

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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DATE: April 24, 2008

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director
Gary Timm, Coastal Program Manager

SUBJECT: Revised Findings for (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 May 7, 2008
Commission Meeting at the Marina Del Rey Hotel, 13534 Bali Way,
Marina Del Rey CA. 90292.

DATE OF COMMISSION ACTION: April 9, 2008 in Santa Barbara

COMMISSION DECISION: Approval of PWP Amendment (PWPA) with suggested modifications and approval of Notice of Impending Development (NOID) with special conditions.

COMMISSIONERS ON PREVAILING SIDE:

To certify PWP Amendment 1-04 with suggested modifications: Commissioners Achadjian; Blank; Clark; Hueso; Kram; Neely; Potter; Reilly; Chairman Kruer.

To approve NOID 1-05 with conditions: Commissioners Achadjian; Blank; Burke; Clark; Hueso; Kram; Neely; Potter; Reilly; Shallenberger; Wan; Chairman Kruer.

PROCEDURAL NOTE: Adoption of the Revised Findings requires a majority vote of the Commission members from the prevailing side who are present at the vote on the revised findings, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The associated motions and resolutions are located on **pages 8 and 22** of this report.

Staff recommends that the Commission adopt the following revised findings in support of the Commission's decision on April 9, 2008 to approve the PWP amendment subject to 27 suggested modifications and to approve the Notice of Impending Development with 13 special conditions. The standard of review for adoption of the revised findings for the proposed PWP amendment and the NOID is consistency with the Commission's April 9, 2008 action.

Staff Note from report reviewed by the Commission on April 9, 2008:

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. Finally, the court stated: "The court's decision does not 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

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").

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). In addition, this report assess impacts from the proposed project not only in isolation, but also whether the possible effects of this project, both in light of and in combination with related past, present, and probable future projects, are collectively significant. Among these related projects are the Westport at Mandalay Bay and Seabridge residential projects in the City of Oxnard, approved on appeal by the Commission, the Vintage Marina Reconstruction Project PWP Amendment and NOID approved by the Commission in May 2006 and PWP Amendment 1-07 for waterside improvements in the Harbor approved by the Commission in February 2008. In addition, a number of minor, less significant projects have been approved by the County and the Commission through the Notice of Impending Development (NOID) process as consistent with stated permitted uses in the certified Public Works Plan.

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 PWPs 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-COMMISSION ACTION

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.

At the April 9 Commission hearing ~~the~~ proposed staff recommendation, and subsequent Commission action, relies relied 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~~ At the April 9 hearing the Commission denied the proposed PWP amendment as submitted followed by approval with ~~25~~ 27 suggested modifications. ~~Staff is also recommending that the~~ The Commission also determined that the impending development will be consistent with the certified Channel Islands Harbor Public Works Plan, as amended, pursuant to the ~~staff recommendation~~ Commission action on April 9, and with ~~eleven (11)~~ Thirteen (13) ~~recommended~~ required 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, (12) efforts to enter into an agreement with the neighboring school districts in Ventura County to develop a scholarship program for the BISC, and (13) prohibition of commercial use of the BISC, all of which were necessary to bring the development into conformance with the PWP.

STANDARD OF REVIEW (from report reviewed by Commission on April 9, 2008)

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 (from report reviewed by Commission on April 9, 2008)

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 TO ADOPT REVISED FINDINGS FOR DENIAL OF PWP AMENDMENT 1-04 AS SUBMITTED AND CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on April 9, 2008, certifying Public Works Plan Amendment 1-04 to the County of Ventura Channel Islands Harbor Public Works Plan if modified as directed by the Commission.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the May 7, 2008 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote: Achadjian; Blank; Clark; Hueso; Kram; Neely; Potter; Reilly; Chairman Kruer.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for certification of PWP Amendment 1-04 to the County of Ventura Channel Islands Harbor Public Works Plan if modified as directed by the Commission on the ground that the findings support the Commission's decision made on April 9, 2008, and accurately reflect the reasons for that decision.

SUGGESTED MODIFICATIONS

At the April 9, 2008 hearing the Commission certified 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 the Commission to be deleted is shown in ~~line-out~~. Language

proposed by the Commission to be inserted is shown underlined. Other suggested modifications to revise maps or figures are shown in *italics*. Changes to the suggested modifications initially proposed by staff resulting from the Commission's final action of April 9, 2008 are shown in **bold double underline for additions and bold double strike-out for deletions**.

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 that black-crowned night herons, great blue herons or egrets are not 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 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 **independent** biologist shall monitor the site prior to **construction, daily at all times** during **exterior construction between December 1 and September 30 (at least twice monthly) to ensure compliance with any conditions of construction, and after construction. Should the monitor observe any failure to comply with any component of this requirement or corresponding special condition or any other construction related special condition to the Notice of Impending Development (NOID) for the BISC, said monitor shall have the authority to, and shall, require that construction be immediately stopped and the monitor shall notify the Director of the Harbor Department and the Executive Director of the Coastal Commission immediately. Construction shall not be resumed until conformance with the requirements of the conditions is confirmed and the Executive Director of the Commission authorizes resumption of construction. The biologist shall submit a monitoring report once each week during construction reporting on condition compliance.** The biologist shall **also** 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. Lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to

those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.

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 30224~~One means of carrying out the Recreational Boating policies of the Coastal Act is by establishing a Boating Instruction and Safety Center on the west side of the Harbor as shown on Figures III, IV, V, and VII.

Modification 18

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

Notwithstanding this man-made environment, several bird species, such as great blue herons and black-crowned night herons, utilize the trees in the Harbor for roosting and nesting. Although none of these species is listed as threatened or endangered, their presence is considered important 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 in this modification indicates language added to new language proposed to the PWP by the Harbor Department (and is not a change made by the Commission at the April 2008 hearing).

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. 17. 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. ~~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.

- b. ~~A biological monitoring program to sample the Harbor waters (including benthic areas) that will be performed simultaneously with the water quality sampling monitoring program.~~

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

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

If any of the samples exceed the Los Angeles Regional Water Quality Control Board (LA Regional Board) Basin Plan objectives or any other standards adopted by the LA Regional Board for the Channel Islands Harbor, the County shall investigate the source of the problem and document the exceedance and any corrective actions taken to resolve the problem. If a continual exceedance exists for any parameter sampled (2 or more samples that exceed standards in a 12-month period), the County shall undertake mitigation measures to reduce the level of pollutant input. This shall include, but not be limited to:

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

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

12. Marina Inspection and Maintenance Program

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

13. 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 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 25

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.

Modification 26

The Harbor Department shall employ its best efforts to enter into a Memorandum of Understanding or similar agreement with neighboring public school districts in Ventura County to develop and offer a scholarship program for children of low income families to fund participation in programs offered by the Boating Instruction and Safety Center.

Modification 27

Commercial use of the BISC is prohibited other than commercial uses directly related to its described functions in the project description and fund raising activities whereby revenues generated by such fund raising are directly used to support BISC activities including related scholarship programs.

II. STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS FOR APPROVAL OF NOTICE OF IMPENDING DEVELOPMENT WITH SPECIAL CONDITIONS

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on April 9, 2008, to 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 as amended in accordance with the suggested modifications.*

Commissioners Eligible to Vote: *Achadjian; Blank; Burke; Clark; Hueso; Kram; Neely; Potter; Reilly; Shallenberger; Wan; Chairman Kruer.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the May 7, 2008 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for its determination that approval of 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 in accordance with the Commission's suggested modifications on the ground that the findings support the Commission's decision made on April 9, 2008 and accurately reflect the reasons for that decision.

III. SPECIAL CONDITIONS

Changes to the special conditions resulting from the Commission's final action of April 9, 2008 are shown in underline for additions and ~~strike-out~~ for deletions.

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 that great blue herons, egrets or black-crowned night herons are not 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 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 independent biologist shall be hired and instructed to monitor the site prior to construction, and daily at all times during exterior construction between December 1 and September 30 (at least twice monthly) to ensure compliance with any conditions of construction, and after construction. The monitor shall be instructed that, should the monitor observe any failure to comply with any component of this special condition or any other construction related special condition to this NOID, said monitor shall have the authority to, and shall: (1) require that construction be immediately stopped and (2) shall notify the Director of the Harbor Department and the Executive Director of the Coastal Commission immediately. All personnel on the construction site shall be informed that the monitor has the authority to stop work. Construction shall not be resumed until conformance with the requirements of the conditions is confirmed and the Executive Director of the Commission authorizes resumption of construction. The County shall ensure that the biologist submits a monitoring report once each week during construction reporting on condition compliance. The biologist shall also 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. Lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.

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.
- 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.

Special Condition No. 12

Agreement with Neighboring Public School Districts

The Harbor Department shall employ its best efforts to enter into a Memorandum of Understanding or similar agreement with neighboring public school districts in Ventura County to develop and offer a scholarship program for children of low income families to fund participation in programs offered by the Boating Instruction and Safety Center.

Special Condition No. 13

Prohibition of Commercial Use

Commercial use of the BISC is prohibited other than commercial uses directly related to its described functions in the project description and fund raising activities whereby revenues generated by such fund raising are directly used to support BISC activities including related scholarship programs.

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.

The Commission is also concerned that recent activities related to other construction projects that have been carried out on the west side of the Harbor have not provided adequate protection for herons that may have been roosting or nesting on the west side and which may have resulted in herons abandoning use of the trees on the west side. For these reasons the Commission finds that it is necessary to provide strict requirements to eliminate or mitigate construction related impacts and to ensure that adequate monitoring biological measures are incorporated into the construction process.

