PWPA.

Maintaining the existing commercial sport fishing facility PWP descriptions and the existing west side commercial fishing facilities descriptions cannot be seen as reducing these activities in the harbor, but allowing them to further proliferate is definitely reducing recreational boating access opportunities for the growing Ventura County boating population. Maintaining the existing language protects these commercial fishing and sport fishing activities while allowing additional recreational uses to share this portion of the east harbor.

Page 28-Recreational Beach Use and Swimming-

This section contains all the original language of the existing PWP related to non-boating recreational use of both Kiddie and Hobie Beaches. It describes how heavily used this coastal access feature used to be. It would be appropriate to describe here how all sand has been removed or allowed to erode from Hobie Beach and how sand is not now being replenished at Kiddie Beach and for what reasons. A clear and accurate description of what used to be the premier non-boating recreational coastal access features of the County's harbor and their current condition and state should be included in this section

and the reasons for Harbor Department policies for why these conditions have come about. For instance, the Harbor Department should add its views that sand on Kiddie Beach migrates onto the harbor floor and thus can become a navigation hazard, if that is, indeed, their view on why they are not now replenishing Kiddie Beach. Similarly they should explain and justify in this section what they have done to eliminate Hobie Beach as the premier catamaran and canoe launching beach in the County.

The current language about traffic driving onto Hobie Beach and displacing sunbathers and swimmers is no longer applicable although it is still technically accurate as nobody can now use this facility for any of these activities due to actions and inactions of the County.

Page 28-29 -Waterways Circulation-

While the issue of waterways circulation has produced considerable controversy and is one of the cumulative impacts that must be addressed according to the court ruling negating the first amendment to the PWP, it is inappropriate for the County to attempt to eliminate the problem by eliminating any description of possible congestion from Mandalay Bay development from the proposed PWPA. The sentences relating to the unlikely feasibility of widening the harbor mouth may not be accurate and could be eliminated, but the issue of Waterways Circulation and its relation to boat congestion from any source should be maintained in the proposed PWPA.

Page 29- Water and Sewer Service-

It is unclear to the CIBCSO why this section has been eliminated entirely from the proposed PWPA. Since other sections of the PWPA still refer to the District as the provider of these services until at least 2021 on page 14, having an updated Water and Sewer Service section is still appropriate. The PWPA should include language that protects the District's access to its facilities and to reserve all rights of the District as specified within the 1996 Water Service Agreement.

Page 32-Maintenance Dredging-

The County has added significant language to the section about maintenance dredging of the harbor and harbor mouth describing the closely related goal of trapping sand in the sand trap north of the harbor mouth and distributing it beaches to the south. Unfortunately in doing this there was an inopportune elimination of the description of the problem necessitating dredging of the harbor mouth later addressed in the third paragraph. To maintain the new language without the confusing deletion of the actual problem requiring harbor mouth dredging the CIBCSO suggests that the County not eliminate the word "mouth", but add the word "and" following it in the second paragraph on page 32. This would accurately describe what the Army Corp operation performs approximately every two years.

The CISCSD suggests that Harbor Department concern about sand migration off of the "planned shelf" described in newly inserted language in the proposed PWPA on page 25 onto the surrounding harbor mouth floor be addressed by amending the County agreement with the US Army Corps of Engineers to dredge the entire harbor mouth as necessary all the way up to this "planned shelf" as the dredging barge equipment is temporarily berthed alongside Hobie Beach just south of this point anyway. Such a simple and economical amendment to the dredging agreement would, thus, allow the County to pursue permits with the Corps to periodically augment, at County or perhaps jointly with City of Oxnard expense, the sand replenishment of the Kiddie and Hobie surge beaches to their originally engineered configurations. The new Corp dredging amended agreement would eliminate the concern of this sand causing a navigational hazard if it migrates off the "planned shelf" and onto the harbor floor.

The simple solution suggested above would allow the restoration of Kiddie and Hobie Beaches, two of the most important and previously popular low cost recreational coastal access features available to families in the County. There is an intuitive basis for the additional benefit of increased water circulation and perhaps water quality by restoring Kiddie Beach's sand out along the "planned shelf" and reducing the pooled and perennially polluted waters at that troubled, formerly wildly popular beach.

Page 33- footnote 4 at bottom of page-

The example cited may no longer be relevant nor accurate.

Page 33- Land Use Designations and Permitted Uses-

The land use map is no longer in the back of the document. It is on page 34.

Page 39-Public Recreation-

The change on page 39 is to delete the reference to Kiddie beach popularity with families because "its waters are clean, clear and normally without any noticeable wave surge." It leaves in the next sentence saying "These conditions allow children of all ages to swim safely." The deletion makes nonsense out of that statement because this beach cannot be considered "safe" if it is polluted -- and it has a chronic problem of pollution. The County's responsibility is to maintain a "clean" beach and the changes should not be approved as written. Instead some discussion of the current condition of the waters at Kiddie Beach and some discussion of loss of public use and access there would be more accurate. The CIBCSO has long had an interest in the status and safety of Kiddie Beach and is suggesting inexpensive and concrete solutions to help restore the coastal access once available at Kiddie and Hobie beaches as outlined above. Imminent definition and enforcement of TMDL's and water quality by state regulatory agencies should be mentioned and an accurate description of recent history with proposed solutions and future options should be offered.

Page 40-Public Parks-

The fourth paragraph should be changed. "the commercial sport fishing docks at Parcel RS" should be eliminated and replaced with "Parcel Q". The park is north of the designated sport fishing docks but directly waterside of Parcel Q.

