

CALIFORNIA COASTAL COMMISSION

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

**ADDENDUM – F5b & 6**

DATE: February 5, 2008

To: Commissioners and Interested Persons

From: John Ainsworth, Deputy Director
Gary Timm, District Manager *GT*

Subject: Friday, February 8, 2008 agenda items **F5b**, Channel Islands Harbor Public Works Plan (PWP) Amendment 1-04 and; **F6**, Channel Islands Harbor Notice of Impending Development (NOID) 1-05.

The addendum includes revised versions of suggested modifications 5 and 24 to the PWP amendment recommendation and recommended special condition 3 to the Notice of Impending Development . Revised Suggested Modification text to be deleted is shown by **~~bold double strike-out~~** and added language is shown by **bold double underline**. Revised Special condition text is shown in **~~bold strike-out and underline~~**. Additions or revisions to findings are shown in underline.

Modification 24 *Deletion of entire modification*

Suggested Modification 24 on page 20 of the staff report is being deleted in its entirety. Deletion of the suggested modification will result in approval of the proposed change on Page 28 of PWP amendment, Chapter 2.3, regarding the first sentence under "Commercial Sport Fishing" to change the dock length of the commercial sport fishing dock at Murre Way on the eastern side of the Harbor from approximately 300 ft. to approximately 600 ft. as follows:

The commercial sport enterprises within the Harbor operate from approximately **~~300~~ 600** feet of floating dock at Murre Way on the eastern side of the main channel.

The proposed change in the PWP from 300 ft. to approximately 600 ft. is not intended to allow an increase in the size of the dock but rather to reflect the existing length of the dock. Staff measured the existing dock as exceeding 580 feet in length. Therefore, the proposed change to reference the length of the dock to approximately 600 feet is

appropriate. This revision to delete the suggested modification is consistent with the language concerning the subject dock recommended for approval in PWP amendment 1-07 (item 5a on the February 8 meeting agenda).

Modification 5

Construction of the Boating Instruction and Safety Center (BISC)

Commencement of construction shall not take place until a qualified biologist has determined the black-crowned night herons, great blue herons or egrets are not longer breeding or nesting within 300 feet of the construction site. Biological surveys of trees on and adjacent to the project site (within 500 feet of any construction activities) shall be conducted 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 1 and September 30. In addition, No no Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons, great blue herons or egrets (February 1 through August 15). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron, great blue heron or egret nesting in the immediate vicinity of the BISC.

NOID Special Condition No. 3 - Protection of Nesting and Roosting Herons

Commencement of construction shall not take place until a qualified biologist has determined the great blue herons, egrets or black-crowned night herons are not longer breeding or nesting within 300 feet of the construction site. Biological surveys of trees on and adjacent to the project site (within 500 feet of any construction activities) shall be conducted 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 1 and September 30. In addition, No no Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons, great blue herons or egrets (February 1 through August 15). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to,

during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron, great blue heron, or egret nesting in the immediate vicinity of the BISC.

Under Section C. of the staff report, Biological Resources, the following revisions or additions shall be made to the findings beginning after the last paragraph on Page 36 of the staff report:

Therefore, the Commission is requiring PWP suggested modification 5 and NOID special condition 3 which prohibit all outside exterior construction during the nesting season of the night herons, great blue herons or egrets (February 1 – August 15). Interior construction shall be allowed throughout the year if the consulting biological monitor determines that interior construction can be performed without adversely impacting nesting herons. In order to provide further protection for avian species that may exhibit breeding behavior prior to the nesting season stated above, Suggested Modification 5 and Special Condition 3 also require that biological surveys be conducted prior to any construction activities that could commence or continue into the heron and egret breeding season of December 1 through September 30 and weekly during construction. Commission staff biologist, Dr. Jonna Engel, has found that the appropriate monitoring period for the breeding and nesting season is December 1 through September 30. These surveys are important and necessary to provide up-to-date information regarding the numbers and locations of nests established by sensitive bird species within the harbor prior to commencing or continuing exterior construction activity.

The addendum also includes attachments consisting of an updated March 2007 monitoring report on the status of California Least Tern and Western Snowy Plover nesting at Hollywood Beach conducted by Reed Smith of the Ventura Audubon Society.

Under Section C. of the staff report, Biological Resources, the following additions shall be made to the findings beginning at the 10th line (3rd from bottom) of the last paragraph on Page 39 of the staff report:

A subsequent report on nesting activity of Least Terns and Snowy Plovers on Hollywood Beach conducted in March, 2007 by the Harbor Department and Reed Smith of the Ventura Audubon Society provides more recent survey data on Tern and Plover habitat at Hollywood Beach. The survey results show successful nesting activity in 2007 for both Least Terns and Snowy Plovers. Two Least Tern chicks hatched and were observed inside the symbolic fence area until they and two adult terns left the area in August 2007. Western Snowy Plover also successfully nested on Hollywood Beach in 2007 with 8 nests initiated according to the report and all of the nests successfully hatched within 4 weeks. 5 of the nests were inside of the fenced nesting area. The report notes that both Least Terns and Snowy Plovers benefited from the protected fencing which was constructed and maintained by the Harbor Department. Suggested

Modification 4 provides for the installation of "symbolic" fencing (e.g. rope and stakes) to protect tern and plover nests if recommended by the U.S. Fish and Wildlife Service.

The addendum also includes disclosure forms for ex parte communications, and approximately 225 letters objecting to the hearing location and requesting a postponement to the Commission's April meeting in Santa Barbara. The large majority of the letters consist of identical copies of two different form letters and a representative sample of each is contained in this addendum.

F 5b. +6

**Hollywood Beach
California Least Tern
Western Snowy Plover
Nesting
2007**

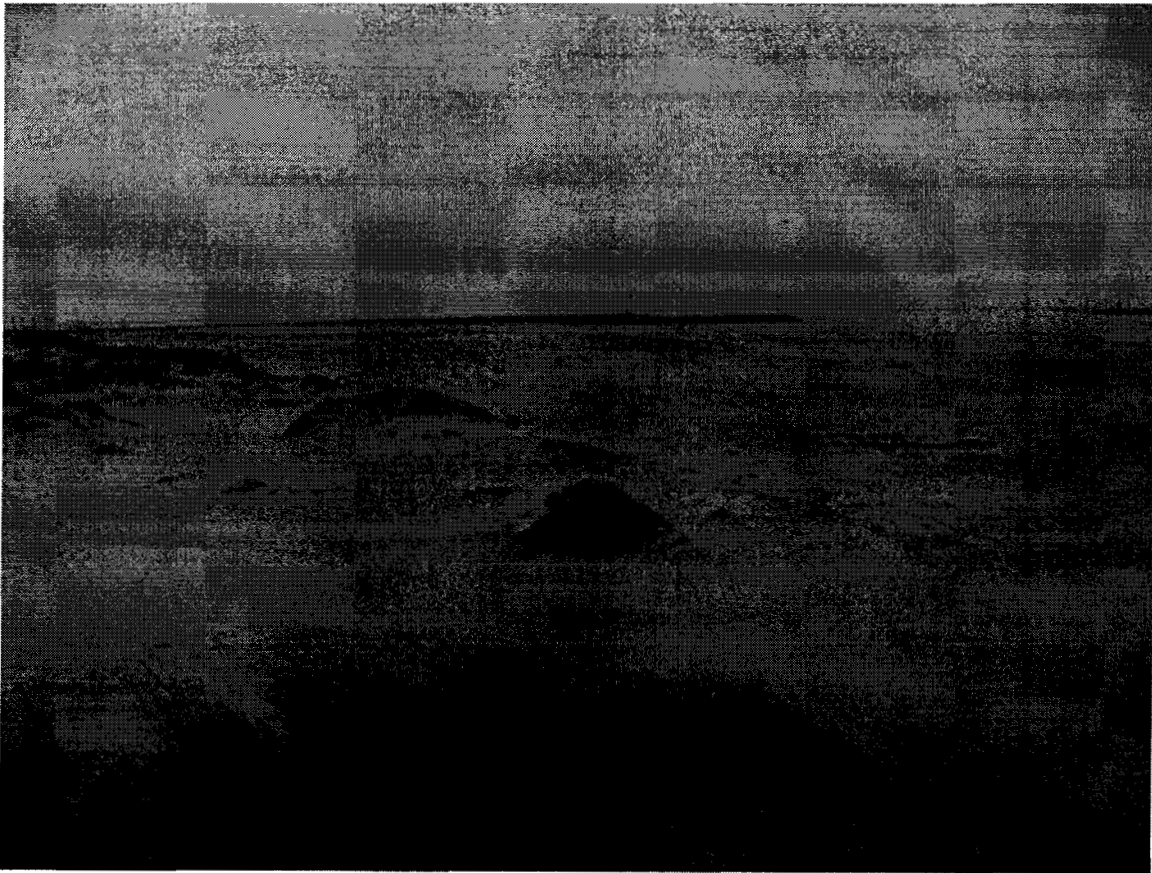
**Reed V. Smith
Ventura Audubon Society**

Hollywood Beach - 2007

Western Snowy Plover and California Least Tern Nesting

On March 19, 2007 the Ventura County Harbor Department (HD) and I marked off the nesting area at the south end of Hollywood Beach. The Harbor Department then put up a symbolic fence with wood posts and string. The fence had signs approx. every 4 posts around the site.

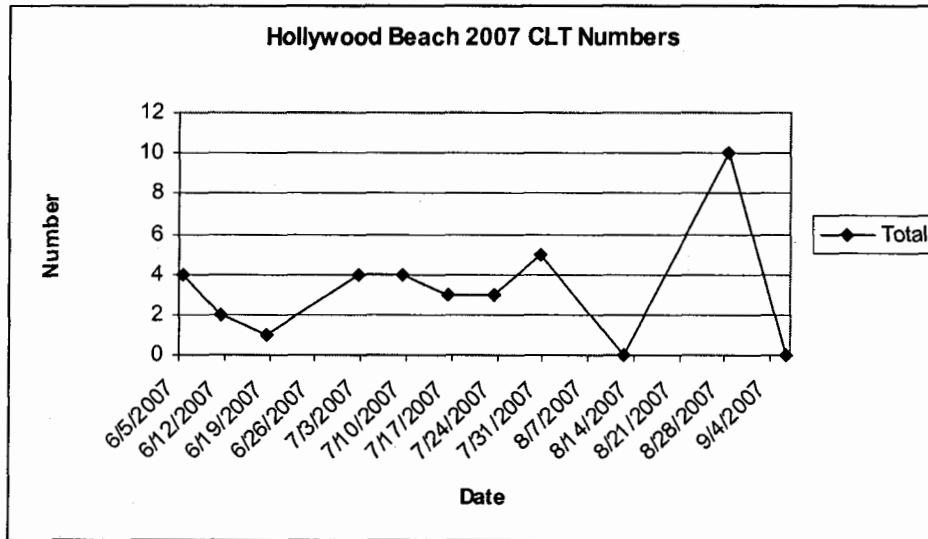
Primary Nesting Area



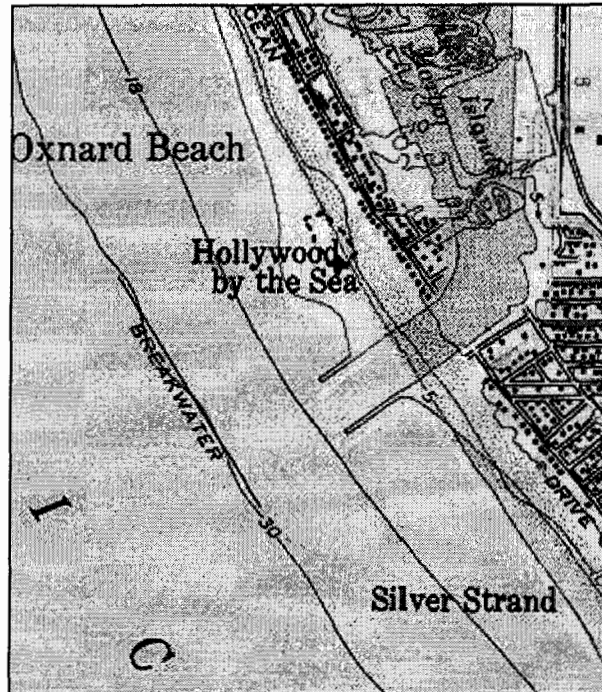
Weekly site visits were conducted by me. These surveys consisted of wandering transects to located plover and tern nests. All nests were recorded and their location was found with a GPS unit. When a plover nest was located the HD was notified and they brought a 3'x3'x3' wire fencing anti-predator enclosure to the beach which I then placed over the nest. The predator enclosure was kept in place until the nest hatched. Both tern and plover nests were monitored until hatching.

California Least Tern (CLT)

Least Terns arrived the week of June 5, 2007 and on that date the first and only nest was found in the southwest corner of the fenced nesting area. This nest was monitored and found to hatch on June 26, 2007. Throughout the nesting season there were 3 CLT defending the area by driving away potential predators. Two chicks hatched and were observed inside the fenced area until they were able to fly. They were observed being fed by two adult terns until August 14, 2007 when they and the adults left the area. On August 28, 2007 4 Adult and 6 Juvenile CLT were observed on the outer beach and not seen again. These birds were presumed to be migrating from other nesting areas.



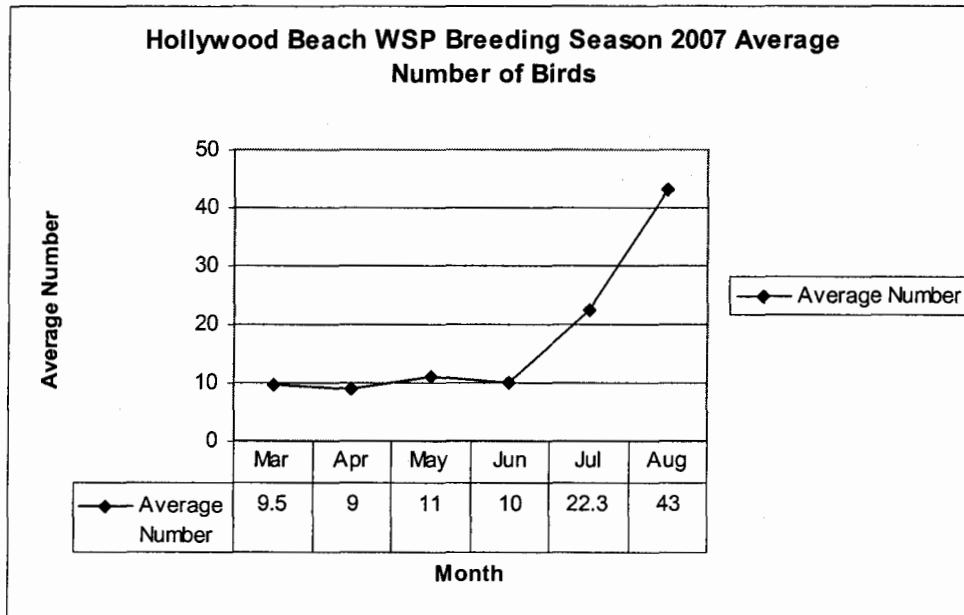
**Hollywood Beach CLT Nest Location 2007
(blue dot)**



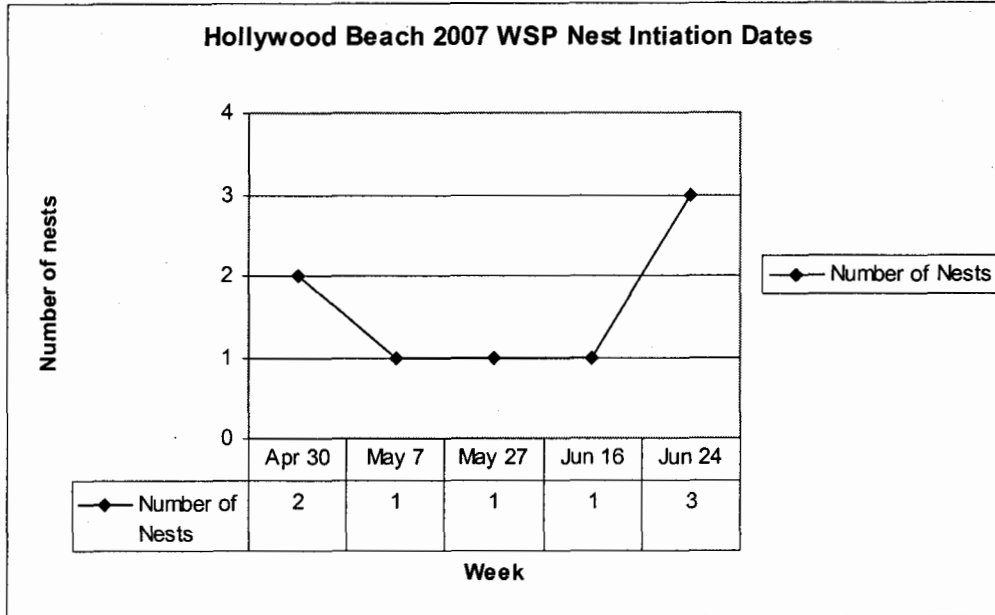
This is the first year CLT have nested on Hollywood Beach since 2004.