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 determined 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. In addition, suggested modification 5 and special condition 3 require that an independent biologist shall monitor the site prior to construction, daily at all times during construction, and after construction. Suggested modification 5 and special condition 3 further require the monitor to halt construction and notify the Harbor Department Director and the Executive Director of the Commission at any time any failure to comply with any component of the modification and related special condition is observed. Resumption of construction is not permitted until conformance with the applicable construction related requirements is confirmed and the Executive Director authorizes construction to resume. The biological monitor is also required to submit a monitoring report regarding condition compliance once weekly during construction, as well as one report after each nesting season during construction, and once annually for 3 years after final construction is completed that addresses the status of heron and egret

nesting in the immediate vicinity of the BISC. Other suggested modifications and corresponding special conditions to the NOID that are intended to provide additional protection for avian species that may be roosting and nesting near the BISC site include modification 6 and special condition 4, which require use of low intensity lighting on the north side of the BISC building that must be directed downward and/or away from nesting trees, modification 24 and special condition 10, which restrict all music played at the BISC to non-amplified acoustic music only, and modification 25 and special condition 11, which restrict special events held by or for the BISC that could cause excessive noise or disturb nesting herons during the nesting season.

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

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.

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 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 (exhibit 12). 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. Dr. Dixon concludes that it is most important that measures be taken to protect herons that may

be nesting in the vicinity of the BISC site during construction. As previously noted, PWP suggested modification 5 and NOID special condition 3 prohibit all outside exterior construction of the BISC during the nesting season for herons and egrets. Further, as also previously noted, and 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 daily at all times during construction, along with the submittal of monitoring reports weekly during construction, after each nesting season during construction, and once annually for three years after construction, as well as cessation of construction at any time non-compliance with the construction related conditions is observed, 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, great blue herons and egrets (February through July). In addition, modification 5 and special condition 3 require biological monitoring prior to, daily at all times during construction and after construction along with the submittal of weekly monitoring reports on condition compliance during construction, after each nesting season during construction, and once annually for three years after construction that provide information on the status of heron roosting and nesting activity on the west side of the Harbor and the performance of construction related protective measures. 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 (Reed Smith, 3/14/05 e-mail).

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 (exhibit 20). 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 protective fencing that 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.

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 its 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.

In order to further comply with the provisions of Coastal Act Policy 30213, (as incorporated into the certified PWP), to protect, encourage, and provide lower cost visitor and recreational facilities for everyone the Commission finds that it is necessary to ensure that programs and training offered at the BISC facility are available to children of low income families. Therefore, suggested modification 26 and corresponding special condition 12 require the Harbor Department to make every effort to enter into a Memorandum of Understanding or similar agreement with neighboring school districts in Ventura County to develop and offer a scholarship program for children of low income families to fund participation in programs offered by the BISC.

In addition, in accordance with the requirement of existing PWP policy 21 stated above to enhance and protect public recreational activities in the Harbor suggested modification 27 and corresponding special condition 13 prohibit commercial use of the BISC other than commercial uses directly related to its described functions and fund raising activities to generate revenues to directly support BISC activities including scholarship programs.

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 require that an EIR “describe a range of reasonable alternatives” to the project 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. *Id.* In addition, as noted in the EIR, CEQA does not require the consideration of alternatives that are not feasible. *Id.*

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 impacts or less significant impacts to all of the potential impact areas considered in this report than would the project as proposed,

without any of the conditions imposed herein to mitigate impacts. 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. Opponents argue those project goals are already achieved through existing Sailing and boating instruction programs in Channel Islands Harbor and nearby (City of) Ventura Harbor and that a building is not necessary to provide such instruction. Existing programs are discussed on pages 63 and 64 of the staff report below. While increased recreational boating activity is clearly a major component and objective of the BISC it is not the only objective. As noted on pages 63 and 64, in addition to providing instruction in sailing, rowing, kayaking, and other aquatic skills, the BISC is intended to be operated in partnership with California State University –Channel Islands 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. Several of the programs proposed to be provided by the BISC are educational in nature, will require classrooms, and consist of programs that do not appear to be offered by other sailing and boating instruction programs operating in Ventura County.

One-Story Building

The BEACON Foundation has argued that the BISC does not require a two-story building and that all BISC functions could be accommodated in a single-story building at some other location on the west side of the harbor. Staff requested that BEACON identify an alternative location for the Commission to consider but BEACON has declined to do so. The Commission therefore considers an alternative that would consist of a one-story building at the proposed project site. Assuming that a one-story building would be sited in the same footprint as the proposed two-story building the Commission concludes that this alternative would result in no less significant impacts in all potential impact areas considered than would the project as proposed with all of the suggested modifications and recommended special conditions imposed herein to mitigate impacts. A one-story building in the same building footprint would not eliminate or reduce view impacts, would still be located in the same proximity to potential heron nesting trees and would eliminate the same amount of grass park area etc. Therefore, the same required mitigation measures would be imposed for a one-story building as those required for the proposed two-story building and the same impacts would result.

Should a one-story building alternative require an expansion of ground level floor space or footprint in order to accommodate all (or even most) of the proposed uses or basic project objectives of the BISC greater and more significant impacts could result. For example, an expanded building footprint would result in a greater amount of view blockage and loss of either grass park or existing parking. An even greater and more significant impact would be that an expanded footprint could require the elimination of existing potential heron nesting trees in the building vicinity. For all of the reasons mentioned above, the Commission finds that a one-story building alternative in the

same project location would have no less impacts and could potentially have greater impacts than the proposed two-story building. In addition, the same mitigation measures required by suggested modifications and special conditions in this report would be required for a one-story building.

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 of 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 alternative 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 University 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 a 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.

In a subsequent letter, dated February 8, 2008 (“February letter”), Angel Law asserts that another, more recent case, Save Round Valley Alliance v. County of Inyo (2007) 157 Cal.App.4th 1437 (“Save Round Valley”), stands for the proposition that “[e]ven when the project proponent does not own a potential alternative site, the development of the project on the alternative site may nevertheless be feasible when the alternative site can be acquired through a land exchange with a public entity.” February letter at 3, quoting Save Round Valley at 1457. Although the case does say that, the court also says that certain criteria need to be satisfied, such as the existence of a willing seller, for such a land exchange to be a feasible alternative. In that case, the alternative site was owned by the federal Bureau of Land Management (“BLM”), which affirmatively stated that it was open to considering a land exchange. Even so, the court expressly withheld judgment as to whether such an exchange was feasible, noting that it may well not be so. Save Round Valley at 1465.

“Thus, the most that could be said of the holding of the case is that, where the party with the current possessory interest in an alternative site is open to the possibility of a property exchange with the project proponent, such an exchange has to be discussed as an alternative to determine whether use of that alternative site constitutes a feasible alternative to the proposed project. HHB has repeatedly argued that the lessee of the Port Royal site (“Lessee”) wants to extricate itself from its lease, thus making it feasible for the County to re-take possession of that site. Lyn Krieger, Director of the Harbor Department, recently confirmed HHB’s assertion that the Lessee is seeking to terminate its involvement in the site. However, this does not necessarily make the site a feasible alternative location for the County’s BISC.

“First, the County has indicated that the Lessee is seeking a buyer and has no intention of simply turning over its possessory interest to the County. Nor does the lease give the County a right of first refusal to retake a possessory interest in the site. Thus, the County has no direct ability to obtain control of the site. In fact, Director Krieger indicated that the County has made more than one offer to take over the site from the Lessee, and the Lessee has rejected all such offers.

“Second, the County has indicated that the Lessee is already in escrow with a prospective buyer (the Ventura County Maritime Museum) and that that proposed sale is now before the County for its review and approval, pursuant to the terms of the lease.³ In fact, an April 1, 2008 article in the Ventura County Star indicated that the County had already come to an agreement in concept with the Lessee and the museum. In this context, the County may not use its information about the pending deal to attempt to outbid the prospective buyer to make the site available because it then might be subject to suit for breach of the implied covenant of good faith and fair dealing. It might also be subject to third party claims by the prospective purchaser for the tort of wrongful interference with contractual rights, or intentional interference with prospective economic advantage.

“In sum, the fact that the Lessee is interested in giving up its involvement in the site does not change the fact that the Lessee has a possessory interest in the site, pursuant to a long-term lease with the County, which the County cannot unilaterally abrogate in the absence of specific circumstances. In this context, notwithstanding that fact that the County holds fee title to the land, the County has no special rights to a possessory interest in the land, and if the party that does have a possessory interest is not amenable to selling that interest to the County, the County is not in the same position as the developer in the Save Round Valley case, where the federal agency with the possessory interest in the alternative site had expressed its willingness to negotiate the possibility of a land swap.”

A letter dated April 2, 2008 to Lyn Krieger, Harbor Department Director, from Bill Conroy, Executive Director of the Maritime Museum, confirms the pending lease sale of the Port Royal restaurant to the museum. In addition, the letter discusses the potential of sharing the building space between the museum and the BISC. The letter notes that the museum was seeking 20,000 square feet of space and the Port Royal would only provide 10,000 square feet but that the museum “will continue to plan for future expansion as funding becomes available”. As proposed, the BISC would consist of an approximately 19,000 sq. ft. two-story building plus a 1,000 sq. ft. maintenance and storage building, and exterior space. Given that the Port Royal building is not presently large enough to accommodate either the Maritime Museum or BISC alone as each project is proposed or envisioned it is not feasible to utilize the Port Royal site for both uses at once.