Page 49-

Policy 3- Change "the Public Works Plan" to "this amendment to the Public Works Plan".

Pages 55-57-Policies-

Item number 1 is eliminated but numbering of items 3 through 8 have not been renumbered.

Page 65-Policies-Protection of existing Recreational Boating Slips

Policy d. should not be eliminated but the first portion of the policy changed to read:
2a- Policies 1 and 2 above shall not be interpreted to mean that...

This policy protects rights of commercial fishing and sports fishing without giving them preferential rights above recreational use other than that specifically provided for in the PWP. This prevents proliferation of commercial fishing slips at the expense of public recreational access to the coastal resources.

Page 72-Policy 9-Water Quality Monitoring-

This policy should have language requiring the County to implement the policy within a specified time upon certification of this proposed PWPA.

Page 74-Policy 17-Water Conservation Program-

This policy should also include language requiring implementation within a specified time of the PWPA certification and continuing annually, as stated in the policy.

Pages 75-80-Traffic and Circulation-

All the language and issues within this section need to be reassessed and evaluated relative to changes in the harbor and surrounding neighborhoods and the Naval Base since the current language was drafted in 1986, including the described HAATS program. The proposed new developments and reconstructions included in the Appendices and changes to the base and the addition of Mandalay Bay, Westport, and Seabridge all render new study of traffic and circulation critical. Truck traffic from the Naval Base onto Victoria and also increased traffic from the Port of Hueneme impacting the intersection of Channel Islands Boulevard and Victoria need to be addressed.

Besides impacts to neighboring communities of Silver Strand, Hollywood by the Sea, and Hollywood Beach that depend on Victoria and Harbor access, the future success of planned Harbor redevelopment also can be very much affected by inadequate mitigation of traffic congestion on the roads or at nearby traffic signals and intersections. Not addressing adequately the current and potential future state of traffic and circulation could negatively affect the ability of the public in accessing the coastal resources managed by the County in and near the Harbor.

Page 84-85-Dredging-Policies-

The CIBCSO suggests adding a policy #2 addressing the suggestion that Army Corps approximately every two years as part of their contract with the Harbor dredge the harbor mouth including up to the "planned shelf" that lies underwater just southwest of the Kiddie surge beach. This would take care of any shoaling that might extend into the harbor mouth and any migration of sand from the underwater shelf that supports Kiddie Beach.

The policy should also seek to establish Corp permission for the County, possibly sharing the expense with the City of Oxnard, to pay for and replenish periodically by truck, the sand at Kiddie and Hobie Beaches to restore these recently lost coastal access facilities that once enjoyed widespread popularity.

Page 89-Appendix A, Table 1-

Parcel X-3c lists 15 recreational slips but the diagram in Appendix H only shows 13 slips.

Boating Instruction and Safety Center References

Document History, page iii- First Amendment should detail the judgement rendering the Coastal Commission certification null and void pending current appeal.

Page v- remove Appendix B-Approved BISC plan and amend all other Appendix letters accordingly.

Page 6- Remove reference to Boating Instruction and Safety Center from Master Plan

Page 21- Remove reference to the Boating Instruction and Safety Center in last paragraph.

Page 23- Remove reference to the Boating Instruction and Safety Center.

Page 25-Remove reference to the Boating Instruction and Safety Center

Page 34-Remove reference to the Boating Instruction and Safety Center from the land use map.

Page 39-40-Remove reference to the Boating Instruction and Safety Center

Page 49-Remove references to the Boating Instruction and Safety Center

Page 50 –Remove references to the Boating Instruction and Safety Center

Page 51-Remove reference to the Boating Instruction and Safety Center

Page 57-Remove reference to the Boating Instruction and Safety Center in item 5 and the BISC in item 6.

Page 71-Eliminate policy 5 regarding the BISC

Page 72- Eliminate BISC policies 6 and 8.

Page 90-Remove BISC from Table 1

Page 91-Remove BISC from Future Waterside Boating Support Facilities

Page 92-93-Remove Appendix B, Approved BISC plan

Thank you for your consideration of District concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcia Marcus".

Marcia Marcus, CIBCSD Board President

Lyn Krieger - Channel Islands Harbor Public Works Plan, 3rd Amendment; Comments

From: "Tessier and Haddox"
To:
Date: 3/12/2007 11:42 AM
Subject: Channel Islands Harbor Public Works Plan, 3rd Amendment; Comments

140 Santa Ana Ave.
Oxnard, CA 93035
March 11, 2007

Board of Supervisors

Comments on the Draft Channel Islands Harbor Public Works Plan, 3rd Amendment (PWPA)
March 13, 2007.

If the Board of Supervisors approves the PWPA as proposed, one of the harbor's most popular public access areas will be diminished in size and in usefulness. Specifically, the extension of the pier-head from Bahia Cabrillo marina toward the harbor mouth (the west side) will reduce public access for traditional activities of fishing, family picnicking, and harbor walks and viewing. Below is a photo of the site, marked with the pier-head extensions proposed under PWPA:



The old marina extends just to the turn where Harbor meets the shoreline (where San Clemente dead-ends). The extension (over three hundred feet in length), will go down past Santa Cruz to where Harbor curves into the park at the point.