Western Snowy Plovers (WSP)

WSP successfully nested on Hollywood Beach this year. The population numbers appeared to be typical for this beach. The numbers of adult birds stayed around 9 to 10 from March through June and then increased in July and August as migrating birds arrived.



The first WSP nest was initiated April 30, 2007 and the last nest was initiated June 24, 2007. A total of 8 nests were initiated.



The nest initiation dates show two waves of nesting. This probably indicates ~4 females nesting twice.

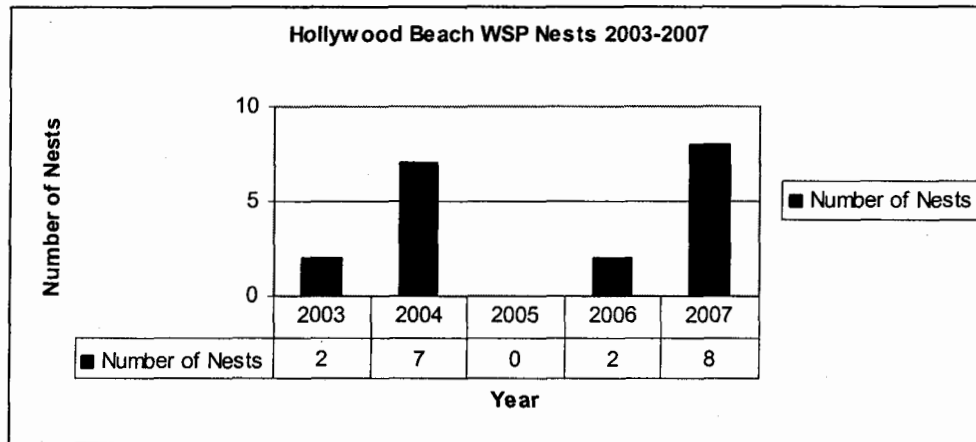
All the nests successfully hatched 4 weeks after initiation. The chicks that hatched were raised to fledging on the south end of the beach. The chicks were observed inside the fence, at the surf line and near the north jetty at the harbor entrance. Since I do not band birds the survival rate of the chicks is not known.

One nest (7HB-06) was vandalized shortly after hatching. The nest was located in the center of the fenced area. On July 30, 2007 I found the predator enclosure knocked over. Pinned under wire of the enclosure was a newly hatched chick. After WSP eggs hatch the chicks remain in the nest scrape or within 6 feet of it for 1 to 2 hours while their feathers dry. Therefore the pinned chick must have just hatched when the enclosure was knocked over. This nest loss was reported to Chris Dellith of the U.S. Fish and Wildlife Service.

Dead Chick from Nest 7HB-06

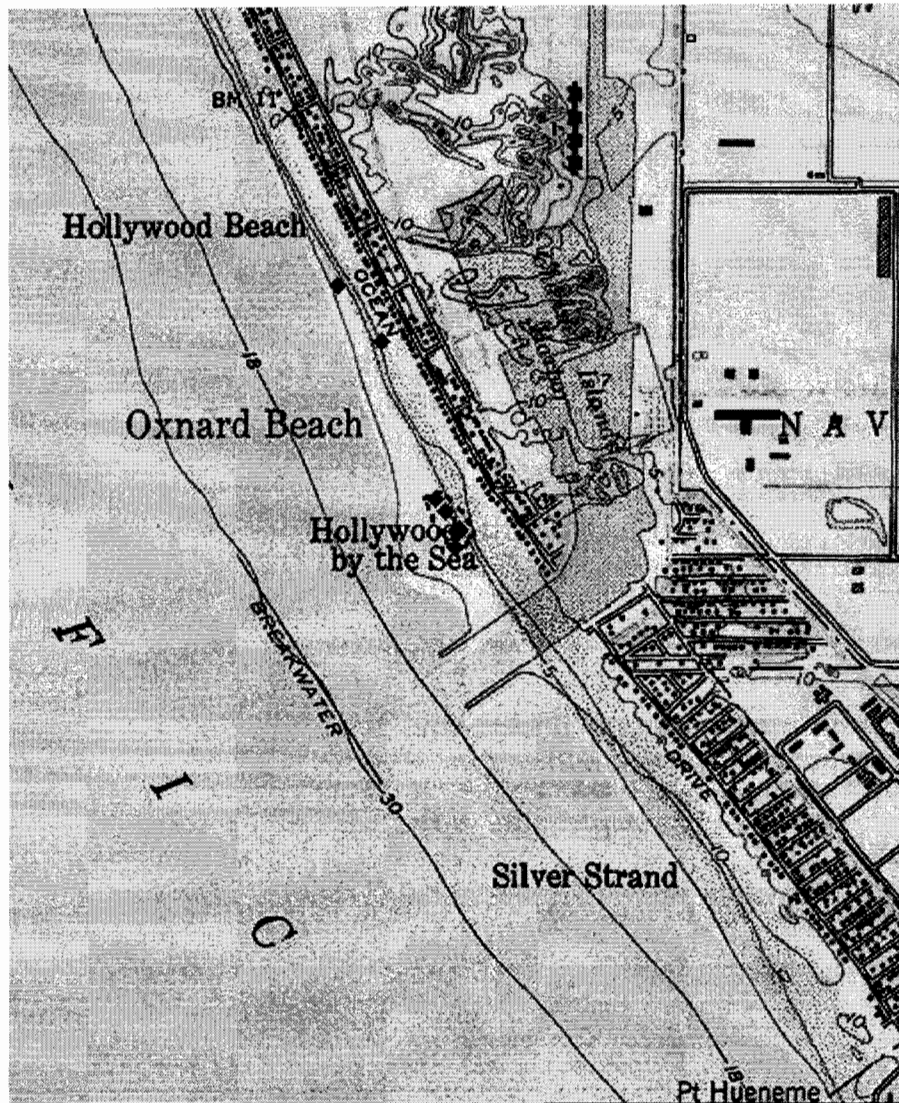


The number of WSP nests this year is the highest of any year since nesting records have been kept.



Hollywood Beach WSP Nest Locations 2007

Five of the nests were inside of the fenced nesting area. One nest was slightly north of La Granada St. and one nest was slightly south of La Granada St. The nest just north of La Granada St. was located next to a lifeguard tower and the HD moved that tower south of the nest.



Summary

Least terns have only nesting twice before in recent history on Hollywood Beach. In 1996 there were about 30 CLT nests and in 2004 there were 21 CLT nests. The 2004 nesting event may have resulted from an unsuccessful nesting season on Ormond Beach with the birds moving to nest on Hollywood Beach. All other CLT nesting areas in Ventura County were successful this year. The pair that nested this year may have been returning birds from the 2004 season. Having a protected, fenced area certainly would encourage CLT nesting.

Snowy plovers benefited also from the fenced area. The fence was constructed and maintained by the HD. Anytime a portion of the fence came down the HD promptly responded and repaired it. The HD also stored and brought out to the beach the predator exclosures that we placed over plover nests.

For the two plover nests that were north of the fence the HD constructed a smaller fenced area, 50' across, around each nest. These were fairly effective. The incubating birds were observed to stay on the nest even when a person walked right up to the fence. The birds would leave the nest and start a distracting display if a dog got within 100' of the nest.

Dog use of the beach was consistent throughout the season. On a typical 1 hour survey I would see 4-10 dogs. Most dogs were not on leashes.

Hollywood Beach presents a small, but successful, nesting area for both California Least Terns and Western Snowy Plovers.

F5b+6

RECEIVED
JAN 17 2008

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



**BOARD OF SUPERVISORS
COUNTY OF VENTURA**

GOVERNMENT CENTER, HALL OF ADMINISTRATION
800 SOUTH VICTORIA AVENUE, VENTURA, CALIFORNIA 93009

January 15, 2008

Mr. John (Jack) Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA. 93001

Dear Mr. Ainsworth:

I am writing to request that the upcoming hearing before the California Coastal Commission regarding the Boating Instruction Safety Center (BISC) be scheduled in April when the Commission will be holding their hearings in Santa Barbara.

The project has the widespread interest of many people in the community. Should the hearing be scheduled in a locale where it is possible for those residents to attend there will be an opportunity to have much larger public participation in the process.

As a public official it is always gratifying to see large public participation in any government process. I am sure the Commission feels much the same way being a public agency that encourages participation of the public in its hearings.

I sincerely hope that you will be able to take this into consideration and schedule the upcoming BISC hearing in April so that it will take place in close proximity to Channel Islands Harbor where the project is proposed.

Sincerely,

JOHN K. FLYNN
Member, Board of Supervisors

FSb+6

Hermandad Mexicana Transnacional
520 West 5th Street, Ste. D, Oxnard, Calif. 93030
(805) 483-4620 * Fax (805) 483-4625

January 30, 2008

RECEIVED
JAN 30 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. John Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, Ca. 93001

Re: Coast Commission Meeting of February 6, 7, & 8

Dear Mr. Ainsworth,

I am writing to request that the upcoming hearing before the California Coastal Commission regarding the Boating Instruction Safety Center (BISC) be scheduled in April of 2008 when the commission will be holding their hearing in Santa Barbara.

This project is of paramount importance to many people in the entire Ventura county area. Should the BISC item be postponed to the April meeting many residents of Ventura County will be able to attend and be heard.

The following are just a few of my concerns;

- The loss of a long established public parkland area widely used by residents of Ventura County.
- Loss of public ADA accessible parkland area with waterfront views.
- Loss of a blue heron nesting area.
- The distance from Ventura County that the current hearing is scheduled for will not allow many of the residents to make their questions and voices heard.

I request that all letters received by your office regarding this hearing item be included in each commissioner's package.

I sincerely hope that you will be able to take into consideration this request and schedule this item for the upcoming Santa Barbara meeting.

Regards,


ALICIA FLORES,
Regional Director

FSb+6

William L. Terry
250 E. Pleasant Valley Rd. #47 - Oxnard, Ca. 93033
Phone: 805-488-0422 - Email: Bterry25047@yahoo.com

Sunday, January 27, 2008

RECEIVED
JAN 28 2008

Mr. John Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suet 200
Ventura, Ca. 93001

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Coastal Commission Meeting of February 8th
Agenda Items #5, 5a, 5b, and 6.

Dear Mr. Ainsworth,

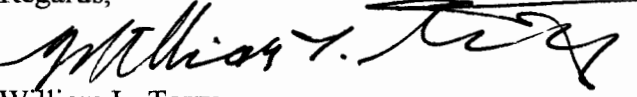
Please postpone the Channel Islands Harbor Boating Instruction Safety Center (BISC) hearing on the above agenda items and reschedule the hearing for the April of 2008 when the Commission will be holding hearings in Santa Barbara.

This project is very important to many working people in Ventura County, postponing these agenda items will afford a greater involvement of the public who will be most effected by this proposed project.

Holding this critical hearing in the City of Oceanside will create an additional hardship on people that want and need to be heard.

I sincerely hope that you will be able to accommodate the broader public interest in this Project and reschedule it for the upcoming Santa Barbara meeting.

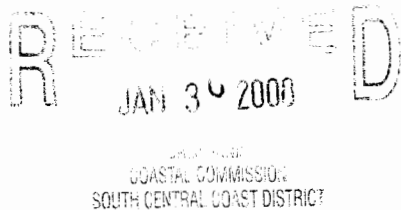
Regards,



William L. Terry

RECEIVED
JAN 28 2008

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



F5b+6

Shirley Godwin
3830 San Simeon Ave.
Oxnard, CA 93033
January 29, 2008

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

RE: February 8, 2008 South Central Coast District Agenda items 5a, 5b, and 6
Ventura County Channel Islands Harbor Boating Instruction & Safety Center.

Members of the Commission:

I have been a resident of the southeast area of Oxnard for 45 years. While I am not a boater and I do not live by the Channel Islands Harbor, it is only a 15 minute drive from my home. My family and I visit the CI Harbor often to walk on the sidewalks and parkland, eat at the CI Harbor restaurants and shop at the Sunday Farmers Market.

I urge you to postpone these items until the April Coastal Commission meeting in Santa Barbara so that local Oxnard/Ventura County residents can attend.

I personally have been very frustrated reading about the hearings on the BISC proposal. The proposed site seems inappropriate because it would remove public parkland and impact an already crowded area of the harbor.

Common sense tells me that the BISC should be located on the presently blighted and under utilized eastside of the CI Harbor off Victoria Ave. An eastside location would be easy to find, allow for adequate acreage and be an asset to the harbor.

Sincerely,



Shirley Godwin



RECEIVED
JAN 28 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

F 5.b. + 6
3950 Bluefin Circle
Channel Islands Harbor
Oxnard, CA 93035-4301
805-985-2511
Fax 805-984-1564
staff@thewhalestail.com

January 25, 2008

Chairman Patrick Kruer
California Coastal Commission
45 Fremont ST., Suite 2000
San Francisco CA 94105

Re: Ventura County Channel Islands Public Works Plan Amendment No. 1-04
(Boating Instructions & Safety Center). And Ventura County Channel
Islands Harbor Public Works Plan Notice of Impending Development 1-05
(BISC) Friday, February 8, 2006, items 5.b and 6.

Dear Chairman Kruer:

I am the owner of the Whale's Tail Restaurant and have been a lessee in the Channel Islands Harbor for 30 years. I am also past president of the Harbor Lessee's Association and a member of the Board of Directors of the Channel Islands Harbor Foundation. I urge you to approve the Boating Instruction and Safety Center project.

I have been a long time supporter of this project because it will provide an affordable facility for the public to get on the water. It will provide a place where they can learn to sail, learn about the marine environment, about navigational arts, about the Channel Islands and about maritime history. It is a building where the young people who now participate in the youth sailing and junior lifeguard programs can attend classes out of the weather. It is a facility that will bring energy and interest to the harbor by attracting those who might not otherwise visit.

The design of the site will improve circulation, reduce the amount of pavement in the area and add park area. It is a public project, for the public with the express purpose of providing water related services to the public. I can't think of a more perfect way to carry out the goals of the Coastal Act and the Coastal Commission.