Thus, although the County may have a greater interest in the Port Royal site than the project proponent had in the alternative site at issue in the Save Round Valley case (where the project proponent had no current legal interest in the BLM site), the BLM site was nevertheless more relevant as a potential alternative because of BLM’s expressed willingness to consider trading its land with that project proponent, whereas no evidence has been presented that the lessee of the Port Royal site is willing to abandon its lease, and no case has been cited indicating that the County must consider violating its

³ Director Krieger indicated it is standard procedure for a lessee to enter into escrow prior to seeking County approval and to make the securing of such County approval a term of the escrow.

existing, valid, contractual obligations as a means of coming up with feasible alternatives.

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 a 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.

Aside from the feasibility of this alternative site, The Commission notes that the impacts of this alternative on potential heron nesting habitat would presumably be smaller than the impacts from the proposed alternative, since this site is farther from the trees than the proposed alternative is. However, it is noted that no nesting trees will be removed as a result of construction of the project at the proposed site, and the potential impacts of the proposed alternative, as mitigated by the suggested modifications and conditions of approval, are insignificant.

The impacts of this alternative on visitor-serving uses might actually be greater than the impacts from the proposed alternative. This is because, although siting the BISC in the location of either existing restaurant would not displace any public park land, it would result in the loss of that restaurant, which is itself an existing visitor-serving use. Furthermore, as mitigated by the suggested modifications and conditions of approval, the proposed alternative is required to create an equal or greater amount of park land to offset the loss of park to construction within the immediate area of the project site, equally accessible to and usable by the public. Therefore, as modified and as conditioned, the proposed alternative will not result in a loss of visitor-serving uses in the harbor.

The impacts of this alternative on existing views of the harbor would be less than the impacts from the proposed alternative but, considering the minimal view loss caused by construction of the proposed BISC, that impact is insignificant.

The impact of this alternative on traffic and water quality would presumably be the same as the impacts from the proposed alternative, as both would involve the same amount of boat traffic and activities vis-à-vis the water.

Thus, in sum, even if these sites were feasible alternative sites for the BISC, they are not alternative sites that would “avoid or substantially lessen any of the significant effects of the project.” 14 C.C.R. § 15126.6(a). They would not substantially reduce any significant impacts of the project on the birds or views, because the project, as mitigated, doesn’t have any such impacts; they would not substantially reduce any significant impacts of the project on water quality or boat traffic because the project would not be any different at all in those respects; and they would not substantially reduce any significant impacts of the project on visitor-serving uses, as they would actually result in fewer visitor-serving uses by replacing an existing one instead of adding to the net sum of visitor-serving uses available.

Finally, in the February 8, 2008 letter, Angel Law argues that the Port Royal site is superior because it would not involve any inconsistency with Coastal Act policies protecting low cost visitor-serving and recreational uses, sensitive habitat, or public views, but as concluded above in the subject findings addressing the cited Coastal Act policy issue areas, construction of the BISC at the proposed the proposed site location, as mitigated by the suggested modifications and required conditions, would not result in any such inconsistencies with Coastal Act policies either.

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 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 providing a site for the proposed BISC in the Harbor. The County rejected this location for these reasons.

Existing Programs in Ventura County

Several Programs exist that offer ongoing boating and safety instruction in Ventura County. A list of those programs along with some additional information on some of them is attached as exhibit 21 to the staff report (at report end). Included among those programs or facilities are the Pacific Corinthian Youth Foundation, the Fairwinds Youth Sailing Program, Cal State Channel Islands Sailing Program and U.S. Coast Guard Auxiliary Public Education Classes, all operating out of Channel Islands Harbor. The City of Ventura provides for instructional sailing and kayaking lessons through the Leo Robbins Sailing Center located at Marina Park at the south end of Pierpont Boulevard in the City of Ventura Harbor as well as through classes offered by the Ventura Maritime Foundation and U.S. Coast Guard. There are also private programs available in each harbor. In addition, the Fairwind Yacht Club, a non-profit community sailing club, will provide low cost sailing instruction and boat slips, including a financial contribution for boats, equipment etc., within the Seabridge residential project marina as satisfaction of a special condition to approval of the CDP for the Seabridge project by the Coastal Commission.

Opponents of the proposed BISC project at Channel Islands Harbor argue that the above mentioned programs are sufficient to provide sailing instruction in Ventura County and that the BISC project is not necessary to meet the needs of the County for sailing and boating instruction. Opponents further argue that the need to raise funds to construct the proposed BISC and to carry out it's associated programs will harm existing programs in that it could eliminate or reduce existing public or private funding for said programs. Opponents also argue that no building is necessary to provide sailing and boating instruction classes. These arguments are largely speculative and no evidence or substantiation is submitted to support these claims, however. In any event, as previously described, the BISC will provide, in addition to on-the-water boating and sailing instruction, classroom instruction in marine biology, oceanography etc. in conjunction with California State University – Channel Islands that are not provided by existing boating and sailing instruction programs.

As stated in the project description section of this report 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.

Several of the programs proposed to be provided by the BISC are educational in nature, will require classrooms, and consist of programs that do not appear to be offered by other sailing and boating instruction programs operating in Ventura County. While increased recreational boating activities are clearly a major component and objective of the BISC it is not the only objective. In addition, programs offered at the BISC, including boating and safety instruction, will likely complement other similar programs that exist in the County by providing increased public access to instructional ocean related and boating programs. For all of the reasons stated above the Commission finds that the proposed BISC facility will increase public access opportunities for recreational boating, safety, and coastal resources education and instruction in Ventura County.

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.

Angel Law's February 8, 2008 Letter also alleges that the Commission failed to comply with the court's direction to discuss all alternatives, including those that are infeasible. However, Angel Law does not identify any alternative that the Commission failed to address. Indeed, the Commission addressed every specific alternative location that any party has raised, including, as indicated in the discussion above, ones that proved to be infeasible. Moreover, the Commission is only required to discuss the infeasible alternatives to the extent of explaining why they are infeasible, as the CEQA Guidelines specifically say that such alternatives need not be "considered." 15126.6(a). Thus, the discussion above goes well beyond what is required by the CEQA Guidelines.

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 was submitted to and subsequently approved by the Commission in February 2007 subject to suggested modifications.

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 proposed 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.

The Vintage Marina reconstruction project was approved, and subsequently constructed, subject to required measures to protect potential heron and egret nesting habitat during construction. Special conditions included a maximum construction noise (dB) level during the nesting season, requirements to use noise reduction measures such as sound shields and bubble curtains during construction, and a requirement that a biological monitor be present on-site during construction and that monitoring reports be prepared and submitted after each nesting season during construction and at the completion of final construction. Construction has been completed on the Vintage Marina project. Further, as discussed above in this report, the several biological protection measures are required to be implemented during construction of the BISC project in order to protect potential heron and egret nesting habitat including a prohibition on commencement of construction or ongoing exterior construction during the nesting season.

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. In addition, construction is subject to restrictions and measures to protect potential heron and egret nesting habitat in the vicinity of the marina reconstruction. 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 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 Commission approved the amendment in February 2008 subject to suggested modifications including the addition of several important policies for waterside use and development not originally proposed by the Harbor Department for this amendment, such as policies related to the protection of marine resources including potential heron nesting habitat, water quality, low-cost boating, recreational boating, and commercial fishing and commercial sport fishing. Required measures to protect potential heron nesting habitat during construction are similar to those protective measures required for the Vintage Marina reconstruction project such as pre-construction surveys, biological monitoring before, during, and after construction, noise restriction measures etc.

The PWP amendment, approved by the Commission in February 2008, proposes an increase in the total number of slips in the Harbor from 2,150 to 2,210, an increase of 60 spaces. Slip reconstruction is proposed to occur at various locations throughout the Harbor. There is currently ample fairway space in the harbor to accommodate boat traffic and the addition of 60 spaces spread throughout the harbor and the typical variations in times and days of use of boats in the harbor will result in minimal impacts relative to current use of the harbor. Given the small number of additional slips proposed, required biological and water quality protection measures, 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 PWP amendment.

The Commission has also approved smaller projects submitted by the County Harbor Department through the Notice of Impending Development (NOID) process established

in the certified PWP to carry out projects already provided for in the PWP. Among these developments are:

NOID 2-06 to construct an 8,800 sq. ft. building to accommodate existing commercial fishing related uses such as offices, storage, and a fish market and restaurant. Existing parking is adequate to support the facility and no heron or egret nesting sites are located nearby and no trees will be removed. No waterside construction is included in the project. The Commission approved the project with conditions including required biological surveys, construction and maintenance responsibilities, runoff control, and public access.

NOID 1-07 to replace a small commercial/recreational boat marina consisting of 8 slips with 11 new slips. The project was approved with conditions for pre-construction biological surveys, construction and maintenance responsibilities, and best management practices.

NOID 2-07 to reconstruct a previously demolished recreational boating marina and replacement of 91 slips with 91 new slips, new docks, piers, ramps, gateways etc., and add an handicapped accessible restroom and shower facility. Special conditions were also required for pre-construction biological surveys, drainage and pollution control, and best management practices.

NOID 4-07 scheduled for Commission Hearing on April 9, 2008 to add 66 additional slips to the 91 slips described above in NOID 2-07 resulting in an increase from 91 to 157 slips. Similar or identical special conditions are required for this project as in the related NOID.