In the original plan, this section was marked to be a “fuel dock”, hence “Visitor Boating Services” in the terminology of PWPA. That fuel dock was never built; the Harbor Commission now argues that plans can be shifted to marina usage under the old plan. The shift fails to take into account:

- **the site is a traditional fishing and picnicking spot.** This is a low-cost (free) section of shoreline used for harbor oriented land activities. The PWPA (p. 39) itself reads: “Section 30211 of the Coastal Act requires that new development not interfere with the public’s right of access to the sea where acquired through use or legislated authorization....The protection of these ocean oriented recreational lands and lower cost visitor and recreation facilities is stipulated by Sections 3020, 30221, and 30213 of the Coastal Act.
- **its original planned use (fuel dock) did not preclude these activities, but the new use will.** Pier-line and boat slips are a more intense and exclusive use than a dock would be. (One neighbor noted that there was once a dock at the site, used for fishing and harbor enjoyment).
- **the site has traditionally been used as part of the park at the southern tip of the harbor’s west side.** PWPA (p. 40) says: “The popularity of this area is due in part to the good fishing and the open view of both the Harbor and its entrance and the passing boats. The area has a sense of motion and openness that other parks within the Harbor do not offer.” In fact, the benches and trash receptacles in the park extend along the revetment that would become the landside of the marina. Even the park maintenance includes this revetment in the park jurisdiction.

For these reasons alone, it is important for the Board of Supervisor to reject the PWPA.

Such major issues of harbor usage need consideration of both land and water issues and appropriate study and public review. At the very least, the Board of Supervisors is urged to revise the PWPA to exclude the Bahia Cabrillo pier-head extension as shown on Appendix J, p. 110; referred to the transmittal letter to the Board of Supervisors, p. 3-4.

Thank you for your consideration,

Judith A. Tessier, resident
(805) 382-0000

APPENDIX A

Inventory of Existing Uses/ Intensities by Parcel

~~**Existing Waterside Boating Support Facilities**~~

EXHIBIT 3
Channel Islands Harbor PWPA 1-07
Appendix A with Suggested Modifications

Table I
Inventory of Existing Uses/Intensities by Parcel

Use of Parcel	Parcel Size (acres) Land & Water	No. of Slips or Dry Storage	Intensity (units or floor area)
<u>RESIDENTIAL</u>			
PCL C ^a	7.14 acres		90 apts
PCL F-4, 5	8.75 acres		118 apts
PCL LM-1			243 apts
PCL LM-2			123 apts
PCL LM-3	19.65 (total for 1,2 & 3)		153 apts
Subtotal	35.54 acres		727 apts
<u>LODGING</u>			
PCL F ^a	10.69 acres		
PCL F-1	2.90 acres		
PCL F-3	1.89 acres		274 rooms
Subtotal	15.48 acres		274 rooms
<u>RESTAURANTS</u>			
PCL F ^a			12810 sq. ft.
PCL F-6	1.20 acres		10075 sq. ft.
PCL H ^a			3000 sq. ft.
PCL K-1	.79 acres	PL ^b	10924 sq. ft.
PCL K-2	.79 acres		11100 sq. ft.
PCL RS	3.57 acres		12100 sq. ft.
PCL V & V2 ^a			6266 sq. ft.
PCL X-3	3.03 acres		12000 sq. ft.
PCL Y-2 ^a	-----		10000 sq. ft.
Subtotal	9.78 acres		88275 sq. ft.
<u>RETAIL & MARINE SALES/SERVICE</u>			
PCL H- 1, 2 ^a	2.51 acres		
Boutique			1000 sq. ft
Chandlery			4000 sq. ft
Office for Boat Rent/Sales			1000 sq. ft
Bait & Tackle/Dive Shop			3950 sq. ft
Office & Space for:			4600 sq. ft
- Marine Services			
- Yacht Sales			
- Boat Rentals			
PCL N-1 ^a	3.4 acres		
Chandlery w/Office for:			5250 sq. ft
- Boat Sales/Storage			
- Insurance Brokerage			
PCL T	0.44 acres		
Office for:			540 sq. ft
- Fuel Dock			

Use of Parcel	Parcel Size (acres) Land & Water	No. of Slips or Dry Storage	Intensity (units or floor area)
PCL V-1 - Auto/gas Station	0.56 acres		1860 sq. ft
PCL V, V-2, V-3 ^a F. Mkt/Bait & Tackle Fish & Chips Splty Shops (8) & Laundromat Grocery	2.44 acres		2000 sq. ft 800 sq. ft 5000 sq. ft
PCL Y-2 ^a Gift Shops & Conv. & Marine oriented & Vis. Serv. Rec.	1.44 acres		15000 sq. ft
Subtotal	<u>10.79 acres</u>		<u>47200 sq. ft</u>

BOAT SLIPS, STORAGE, CONSTRUCTION & REPAIR

PCL C ^a Yacht Club Rec. Bldg.		<u>9179</u> 84 slips	4500 sq. ft.
PCL D & E Office for: - Slip Rental - Yacht Club	14.51 acres	402 slips	7570 sq. ft.
PCL F-2 ^a Transient Dock		<u>11</u> 27 slips	
PCL F-3 ^a		<u>331</u> 196 slips	
PCL F-7 Rec. Bldg. w/office For Slip Rental	18.76 acres	<u>433</u> 504 slips	8800 sq. ft.
PCL H1, 2 ^a		<u>20</u> 17 slips	
PCL LM-1, 2, 3 ^a		<u>0</u> 154 slips (combined with F-3)	
PCL N Bldg. for Boat: Sales & Brkrge. Whsle. Marine Repair & Constr.	6.75 acres	45 30 slips	25410 sq. ft
PCL N-1 ^a		<u>55</u> 22 slips	
PCL N-2 ^a - Office - Transient Dock - Launch Ramp	17.50 acres	<u>72</u> 120 slips <u>16</u> 40 slips (i.e. boats) 7 lanes	1330 sq. ft