Thank you.

Sincerely,


Michael R. Koutnik
Owner/Operator

F 5b. +6

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

Date and time of communication: January 24, 2008
(For messages sent to a Commissioner
by mail of facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

Location of communication: Telephone, 9 a.m.

Person (s) initiating communication: Andi Culbertson

Person (s) receiving communication: Commissioner Dan Secord

Name or description of project: Friday, Feb. 8, 2008 Item 5b and 6

- **Ventura Co. Channel Islands Harbor Public Works Plan Amendment No. 1-04 (Boating Instruction & Safety Center)**
- **Channel Islands Harbor Public Works Plan Notice of Impending Development 1-05 (BISC)**

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

The County describes that the BISC Amendment is for the purpose of greatly encouraging public access in Channel Islands Harbor, and notes that this is a remand to the Commission by a court to address perceived deficiencies in the CCC's original action.

The County reports that the amendment allows for a Boating Instruction and Safety Center at Channel Islands Harbor in a location that is safe for the users and the public, as well as introduces the general public to the Westside of the harbor. This side of the harbor has traditionally had a residential "feel" to it, such that the public may not perceive their visits as allowable. The County also argues that:

- The BISC will serve youth programs for water oriented activities for the public of Ventura County, including non-coastal communities and underprivileged youth organizations such as YMCA and Boys and Girls Club as well as Cal State University Channel Islands
- The BISC is a state capital project with substantial funding from the County and a foundation.
- Channel Islands Harbor is the largest harbor in the state without such a facility.

F 5 b r 6

RECEIVED
FEB 05 2008

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

1/31/08, 3:30 p.m. by e-mail (attached)

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Sent to Commissioner Neely's office in Eureka by e-mail.

Person(s) initiating communication:

Sue Leskiw and Maggy Herbelin,
Humboldt-Del Norte ORCA Coordinators

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

February Agenda Items: Orange County Toll Road (Wed.8b) and Boating Instruction and Safety Center PWPA and NOID for Channel Islands Harbor (Fri.5a)

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

ORCA opposes both projects listed above. See attached e-mail communication.

1-31-08
Date

Bonnie Neely
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

F 5b.r6

Hampton, Nancy

From: Hayes, Kathy
Sent: Thursday, January 31, 2008 3:31 PM
To: Hampton, Nancy
Subject: FW: ORCA Positions on Two CCC Agenda Items for Feb 2008

Importance: High

Attachments: Overview of Impacts of Toll Road.pdf

Nancy: Can you process the Exparte's? Thanks

Kathy Hayes
 Executive Assistant/Clerk of the Board to the
 Humboldt County Board of Supervisors
 707-476-2396
 707-445-7299 FAX
khayes@co.humboldt.ca.us

-----Original Message-----

From: Neely, Bonnie
Sent: Thursday, January 31, 2008 2:51 PM
To: Hayes, Kathy
Subject: FW: ORCA Positions on Two CCC Agenda Items for Feb 2008
Importance: High

These are exparte communications regarding two different coastal issues. Could you please prepare an exparte form for each item? Thanks.

-----Original Message-----

From: [sueleskiw \[mailto:sueleskiw@suddenlink.net\]](mailto:sueleskiw@suddenlink.net)
Sent: Thursday, January 31, 2008 12:10 PM
To: Neely, Bonnie
Cc: 'Maggy & Charlie Herbelin'
Subject: ORCA Positions on Two CCC Agenda Items for Feb 2008
Importance: High

Dear Bonnie:

My apologies that Maggy and I were unable to meet with you in person to present ORCA's positions on two items on the Coastal Commission agenda for February. Maggy has just returned from extensive work and training travel, and I had toe surgery on Monday and am currently housebound.

The two issues that ORCA chapters from other areas of the state have asked us to discuss with you are 1) the Orange County Toll Road and 2) the Boating Instruction and Safety Center PWPA and NOID for Channel Islands Harbor.

Agenda Item for February 6 – ORCA Position: OPPOSE

8. FEDERAL CONSISTENCY.

b. CC-018-07 (Transportation Corridor Agencies (TCA), Orange & San Diego Co.) Consistency certification by Transportation Corridor Agencies of Orange County to construct Foothill Transportation South (FTC-S) toll road in southern Orange and northern San Diego County, between existing toll road's (SR-241) terminus at Oso Parkway, Orange Co., and I-5 on Marine Corps Base Camp

Pendleton, San Diego County. (MD/CT/ST-SF)

The Toll Road would violate numerous Coastal Act provisions and policies, including those relating to protection of environmentally sensitive habitat areas ("ESHAs"), recreational and cultural resources, wetlands, biological resources, and water quality. Among other things, the Toll Road would:

- Destroy important habitat for eleven threatened or endangered species found within the park or the surrounding San Mateo Creek watershed.
- Irreparably damage sites sacred to the Acjachemen/Juanefio people, including a village that is listed in the state Sacred Lands file; used for ceremonies and reburials, and eligible for inclusion on the National Register of Historic Places.
- Threaten the water quality of the watershed and the coastal waters to which it drains, including the world-class surfing beach known as Trestles.
- Cause the permanent loss of coastal wetlands.
- Destroy over 50 acres of undisputed ESHAs in and around the coastal zone.
- Ruin San Onofre's most popular low-cost visitor-serving recreational area - the San Mateo Campground. The campground is a critically important coastal recreational resource that *the Commission itself* required be created in the 1970s to offset the coastal impacts of the San Onofre Nuclear Generating Station.

THE PROJECT IS INCONSISTENT WITH THE CALIFORNIA COASTAL ACT.

- It would permanently eliminate ESHA.
- It would destroy San Mateo Campground.
- It would harm Trestles Beach.
- It would fill wetlands and degrade water quality.

THERE ARE SEVERAL LIKELY FEASIBLE AND EFFECTIVE ALTERNATIVES TO THE TOLL ROAD THAT WOULD DRASTICALLY REDUCE OR ELIMINATE IMPACTS TO COASTAL RESOURCES.

- Improving I-5 and existing arterials could provide similar traffic benefits while avoiding the environmental impacts of the Toll Road
- The AIP-R Alternative would likely avoid virtually all property displacements and is feasible.
- The AIP-R Alternative improves interchange safety.
- Financing and governmental authority to construct the AIP-R Alternative can be obtained.

THE BALANCING PROVISION OF THE COASTAL ACT DOES NOT ALLOW FOR APPROVAL OF THIS PROJECT.

TCA'S MONETARY OFFER CANNOT MAKE THE TOLL ROAD CONSISTENT WITH THE COASTAL ACT, NOR WOULD IT MITIGATE THE IMPACTS OF THE PROJECT.

Attached is a 2-page summary of Toll Road impacts.



Overview of
Impacts of Toll Ro...

Agenda Item for February 8 - ORCA Position: OPPOSE.

5. LOCAL COASTAL PROGRAMS (LCPs)

b. Ventura Co. Channel Islands Harbor Public Works Plan Amendment No. 1-04 (Boating Instruction & Safety Center). Public hearing and action on request by Ventura County Harbor Department to amend certified Channel Islands Harbor PWP to allow Boating Instruction & Safety Center (BISC) as a permitted use in the harbor. (GT-V)

6. Channel Islands Harbor Public Works Plan Notice of Impending Development 1-05 (BISC). Public hearing and action on Notice of Impending Development by Channel Islands Harbor for Boating Instruction and Safety Center (BISC) consisting of 26,000 sq. ft. exterior space, 24,000 sq. ft. dock space, 2-story 19,000 sq. ft. building, and 1-story 1,000 sq. ft. maintenance/storage building, on west side of Channel Islands Harbor, Oxnard, Ventura Co. is consistent with Channel Islands Harbor certified Public Works Plan as amended by PWP amendment 1-04. (GT-V)

The ORCA position is that the proposal:

- Displaces low-cost or free public access to the coast
- Increases boat congestion, contrary to the PWP
- Impacts view access without mitigation
- Directly impacts coastal biologic resources of nesting bird species and cannot be mitigated
- Viable alternatives to the project exist that do not impact these issues

ORCA *disagrees* with the staff report on the following issues:

- Disagrees that construction modifications will adequately mitigate the destructive impacts on the heron rookery.
- Disagrees that there are no alternatives to the project.
- The majority of sailing experts in the record now recommend against the project location due to boating congestion at the site and possibility of collision of small instructional sailboats with larger power boats.
- Disagrees that the BISC provides increased access to the public to justify reduction of the free open space parkland coastal access presently available.

Thank you in advance for your consideration of these points before making a decision next week.

Sincerely, Sue Leskiw & Maggy Herbelin, Humboldt-Del Norte ORCA Coordinators

F 56. +6

RECEIVED
FEB 05 2008

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

February 1, 2008 - 4:15 p.m.

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Eureka, CA - via email

Person(s) initiating communication:

Lyn Krieger

Person(s) receiving communication:

Bonnie Neely

Name or description of project:

Boating Center, Marina Reconstruction & Public Works Plan Amendment

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

See Attached Email

02/01/08

Date


Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

F 5b+6

Hayes, Kathy

From: Lyn Krieger [Lyn.Krieger@ventura.org]
Sent: Friday, February 01, 2008 4:15 PM
To: Neely, Bonnie
Cc: Hayes, Kathy
Subject: Coastal Commission Agenda, Friday Items 5.a, b. and 6.

Greetings, Commissioner Neely:

I am writing from Ventura County. You may recall our many hearings on our proposed Boating Center, marina reconstructions, and so on.

I apologize for writing at this late date, but we just received the staff report over the weekend and have been working with the staff since that time. Also, I understand that you and your fellow commissioners are overwhelmed with contacts regarding the toll road project, and we did not wish to bother you unnecessarily.

We have two items "up" on Friday of this week. The second will be the final hearing on the Boating Instruction and Safety Center (BISC) in response to the lawsuit against the Coastal Commission. We have no problem with the staff report, and do not plan much of a presentation since the first half of this hearing was in October 2007.

The first matter is our comprehensive Public Works Plan Amendment regarding the water portion of the Harbor. We have attempted to keep it a very simple amendment, increasing the number of slips, and maintaining a mix of small and moderate sized slips. We have a few issues with the staff report that we are trying to work out through the addendum process. However, given that we have outstanding issues, I would very much like an opportunity to meet with you, even for a short time, sometime on Thursday. I can be available at any time that works for you. We also have a small briefing packet for you that we will provide after the Wednesday hearing.

Thank you for your consideration.

Lyn Krieger

F5b+6



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



Lyn Krieger
Director

Telephone (805) 382-3900
FAX (805) 382-9015
www.channelislandsharbor.org

January 23, 2008

Jared Bouchard
Channel Islands Beach Community Services District
353 Santa Monica Drive
Oxnard, CA 93035

Dear Jared:

I am writing to follow up on our conversation this morning regarding Channel Islands Harbor Marina.

In that conversation you mentioned your concerns about the need to relocate water line(s) adjacent to the Channel Islands Harbor Marina restrooms to be renovated as part of the replacement project. Your concerns included the relocation of existing water lines and, potentially, backflows, and the rerouting of lines necessary for the BISC.

Please outline your specific concerns in writing, along with the engineering rationale for these concerns, so that we can work with our engineer to determine whether they agree with your concerns. If they do, we, of course, will work with you to obtain prompt resolution of any problems. In the meantime, since our Lessee has valid permits he will be continuing construction. This, of course, means that time is of the essence in getting written comments from you.

As I said on the phone today, it is very difficult for us to be held to different standards by the permitting agency, the City of Oxnard, and the CIBCSO. Thus, getting specific details from you to examine is vital for this and other projects.

Thank you for your assistance.

Sincerely,

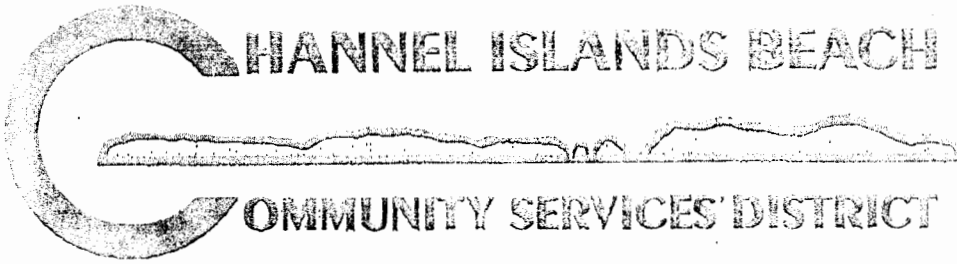

Lyn Krieger
Director

F 56 + 6

Board of Directors:

MARCIA MARCUS, President
 KEITH MOORE, Vice-President
 SUSAN KOESTERER, Director
 JONATHAN ZIM, Director
 ELLEN SPIEGEL, Director

JARED BOUCHARD
 General Manager



353 Santa Monica Drive • Channel Islands Beach, CA 93035-4473 • (805) 985-6021 • FAX (805) 985-7156
 A PUBLIC ENTITY SERVING CHANNEL ISLANDS BEACHES AND HARBOR / CHANNELISLANDSBEACHCSD.COM

January 24, 2008

Lyn Krieger,
 Channel Islands Harbor
 3900 Pelican Way
 Oxnard, CA 93035-4367

Dear Lyn,

Thank you for your request and willingness to review the District's concerns relating to water line locations within the vicinity of the Channel Islands Harbor Marina. I will attempt to convey the issues as best I can within the text. I will be happy to meet with whomever the County appoints to discuss these items further.

1. Relocation of water lines from under existing or new buildings does not require an engineering explanation. The request to relocate these lines is a matter of practicality for maintenance, timely cost effective repair and the elimination of significant liability associated with potential damages and repair cost that might occur should the line rupture under the building.
2. Assuming the soil conditions are the same at both the BISC and the Marina I have the following concerns. The BISC EIR Geotechnical Engineering Study of the soils within the area demonstrates intolerance for water percolation or infiltration, surface or subsurface in origination. The geotechnical report also addresses issues relating to excavation and immanent soil movement during excavation. Although mitigation measures are offered in the report for how to protect the footings while excavation occurs, it does not address potential damage to the existing 50 year old pipes as a result of soil movement and without engineering analysis it would not be prudent for me to make recommendation as to how best to accomplish this. The pipelines within the area are constructed of A/C Asbestos Concrete pipe. Although if undisturbed A/C pipeline has proven to have a long life within the water industry, it has also demonstrated a very low tolerance for soil settling, shifting, water hammer or disturbances of any kind for that matter. Both the BISC and the Marina will require footing excavation that most certainly will result in soil movement. Given the known soil conditions in the area, it would not be advisable to merely move the line out from under the building but to relocate the line far enough from the buildings that in the event of line rupture the structural integrity of the buildings would not be compromised.

3. As you are aware fire flow within the area is of great importance. The design of any such relocation must be done with fire flow and the above issues in mind. On the face it may seem relatively simple to move the line just out and around the building; this is not the case when trying to ensure fire flows are not impacted. In order to ensure equal or greater flow in the pipeline a gradual bend in the line must be engineered and installed to avoid friction and head loss through tight turns or bends in the line. It is conceivable that just to move the line around the Marina building, we would need to go a couple of hundred feet on either side of the building to allow for a gradual turn and get the line far enough away from the building that any rupture of the line would not adversely affect the structure or expose the District to unnecessary liability exposure.
4. The need to look at both the BISC and the Marina Line Relocations jointly is practical and proper planning. If the BISC were not to be constructed an engineer could design the relocation around the Marina with little difficulty. Since we know the County intends to move forward with the BISC adjacent to the Marina it convolutes the Marina relocation. We will need to know where to align those pipes and new connections so that we are not having the Counties lessee perform work and expend financial resources only to have that project reengineered or redone two years down the road to accommodate the BISC.
5. You requested some engineering explanation of our need for this. The above explanations and rational is sufficient basis for the District to require the work. We were not consulted with regard to the Marina project where we could have disclosed this at an earlier date. It will be the Counties or the Lessees responsibility to bear the expense of engineering and constructing the relocations in such a manner that the above issues are addressed.