All of these projects will add approximately 69 new boat slips to Channel Islands Harbor, however, these additional slips are accounted for in the PWPA 1-07 total proposed slip count discussed above. As approved and as conditioned there will be no significant impacts on heron or egret habitat, visitor-serving uses, public access, water quality, recreational or commercial boating opportunities. New building area will result in a minimal intensification of use in the harbor, compliments existing uses and all project are conditioned to minimize impacts to the maximum feasible amount and no significant impacts will result from construction of the approved or proposed projects. Given the small number of additional slips and building area proposed, required biological surveys and monitoring, water quality protection measures, and other special conditions, the Commission finds that there will be minimal cumulative impacts associated with the combined construction of the BISC project and the described projects.

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 components of this future amendment are not know at this time relative to proposed uses, intensity, locations etc.

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

J. California Environmental Quality Act

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

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,

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

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.

Regional Location Map

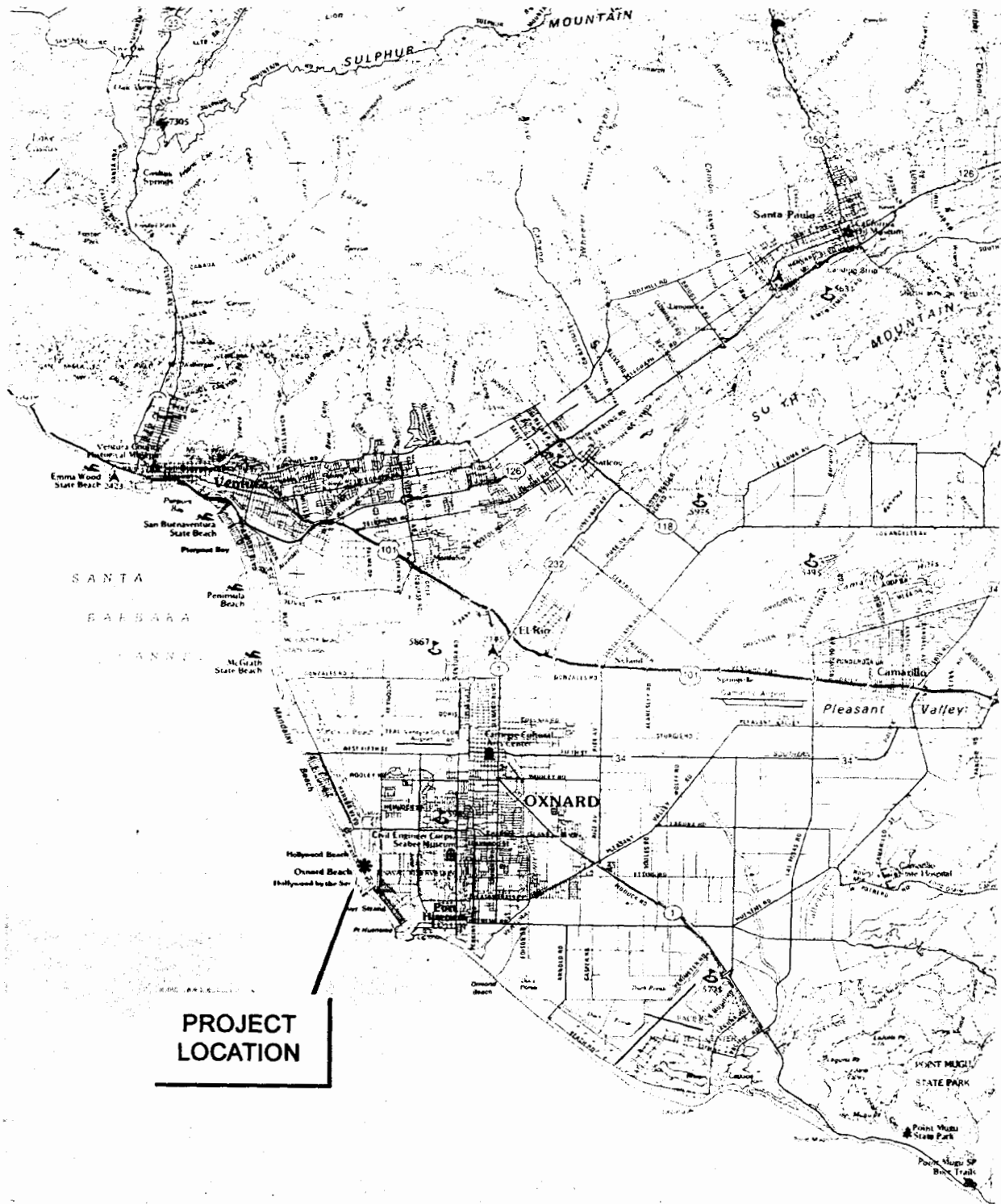


Exhibit 1
PWPA 1-04, NOID 1-05
Regional Location Map

Project Vicinity

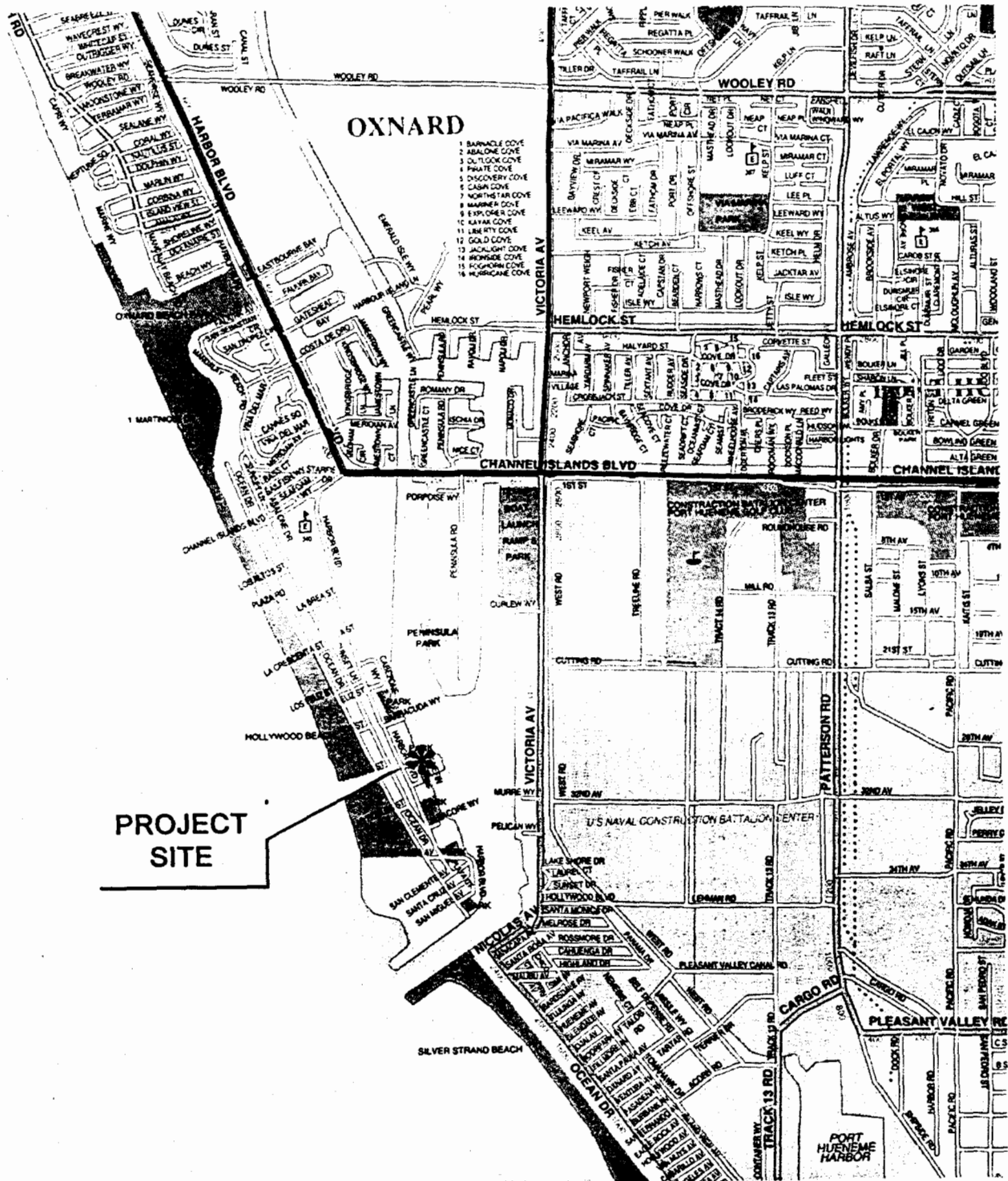


Exhibit 2
PWPA 1-04, NOID 1-05
Vicinity Map



Lyn Krieger
Director

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October 27, 2004

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OCT 28 2004

CALIFORNIA
COASTAL COMMISSION
DISTRICT 10 - SANTA BARBARA DISTRICT

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

Attention. Mr. Gary Timm, District Manager

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

Dear Mr. Timm:

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

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

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

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

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

Exhibit 3
PWPA 1-04, NOID 1-05
PWPA Submittal Letter and Resolution

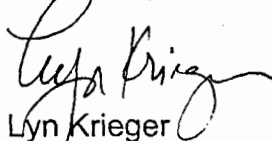
Mr. Peter Douglas, Executive Director
October 27, 2004
Page 2

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

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

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

Sincerely yours,



Lyn Krieger
Director

c: Board of Supervisors
County Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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



A handwritten signature in dark ink, appearing to read "J. H. ...", is written over a horizontal line.