Use of Parcel	Parcel Size (acres) Land & Water	No. of Slips or Dry Storage	Intensity (units or floor area)
PCL P-P & N Dry Storage Office for Boat - Sales & Rental - Minor Repair - Storage	6.49 acres	<u>145-645</u> slips	3056 sq. ft.
PCL N Bldg. for Boat: - Sales & Brkrge. - Whsle. Marine - Repair & Constr.	6.75 acres	45-30 slips	25410 sq. ft.
PCL Q Dry Stack		(unknown at this time)	
PCL RS ^a Commercial Sport Fishing		31 slips	
PCL X1A Commercial Fish	4.02 acres	<u>66-67</u> slips	
PCL X1B Office & Bldg. for Admin/Mngmt of Comm Fishing support facility ^c	0.78 acres		8800-8000 sq. ft. <u>8000 sq. ft.</u>
PCL X-2 Office for: - Minor Motor/Repair - Boat Sales/Brkrge - Boat Insurance	7.58 acres	197 slips	2674 sq. ft.
<u>PCL X-3e</u>		<u>15 slips</u>	
PCL Y-1 Office for: - Slip Rentals - Minor Motor/Repair - Boat Sales/Brkrge - Boat Insurance	6.96 acres	174 slips	2674 sq. ft.
PCL Y-3 Office for: - Slip Rentals	5.95 acres	153 slips	1300 sq. ft.
PCL Y-4 Yacht Club Bldg.	11.49 acres		9270 sq. ft.
Subtotal	88.54 acres		66584 sq. ft.

Use of Parcel	Parcel Size (acres) Land & Water	No. of Slips or Dry Storage	Intensity (units or floor area)
<u>PUBLIC SERVICES</u>			
PCL F-6 ^a Bldg. for Fire Station			4143 sq. ft.
PCL F-2 Pub. Park	0.90 acres	PL ^a	
PCL (no. #) P. Park (W. Side) (.20 underdeveloped)	3.10 acres		
PCL (no. #) P. Park (E. Side)	0.60 acres		
PCL (no. #) Harbor Maint. yard Maintenance Bldg.	0.87 acres		1269 sq. ft.
PCL (no. #) U.S.C.G. - Admin Bldg. - Barracks	1.40 acres	dock	5342 sq. ft. 3700 sq. ft.
PCL (no. #) Harbor Admin Bldg.	1.38 acres		5500 sq. ft.
PCL (no. #) ^f Boating Instruction and Safety Center (BISC) designated by * as shown on <u>Figure III, Figure IV, & Appendix B</u> Figures III, IV, V, & VI	**		net 19,000 sq. ft.
Subtotal	8.25 acres		19954 sq. ft.
TOTALS	167.98 acres	<u>2150</u> 2354 slips ^d	222013 sq. ft. ^e

a Parcel appears more than once in the Table.

b Public Landing

c Bldgs. not constructed/not shown in Total sq. ft.

d ~~With all pierhead extensions, the actual maximum slip total is will be 2210; however, the 2150 is the minimum number of slips, available. 2150 slips is minimum slip number is used to accommodate slips out of service at any given time.~~

d Designated slips, excludes approx. 150 partial finger ties and 350 dry boat storage slips.

e Does not include 8000 sq. ft. planned for parcel X1B

ef BISC includes boating and marine education, and a gathering facility

Table II
Existing Waterside Boating Support Facilities

USE / FACILITY	NUMBER OF SLIPS	LOCATION
TOTAL SLIPS	2150 2504 ^a	
Recreational (Public)	2047 2323 ^b	All Channels
Commercial Fishing	60-150 66	West Channel boat basin c
Commercial Sport Fishing	31	East Channel
Mixed Slips	20	
TOTAL DOCKS	8	
Commercial Sport Fishing	1 (31 slips) ^d	East side of Main Channel
Transient Slips Vessels	46 2 (67 slips) ^d	East Channel (at Fisherman's Wharf/Launch Ramp) & West Basin (at Peninsula Park)
Fuel Docks	1	East Side of Channel
U.S. Coast Guard Dock	1	East Side of Main Channel
Public Docks	3	One on West side at Bluefin Circle (near parking lot W-4). One on West side at Harbor Landing (never publicly owned). One in East Channel connecting to Fisherman's Wharf dock.

FUTURE WATERSIDE BOATING SUPPORT FACILITIES

Boating Instruction and Safety Center	278 ft.	West side at Bluefin Circle near parking lot W-4
---------------------------------------	---------	--

- a. Includes facilities approved for construction (but not yet fully constructed) on X and Y parcels per Coastal Permit 178-15.
- b. Includes 150 finger ties (mooring of boats outside of designated slips, but using the dock or slip structure to tie onto.)
- c. Permit 17-15 locates commercial fishing slip opportunities within this basin but recognizes that fishermen may choose to berth elsewhere in the Harbor.
- d. The number of berths available at any given time varies with the size of vessels tied up. The maximum number of slips for these docks was included in the "total slips" figure of the table.
- e. Public docks are those which are available for short-term berthing at points of interest within the Harbor.
- The Boating Instruction and Safety Center is situated partly on the current alignment of the Bluefin Way Loop, and partly on a turf and trees area. The BISC location is shown on Figures III, IV, V and VII.
 - The Boating Instruction and Safety Center eliminates 22 recreational boating slips, of which 3 are live-aboard. These slips are to be re-created elsewhere in the harbor in connection with Condition 2 of Notice of Impending Development 1-05.
 - This figure expresses the approximate lineal footage of side-tie dock to be established with the BISC.