I hope this provides you with the information you need to have your engineer offer an opinion. Please notify me of the County engineers' opinion as soon you are able. You stated that if the County engineer agrees, the County will work with us to obtain resolution. The District is not bound by the opinion of the County engineer and should we reach an impasse on this, we will pursue all options to ensure the project is performed inclusive of the District requirements. Should you have any questions please don't hesitate to contact me.

Sincerely,



Jared Bouchard
General Manager

CALIFORNIA COASTAL COMMISSION

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



DATE: January 24, 2008

TO: Commissioners and Interested Persons

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

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

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

For Public Hearing and Commission Action at the February 8, 2008
Commission Meeting at the City of Oceanside City Council Chambers,
300 North Coast Highway, Oceanside, CA.

Staff Note:

This matter comes before the Commission via the continuation of a hearing begun last October. This matter is therefore being heard by the California Coastal Commission for a second time following an original approval in March of 2005. The approval of the California Coastal Commission was legally challenged by the organization *Habitat for Hollywood Beach*. In its Statement of Decision, the Superior Court of the County of Los Angeles found that the Commission's findings were not adequate regarding the consideration of alternatives and cumulative impacts. The court, by writ, commanded the Commission to set aside its approval of the proposed Public Works Plan amendment and associated NOID for the BISC project, and to prepare a new report addressing the alternatives analysis and cumulative impacts issues. The Commission set aside and vacated its prior approval at its October 10, 2007 Meeting. The Commission took no other action but it opened the public hearing, took public testimony and continued the hearing to a future date.

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

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

Response to Procedural Objections Raised by Beacon and Habitat for Hollywood Beach

Letters were received from the Beacon Foundation dated September 20 and October 1 and Habitat for Hollywood Beach attorney Frank Angel dated October 1. (These letters were previously provided to the Commission as attachments in the September 27, 2007 staff report and October 5, 2007 addendum.) These letters present arguments that the Commission staff report does not comply with the decision of the Superior Court concerning the Commission's prior approval of the subject PWP amendment and associated Notice of Impending Development and that the process proposed by staff (as well as the substantive action recommended by staff) does not comply with the requirements of the California Environmental Quality Act ("CEQA").

September 20th Beacon Letter

The main claim raised by the Beacon Foundation in its September 20 letter ("Beacon Letter 1") is that the Court did not intend for the Commission to proceed, on remand, on the basis of the existing record, including the existing Environmental Impact Report ("EIR"). In support of this contention, Beacon points to language at the end of the trial court's Statement of Decision¹ directing the Commission to "prepare a new functional equivalent of an EIR addressing the alternatives analysis and cumulative impacts issues". Beacon Letter 1 at 1, quoting Decision at 21. Beacon misconstrues the meaning of this statement. The court clearly stated that the "Commission's staff reports serve as a 'functional equivalent' of an EIR." Decision at 14. Thus, the requirement to produce a "new functional equivalent of an EIR" simply meant that the Commission needed to produce a new staff report.

It is true that the court wanted a more obvious and thorough analysis of alternatives and cumulative impacts, but there was nothing in the Decision to indicate that such an analysis could not be based on the existing EIR. To the contrary, the court stated that "The County EIR has not been held invalid, and therefore may be considered and relied upon by another agency." Decision at 14 and that "The Commission's staff report may rely on the CEQA analysis from the County's EIR." Id. at 15. Regarding the analysis of alternatives the court determined that "The Commission's staff report must do this analysis. . . . ¶ This does not mean that the Commission cannot rely on the County EIR's discussion of alternatives; it can." Id. at 17. "The court's decision does not

¹ Statement of Decision on Petition for Writ of Mandate, dated October 16, 2006, in Habitat for Hollywood Beach v. California Coastal Commission, Los Angeles Superior Court Case No. BS 101782 (hereinafter "Decision").

preclude the Commission from relying on the County' analysis in any of the above documents." Decision at 18.

The Beacon letter also states: "It appears Commission staff will rely in its re-review Report on an EIR certified by the County on December 13, 2003 – nearly four years ago and relevant materials, if any, submitted by the County in advance of Commission approval of the project on March 16, 2005. This exercise is deficient on its face." Beacon Letter 1 at 2.

Preliminarily, it is important to note that the staff report does not rely exclusively on the December, 2003 EIR. Commission staff collected additional information and analyzed additional alternatives in preparing its recommendation, and the Commission relies, in part, on that additional information and analysis in making its decision. The Commission does take the County's EIR into account in making its determination, though, as there is no reason not to do so unless specific evidence is presented indicating that the EIR has become so outdated in the intervening 4 years that it is no longer reliable. This is consistent with CEQA Guideline section 15126.6(f)(2)(C), which states: "Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the Lead Agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative." Cal. Code Regs., tit. 14, § 15126.6(f)(2)(C) (emphasis added).

Again, the Commission staff recommendation does not rely entirely on the previously certified EIR although considerable weight has been given to that document. Additional documents, letters and opinions received subsequent to the certified EIR date were considered even in the Commission's March 2005 staff report and additional materials or documents are considered in this report as well, such as more recent biological monitoring reports and a new letter from the Department of Boating and Waterways (re-emphasizing its previous conclusions). Further, although Commission staff does not believe that there has been any substantial change in circumstances, the staff report does address projects in or near the Harbor that have undertaken construction since approval of the project in March 2005.

The September 20 Beacon letter also states "the Court did not validate the adequacy of the County EIR or other County materials in the record." Beacon Letter 1 at 2. While this statement is true, it is equally true that the Court did not invalidate the adequacy of the EIR or other information in the record. It did not address that issue. And again, the court did expressly validate the Commission's reliance on the EIR.

Finally, the September 20 Beacon letter references some specific alternatives and related development that Beacon feels the County EIR should have assessed. For example, Beacon states "One of the alternatives not analyzed in County submission at all is the Port Royal restaurant parcel. Subsequent to the October 16, 2006 Habitat decision, The County recognized this site as an alternative. There is no way for

Commission staff to adequately review this site based on the pre-March 16, 2005 record.” Beacon Letter 1 at 3. The Beacon letter further states that “Another alternative not adequately reviewed is known as the Cisco sport fishing site on the east side of the Harbor,” id., and that this site is a viable alternative because the County controls the site due to expiration of the lease.

The analysis in the subject Commission staff report is not limited to the EIR or the pre-March 16, 2005 record, however. The Port Royal restaurant site alternative is addressed on pages 51-54 of the staff report. The Cisco site is also addressed in the staff report in an analysis of eastside Harbor alternative sites on pages 55 through 62. The primary reason for rejecting east side alternative sites for the BISC is related to wind direction and maximizing safety for novice sailors. Cumulative impacts associated with two housing projects and a marina reconstruction project approved by the Commission are also addressed in the staff report.

October 1 Beacon letter

The October 1, 2007 letter from Beacon is largely obsolete. It claims that the 12 days between the availability of (the September 27, 2007) report and the scheduled October hearing is “inadequate for public and Commission review.” Staff did not and does not agree with this contention. The 12 day review period is consistent with Commission regulations and the amount of time provided for other staff reports produced for that Commission hearing and review periods provided for past reports and Commission hearings. The adequacy of the review period was heightened in that case by the fact that much of the analysis in the staff report was unchanged from when the report was issued two-and-a-half years ago. Nevertheless, in response to Beacon’s request for a continuance, staff recommended that the hearing be opened to take testimony and continued in order to maximize the opportunity for public input and the Commission followed staff’s recommendation. Thus, as noted above, the Commission held a public hearing on October 10, 2007, took public testimony and continued the hearing to a future date.

October 1 Angel letter

The October 1, 2007 letter from Angel Law on behalf of Habitat for Hollywood Beach claims “the staff report is not being circulated the minimum 30-day period mandated by CEQA.” Letter at 2. The letter also states that the “30-day public review time period requirement for EIRs [in CEQA Section 21091] dictates the public review time period requirement for the Commission’s staff reports [citations omitted],” id. at 4, and that “CEQA requires the Commission to make its written documentation ‘available for a reasonable time for review and comment by other public agencies and the general public’ [citations omitted].” Id. at 2.

Staff disagrees with the allegation that circulation of Commission staff reports is subject to the 30-day requirement in CEQA section 21091. The adequacy of the time period for Commission circulation of staff reports is provided in section 13532 of the Commission’s

regulations and Coastal Act section 30605, which states that PWP's be reviewed "in the same manner prescribed for the review of local coastal programs". Although the Commission does not agree with the contentions raised above by the Beacon Foundation and Angel Law it did agree to a continuance of the hearing on this matter at the October 2007 Commission meeting in order to allow staff to consider comments raised at the hearing and respond, as necessary, in the staff report.

SUMMARY AND STAFF RECOMMENDATION

The amendment to the Public Works Plan (PWP) is proposed to allow for the construction of the Boating Instruction and Safety Center (BISC) on property owned by the County of Ventura located on the west side of the Channel Islands Harbor. The County Harbor Department has also submitted the corresponding Notice of Impending Development (NOID) to provide for construction of the proposed project upon certification of the PWP amendment. The project includes approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, a two-story 19,000 sq. ft. building, and a one-story 1,000 sq. ft. maintenance/storage building.

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

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

Staff is recommending denial of the proposed PWP amendment as submitted followed by approval with 26 suggested modifications. Staff is also recommending that the Commission determine that the impending development will be consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to the staff recommendation, and with ten recommended special conditions regarding (1) compliance with all required project modifications and mitigation measures; (2) replacement of lost boat slips caused by the project within the harbor; (3) protection of nesting and roosting herons; (4) night lighting restrictions; (5) revised plans for replacement of lost park area; (6) drainage and polluted runoff control; (7) erosion control and removal of debris; (8) Best Management Practices; (9) approval of PWP amendment; (10) prohibition of amplified music, and (11) requirements concerning heron habitat protection relative to future special events held by or for the BISC, all of which are necessary to bring the development into conformance with the PWP.

STANDARD OF REVIEW

Section 30605 of the Coastal Act and Title 14, Section 13356 of California Code of Regulations provides that where a public works plan is submitted prior to certification of the Local Coastal Program (LCP) for the jurisdiction affected by the plan the Commission's standard of review for certification is Chapter 3 of the Coastal Act. Although the land area within the Harbor is owned by the County, it lies within the jurisdiction of the City of Oxnard. The Commission certified the Public Works Plan in September 1986 prior to certification of the LCP for the Harbor area which was certified in December 1986. Therefore, the Commission's certification was based on consistency with Chapter 3. Section 30605 and Section 13357 of the Code of Regulations also states that where a plan or plan amendment is submitted after the certification of the LCP for the area any such plan shall be approved by the Commission only if it finds, after full consultation with the affected local government(s), that the proposed plan is in conformity with the certified LCP. Therefore, the standard of review for the proposed amendment to the Public Works Plan, pursuant to Section 30605 of the Coastal Act, is that the proposed plan amendment is in conformance with the certified Local Coastal Program for the City of Oxnard. Since the City's certified LCP contains all applicable Coastal Act policies, conformance with applicable Chapter 3 policies of the Coastal Act is also required. PRC Section 30605 also states that any proposed amendment shall be processed in the same manner as prescribed for an amendment to a Local Coastal Program.

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

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

PUBLIC PARTICIPATION

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

PROCEDURAL REQUIREMENTS

Because approval of the PWP amendment is subject to suggested modifications by the Commission, the County must act to accept the adopted suggested modifications pursuant to the requirements of Section 13547 of the California Code of Regulations, which provides for the Executive Director's determination that the County's action is legally adequate, within six months from the date of Commission action on this application before the PWP amendment shall be effective.

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

A. Denial as Submitted

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

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

RESOLUTION I:

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

B. Certification with Suggested Modifications

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

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

RESOLUTION II:

The Commission hereby certifies the Channel Islands Harbor Public Works Plan Amendment 1-04 as modified and adopts the findings stated below on the grounds that the Amendment as modified conforms with the certified Local Coastal Program for the City of Oxnard. Certification of the Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Amendment on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the Amendment] on the environment.

SUGGESTED MODIFICATIONS

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

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

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

Modification 1

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

Modification 2

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

Modification 3

The Harbor Department shall avoid beach grooming activities at Hollywood Beach between January 1 and September 30 of each year unless authorized by the US Fish and Wildlife Service. Removal of items not necessary to support insects and invertebrates that western snowy plovers feed upon is allowed provided that removal is not conducted during the breeding season. Motorized vehicles shall stay on the wet sand or along the south edge by the jetty during this period.

Modification 4

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

Modification 5

Construction of the Boating Instruction and Safety Center (BISC)

Commencement of construction shall not take place until a qualified biologist has determined the black-crowned night herons, great blue herons or egrets are no longer nesting within 300 feet of the construction site. No Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons, great blue herons or egrets (February 1 through August 15). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron, great blue heron or egret nesting in the immediate vicinity of the BISC.

Modification 6

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

Modification 7

Replacement of all lost boat slips within CIH

All recreational boat slips eliminated due to construction of the BISC project shall be replaced in kind (size and use) within the Channel Islands Harbor PWP jurisdiction. Replacement shall take place within 6 months of completion of BISC.

Modification 8

Replacement of lost park area from BISC construction

The County shall be responsible for the replacement of an equal or greater area of park to that lost to construction of the BISC within the immediate area of the project site in the Harbor. The replaced park area shall be equally accessible and usable by the public as the area lost to construction. The replacement of the park shall occur concurrently with construction of the BISC.

Modification 9

Page 5, 3rd paragraph shall be modified as follows:

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

Modification 10

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

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

Modification 11

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

Modification 12

Page 42, Public Parks: Revise 2nd full sentence at top of page as follows:

The ~~2.6-acre~~ linear Channel Islands Harbor Park is located on the western Harbor side, ~~consisting and consists of all open turf and landscaped area, trees, with~~ picnic tables, walkways and restroom facilities.

Modification 13

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

Modification 14

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

20. All areas designated as public parks and beaches in Figures III, IV, and VII of the Plan shall be protected as open space and shall not be developed or utilized for other uses without an amendment to the Plan, ~~accept as set forth in Policy 19.~~

Modification 15

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

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

Modification 16

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

Modification 17

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

The Harbor Department will implement the recreational and public access policies of the Coastal Act as set forth in Public Resources Code Sections 30001.5, 30213 and 30224One means of carrying out the Recreational Boating policies of the Coastal Act is by establishing a Boating Instruction and Safety Center on the west side of the Harbor as shown on Figures III, IV, V, and VII.

Modification 18

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

Notwithstanding this man-made environment, several bird species, such as great blue herons and black-crowned night herons, utilize the trees in the Harbor for roosting and nesting. Although none of these species is listed as threatened or endangered, their presence is considered important and protective measures are necessary to protect historic or current roosting and nesting habitat. In addition, nearby Hollywood Beach west of the Harbor is designated as critical habitat for western snowy plover and California least tern.*

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

Modification 19

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

Modification 20

PWP Section 4.5, Biological Resources, POLICIES shall be modified to add the following Water Quality Protection policies:

Water Quality Protection

1. All new development or redevelopment shall be designed to prohibit the discharge of pollutants that may result in 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:

- The material used shall be durable and a minimum of one-tenth of an inch thick.
- All joints shall be sealed to prevent leakage.
- 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.
- The plastic sleeves shall extend a minimum of 18 inches below the mudline.
- 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.
- The lessee shall be made responsible for removal of failed docks or materials.
- 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 21

PWP, Biological Resources, POLICIES, shall be modified to add the following Construction, Maintenance, and Debris Removal policies:

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:

- 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.
- 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.
- 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.
- 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.
- All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- 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.
- 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.
- 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.
- The discharge of any hazardous materials into any receiving waters shall be prohibited.