Chair, Board of Supervisors

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

By: C. Christine Salonguela
Deputy Clerk of the Board

February 25, 2005

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

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

Dear Mr. Timm:

Pursuant to Public Resources Code §30606 and California Coastal Commission Regulations §§ 13358 and 13359, this letter is presented to provide Notice of Impending Development (NOID) for the proposed Boating Instruction and Safety Center (BISC) project located at Channel Islands Harbor. Such notice must be submitted prior to commencement of development by the public agency proposing a public works project pursuant to an adopted Public Works Plan. In this case, the certified Channel Islands Harbor Public Works Plan (PWP) is the PWP covering this project. This Notice provides a description of the proposed project as well as a showing of consistency with the PWP.

On December 16, 2003, the Ventura County Board of Supervisors certified the project EIR and approved the project, more specifically, Alternative 6.2B. Therefore, the project as originally proposed by the Board of Supervisors was rejected, and an environmentally superior alternative was adopted. A Public Works Plan Amendment was submitted in October, 2004 to specifically designate this project.

Project Description

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

Exhibit 4
PWPA 1-04, NOID 1-05
NOID Submittal Letter

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

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

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

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

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

Consistency with Public Works Plan

The Channel Islands Harbor Public Works Plan, including the Land Use Plan, was certified by the Coastal Commission on September 19, 1986, and has been the governing document for Harbor development since that time. A Public Works Plan Amendment has been submitted to the Coastal Commission and is being heard

Mr. Gary Timm
February 25, 2005
Page 3

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

In addition, Coastal Act §30605 makes clear that Coastal Commission review of the NOID (if the Public Works Plan Amendment is approved) is limited to imposing conditions consistent with Section 30607 and 30607.1. Section 30607.1 is restricted only to consideration of dike and fill impacts to wetlands. No wetlands exist on the project site; therefore, this section does not apply to the proposed project.

Notification

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

Conclusion

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

Sincerely,

Lyn Krieger, Director
County of Ventura Harbor Department

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

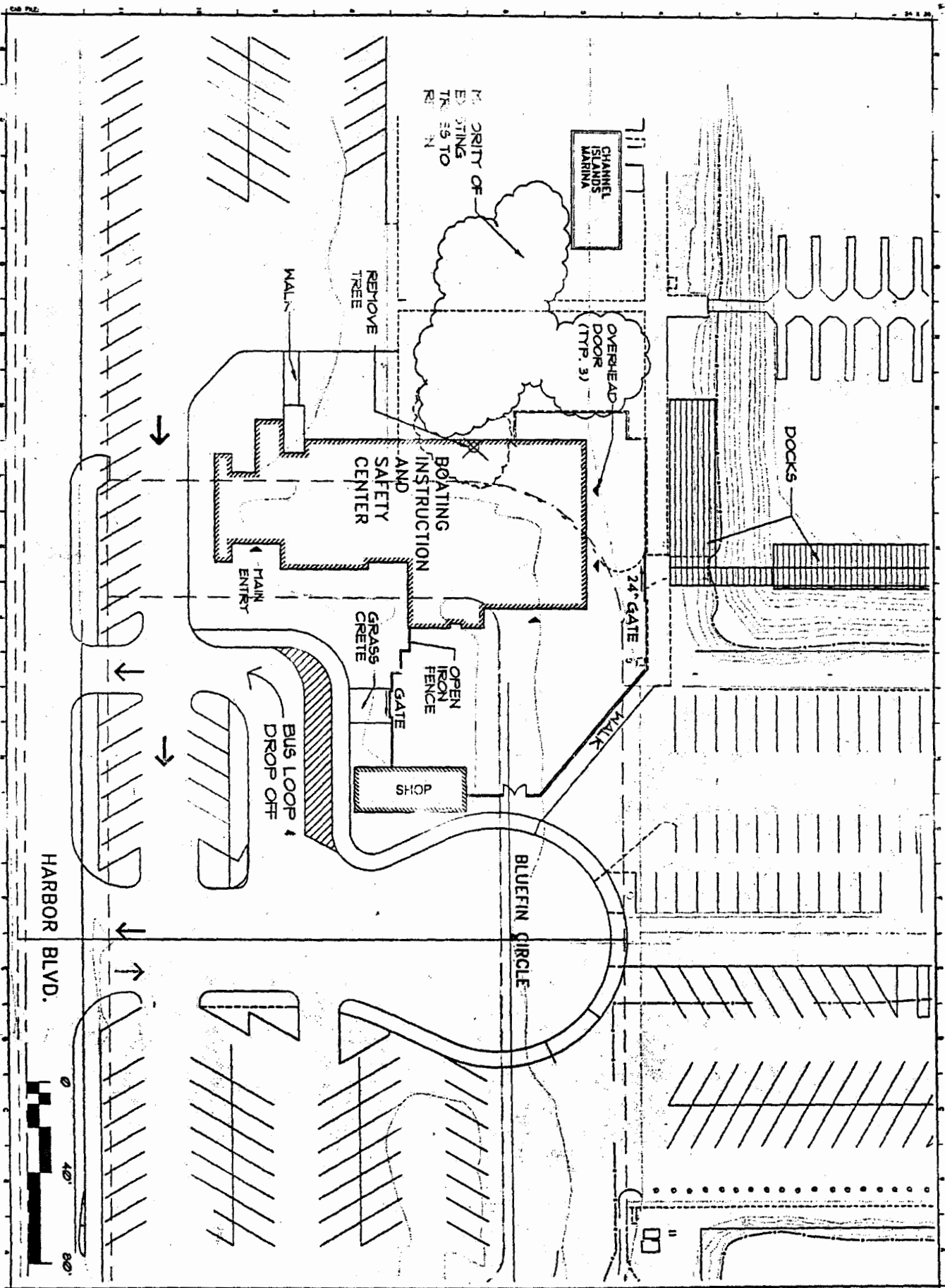


Exhibit 5 PWPA 1-04, NOID 1-05 Site Plan & Elevations	
Division of the State Architect ACCESS COMPLIANCE Title No. 88-100001 Project No. 88-100001-001	
California State Title Standard Access to the State Architect Project No. 88-100001-001	
Project Name CHANNEL ISLAND BOATING INSTRUCTION AND SAFETY CENTER	
Location Oxnard, CA	
Site Plan Alternative (Variation) All	

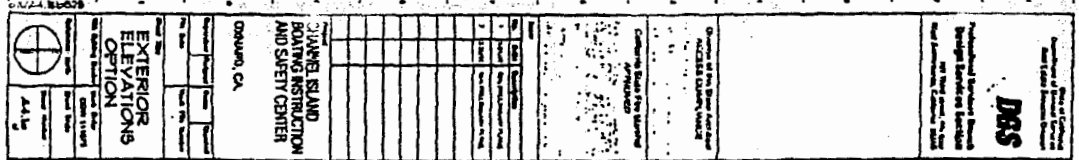


Exhibit 50 - Exterior Elevations (Variations A and B)



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

February 4, 2005

RECEIVED

FEB 10 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

Dear Messrs. Ainsworth and Timm:

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

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

Background

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

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

Exhibit 6
PWPA 1-04, NOID 1-05
City of Oxnard Correspondence

California Coastal Commission
February 4, 2005
Page Two

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

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

Present Position of the City of Oxnard

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

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

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

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

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

Buildout of Harbor

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

"With the completion of already approved projects along the west channel, the harbor will be completely built out. The Property Administration Agency does not have plans for any major expansions or re-constructions of the harbor area." (Oxnard LCP, page III-21)

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

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

Use of the "Park"

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

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

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

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

View Corridors

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

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

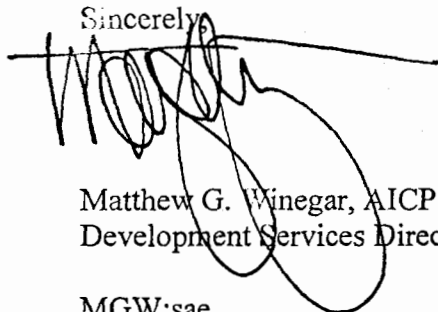
Conclusion

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

California Coastal Commission
February 4, 2005
Page Five

Please contact me if I can answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew G. Winegar', is written over a horizontal line. The signature is stylized with large, sweeping loops.