Exhibit 4

Channel Islands Harbor PWPA 1-07

Heron Reports

12 Pages



JEFFREY B. FROKE, Ph.D.

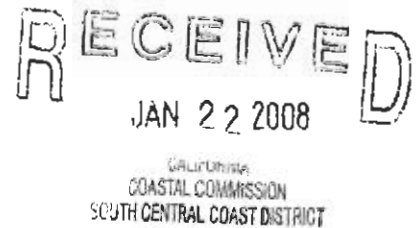
CALIFAUNA

3158 Bird Rock Road / Pebble Beach, CA 93953

TEL (831) 224-8595 / FAX (831) 649-3765

jbfroke@mac.com

14 January 2008



CHANNEL ISLANDS HARBOR HERONRY

NEST TREE DISTRIBUTION

The following table represents the annual distribution of nest trees for all tree species used by all nesting heron species during nest years 2003-2007. During the five-year study period, 43 individual trees were used for nesting; and altogether, 90 uses of those trees were counted. Black-crowned Night-Herons (BCNH) accounted for 63 of the 90 total tree-uses*, Great Blue Herons (GBH) 26, and Snowy Egret (SNEG) 1 (2004 only).

Herons nesting along the **PENINSULA** counted for 57 tree-uses (63 pct) over the five-year period, and the balance of 33 tree-uses (37 pct) occurred on the **WESTSIDE**. The largest annual tree-usage (and nesting effort) was made by BCNH on the Westside during the 2003 nesting period (BCNH used 16 Westside trees for nesting). Presently shown data do not reflect the actual number of nests used during any period. These nest effort data do exist and are reportable, per species.

Tree-use data are being analyzed to understand the annual patterns of new tree accession (NTA). NTA represents tree selection patterns of individuals or a population of animals (herons) that annually select nest trees from a larger field of suitable trees, and particularly when they adopt a previously unused tree for nesting, i.e., the population of nest trees increases over time by accession.

DEFINITION: USE means that one or more pairs of a species used the tree for nesting in a given year. Whether one or two GBH pairs nests in a tree, the event is a single use. The actual count of nests is not factored into this description of use.

CIH Nest Tree Distribution, 2003-2007

CIH AREA	2003		2004			2005		2006		2007		TOTALS
	BCNH	GBH	BCNH	GBH	SNEG	BCNH	GBH	BCNH	GBH	BCNH	GBH	
PENINSULA	12	1	11	1	0	6	1	5	7	5	8	57
WESTSIDE	16	3	4	3	1	3	1	0	1	1	0	33
TOTALS	28	4	15	4	1	9	2	5	8	6	8	90

Nest Tree Worksheet, 2003-2007

The following worksheet incorporates all basic tree-use data about CIH nesting herons during 2003-2007. Tree numbers correspond with trees marked on the **All Nest Map for 2003-2007** (attached). The 5 tree species are indicated by color-coded dots on the same map. Individual trees that are highlighted in yellow, below, have been used only once by herons. To date, this feature is more significant for trees used before 2007 as it indicates the trees to which herons did not return after the prior year. Future, or repeat use of trees used during 2007 only has not been determined (also, see All Nest Map).

TREE #	TREE NAME	NEST YEAR	HERON SPECIES
1	Magnolia	2003	BCNH
1	Magnolia	2004	BCNH
1	Magnolia	2005	BCNH
2	Melaleuca	2006	BCNH
2	Melaleuca	2007	BCNH
3	Cypress	2003	BCNH
3	Cypress	2004	BCNH
4	Cypress	2003	BCNH
4	Cypress	2004	BCNH
5	Cypress	2007	BCNH
6	Cypress	2007	BCNH
7	Cypress	2003	BCNH
7	Cypress	2004	BCNH
7	Cypress	2005	BCNH
7	Cypress	2003	GBH
7	Cypress	2004	GBH



8	Cypress	2003	BCNH
8	Cypress	2004	BCNH
8	Cypress	2005	BCNH
8	Cypress	2003	GBH
8	Cypress	2004	GBH
8	Cypress	2006	GBH
8	Cypress	2004	SnEg
9	Cypress	2003	BCNH
9	Cypress	2004	BCNH
9	Cypress	2005	BCNH
9	Cypress	2003	GBH
9	Cypress	2004	GBH
9	Cypress	2005	GBH
10	Cypress	2007	BCNH
11	Pohutukawa	2003	BCNH
11	Pohutukawa	2004	BCNH
11	Pohutukawa	2005	BCNH
11	Pohutukawa	2006	BCNH
12	Pohutukawa	2003	BCNH
12	Pohutukawa	2004	BCNH
12	Pohutukawa	2005	BCNH
12	Pohutukawa	2006	BCNH
13	Pohutukawa	2003	BCNH
13	Pohutukawa	2004	BCNH
13	Pohutukawa	2005	BCNH
13	Pohutukawa	2006	BCNH
14	Pohutukawa	2003	BCNH
14	Pohutukawa	2004	BCNH
14	Pohutukawa	2005	BCNH
14	Pohutukawa	2006	BCNH
15	Pohutukawa	2003	BCNH
16	Pohutukawa	2003	BCNH
17	Pohutukawa	2003	BCNH
18	Pohutukawa	2003	BCNH
19	Pohutukawa	2003	BCNH
20	Pohutukawa	2003	BCNH
21	Pohutukawa	2003	BCNH