- 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.
- 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.
- 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
- All BMPs shall be maintained in a functional condition throughout the duration of the project.

Modification 22

The following existing Water Quality policies 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. 11. Activities which produce, handle or transport petroleum products or hazardous substances within Harbor water areas shall be discouraged unless it can be proven beyond reasonable doubt that such activity will not result in any significant environmental impact.~~ This policy does not apply to retail fuel sales/operations for boaters and commercial fishermen in the Harbor.

~~7. 12. 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 23

PWP, Biological Resources, POLICIES, policy 16 on page 76 shall be modified to add the following policies regarding Best Management Practices to minimize adverse impacts to water quality from boating activities:

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. 47. In order to protect~~ monitor the water quality ~~and biological productivity~~ of Harbor waters the County in conjunction with the City of Oxnard ~~will continue their current~~ will conduct a monitoring program, which includes:

- ~~A water quality monitoring program for oxygen, turbidity, coliform bacteria, heavy metals and nitrates/phosphates to be performed on a semiannual basis. The program will be designed to establish a baseline for water quality within the Harbor so that, at a minimum, the existing level of marine organisms can be maintained in the Harbor; and;~~ 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 by the Los Angeles Regional Water Quality Control Board.
- ~~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. ~~47.~~ 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 24

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

The commercial sport enterprises within the Harbor operate from approximately ~~600~~ 300 feet of floating dock at Murre Way on the eastern side of the main channel.

Modification 25

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

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

Modification 26

Biological Resources, POLICIES, shall be modified to add the following:

Temporary and Special Events – Boating Instruction and Safety Center

To the extent feasible, special events held by or for the Boating Instruction and Safety Center (BISC) that could cause excessive noise or disturb nesting herons shall take place outside of the breeding season for herons. Special events that could cause excessive noise or disturb nesting herons held during the breeding season for herons shall not take place within 300 feet of any active breeding tree. Trees containing active nests shall be flagged or bordered by caution tape outside of the tree canopy.

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

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

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

RESOLUTION:

The Commission hereby determines that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to PWP Amendment 1-04, for the reasons discussed in the findings herein.

III. SPECIAL CONDITIONS

1. Mitigation Measures identified during Environmental Review

In accordance with the Ventura County Harbor Department's proposal to implement all mitigation measures identified in the Final Environmental Impact Report (EIR) for the

Boating Instruction and Safety Center (BISC) dated December 2003, all mitigation measures and project modifications identified within the subject final EIR applicable to alternative 6.2B are hereby incorporated by reference as conditions of the Notice of Impending Development 1-05 unless specifically modified by one or more of the special conditions set forth herein.

2. Replacement of all lost boat slips within CIH

All recreational boat slips eliminated due to construction of the BISC project shall be replaced in kind (size and use) within the Channel Islands Harbor PWP jurisdiction. Replacement shall take place within 6 months of completion of the BISC. Prior to commencement of construction the Harbor Department shall submit a slip replacement plan for the review and approval of the Executive Director.

3. Protection of Nesting and Roosting Herons

Commencement of construction shall not take place until a qualified biologist has determined the great blue herons, egrets or black-crowned night herons are no longer nesting within 300 feet of the construction site. No Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons, great blue herons or egrets (February 1 through August 15). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron, great blue heron, or egret nesting in the immediate vicinity of the BISC.

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

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

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

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

6. Drainage and Polluted Runoff Control Plan

Prior to the commencement of development, the Harbor Department shall submit for the review and approval of the Executive Director, a final Water Quality Management Plan for the Boating Instruction and Safety Center as specified below:

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:

- The material used shall be durable and a minimum of one-tenth of an inch thick.
- All joints shall be sealed to prevent leakage.
- 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.
- The plastic sleeves shall extend a minimum of 18 inches below the mudline.
- 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.

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

7. Erosion Control and Removal of Debris

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

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:

- 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.
- 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.
- 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.
- 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.
- All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- 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.

- 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.
- 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.
- The discharge of any hazardous materials into any receiving waters shall be prohibited.
- 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.
- 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.
- 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
- All BMPs shall be maintained in a functional condition throughout the duration of the project.

8. Water Quality/Best Management Practices Program

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

Boat Maintenance Best Management Practices

- Clean boat hulls above the waterline and by hand. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
- Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.

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- 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 minimized to the maximum extent practicable.

Solid Waste Best Management Practices Related to Boat Maintenance

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

Hazardous Waste Best Management Practices

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

Sewage Pumpout System Best Management Practices

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

Public Education Measures

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

9. Approval of PWPA 1-04

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

10. Amplified Music Restriction

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

11. Special Events

Temporary and Special Events – Boating Instruction and Safety Center

To the extent feasible, special events that could cause excessive noise or vibrations held by or for the Boating Instruction and Safety Center (BISC) shall take place outside of the breeding season for herons. Special events that could cause excessive noise or vibrations held during the breeding season for herons shall not take place within 300 feet of any active breeding tree. Trees contained active nests shall be flagged or bordered by caution tape outside of the tree canopy.

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

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

A. Amendment and Project Description and Background

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

consistent with the PWP, or imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

Requirements for the level of information contained in a Public Works Plan are contained in Section 13353 of the California Code of Regulations, which states that a PWP “shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan”. Such information includes: 1) the specific type of activity or activities proposed to be undertaken; 2) the maximum and minimum intensity of activity or activities proposed to be undertaken; 3) maximum size of facilities proposed to be constructed pursuant to the plan; and 4) the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plan. In other words the Coastal Act envisions that a Public Works Plan functions more as a Specific Plan or a master development permit in order for specific projects or activities described in the PWP to be approved quickly through the Notice of Impending Development Process at later dates with minimal review. Activities, projects, or facilities not specifically proposed in a Public Works Plan in the level of detail described above shall require an amendment to the certified PWP that must be approved by the Coastal Commission prior to approval and issuance of a Notice of Impending Development for said activity, project, or facility.

The Land Use Map contained in the PWP specifies land use designations and describes permitted uses within specific areas of the Harbor. The proposed BISC site is designated *Visitor Serving Harbor Oriented (VSHO)*. The PWP states that “the purpose of this designation is to provide for visitor serving uses and amenities which are either directly related to the boating activity within the Harbor, or ancillary to it.” Permitted uses include “picnicking and other passive recreation, lodging, dining, fast food and shopping in chandleries, gift shops and boutiques, motels, restaurants, convenience stores, gas stations, fire stations, community centers/meeting places, yacht clubs, park areas, marine museums and marine oriented research facilities.” Although the BISC is the type of use that appears to be consistent with the use designation it is not specifically referenced or described as a permitted use in the PWP, however. In addition, although the BISC has been rotated on the proposed project site to minimize encroachment into the designated public park, the project is still inconsistent with Policy 20 of the PWP which requires that all areas designated as public parks shall not be developed or utilized for other uses without an amendment to the plan.

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

Amendment and Project Description

The proposed amendment and project subject to the Notice of Impending Development (NOID) is to authorize the construction and operation of a Boating Instruction and Safety Center (BISC) on a 0.84 acre parcel owned by the County of Ventura located on the west side of the Channel Islands Harbor between Harbor Boulevard and the Harbor (exhibits 2 & 5). The BISC would consist of approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, an approximately 19,000 sq. ft. two-story building, and a one-story, 1,000 sq. ft. maintenance and storage building to provide for incidental maintenance of the sailing, rowing, kayaking, and canoeing vessels. The project includes a full ADA access ramp from the main building to the dock area.

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

There is significant public opposition to the project, particularly from residents living adjacent to the west side of the Harbor. As originally proposed, the BISC was to be constructed within a grassy area of the Harbor designated as Public Park in the PWP and would have required the removal of a number of nesting trees for Black-crowned Night Herons. In response to comments from Commission staff the County re-oriented the BISC building by 90 degrees to avoid the trees used for nesting activity and to significantly minimize intrusion into the park area. As a result, one non-nesting tree and approximately 1700 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small overall increase in green area of .approximately .25 acres. Opponents contend that the amount of green area displaced is 2300 sq. ft. when the area to be fenced off by the BISC is considered. This alternative, (with the re-oriented BISC building and the redesigned street access), identified as alternative 6.2B in the FEIR, was approved by the County as the preferred alternative. In its approval of alternative 6.2B, the County Board of Supervisors incorporated all mitigation measures listed in the EIR into the BISC project. The Board also required 10 Standard Conditions and 31 Project Modifications (Special Conditions) in its approval of the project.

In response to claims once again raised at the October 2007 Commission hearing that greater than 1700 sq. ft. of grass park area would be lost to construction of the BISC and related questions raised by the Commission at the hearing the County has provided current data from its consulting engineer, Penfield and Smith. The calculations show

that under the current design of Bluefin Circle the existing landscaped grass area in the immediate area of the proposed BISC and redesigned Bluefin Circle comprises 32,974 sq. ft. Existing grass area eliminated by the BISC building footprint totals 1,714 sq. ft. (Portions of the proposed BISC construction will take place within the existing Bluefin Circle paved area.) After construction of the BISC and the redesigned cul-de-sac that replaces the existing Bluefin Circle the total landscaped area in the immediate area of the BISC and Bluefin Circle will total 43,718 sq. ft. This represents a net increase of 10,744 sq. ft. or approximately .25 acres (see exhibit 9).

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

Department of Boating and Waterways Review

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

The location of the BISC has become extremely controversial. There is opposition to siting the proposed BISC on the west side of the Harbor and opponents have argued that an eastside location is preferable. The Commission has been provided copies of correspondence from the Department of Boating and Waterways concerning location of the BISC (December 1, 2003 from Mike Ammon to Lyn Krieger, October 15, 2004 from Raynor Tsuneyoshi, Director to members of the Ventura County Board of Supervisor, October 21, 2004 from Director Tsuneyoshi to Assemblyman Tony Strickland). The Commission has also received correspondence directly from the Department of Boating and Waterways consisting of an e-mail dated February 28, 2005 and a letter dated September 20, 2007 from Director Tsuneyoshi to Gary Timm. [Exhibit 7] These letters and e-mails all indicate a preference for locating the BISC on the west side of the Harbor in the proposed location. Safety concerns relative to wind direction were cited as one of many factors in the decision. Both the October 15 and 21, 2004 letters state "given the considerable safety concerns expressed by independent experts, we cannot recommend funding from the Department of Boating and Waterways for a BISC project on the harbor's east side." Prior to the March 2005 Commission hearing, staff contacted the Department to confirm this position and in an e-mail dated February 28, 2005 Director Tsuneyoshi stated that the Department continues to prefer the Harbor west side location for the BISC and that the Department's position has not changed. Most recently, in an e-mail and letter response to an inquiry from staff dated September 20, 2007, Director Tsuneyoshi again confirmed the Department's support and preference for locating the BISC on the west side of the Harbor. The letter stated (in part):

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

Despite all of the Correspondence from the Department of Boating and Waterways referenced above claims have been raised by project opponents at the October, 2007 Commission hearing and in subsequent e-mail correspondence that the Department prefers the Port Royal alternative site on the Harbor’s west side over the proposed BISC site due to its closer proximity to the water. In response to these claims, an e-mail message dated October 18, 2007 from Steve Watanabe, Boating Facilities Division chief of the Department of Boating and Waterways to Lyn Krieger, Harbor Department Director states that the Department has not endorsed the (Port Royal) site as a preferred site over the proposed (BISC) site on the west side.

B. Consistency with City of Oxnard certified Local Coastal Program

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

The Commission has received a letter from the City of Oxnard Development Services Director (exhibit 6) dated February 4, 2005 concerning the proposed BISC’s consistency with the City’s certified LCP. In the letter the City states its determination that the BISC is consistent with the City’s certified LCP and provides substantiation for that position. The letter notes that the certified LCP emphasizes recreational boating and that sailing schools are listed as conditionally permitted uses. Other policies encourage the maximization of public access and recreational boating opportunities and provide for the promotion and protection of water-related uses. The City notes that there are no policies prohibiting new development in the harbor although the existing PWP can be interpreted as such (which is the basis of the submittal of the PWP amendment to allow

the project). In addition to the issue of build-out of the harbor, the City also addresses designation and use of the park area on the west side of the harbor and maintenance of view corridors in the harbor and concludes that the BISC project is consistent with LCP policies. In a letter dated February 6, 2003 to the Director of the Harbor Department (exhibit 6) the City notes that the BISC site is zoned HCI (Harbor, Channel Islands) in the certified coastal zoning ordinance and that "sailing or SCUBA schools and marine-related museums are listed as conditionally permitted uses in this zone." The City concludes that the BISC is consistent with this zoning designation.

C. Biological Resources

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

Section 30230

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

Section 30250 (In part)

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

Section 20240

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

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

The proposed BISC is located on the western side of the Harbor in an area comprised predominantly of paved areas for parking and visitor-serving uses. A landscaped linear park exists adjacent to Harbor waters and a public walkway that parallels Harbor

Boulevard. The landscaped area includes several large non-native trees that have been used by black-crowned night herons for nesting. Existence of the heron rookery has been confirmed by the California Department of Fish and Game (DFG). Nests were found throughout the Harbor. Great blue herons also have been found nesting in Cypress trees in the Harbor away from the proposed BISC site.

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

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

Monitoring of heron activity, including nesting, has been ongoing since the Commission hearing for the BISC in 2005. The County's biological consultant, Dr. Jeffrey Froke, has reported that black-crowned night herons did not nest in the vicinity of the BISC location during 2005 (memo from J. Froke to A. Culbertson dated Oct. 31, 2005). Dr. Froke reports that there were approximately 39 black-crowned night heron nests on the west side of the Harbor in 2003, 5 in 2004, and 1 in 2005. Dr. Froke further reports that the heron colony has shifted to Port Hueneme. The County Harbor Department has reported that there have been no herons nesting at the BISC site during either the 2004, 2005, 2006 or 2007 nesting season and that, while roosting and foraging have occurred on the west side of the Harbor, nesting has only occurred on the Harbor Peninsula. In a memo to Lyn Krieger, Harbor Director, dated March 5, 2007 Dr. Froke reported that there were no black-crowned night herons nesting in the Harbor study area as of February 22, 2007 but that there were two pairs of great blue heron nesting in a Monterey Pine on the Peninsula northeast of the BISC site in the center of the Harbor. In a memo dated June 5, 2007 addressing the known nesting status of all herons at Channel Islands Harbor as of May 31, 2007 Dr. Froke reported a minimum of one black-crowned night heron nest and five (5) great blue heron nests in the Harbor. No herons were observed nesting on the west side of the Harbor. Black-crowned night herons continued to nest in the Harbor on the Peninsula in a Monterey Cypress tree located at the entrance to the boat anchorage parking at the cul-de-sac at the end of Peninsula Road. Two other nests were suspected, but not confirmed, in adjacent trees, a Monterey Cypress and a Monterey Pine. Dr. Froke also believed that there was a greater probability of finding new nests.