Matthew G. Winegar, AICP
Development Services Director

MGW:sae

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

CALIFORNIA COASTAL COMMISSION

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



February 24, 2005

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

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

Dear Director Tsuneyoshi:

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

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

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

Sincerely,

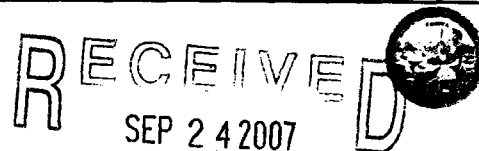
Gary Timm
District Manager
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA. 93001
805-585-1800
gtimm@coastal.ca.gov

cc. Jack Ainsworth
Lyn Krieger

Exhibit 7
PWPA 1-04, NOID 1-05
Dept. of Boating & Waterways Correspondence

DEPARTMENT OF BOATING AND WATERWAYS

2000 EVERGREEN STREET, SUITE 100
SACRAMENTO, CA 95815-3888
Tele: (916) 263-4326
Fax: (916) 263-0648
www.dbw.ca.gov



September 20, 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

Subject: Channel Islands Boating Instruction and Safety Center


Dear Mr. Timm:

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

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

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

Sincerely,


for Raynor Tsuneyoshi
Director

Gary Timm

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

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

Dear Mr. Timm,

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

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

Sincerely

Raynor Tsuneyoshi
Director
Department of Boating and Waterways

STATE OF CALIFORNIA-THE RESOURCES AGENCY

Arnold Schwarzenegger, Governor

DEPARTMENT OF BOATING AND FISHING SERVICES

1000 Evergreen Street, Suite 100
SACRAMENTO, CA 95815-3600
(916) 263-1331



December 1, 2003

Lyn Krieger, Director
Harbor Department
3900 Pelican Way, L#5200
Oxnard, CA 93035-4367

Subject: BISC Site Funding

Dear Ms. Krieger:

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

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

Sincerely,

Mike Ammon
Contract Administrator
(916) 263-8163

RECEIVED
South Coast

FEB 4 2004

COAS

Oct 15 04 09:30a

Boating & Waterways

916-263-0648

p. 1

STATE OF CALIFORNIA THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER Governor

DEPARTMENT OF BOATING AND WATERWAYS

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



October 15, 2004

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

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

Dear Supervisor:

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

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

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

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

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

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

Oct 15 04 09:30a

Boating & Waterways

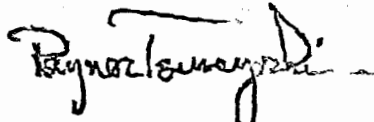
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P.2

Supervisors, County of Ventura
October 15, 2004
Page Two

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

Sincerely,



Raynor Tsuneyoshi
Director

RT:dj:ms

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

02/02/05 12:22 FAX 8053823013

CHANNEL ISLANDS HARBOR

002

Feb 01 05 10:00

Boating

811-203-0648

811-203-0648

STATE OF CALIFORNIA - THE RESOURCE AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF BOATING AND WATERWAYS

2000 Evergreen Street, Suite 100
 SACRAMENTO, CA 95815-0888
 Tele: (916) 263-4325
 Fax: (916) 263-0648
 www.dbw.ca.gov



October 21, 2004

-Faxed on 10/21/04-

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

Post-It® Fax Note	7671	Date	11 of 1 pages
To	CAROL ABELA	From	MIKE ARMSTRONG
Co./Dept		Co.	
Phone #		Phone #	
Fax #		Fax #	

Dear Assemblymember Strickland:

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

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

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

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

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

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

02/02/05 12:23 FAX 8053823015

CHANNEL ISLANDS HARBOR

0003

Feb 01 08 10 56a

Boating & Waterways

316-263-0041

P. 2

Honorable Tony Strickland
October 21, 2004
Page Two

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

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

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

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

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

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

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

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

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

02/02/05 12:23 FAX 8053623015

CHANNEL ISLANDS HARBOR

0004

05 10:57

Boating & Waterways

916 263-0648

Honorable Tony Strickland
October 21, 2004
Page Three

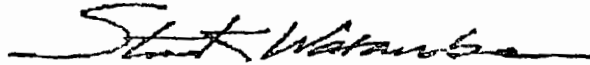
Question: If the county were to opt to place the BISC on the west side of the harbor, would the Department completely refuse to support the BISC?

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

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

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

Sincerely,



for Raynor Tsuncyoshi
Director

RT:djms

Enclosure

cc: Mr. Steve Watanabe
Mr. David Johnson ✓

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Assembly
California Legislature



TONY STRICKLAND
ASSEMBLYMAN, THIRTY-SEVENTH DISTRICT

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ELECTIONS, REDISTRICTING, AND
CONSTITUTIONAL AMENDMENTS
GOVERNMENTAL ORGANIZATION
COMMISSION
STRUCTURAL CHALLENGES
TO BUDGETING IN CALIFORNIA

October 14, 2004

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

Dear Director Tsuneyoshi:

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

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

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

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

E-MAIL: Assemblymember.Strickland@assembly.ca.gov
WEB: <http://www.assembly.ca.gov/strickland>

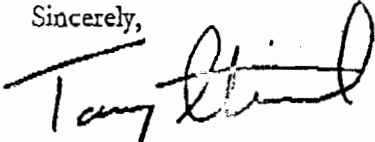
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5. If the County were to opt to place the BISC on the east side of the harbor, would the Department completely refuse to support the BISC?

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Strickland". The signature is fluid and cursive, with a large initial "T" and a stylized "S".

Tony Strickland
Assemblyman, 37th District

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

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

¹ Lots closest to Boating Instruction and Safety Center

The Farmer's Market was being held this weekend. W-6 is the supporting parking lot. The Farmers' Market is held on Sundays.

Gary Timm

From: Tom Wolfington [tcw@penfieldsmith.com]
Sent: Thursday, October 18, 2007 4:02 PM
To: Marilyn.Miller@ventura.org
Subject: BISC

Marilyn,

Attached are some exhibits related to the BISC from our 2004 archives. The following additional statistics were provided by email at the time:

Landscape area left of Bluefin for original = 10,047 sf Landscape area
left of Bluefin for option B = 13,277 sf

The BISC area is comprised of 11,110 sf of building space and 8,933 sf of paved area.

Only 1,714 sf building footprint overlays the current landscaped area.

Let me know if any hard copy prints are needed or if anything further is needed on this subject.

Thanks for your inquiry.

Tom Wolfington
Senior Engineer

Penfield & Smith
Tel 805-981-0706 ext. 111
Fax 805-981-0251
<http://www.penfieldsmith.com>

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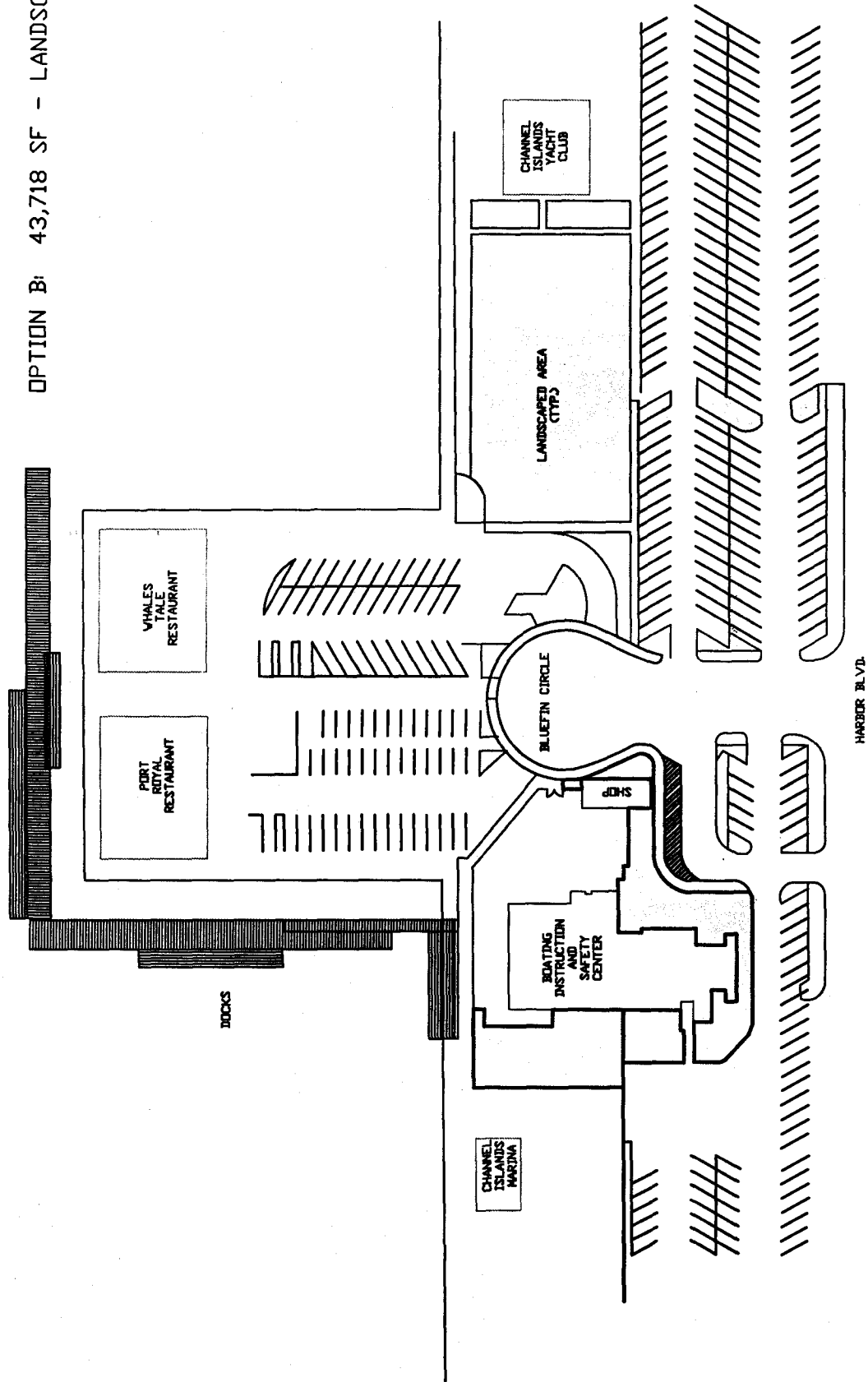
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1/17/2008