22	Pohutukawa	2003	BCNH
23	Pohutukawa	2003	BCNH
24	Pohutukawa	2003	BCNH
25	Pohutukawa	2003	BCNH
26	Mont Pine	2003	BCNH
26	Mont Pine	2004	BCNH
27	Mont Pine	2007	BCNH
28	Mont Pine	2003	BCNH
28	Mont Pine	2004	BCNH
29	Mont Pine	2003	BCNH
30	Mont Pine	2003	BCNH
30	Mont Pine	2007	BCNH
31	Mont Pine	2003	BCNH
31	Mont Pine	2004	BCNH
31	Mont Pine	2005	BCNH
31	Mont Pine	2003	GBH
31	Mont Pine	2004	GBH
31	Mont Pine	2005	GBH
31	Mont Pine	2006	GBH
31	Mont Pine	2007	GBH
32	Fan Palm	2006	GBH
33	Fan Palm	2006	GBH
33	Fan Palm	2007	GBH
34	Fan Palm	2006	GBH
34	Fan Palm	2007	GBH
35	Fan Palm	2006	GBH
36	Fan Palm	2007	GBH
37	Fan Palm	2006	GBH
37	Fan Palm	2007	GBH
38	Fan Palm	2007	GBH
39	Fan Palm	2006	GBH
39	Fan Palm	2007	GBH
40	Fan Palm	2007	GBH
41	Pohutukawa	2004	BCNH
42	Pohutukawa	2003	BCNH
43	Pohutukawa	2003	BCNH

End of collected tree-use data , 2003-2007



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

Gary Timm, Assistant Director
Amber Tysor, Coastal Program Planner
California Coastal Commission
89 So. California Street, Suite 200
Ventura, CA. 93001

January 16, 2008

Re: Channel Islands Harbor
Public Works Plan Amendment
BISC – Avian Expert and ESHA

Dear Mr. Timm and Ms. Tysor:

The only independent avian expert to examine heron issues in the Channel Islands Harbor is Dr. John P. Kelly, Director of Conservation Science of the Audubon Canyon Ranch. As a public service and without compensation Dr. Kelly has provided three opinion letters to the Commission. Consideration of his comments and recommendation is vital to fashioning requirements for protection of this biological resource.

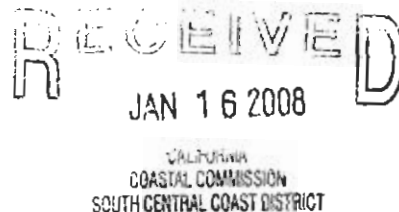
Please provide the Commissioners with the three attached letters to the Commission of March 9, 2005, April 7, 2006 and November 12, 2007. The letters are interrelated and need to be read together.

It is noteworthy that the November 12th letter indicates that he has followed the work of Commission biologist, Jonna Engles in Marina Del Rey and that he recommends establishing: "... Environmentally Sensitive Habitat Areas (ESHA) that would protect non-native trees and other vegetation needed to provide suitable nesting substrate for herons or egrets at Channel Islands Harbor." Dr. Kelly emphasizes the need for a thorough study to design needed protections.

Sincerely,

Lee Quaintance
Secretary

Encls.





AUDUBON CANYON RANCH

Cypress Grove Research Center, P. O. Box 808, Marshall, CA 94940
Tel 415-663-8203 • E-mail CGRC@egret.org • Fax 415-663-1112

12 November 2007

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

RE: Proposed Boating Instruction and Safety Center (BISC).and protection of the
heronry at Channel Islands Harbor

Dear Commissioners:

I would like to comment on continuing concerns for the protection of the heron and egret colony site at Channel Islands Harbor. I have commented previously on this issue, in letters to the California Coastal Commission (9 March 2005 and 7 April 2006) and the Ventura County Harbor Department (25 June 2003 and 9 December 2003). In these letters, I outlined published scientific findings regarding the protection of heronries. My comments are further supported by my continuing scientific work on herons and egrets, conducted at all known heronries in the San Francisco Bay area since 1990. Please refer to my recent Annotated Atlas and Implications for the Conservation of Heron and Egret Nesting Colonies in the San Francisco Bay Area [available online: www.egret.org/atlas.html]. In addition, I have recently written a scientific analysis on the status, trends, and conservation of San Francisco Bay area heronries, currently in press in the international journal *Waterbirds*.

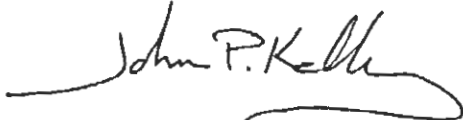
I would like to emphasize two points regarding the protection of nesting herons and egrets at Channel Islands Harbor. First, I have continuing concerns about appropriate buffer distances between BISC construction areas and nesting trees. In my opinion, the proposed buffer distances may not be large enough to protect nesting herons. My previous comments explain these concerns in considerable detail.