Dr. Froke observed three pairs of great blue herons were nesting in a Monterey Pine on the Casa Sirena hotel grounds located on the Peninsula. Six (6) juvenile great blue herons were observed standing on the rooftop of the hotel. Five (5) pairs of great blue herons were nesting in separate palm trees on the Peninsula.

On January 14, 2008 Dr. Froke submitted a report entitled *Channel Islands Harbor Heronry Nest Tree Distribution*. The report, which includes tables, charts, and aerial photo (see exhibit 10) provides a summary of the annual and total distribution of nest trees for all tree species used by all heron nesting species during nest years 2003 – 2007. During the study period the report states that 43 individual trees were used for nesting and 90 separate uses of the trees were observed. Black-crowned Night-Herons accounted for 63 of the 90 uses, Great Blue Herons accounted for 26 uses and one (1) Snowy Egret use was counted. "Use" means that one or more pairs of a species used the tree for nesting in a given year. Use does not represent a count of nests.

The report provides that Heron nesting on the west side of the Harbor accounted for 33 tree-uses (37%) over the five-year period with the majority of 57 tree-uses (63%) occurring on the Peninsula. The largest annual tree-usage, including nesting, occurred during the 2003 nesting season by Black-crowned Night Herons. Total use of trees has varied over the period from 32 in 2003, 20 in 2004, 11 in 2005, 13 in 2006, and 14 in 2007. Use of trees on the west side of the Harbor over the period has changed from 19

in 2003 to 8 in 2004 to 4 in 2005 to 1 (Great Blue Heron) in 2006 to 1 (Black-crowned Night Heron) in 2007.

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

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

As stated previously, the project has been revised to relocate the building so that only one non-nesting tree is lost. Although the County has found that there are several other trees in the Harbor available for nesting, in order to avoid impacts to herons caused by construction noise the County has incorporated a mitigation measure (County special condition 30) requiring that no construction shall commence during the nesting season for black-crowned night herons. If construction commences prior to or continues into a nesting season the County has required that six nesting trees adjacent to the BISC site be covered with netting to prevent herons from using the trees for nesting during construction. Prior to commencement of construction a qualified biologist is required to determine that black-crowned night herons are not nesting and that fledging will not be adversely affected by construction. It is anticipated that construction will take from 12 to 14 months to complete.

The Commission is not convinced that covering nesting trees with netting and allowing construction to continue during the nesting season is the least damaging alternative, however. Nor is the Commission convinced that the herons will relocate to other trees in the harbor to avoid construction activity. The Commission also notes that the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 cited above.

Therefore, the Commission is requiring PWP suggested modification 5 and NOID special condition 3 which prohibit all outside exterior construction during the nesting season of the night herons. Interior construction shall be allowed throughout the year if the consulting biological monitor determines that interior construction can be performed without adversely impacting nesting herons.

Opponents to the project cite a letter to Lyn Krieger, Director of the Harbor Department, from John P. Kelly, PhD, Director of Conservation Science at Audubon Canyon Ranch in Marin County², dated June 25, 2003, commenting on the Draft EIR for the BISC. Dr. Kelly suggests that it would not be possible to either avoid or mitigate significant adverse impacts on the heronry, given the close proximity of the BISC. Dr. Kelly further states that “disturbed colonies may or may not re-establish in nearby areas”, that “heronries vary dramatically in their response to disturbance”, and that “scientific efforts have been unable so far to explain this variability in ways that allow reliable prediction of the consequences of construction activities, increases in human presence, or special recreational events.” The letter concedes that black-crowned night herons often nest in areas with human activity but that they “seem to be very sensitive to changes in human activity and will abandon nesting areas if disturbed.” Dr. Kelly’s letter asserts that “disturbed colonies may shift locally to adjacent trees but may also abandon colony sites completely” due to such causes as removal of trees, direct harassment, predators, and other types of disturbance. In addition, Dr. Kelly states that assertions made in the DEIR relative to relocation are not substantiated or documented. He recommends a setback of nearly 200 meters to avoid disturbance. Dr. Kelly reiterates his conclusions in letters dated March 9, 2005 and April 7, 2006 regarding the increasing likelihood of disturbance with declining distance to human activity and incorporating the maximum feasible buffer zone. Dr. Kelly concludes that there is no “habituation” or adaptability by nesting herons to human activity in Channel Islands Harbor and that herons select nest sites each year based on their ecological requirements and the suitability of local conditions. Dr. Kelly also indicated his support of several points made by Dr. Froke, the County’s biological consultant, relative to incorporating protective measures during construction of the BISC.

In a letter dated November 12, 2007 Dr. Kelly provides further comments regarding the BISC and protection of herons and egrets at Channel Islands Harbor. Dr. Kelly expresses further concerns relative to the appropriate buffer distance between BISC construction areas and nesting trees. Dr. Kelly also cites work by Coastal Commission biologist Dr. Jonna Engels in Marina del Rey and encourages the Commission to consider whether the non-native trees qualify as ESHA based on the fact that they provide nesting habitat for herons and egrets in Channel Islands Harbor. Dr. Kelly also recommends that a study of current and historical use of nesting areas at CIH be conducted by Commission staff. Correspondence from Dr. Kelly is contained in exhibit 11 to this staff report.

While a large setback might be desirable in an area of otherwise undisturbed pristine habitat it is not possible in this case under the proposed development scenario. More importantly, it does not appear to be necessary here. The County biological consultant maintains that the black-crowned night herons have demonstrated a high level of adaptability or tolerance to human caused impacts in the Harbor. (This conclusion is

² Audubon Canyon Ranch was established in 1962 to protect a heronry on the Marin County Coast. Currently Audubon Canyon Ranch manages a system of wildlife sanctuaries in Marin and Sonoma Counties.

controversial and it is also possible that the degree of tolerance or adaptability of herons which become accustomed to nesting and roosting in large, undisturbed areas might be quite different, however.) It is also possible that the introduction of an additional disturbance such as construction of the BISC so close to the nesting trees could cause a change in the level of tolerance of the herons. The biological consultant also notes that the primary food source for the herons, Harbor waters, will not be degraded or lessened by construction of the BISC.

While it is true that the greater the distance of setback the lesser the chance of disturbance or impacts the Commission notes that the area of the proposed BISC is not pristine and has been subject to human intrusion for years yet the black-crowned night herons continue to nest in the area (although nesting is no longer occurring in the vicinity of the proposed BISC location). While the degree of disturbance may be intensified somewhat by construction of the BISC there are alternative trees available for nesting in the near vicinity of the project. Further, the County has required planting of additional trees suitable for nesting in the Harbor by incorporating mitigation measures 1 - 4 into the project. As previously noted, the proposed BISC project will be sited less than 10 feet away from the existing nesting trees. (Nesting has not occurred near the BISC in recent years.) The degree of tolerance or adaptability of the herons, which have become accustomed to nesting and roosting in the public park, to future development, cannot be accurately predicted and might be quite different, however, during or after construction of the BISC. Although it is not possible or necessary to provide a setback of 200 meters to avoid disturbance to the heron colony other measures are feasible to provide a greater degree of protection for the potential nesting of herons at this location during and post construction.

The Commission has made no determination as to whether the trees within the Harbor that are currently or have previously been used by herons for nesting and roosting meet the Coastal Act definition of Environmentally Sensitive Habitat under Section 30240. The Commission's staff biologist, Dr. John Dixon, has reviewed the County biological consultant's report and agrees with its conclusions relative to the nesting and roosting activity of the black-crowned night herons near the BISC site. The report states that due to the existence of numerous trees throughout the harbor available to the herons and level of tolerance and adaptability to humans and structures demonstrated in the past an additional setback from the trees is not necessary in this case. Further, notwithstanding this conclusion, mitigation measures are being required to ensure the protection of the nesting herons during construction is adequate, such as requiring on-site monitoring and limiting construction noise. Thus, the Commission concludes that, even if the trees were to constitute ESHA, the proposed BISC would not significantly degrade the area or be incompatible with the continuation of the habitat. In addition, Coastal Act Sections 30230 and 30250, as incorporated into the City of Oxnard LCP, require protection of marine resources and coastal resources respectively. Therefore, again, even if the trees do not constitute ESHA, the Commission finds that these sections support the Commission's imposition of requirements that measures be taken during the nesting season to protect herons during construction of the BISC. It is also noted that protection of heron rookery habitat in the harbor, including the question of

whether trees demonstrating historic use by herons should be designated as ESHA, is an issue that will be addressed in a more comprehensive fashion in an upcoming future PWP amendment that will address new proposed landside development in the harbor.

For the reasons discussed above, the Commission finds that construction of the BISC pursuant to the proposed alternative design 6.2B and with all required mitigation measures and special conditions attached to this permit will not have any long term adverse impacts on the nesting of black-crowned night herons. The Commission is requiring compliance with PWP suggested modification 5 and NOID special condition 3 to prohibit commencement of construction or ongoing exterior construction of the BISC during the nesting season for black-crowned night herons (February through July). In addition, modification 5 and special condition 3 require biological monitoring during and after construction. PWP modification 6 and NOID special condition 4 require that all lighting on the north side of the BISC building be of low intensity and directed downward and away from the nesting trees. PWP modification 25 and NOID special condition 10 require that the playing of music during special events at the BISC must be limited to non-amplified, acoustic music, whether the event takes place inside or outside of the BISC facilities.

Heron breeding habitat can be lost or significantly damaged due to removal of trees or excessive tree trimming. Excessive tree trimming that opens up or exposes the canopy of trees with active nests can lead to predation and killing of fledglings by corvids. As indicated one non-nesting tree will be removed to allow construction of the BISC. An adjacent tree that has been used for nesting in the past is subject to protection measures required by Suggested Modifications and special conditions. The overall issue of tree trimming will be addressed in the forthcoming comprehensive landside PWP amendment. PWP modification 26 and NOID special condition 11 add requirements concerning measures for heron habitat protection relative to future special events held by or for the BISC. Temporary or special events that could cause excessive noise or vibrations shall be held outside of the breeding season for herons to the extent feasible. In no case shall such events take place within 300 feet of any active breeding tree. PWP modifications 18 and 19 add language to the PWP to acknowledge the existence and nesting activity of the herons within the Harbor.

The FEIR for the proposed BISC dated December 2003 states that the western snowy plover and the California least tern use areas on nearby Hollywood Beach to rest or forage. Hollywood Beach is located west of the Harbor and is not technically contained within the boundary of Channel Islands Harbor. According to the FEIR, snowy plovers roost on the beach and nest or attempt to nest in front of the dunes at the south end of the beach. In past years up to five nests have been observed. Hollywood Beach has been designated as critical habitat for the snowy plover. In 2004 the Ventura Audubon Society, operating under an agreement between the USFWS and the Harbor Department, monitored 50 Least Tern nests and 7 Western Snowy Plover nests in 2004 (Reed Smith, 3/14/05 e-mail). Concerns have been raised that snowy plover and least tern habitat would be adversely affected by users of the BISC crossing the beach from the Harbor to the ocean. In response to these concerns the U.S. Fish and Wildlife

Service was consulted and determined, in a March 25, 2003 letter to the County, that “the activities associated with BISC on Hollywood Beach are not likely to cause disturbance beyond that caused by current recreational use and beach grooming activities. Therefore, we concur with your determination that the proposed BISC would not result in the take of western snowy plovers or California least terns.” The USFWS did recommend that the County take measures to protect portions of the beach used by these species. In approving the project the County required mitigation measure or County special condition 14 to be incorporated into the project, which states:

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

The Commission notes that the March 2003 letter from USFWS to the County does not address current nesting activity by snowy plovers on Hollywood Beach that has been observed and that the PWP contains no specific policies that require mitigation or protective measures for western snowy plovers during nesting season. Therefore, for the reasons discussed above, the Commission finds that modifications to the PWP are necessary to provide protective measures to nesting snowy plovers and least terns and to designate nesting areas on Hollywood Beach as Environmentally Sensitive Habitat. PWP Modification 1 designates the nesting and breeding area as ESHA and prohibits activities associated with the BISC on or across Hollywood Beach during the nesting & breeding season (March 1 – September 30). This requirement is also included within Special Condition 1 to the NOID, (Mitigation Measures). Modification 2 provides for coordination with the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the Army Corps of Engineers to develop a conservation plan for least terns and western snowy plovers that address Harbor education and outreach programs such as those provided by the BISC. Modification 3 provides that beach grooming by the Harbor Department at Hollywood Beach is restricted between January 1 and September 30 of each year unless authorized by the U.S. Fish and Wildlife Service. Modification 4 requires that educational signs be installed at beach access locations to inform beach users of leash laws and to discourage harmful activity within the nesting area.

Note: The local Chapter of the Sierra Club has requested that the Commission require Ventura County to designate Hollywood Beach Plover and Tern habitat as ESHA in the certified County of Ventura LCP as a suggested modification. Because the subject Public Works Plan Amendment applies only to the certified Channel Islands Harbor PWP which is a distinct and separate document from the certified County LCP the Commission has no authority to suggest modifications to the LCP through the PWP. Comments were also made at the October Commission hearing suggesting that a

docent program be established to provide protection of Snowy Plover and Least Tern habitat on Hollywood Beach. Direct regulatory authority over Hollywood Beach rests with the County of Ventura rather than the Harbor Department, however, and the Harbor Department does not have the authority to establish such a program. It is noted, however, that suggested modification 2 calls for Harbor Department coordination with the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers to develop and implement a long-term conservation plan for Least Terns and Snowy Plovers at Hollywood Beach. Such a plan could include a provision for a docent program at Hollywood Beach.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with the City of Oxnard LCP including applicable Coastal Act policies 30230, 30240, and 30250. In addition, the Commission finds that the Notice of Impending Development for the BISC project, subject to the recommended special conditions, is consistent with the PWP, as modified, relative to biological resources.

D. Recreational Boating

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

Section 30220

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

Section 30224

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

Section 30234

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

Under the PWP existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided (PRC Section 30234). Policy 3 of the Recreational Boating Section of the PWP states, in part:

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

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

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

Any further development adjacent or near to Channel Islands Harbor which will create significant additional demand for boating access to the Harbor or its landside facilities will have adverse effects upon circulation and congestion, particularly at the Harbor entrance. As a condition to the consideration of any such development, the project proponent(s) shall be required to have completed a study evaluating traffic circulation and all related impacts. This shall include examination of the adequacy of the Harbor waterway and entrance to accommodate such demand and what measures are appropriate to mitigate these issues.

The Harbor Department prepared “an assessment of vessel traffic congestion of the inland waters of Channel Islands Harbor”. The stated purpose of the study was to assess current and predicted vessel traffic congestion on the inland waters of Channel Islands Harbor. The study focused on the potential impact on current vessel traffic of the proposed BISC relative to conducting boating classes within the waters of the Harbor. The study compared Channel Islands Harbor, Marina del Rey and Newport harbors. The study found that current vessel activities are well managed and conducted in a relatively safe environment. The study also found that the proposed BISC location would provide more than ample room for transiting vessel traffic to maneuver safely around students. The study noted that the Harbor width at the proposed BISC location contains 900 feet of usable water area and that vessels can be seen for ¼ mile in either direction. The study also concluded that that the Harbor will not likely reach a level of congested weekday vessel traffic and that, even on weekends, current vessel operating conditions should not be significantly impacted by the BISC. The vessel traffic assessment prepared by the County (and included in the Final EIR), also addressed and considered two recently approved residential projects, Seabridge and Mandalay Bay, in its conclusion. A third project undertaken in the Harbor is for the renovation of the Channel Islands Marina (also referred to as Vintage Marina). The project is currently under construction and nearly complete. The reconstructed marina would result in a total of 402 - 416 boat slips representing a loss of as many as 84 wet slips (depending on final configuration of the end ties). Additional dry dock storage is being

provided to minimize the overall loss. The Commission approved a Public Works Plan Amendment and the associated Notice of Impending Development for the Channel Islands Marina renovation at its May 2006 hearing. Overall, the renovation project will not result in any significant increase in boat vessel traffic in the Harbor.