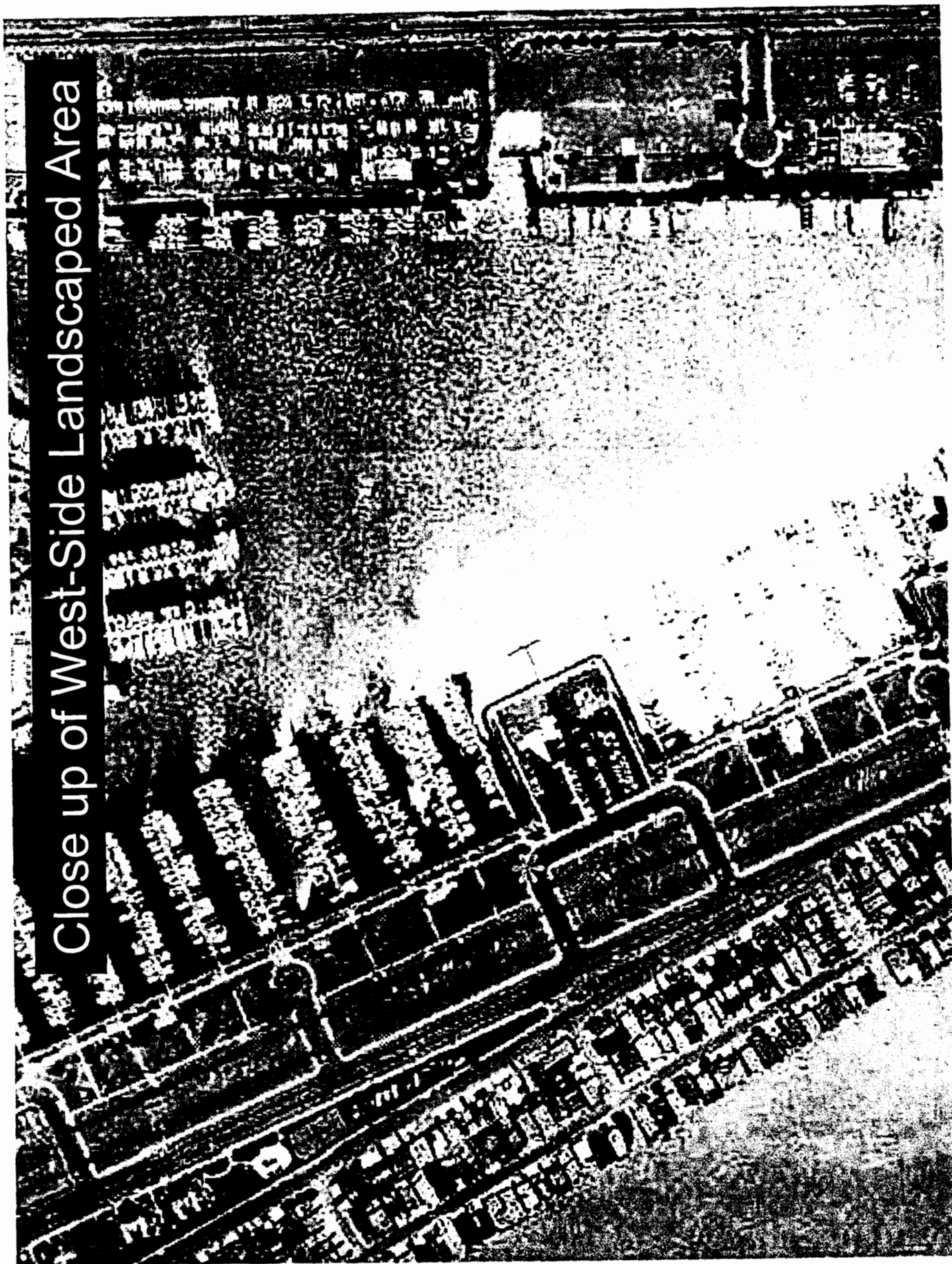
Exhibit 9
PWPA 1-04, NOID 1-05
BISC and Park Footprints

[illegible]

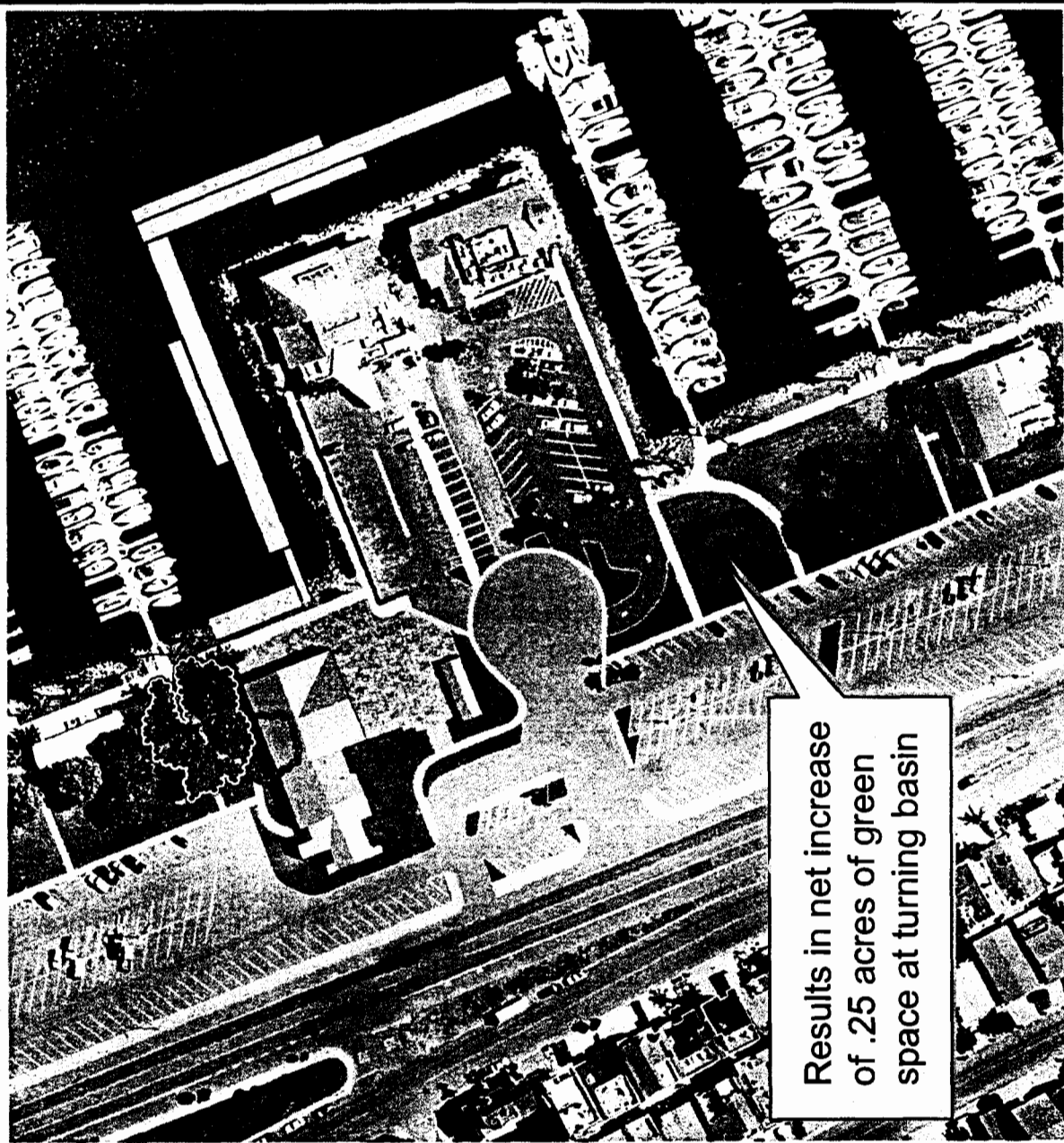
OPTION B: 43,718 SF - LANDSCAPED AREA



Close up of West-Side Landscaped Area



BISC Revised Site Plan B: Building perpendicular to water



Results in net increase
of .25 acres of green
space at turning basin



JEFFREY B. FROKE, Ph.D.