Second, following the work by Coastal Commission biologist Jonna Engels in Marina del Rey, I encourage the Commission to consider establishing Environmentally Sensitive Habitat Areas (ESHA) that would protect non-native trees and other vegetation needed to provide suitable nesting substrate for herons or egrets at Channel Islands Harbor. Although heron and egret nest abundances fluctuate considerably across years as birds

move among local heronries, establishing such protections would help to ensure the long-term use of this area by herons and egrets. To substantiate an ESHA at Channel Islands Harbor, and to clarify recent confusion regarding nest abundances and the historic use of particular nesting trees, a thorough study of current and historical use of nesting areas should be conducted by Coastal Commission staff.

I appreciate the Commission's concern for the protection of heron and egret nesting habitat. My comments are offered independently and I have no affiliation with other individuals or groups that have commented on this issue. Thank you again for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, reading "John P. Kelly". The signature is fluid and cursive, with a long horizontal stroke extending to the left and a loop at the end.

John P. Kelly, PhD
Director, Conservation Science



AUDUBON CANYON RANCH

Cypress Grove Research Center, P. O. Box 808, Marshall, CA 94940
Tel 415-663-8203 • E-mail CGP@svn.net • Fax 415-663-1112

7 April 2006

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

RE: Proposed construction of docks in Channel Islands Harbor Basins D and E

Dear Commissioners:

I would like to comment on the potential for adverse environmental effects on nesting herons by construction of the proposed replacement marina adjacent to the future Boating Instruction and Safety Center (BISC) in the Channel Islands Harbor. Since 1990, I have conducted scientific studies of herons and egrets at all known heronries in the San Francisco Bay area. These comments follow from my previous letters to the Ventura County Harbor Department (25 June 2003, 9 December 2003) and the California Coastal Commission (9 March 2005) regarding the BISC and protection of the heronry in the Channel Islands Harbor.

In particular, I would like to emphasize my support of several points provided by Dr. Jeffrey Froke in his 3 March 2006 report to the Ventura County Harbor Department on protection of the heronry. I strongly agree with Dr. Froke that a conservative approach with special consideration for the protection of the nesting birds is "essential" to assure that the heronry will not be adversely affected by the proposed construction activities. In addition, his comments on the importance of (1) involving a qualified heron ecologist to monitor the birds and (2) prohibiting construction noise, loud music, human activity, and pets near nesting areas are well-supported by published studies on disturbance threats to heronries.

However, some aspects of the report need closer attention to align the planned protection of the heronry with current knowledge on the nesting ecology of herons and egrets. Specifically, my comments below address five important points.

(continued)

First, the statement in Dr. Froke's report that the "latest it is reasonable to expect arriving new [Black-crowned Night-Herons] is mid-late April" is not true. The timing of nest initiations by Black-crowned Night-Herons is highly variable and unpredictable. This point has been demonstrated clearly at Alcatraz Island, where nest initiations from 1990-2002 extended from March 11th to July 24th with half of all new nests initiated after April 27th (Hothem and Hatch 2005, *Waterbirds* 27: 112-125). Such prolonged periods of nest initiation are also evident at other heronries throughout the San Francisco Bay area. In addition, colony disturbance by humans has been shown to discourage the settlement of late-nesting night-herons (Tremblay and Ellison 1979, *Auk* 96: 364-369). Therefore, construction activities or repeated intrusions by humans anytime during the nesting season might prohibit the use of suitable nesting sites in the heronry, even if a qualified observer confirms that those sites are not being used. Therefore, the appropriate approach to managing construction activities near the heronry is to limit construction activities to the seasonal period when the birds are not nesting.

Second, the particular locations of active nests in a particular year should not be used to delineate the boundaries of a heronry. The reason for this hinges on the intraseasonal dynamics of nest initiations. Not only are new nests possible throughout most of the breeding season, but the locations of new nests normally shift both within and between breeding seasons. Therefore, the colony site is best defined as the area that includes all nest sites shown to be suitable by current or previous use. It is risky and inaccurate to assume that the habitat conditions worthy of protection necessarily shift around as birds build their nests in different locations. This is an important point, because the correct boundary of heronry must be determined to evaluate the proximity of potential disturbance.

Third, the assertion in Dr. Froke's report that arguments in support of using setbacks to protect heronries lack data is not true. Although the available data are insufficient to prescribe precisely the appropriate setback distances for particular sites, scientific studies based on field experiments and disturbance reports strongly support the use of buffer zones to protect heronries (Hafner 2000, *Heron nest site conservation*, in Kushlan and Hafner, eds., *Heron Conservation*. Academic Press). The distinguishing difference between Dr. Froke's interpretation and the recommended use of setbacks is this point: Dr. Froke indicated correctly that these birds often nest in close proximity to human activity and may tolerate such activity if it is predictable or repetitive, *but tolerance to existing conditions has no bearing on the potential for disturbance*. The proximity of nesting herons to humans and structures is most likely based on habitat conditions assessed by the birds when they select suitable places to nest—it does not indicate a tolerance to unusual disturbance resulting from *changes* in the extent, timing, or intensity of human activity. Zones of potential disturbance exist around all heronries—even in urbanized settings—and should be considered in conservation planning.