Construction of the proposed BISC will cause the elimination or loss of three live-aboard spaces and 22 recreational boating spaces. The County has incorporated mitigation measure 3 and County special condition 28 into the proposed project which require the Harbor Department to offer transient boaters (non live-aboard) similar accommodations within the Harbor. In addition to compliance with Policy 3, stated above, relative to protecting recreational boating facilities in the Harbor, however, the Commission is also requiring PWP suggested modification 7 which requires that all recreational boating slips eliminated as a result of construction of the BISC be replaced in kind within the jurisdictional geographic boundaries of the PWP. Special Condition 2 to the NOID also requires in kind replacement of recreational boating slips within the Harbor.

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

E. Public Access and Recreation - Parkland

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

Section 30213 states in part:

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

Section 30221

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

In addition, existing Policy 20 to the Public Works Plan states:

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

Existing Policy 21 states:

Harbor activities shall be clustered into locations appropriate to their use to protect and enhance public recreational activities in the Harbor. Land uses shall be compatible and consistent with the kind, location and intensity of development and resource protection and development policies prescribed by this Land Use Plan.

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

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

As previously indicated, there is significant public opposition to the project, particularly from residents living adjacent to the west side of the Harbor. As originally proposed, the BISC was to be constructed within the landscaped area of the Harbor designated as Public Park in the PWP and would have required the removal of a number of nesting trees for Black-crowned Night Herons. In response to comments from Commission staff the County re-oriented the BISC building by 90 degrees to avoid the trees used for nesting activity and to significantly minimize intrusion into the park area. As a result, one non-nesting tree and 1700 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small increase in green area of approximately 0.25 acres (10,000+ sq. ft.). This alternative, identified as alternative 6.2B in the FEIR, was approved by the County as the preferred alternative. In its approval of alternative 6.2B, the County Board of Supervisors incorporated all EIR mitigation measures into the BISC project. The Board also required 10 Standard Conditions and 31 Project Modifications (Special Conditions) in its approval of the project.

Opponents to the project claim that the amount of grassy park area displaced is greater than 1700 sq. ft. – that it is actually 2300 sq. ft. to 4,000 sq. ft. when area to be fenced off by the BISC is considered. In response, the County has received confirmation from

it's engineering consultant that 1,714 sq. ft. of the existing grass area will be lost which will be replaced by 10,744 sq. ft. of grass area.

In response to claims once again raised at the October 2007 Commission hearing that greater than 1700 sq. ft. of grass park area would be lost to construction of the BISC and related questions raised by the Commission at the hearing the County has provided current data from its consulting engineer, Penfield and Smith. The calculations show that under the current design of Bluefin Circle the existing landscaped grass area in the immediate area of the proposed BISC and redesigned Bluefin Circle comprises 32,974 sq. ft. Existing grass area eliminated by the BISC building footprint totals 1,714 sq. ft. (Portions of the proposed BISC construction will take place within the existing Bluefin Circle paved area.) After construction of the BISC and the redesigned cul-de-sac that replaces the existing Bluefin Circle the total landscaped area in the immediate area of the BISC and Bluefin Circle will total 43,718 sq. ft. This represents a net increase of 10,744 sq. ft. or approximately .25 acres (see exhibit 9).

In addition, comments made at the October, 2007 Commission hearing allege that loss of even a small portion of the grassy park area raises an environmental justice issue because it limits public access for persons of low income and minority status thereby constituting a loss of a low cost, visitor-serving use. The County Harbor Department has responded by noting that not only is grassy park area being replaced but that the BISC is also a low cost, visitor serving facility that provides access to the harbor waters and boating instruction and activities such as youth sailing programs and junior lifeguard programs to members of the public who cannot afford a boat.

The Commission finds that the entire linear landscaped area along the west side of Harbor Boulevard is designated as Public Park in the PWP. Therefore, an amendment to the PWP is necessary to construct a portion of the BISC on the park. In this case, the Commission finds that the proposed BISC, as described above, is consistent with the type of uses envisioned by the City of Oxnard LCP and the applicable public access and recreation policies of the Coastal Act. For this reason the Commission finds that it is appropriate to displace a portion of the public park for the BISC facility provided that an equal amount of parkland is created in the immediate area. Displacement of public parks would not be appropriate for other kinds of uses in the Harbor, however. Therefore, modification 8 to the PWP amendment and special condition 5 to the NOID require the replacement of an equal or greater area of park that is lost to construction of the BISC within the immediate area of the project site. PWP modification 12 further defines the entire linear grass area on the western side of the Harbor as public park (minus the portion eliminated due to BISC construction) and modification 13 provides that all areas designated as public park shall not be developed unless an amendment to the PWP is approved.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified is consistent with the public access and recreation policies of the certified City of Oxnard LCP. In addition, the proposed NOID, as

conditioned, is consistent with the PWP as amended, relative to the public access and recreation policies of the Channel Islands Harbor Public Works Plan.

F. Water Quality

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

Section 30230 Marine resources; maintenance

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

Section 30231 Biological productivity; water quality

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

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

Potential sources of pollutants such as chemicals, petroleum, cleaning agents and pesticides associated with new development, as well as other accumulated pollutants from rooftops and other impervious surfaces result in potential adverse effects to water quality to the Harbor and coastal waters. Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground.

Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for infiltration.

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

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

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the amount of stormwater produced by all storms up to and including the 85th percentile, 24 hour storm event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the inclusion of a Water Quality Management Plan including the selected post-construction structural BMPs be sized based on design criteria specified in PWP modifications 20 through 23 and special conditions 6 through 8 to the NOID, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a

manner consistent with the water and marine policies of the Oxnard LCP and PWP as amended.

Furthermore, interim erosion control measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. To ensure that proposed erosion control measures are properly implemented and in order to ensure that adverse effects to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the Harbor Department, as required by modifications 20 through 23 and Special Condition 7, to submit final erosion control plans. Additionally, the Commission finds that stockpiled materials and debris have the potential to contribute to increased erosion, sedimentation, and pollution. Therefore, consistent with the City of Oxnard LCP and PWP, in order to ensure that excavated material will not be stockpiled on site and that landform alteration and site erosion is minimized, Modifications 20 through 23 and Special Condition 7 requires the Harbor Department to remove all excavated material, including debris resulting from the demolition of existing structures, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the commencement of development. Should the disposal site be located in the Coastal Zone a separate coastal development permit or notice of impending development shall be required.

The Commission also notes the potential for adverse impacts to water quality related to the public boating facilities associated with the BISC. Therefore, modifications 20 through 23 and special condition 8 requires the Harbor Department to submit a water quality Best Management Practices (BMPs) program that demonstrates that boating activity in the project area will be managed in a manner that protects water quality.

The Commission finds that the proposed BISC project described in the proposed PWP amendment with the suggested modifications is consistent with the applicable policies of the City of Oxnard LCP. In addition, the Commission finds that the Notice of Impending Development, as conditioned, is consistent with the PWP, as amended, with regards to protection of water quality.

G. Visual Resources – View Corridors

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

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of

surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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

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

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

I. Project Alternatives

The County, acting as the “lead agency” for this project for purposes of the California Environmental Quality Act (“CEQA”), Cal. Pub. Res. Code §§ 21000 *et seq.*, certified an Environmental Impact Report (EIR) for the proposed project in December of 2003 that addresses 12 alternatives to the proposed project. The CEQA guidelines requires that an EIR describe a range of reasonable alternatives to the projects evaluated, which may include alternative locations for the project, that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. .” Cal. Code Regs., tit. 14, § 15126.6(a). An EIR is not required to consider every conceivable alternative to a project. As noted in the EIR, CEQA does not require the consideration of alternatives that are not feasible.

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

Other project objectives listed in the EIR include:

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

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

No Project

The no project alternative would result in no or less significant impacts to all of the potential impact areas considered. The EIR did determine, however, that the failure to construct the BISC would result in adverse impacts to the achievement of recreational and public access goals of the PWP and the Coastal Act by not achieving any of the stated project objectives including the basic goal of providing a safe, sailing, aquatic, and marine-oriented instructional center to residents of Ventura County.

Building Height Reduction

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

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

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

Opponents to the proposed BISC at the preferred west side location maintain that an existing seven year remaining lease for the Port Royal Restaurant is not a legally adequate reason for rejecting the Port Royal site as an alternative location for the BISC. They argue that the County could buy out the lessee’s remaining lease or lease back until the lease runs out.

On December 17, 2007, Angel Law, on behalf Habitat for Hollywood Beach (“HHB”), submitted a letter (hereinafter, “Letter”) reiterating that HHB “continues to strongly object” to the proposed BISC site and providing citations to legal authority to support HHB’s contention that “in-depth alternatives review and alternatives selection ... may not be avoided or restricted based on claims that existing contractual commitments render infeasible otherwise reasonable alternatives sites. Letter (attached) at 2. The Letter specifically argues that the Port Royal restaurant site “is a feasible alternative location for the BISC on the west side of Channel Islands Harbor.” *Id.*

The cases cited by Angel Law do not support the proposition for which they are cited. The main case cited is Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692. Angel Law claims it supports the proposition that “contracts entered into . . . prior to review of a project cannot be used to avoid the scrutiny envisioned by CEQA.” Letter at 3. This statement of the case’s holding is much too broad. The case involved a proposal to build a coal-fired cogeneration plant. The court did hold that the project proponent’s existing contracts did not preclude review (in the EIR) of a natural gas alternative, but the contracts at issue were not unrelated contracts that would make a natural gas alternative more expensive; they were contracts that the project proponent had entered into in anticipation of project approval, the obligations of which could only be satisfied if the proposed project were approved. In other words, prior to CEQA review, the project proponent entered into agreements committing itself to obligations that it could only fulfill if its proposed project were approved. Under those circumstances, the court made such unremarkable statements as noting that the applicant who proceeds before the review process is done does so at its own risk and that entering into contracts cannot be used to avoid the scrutiny envisioned by CEQA. 221 Cal.App.3d at 737.

That is very different from the situation at issue here. The contract at issue is not a contract in which the County committed to use its preferred alternative site for its BISC project in advance of the CEQA process. Long before the BISC project was proposed, the County entered into a lease, wholly unrelated to the BISC project, with the inherent opportunity costs involved in any lease (including that the leased area cannot then be used for other purposes). Now, years later, it is arguing that the area that is still subject to that lease is not a feasible alternative site for this new BISC project.

Angel Law also cites Laurel Heights Improvement Association v. Regents of Univeristy of California (1988) 47 Cal.3d 376, but that case is even more clearly distinguishable, for similar reasons. There, the University had actually begun work on its proposed project in advance of CEQA review or approval, and, as Angel Law notes, the court simply said that it would not countenance an attempt to reject an potential alternative site on the ground that the project proponent had already purchased its preferred site and commenced its project. 47 Cal.3d at 425.

These cases stand for the unremarkable proposition that one cannot commit to some activity that requires CEQA review and then use that commitment as a basis for rejecting other alternative projects as infeasible. Angel Law cites no case for the proposition that a government agency must consider, as a feasible alternative site for a proposed project, a site that would require it to violate its unrelated, previously-existing, legally proper, contractual obligations.

Analysis of feasibility must be based on the statutory and regulatory definition of that term. CEQA and the CEQA Guidelines define “feasible” to mean:

“capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” PRC § 21061.1, 14 C.C.R. § 15364.

No evidence has been presented to indicate that the County should consider breaking its lease. No evidence has been presented indicating that it could do so without incurring substantial costs or that doing so would not have social repercussions by affecting the County’s reputation as a reliable lessor. Indeed, the natural assumption would be that the converse is true.

The fact that the restaurant is still in operation also means that there is an existing building on the site, which would have to be removed in order to construct the BISC at the Port Royal site. The difference between a vacant site and a site with an building in active use is substantial. In upholding the validity of an EIR for a proposed senior housing development, the California Court of Appeal recognized the significance of this factor. See Save Our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745, 1754 (“the . . . EIR stated its reasons for concluding that no alternative sites to the project were feasible. . . . There is no other space available unless the City demolishes existing residential units.”)

In conclusion, the County prepared an EIR in which it considered the Port Royal site but concluded that the site was not a feasible alternative location. The opponents have not presented the Commission with an adequate reason to challenge the County’s conclusion in this respect, and the Commission declines to do so. Finally, even if the Port Royal site were a feasible alternative, that would not necessitate denial of the proposed site, since, as will be discussed below, the proposed project at the proposed site, as modified and conditioned, will have no significant adverse effects.

Alternative Site 3

This site is known as the “Marine Emporium” site. The site is located in a narrower area of the Harbor some distance from the turning basin and has less room for docks. Negotiating the channel to arrive and depart the BISC would be a more difficult challenge for BISC students as opposed to the flexibility of being in the turning basin. The PWP, in policy 5, also currently restricts small vessel operation in this location to minimize waterway congestion. This site also occupies a larger area of grass and trees within the linear park on the west side of the Harbor. Due to the narrower channel and distance from the turning basin the County determined that locating the BISC at this site would increase conflicts between recreational boaters and novice sailors. This location would also result in greater conflict with view corridors identified in the PWP. For all of these reasons the County rejected this alternative site and found that this alternative site contained greater adverse impacts than those associated with the preferred alternative site. The Commission concurs with the County’s reasoning and conclusions provided above.

Alternative Site 4

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

Alternative Site 5

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

Alternative Site 6

This site is known as the “Peninsula Park Site” and is currently developed as a public park with tennis courts, playground, a waterfront dock, a bathroom, a small meeting facility, and general park open space. Two adjacent hotels are available for overnight accommodations and visitor-serving use. The park contains many trees, many of which have shown evidence of nesting by black-crowned night herons. Designated view corridors exist across the site. In addition, the County has determined that there is not room for adequate parking at this location and there is little available dock space. Existing dock space is available for transient use. For all of these reasons the County found that this site was not feasible relative to meeting

many project objectives and had more adverse impacts on the environment than the preferred alternative. The Commission concurs with the County's reasoning and conclusion that this is not a feasible alternative site.

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

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

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

Site 7 is also located in a designated view corridor. The 0.6 acre park currently provides views of open water area from Victoria Avenue for a portion of its width. However, views of the Harbor are currently obstructed by boat storage in the parking lot although the boat storage is unpermitted at this time. Based on the analysis contained in the EIR alternative site 7 would not result in aesthetic impacts to the view corridor. The EIR concludes that construction of the BISC could potentially improve public views from Victoria Avenue. In summary, as with the proposed site, site 7 would result in some obstruction of a portion of a view corridor but, overall, would restore view corridor area currently obstructed by existing boat storage. The

County determined that project-related aesthetic impacts would be less than significant at either site 7 or the proposed project site.

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

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

Geologic and soils impacts associated with either alternative site 7 or the preferred project alternative site are similar since both sites are located in the same regional and local geologic setting. Implementation of the standard conditions and project modifications identified in the EIR for the BISC will reduce the potential for geologically related impacts to the maximum extent feasible based upon standards established by the Uniform Building Code and County of Ventura development standards and regulations. Less than significant impacts relative to either alternative 7 or the preferred alternative site will result with implementation of the County's geotechnical recommendations and compliance with standard regulations.