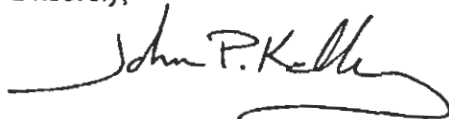
(continued)

Fourth, published data do not imply that these birds are in any way "attracted" to areas of human activity, as suggested in the Dr. Froke's report. To my knowledge, there is no scientific evidence of any selectivity or preference for urbanized settings. (Evidence of attraction or avoidance requires a comparison of sites that are used vs. suitable alternative sites that are not used.) Instead, existing evidence indicates that although herons and egrets may nest in urbanized areas, they avoid using sites with increased human activity. For example, work by Watts and Bradshaw (1994, *Colonial Waterbirds* 17:184-186) indicated that herons in Chesapeake Bay select colony sites that are farther from human structures and in areas with less intensive human development than available alternative sites in the area. Similarly, herons in coastal Maine tend to occupy heronries that are farther than available alternative colony sites from towns (Gibbs et al. 1987, *Auk* 104: 38-47). Katherine Parsons reported an increasing dependence by Snowy Egrets on the safety of islands in urbanized estuaries (Parsons and Master 2000, *in* Poole and Gill, *Birds of North America*, No. 489). The most likely reason that herons and egrets use remnant habitat near humans, such as the nesting area at Channel Islands Harbor, is that they need safe places to nest in close proximity to critical feeding areas.

Finally, the possible effects of increased turbidity associated with dock construction on the foraging needs of nesting herons and egrets should be carefully considered. At least one study has found that increased turbidity causes a significant decline in foraging success and suggested its use in deterring fish-eating colonial waterbirds from fish farms (Cezilly 1992, *Colonial Waterbirds* 15: 249-252).

I hope these comments are helpful in developing the conservative approach recommended by Dr. Froke's report. Thank you again for this opportunity to comment on the heronry at Channel Islands Harbor.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Kelly", with a stylized flourish at the end.

John P. Kelly, PhD
Director, Conservation Science

CC: Ms Lyn Krieger, Director, Ventura County Harbor Department.



AUDUBON CANYON RANCH

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9 March 2005

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

RE: Boating Instruction and Safety Center (BISC) project, PWA-MAJ-1-04

Dear Commissioners:

I would like to clarify some points of discussion related to my previous letters to the Ventura County Harbor Department (25 June 2003 and 8 December 2003) and the assessment of proposed modifications to the Boating Instruction and Safety Center (BISC) project.

First, zones of disturbance around heron nesting colonies exist even in urbanized settings. The difficulty in determining the appropriate minimum buffer distance in areas where herons nest near human activity does not reduce the value of avoiding disturbance zones. Disturbance studies to date invariably recognize not only that the sensitivities of nesting herons and egrets vary considerably among nesting sites and times of year, but more importantly, that at each colony site there is an increasing likelihood of disturbance with declining distance to human activity. In areas where human disturbance cannot be completely avoided, incorporating the maximum feasible buffer zone may be critical in protecting heronries by reducing the frequency or intensity of disturbance. Heinz Hafner, a leading scientist in the field of heron and egret ecology, has indicated that buffer zones remain critical factors in colony site management even at sites where birds tolerate humans at close distances (Hafner 2000; pp. 210-212 in Heron Conservation, Academic Press). Although scientific recommendations of 100-200 m buffer areas around wading bird colonies have apparently been considered unrealistic in the proposed plans for the BISC, I urge you to consider establishing the maximum feasible buffer area between the nesting herons and areas planned for increased human activity.

I greatly appreciate Dr. Froke's 2003-2004 assessments of the heronries at Channel Islands Harbor, Port Hueneme, and Ventura Harbor. However, readers should not use the results, which document a shift in nest locations between two seasons, to speculate about trends in nesting abundance or use of nest trees. Such year-to-year changes are common and often fail to reflect any underlying trend or pattern. Dr. Froke's report also indicates, importantly, that the trees near the BISC site provide potentially suitable nesting sites, even if unused in a given year. It is reasonable to assume that such sites remain suitable and that their availability may be critical in urbanized environments, by accommodating shifts of nest locations in colonies that persist as dynamic, dispersed aggregations. Similarly, there is a likely risk in assuming that reduced or intermittent use of particular nest trees reflects reduced importance to the colony.

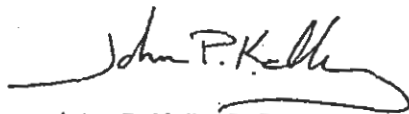
I share Dr. Froke's suspicion that many of the nesting Black-crowned Night-Herons moved from the Channel Islands Harbor in 2003 to Port Hueneme in 2004. Such movements are common in this species and can be stimulated by changes in feeding conditions (degraded locally or improved elsewhere), nesting habitat conditions, or the intensity, timing, or frequency of disturbance events. Some changes in nest locations probably reflect normal annual variation. As above, I emphasize that in the absence of additional information, the shift in nest locations in 2004 is unlikely to indicate longer-term differences in the suitability of nest sites or colony sites.

Please also note that the dispersed configuration of the heronry at Channel Islands Harbor does not in itself protect birds that nest close to the BISC site. The California Department of Fish and Game Code prohibits take of individual nests, regardless of any larger-scale effects on the heronry.

Finally, although some responders on this issue have reported "habituation" to human activity by nesting herons at Channel Islands Harbor, there is no evidence of habituation, which requires a change in individual behavior over time. Even if habituation was known to have occurred, the capacity of the herons for further habituation is unknown. A simpler and therefore more likely explanation for the presence of nesting herons and egrets in the Channel Islands Harbor is that herons, like other birds, select nest sites each year based on their ecological requirements and the suitability of local conditions. Consistent with this idea, frequently observed changes in their use of nest sites and colony sites suggest a sensitivity to changes in the surrounding area.

Thank you for your appreciation of the heronry and for this opportunity to comment.

Sincerely,



John P. Kelly, PhD
Research Director