Impacts caused by hazards and hazardous materials associated with alternative site 7 would result from the use, storage, and/or transport of minimal quantities of paint

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

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

The County concluded that BISC construction on alternative site 7 would result in significant impacts to land use and planning because the BISC project is not currently a permitted use at this location. Currently, site 7 is designated as Visitor-Serving Boating and a PWP amendment would be required to allow the BISC on the site. The Commission, however, has previously determined that a PWP amendment is also necessary to allow construction of the BISC on the preferred alternative site which is discussed in greater detail in this report. The necessity of obtaining a PWP amendment to allow the BISC use on the site does not preclude its use, however, assuming a PWP amendment were approved. Other existing land use restrictions or impacts associated with construction of the BISC at the east side site 7 location would likely preclude approval of a PWP amendment, however. Such impacts include loss of dry boat storage space and potential loss of existing commercial fishing docks, (commercial fishing is given priority protection in the Coastal Act and the PWP). Another significant impact associated with an east side land use concerns dock design and wind safety issues which are discussed in greater detail in the Public Safety section below. Extension of the dock pierhead line to

accommodate an upwind docking in a downwind location at the site 7 location would likely lead to significant to waterway congestion in the Harbor. Further, the U.S. Coast Guard has opposed any dock extension at this location. For these additional reasons the County concluded that alternative site 7 on the east side would result in significant impacts associated with land use and planning.

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

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

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

Anticipated impacts to roadways and traffic associated with site 7 and the preferred project site would be less than significant due to the small amount of traffic projected to be generated by the BISC project. The EIR provides recommendations to reduce impacts in the area of site circulation and parking. Alternative site 7 is located on the east side of the Harbor's main channel and would have site access from and to Victoria Avenue. Traffic generated by site 7 has been calculated for the intersections in the vicinity of the site and no significant impacts were identified in the EIR. The EIR does conclude that the alternative site 7 will contribute more significant impacts to the intersection of Victoria Avenue and Channel Islands Boulevard because it would require a northbound right turn lane (with the elimination of one of the northbound left turn lanes) to reduce impacts to a less than significant level. This improvement can be striped within the existing right-of-way for Victoria

Avenue. In summary, on-site circulation and parking would have no significant impacts for either alternative site 7 or the proposed alternative site. However, traffic volumes at the intersection of Victoria Avenue and Channel Islands Boulevard will increase somewhat with the alternative site 7 location as compared to the proposed project site.

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

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

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

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

Analyses regarding wind direction characteristics of the Harbor and comparison of alternative site 7 and the proposed project site were conducted by experts in the field of sailing and boating instruction and are included in the EIR as Appendices R and S. The analyses, and the EIR, conclude that an upwind location, as provided at the proposed project site, is important for teaching sailing and that “the ‘wind shadow’ created along the west side of the Harbor is particularly beneficial for a sailing learning environment”. The analysis also concludes that the alternative site 7

“downwind location creates potential navigational hazards and could not provide for BISC docking needs”.

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

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

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

A proponent of an east side location for the BISC maintains that it is now feasible to construct dock space on the east side because the County is requesting to extend the pierhead line in a recently submitted PWP Amendment request. The County has responded to this contention. The County points out that Channel Islands Harbor does not have a specified or designated pierhead line. The County treats the existing end of marina dock construction as a pierhead line in practice. In the recently submitted PWP amendment the County has requested to extend the eastside pierhead line well to the north of alternative site 7 for the BISC (towards Fisherman’s Wharf) and further from the turning basin that would be used by BISC

users of the west side preferred location. The County has not requested a pierhead line extension at the commercial sportfishing docks, in the location of alternative site 7, due to safety concerns on the part of the Harbormaster, and previously expressed concerns by the Coast Guard. The County reports that its initial request to extend the pierhead lines on the east side somewhat north of alternative site 7 was not supported by the Coast Guard and the extension was moved further to the north in order to avoid the turning basin which is the area for dropping sails and rafting disabled vessels. The east side area, where the Coast Guard is located, is the deepest water area in the Harbor for the Coast Guard to dock its Cutter and conduct operations.

Correspondence received from Dr. Jonathan Ziv, President, Habitat for Hollywood Beach includes written reports or statements from six boating program instructors or directors of facilities in Ventura and Orange Counties that discuss viable or preferable alternative sites to the preferred site (exhibit 14). Each report or statement differs somewhat in its conclusion but all conclude that either an east side location or the Port Royal restaurant site is either feasible or preferable. Some reports (Keith, Bowen, Brooks, Wenzel) conclude that the east side is preferable because of the higher boat traffic on the west side of the harbor and/or because the leeward docking on the east side of the harbor is safer or a neutral feature. Another report (Avery & Prioleau) acknowledges that both sites have positive and negative features and that both sites are viable. For instance, the report notes that the perfect facility would “combine the west side upwind docks with the open land, facility view, and parking found at the east site.”) One statement (Prophet) prefers the Port Royal site on the west side.

It is clear that it is physically feasible to construct a BISC facility on the land portion of either the west or east side of the Harbor. It is also clear that there are disagreements among knowledgeable persons as to the best location for the BISC. The east side vs. west side alternatives are discussed in detail above particularly relative to the issue of wind direction and safety. Boating traffic in the waterways is also addressed in this report. The Commission has considered the alternatives and arguments on both side of the issue. Analyses contained in the EIR, and in this staff report, support the conclusion that the primary constraint of alternative site 7, including the Cisco's site, is wind direction and the improvements that would be necessary to accommodate the BISC at this downwind location as described above. The EIR further concludes that a downwind dock design at this location is not well suited to novice sailors and would create substantially greater public safety impacts. In approving the EIR and in rejecting alternative site 7 as a BISC location, the County found that significant impacts would be created with regards to public safety and that alternative site 7 does not meet key objectives for the BISC in regards to operational needs and maximizing safety for BISC users. The County found that maximum safety is obtained by providing upwind docking slips that would enable a beginning sailor to navigate a sailboat into the wind, which would help to slow and stop the boat. For all of these reasons the County found that this alternative site was not feasible as a BISC location. For all of the reasons discussed above

concerning alternative site 7, including the Cisco's site, the Commission concurs with the County's reasoning and conclusion that site 7 was not a feasible alternative site for the BISC project.

Alternative Sites Outside Channel Islands Harbor

Port of Hueneme – Oxnard Harbor District

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

Ventura Harbor

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

Alternative Project Design – Preferred Alternative

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

The EIR concluded that the proposed project, alternative 6.2B, would result in potentially adverse impacts to biological resources, transient and liveaboard boat slips, and noise. With the exception of temporary construction noise related

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

The EIR concluded that reorienting the building would reduce *aesthetics* impacts under the preferred alternative site B by reducing tree removal and loss of turf area. Preferred alternative B would result in the loss of one non-nesting tree. Reorientation of the BISC building would also reduce the extent of view corridor loss. It is also noted that Commission suggested modification 8 to the PWP and corresponding special condition 5 to the NOID require the County to replace an equal or greater amount of grass park area lost to construction of the BISC within the immediate area of the project site. Commission suggested modifications 12 and 13 further clarify that the extent of the linear park on the west side of the harbor consists of all open turf and landscaped areas, trees, picnic tables, and restroom facilities with the exception of the existing park eliminated due to construction of the BISC.

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

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

construction and submit a monitoring report after each nesting season and annually for 3 years after final construction is completed. Suggested Modification 6 and special condition 4 requires that all lighting on the north side of the BISC building (nearest the trees) be of low intensity and directed downward and/or away from the trees.

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

In approving and adopting the final EIR, the County found that all recommended mitigation measures were feasible and they were incorporated into the approved project. In addition, special condition 1 to the Notice of Impending Development recommended in this staff report and findings requires that all mitigation measures and project modifications identified in the Final EIR for the BISC applicable to approved alternative 6.2B be incorporated by reference as conditions of the NOID unless specifically modified by any other recommended special conditions.

The staff recommendation and findings contain 26 suggested modifications to the PWP amendment and 11 special conditions to the Notice of Impending Development which are all discussed in greater detail in the preceding analysis and findings. Based on the preceding findings contained herein, the Commission finds not only that the proposed PWP amendment 1-04 is consistent with the certified LCP for the City of Oxnard and applicable Coastal Act policies and that the proposed Notice of Impending Development 1-05 is consistent with the PWP, as amended, but that the approved project as a whole, as modified and conditioned, has no remaining significant impacts on the environment. For that reason and the reasons specified above, there are no feasible alternatives that would further reduce any significant impacts that the project, as proposed, might have on the environment.

J. Cumulative Impacts

CEQA requires the consideration of cumulative impacts which are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” The County has found that the cumulative impacts of the BISC taken together with other known approved or foreseeable future projects affecting Channel Islands Harbor are insignificant individually and cumulatively. There are three known major projects that affect Channel Islands Harbor in some way. Two major residential projects that include waterfront boat docks have been approved by the Coastal Commission as coastal development permits (on appeal from City of Oxnard decisions). Additionally, a major reconstruction and renovation of the Channel Islands Harbor Marina (also known as Vintage Marina) has been approved by the Coastal Commission as a PWP amendment and related NOID

after receiving initial approval from the County. In addition to these three major projects, several small repair and/or dock reconstruction projects have been approved through the Notice of Impending Development process. Two additional marina replacement projects within the Harbor were approved by the Commission through the NOID process in June 2007 at Channel Islands Landing and Marine Emporium Landing. Most recently, the County has approved PWP amendment 1-07 that addresses waterside improvements only in Channel Islands Harbor. This amendment has been submitted to the Commission for approval, but has not been considered by the Commission.

The Westport at Mandalay Bay residential project was approved by the City of Oxnard initially, appealed to the Coastal Commission and approved on appeal by the Coastal Commission in April 2001. The project site is located in the City of Oxnard adjacent to the Reliant Energy Canal (formally the Edison Canal), a waterway that extends from Channel Islands Harbor northward to the Reliant Energy Plant at Mandalay Beach. The project includes creation of channels and waterways; subdivision of three existing parcels into 116 lots (95 single family lots, 17 duplex lots, 2 townhouse lots, and 2 "mixed use" lots); the construction of 95 single family residences (82 with private boat docks); 35 residential duplex units; 88 townhouse condominiums; mixed-use development with 88 multi-family residential units and 22,000 sq. ft. of visitor-serving or neighborhood commercial uses; and 8.16-acres of public park area with trail system. The Commission approved the project with special conditions including requirements for lateral access along some of the channels and vertical access points, construction of all public park and access improvements prior to occupancy of any structures, provision of a public access and signage program, and submittal of a boat dock management plan that provides that 50 per cent of the boat docks are made available to the public. Other conditions dealt with issues not related to water use in the Harbor.

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

The Commission approved a PWP amendment with Suggested Modifications and Notice of Impending Development with Special Conditions for the Channel Islands Harbor Marina (Vintage Marina) reconstruction project in May 2006. The amendment to the Public Works Plan (PWP) was approved to allow for the demolition and

reconstruction of the Vintage Marina on property owned by the County of Ventura located on the west side of the Channel Islands Harbor. The corresponding Notice of Impending Development (NOID) provides for construction of the proposed project upon certification of the PWP amendment. The project includes reconstruction of an existing marina on two parcels (D & E) occupying a total of 14.35 acres. The two parcels are separated by the parcel on which the proposed Boating Instruction and Safety Center (BISC) is to be located. The existing 500-slip marina was over 40 years old and was in a state of disrepair and at the end of its useful life. The proposed 402 –416 slip marina (depending on how the end ties are utilized) is designed to comply with new safety standards for Department of Boating and Waterways (DBAW) and Americans with Disabilities Act (ADA). In order to comply with the DBAW and ADA standards as well as accommodate a greater number of larger boat slips, the new design results in a net loss of between 84 and 100 wet slips (depending on how the end ties are configured). In order to minimize the loss of boating slips, the new design extends the docks 20 feet beyond the existing pier head line. In addition, to mitigate for the loss of wet slips, the Harbor Department proposed to increase the number of dry dock storage spaces on Parcel P in the Harbor from approximately 300 to 400 spaces. The Commission action included suggested modifications that provide for the protection of a specified percentage of small and medium size boat slips, provision of additional dry land storage space for boats, and protection of potential nearby heron nesting activity. Required special conditions also provided for the protection of nearby heron nesting activity and submittal of revised plans that demonstrate that Fairway space between Vintage Marina dock F and Boating Instruction and Safety Center (BISC) dock E including side ties shall conform to California Department of Boating and Waterways 2005 Guidelines for vessel traffic ingress and egress for both docks simultaneously. The revised plans were required to also demonstrate that the BISC project, including dock E, conforms to the project approved by the Commission. Construction of this project is underway and scheduled to be completed in January 2008.

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

On-the-water operations of the BISC will be well supervised by trained personnel, operations will occur mainly in the large turning basin where the usable water area is approximately 900 feet wide, and operations and BISC water activity will avoid peak vessel traffic periods on weekends. Although operations related to boat traffic created

by the BISC is minimal, such features as the size of the turning basin, advantage of wind direction, on-site supervision, and use during less busy times of Harbor boat traffic will provide additional factors of safety. Therefore, the County determined and the Commission concurs, that the cumulative impacts on boating safety of the BISC taken together with the Westport at Mandalay and Seabridge projects are negligible.

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

The Channel Islands Marina (Vintage Marina) reconstruction project will not result in additional boat traffic in the Harbor. The total number of boat slips is reduced by approximately 84 to 100 slips (the exact number is unknown) although there will be an increase in dry dock storage on the east side of the Harbor. One concern related to the combination of the BISC construction and the Vintage Marina reconstruction concerned the reconstruction project's impact upon future construction of the approved BISC dock. In approving the marina reconstruction project the Commission required the Harbor department to submit evidence in the form of revised plans demonstrating that the fairway space between Vintage Marina dock F and Boating Instruction and Safety Center (BISC) dock E including side ties conforms to California Department of Boating and Waterways 2005 Guidelines for vessel traffic ingress and egress for both docks simultaneously. The revised plans must also demonstrate that the BISC project, including dock E, conforms to the project approved by the Commission. The Harbor Department has complied with this special condition.

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

Since its approval of the BISC project the Ventura County Harbor Department has submitted a PWP amendment application to the Commission on March 30, 2007 for waterside improvements throughout the Harbor. The waterside amendment includes revisions to allow pierhead expansion for additional boat slips along the peninsula, along the southwest side of the harbor and along the northeast side of the harbor. The

amendment also includes revisions to allow for reconstruction of marinas and boater related amenities, such as dock and gangway repair, replacement, and maintenance. Additionally, commercial fishing services are proposed to be consolidated to the commercial fishing wharf on the west side of the harbor. The Ventura County Harbor Department also plans to submit a PWP amendment application for landside improvements in the future, which may include changes to allowed height and density for new or reconstructed buildings, addition of a public promenade, and expansion or addition of park areas.

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

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

J. California Environmental Quality Act

At least two governmental entities have been involved in reviewing the environmental impacts of this project – the County and the Coastal Commission. The County prepared an Environmental Impact Report (EIR) for the project. The Coastal Commission reviewed that report in the course of its review of the proposed PWPA and project and has consulted with the County and other public agencies in the course of preparing this report. As an agency with a certified regulatory program under CEQA section 21080.5,

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the Commission must consider alternatives and mitigation measures that would lessen any significant environmental impacts that the proposals would otherwise have on the environment. Sections 13371 and 13356(b)(2) of Title 14 of the California Code of Regulations require that Commission not approve or adopt a PWPA unless it can find that , "...there are no feasible alternatives, or feasible mitigation measures, available which would substantially lessen any significant adverse impact which the activity may have on the environment." The Commission has consulted with other public agencies in conducting its review and has provided those agencies

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

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