CALIFAUNA

3158 Bird Rock Road / Pebble Beach, CA 93953

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jbroke@mac.com

14 January 2008

CHANNEL ISLANDS HARBOR HERONRY

NEST TREE DISTRIBUTION

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

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

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

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

CIH Nest Tree Distribution, 2003-2007

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

Nest Tree Worksheet, 2003-2007

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

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



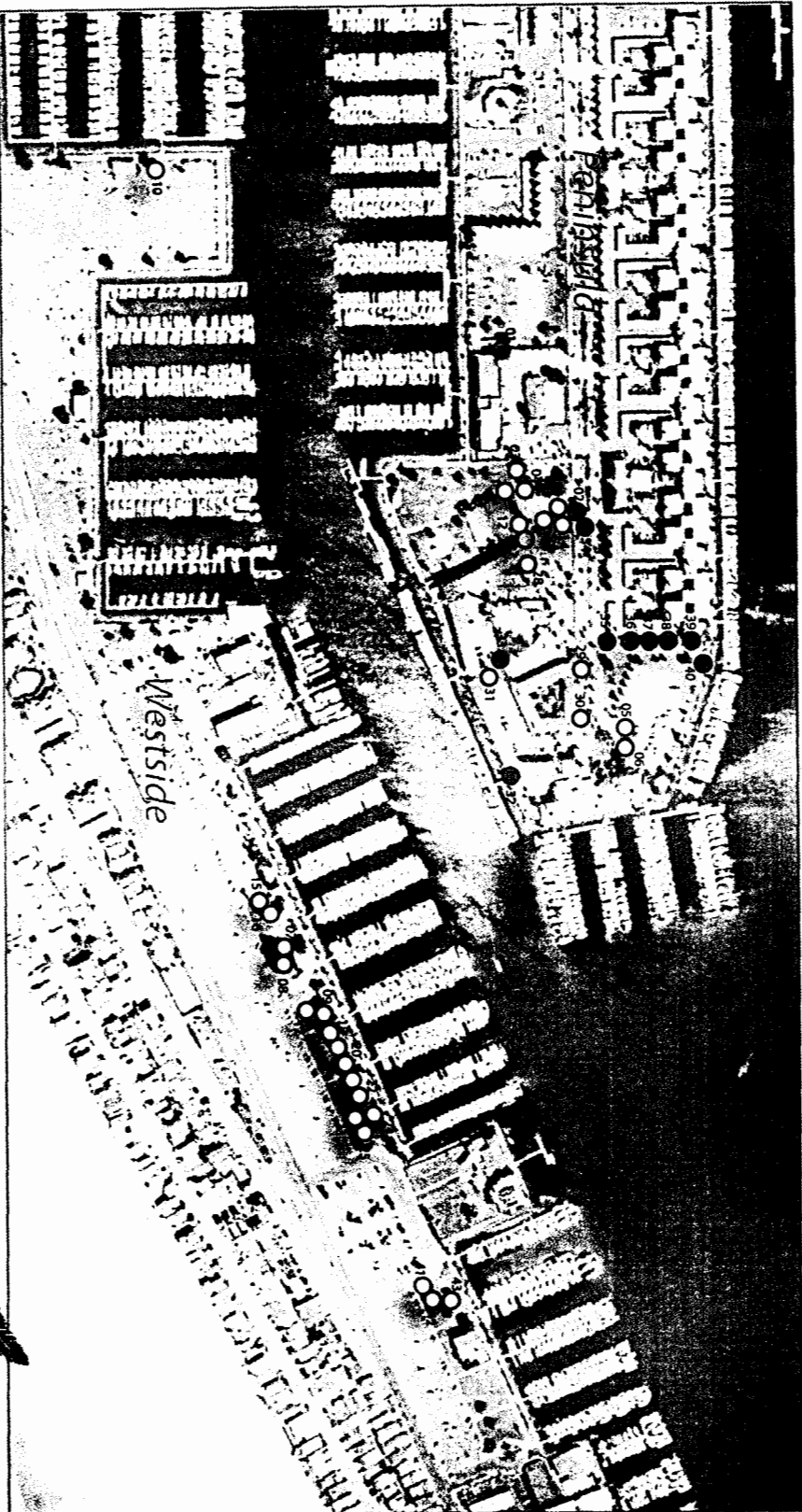
8	Cypress	2003	BCNH
8	Cypress	2004	BCNH
8	Cypress	2005	BCNH
8	Cypress	2003	GBH
8	Cypress	2004	GBH
8	Cypress	2006	GBH
8	Cypress	2004	SnEg
9	Cypress	2003	BCNH
9	Cypress	2004	BCNH
9	Cypress	2005	BCNH
9	Cypress	2003	GBH
9	Cypress	2004	GBH
9	Cypress	2005	GBH
10	Cypress	2007	BCNH
11	Pohutukawa	2003	BCNH
11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



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

End of collected tree-use data , 2003-2007

HERON NEST ATLAS for CHANNEL ISLANDS HARBOR HERONRY, 2003-2007



Nest Tree Species: ○ Monterey Cypress

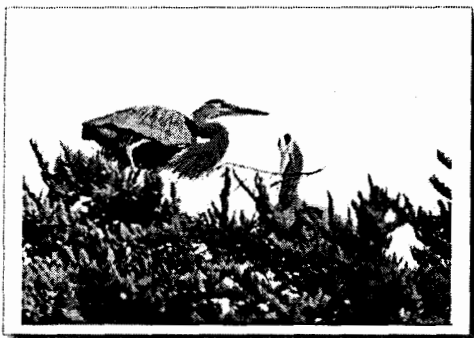
n = 43

○ Monterey Pine

○ Pohutukawa (New Zealand Christmas Tree)

● Magnolia (01) & Melaleuca (02)

● Mexican Fan Palm



Jeffrey B. Froke, Ph.D.
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jbfroke@mac.com

CHANNEL ISLANDS HARBOR FIELD REPORT

DATE: 05 June 07
TO: Lyn Krieger
Ventura County Harbor Department
CC: Andi Culbertson
CAA Planning
SUBJECT: **COVERING PERIOD OF 27 April 2007 - 31 May 2007**

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

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

Black-crowned Night-Heron -

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

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

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

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

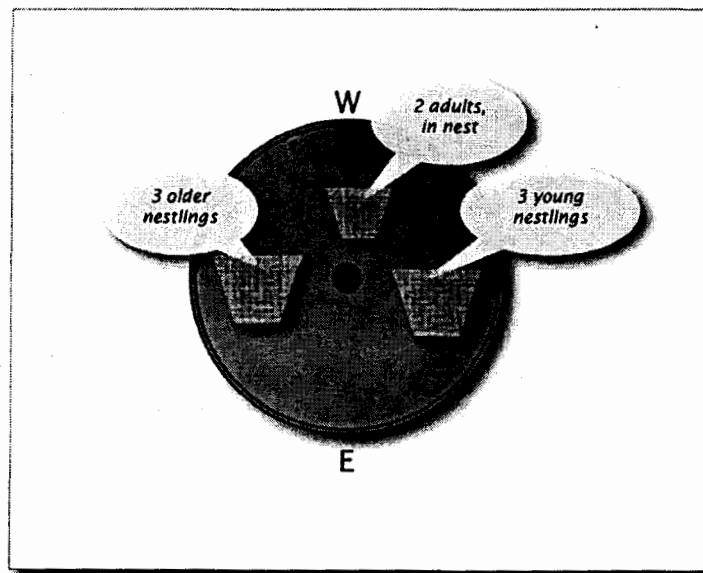
Great Blue Heron -

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

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

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

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



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

Summary:

BCNH - *minimum 1 nest with young*

GBH -- *minimum 5 nests with young*



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

W/11a + 11b



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jbfroke@mac.com

CHANNEL ISLANDS HARBOR FIELD REPORT

DATE: 05 March 2007
TO: Lyn Krieger
Ventura County Harbor Department
CC: Andi Culbertson
Culbertson Adams & Associates

Here is the early nesting season status of herons at Channel Islands Harbor as of 22 Feb 07, the date of my most recent onsite inspection.

Black-crowned Night-Heron - There are no BCNH pairs nesting or starting to nest in the harbor study area. My information consists of my own observations plus those of Greg Ainsworth with Impact Sciences: The agreement that Greg and I have is that we will mutually notify one another whenever we detect or suspect BCNH nesting or serious nesting behavior.

Great Blue Heron - There are at least 2 pairs of GBH nesting on the Peninsula, both are in a Monterey Pine on the grounds of Casa Sirena. When we were touring the area together earlier in February, we stopped and I showed you one of the birds in the nest tree that is snuggled up against the three-story section of the hotel. Since then, the second pair has settled in to the tree making up the same 2-pair arrangement as last year.

On the 22nd, there were three individual birds, one each sitting on last year's nests in palms in the boaters' parking lot at the end of Peninsula Road. During my field day, there was a constant 20 knot wind and driving rain, and the entire time all three birds stayed hunkered down on the respective nests. That common and persistent behavior strongly suggested to me that the birds were committed to the palm sites for more than a place to wait out the rain and were already sitting on eggs if not hatchlings. It is possible that the mates of the visible birds were also on the nests, but flattened over the nest cup as the species will do over eggs and very young chicks in inclement weather.

In sum --

BCNH = 0 prs

GBH = 2 - 5 prs

FYI, I'll be back onsite next week for 4-6 hrs during 12-16 March 2007.



W 11/2 + 11/6

Jeffrey B. Froke, Ph.D.
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jbfroke@msn.com

03 May 2006

Gary Timm
CALIFORNIA COASTAL COMMISSION
89 South California Street, Suite 200
Ventura, California 93001

Re Channel Islands Harbor > Response to CCC Staff Report (Th16c-s-5-2006[1])

Dear Mr. Timm:

I am writing to address your recently released Staff Report that deals with proposed dock construction activities at Vintage Marina in Channel Islands Harbor. Having studied the heronry at Channel Islands Harbor continuously for a period of over 3 years, I am now well into my fourth year of surveys. My studies of the Channel Islands Harbor heronry, combined with my similar, but shorter (2 years and counting) observations at Marina del Rey, may well constitute one of the most thorough studies of heron nest placement in an urban waterfront setting available. I restrict my comments on the staff report to biological issues.

LIST OF EXHIBITS

I. In my view, it would be more appropriate to attach only Dr. John Kelly's April 2006 letter, and omit his letter from the 2005 BISC hearings (Item 12). Dr. Kelly, by personal statement to me in 2004, has acknowledged that he made only a quick visit to the BISC site in 2003. In addition, the BISC site is but a small portion of the area abutting the current marina project, and the data is over three years old. Moreover, Dr. Kelly's observations and recommendations are made on the basis of heron rookeries in Northern California in more remote and natural settings – a far cry from those of Channel Islands Marina. While all responsible biologists acknowledge the importance of sensitivity to the herons, responsible biologists must also distinguish the animals' interactions with their environment in urban from natural situations.

SUGGESTED MODIFICATIONS / Modification 9 / Construction of the Vintage Marina

2. First paragraph -- From this point forward, there are several references made to the grouping of "black-crowned night herons, great blue herons, green herons, and/or egrets," as in whether these taxa are nesting within the linear park on the west side of the harbor, and so on. Here, I would like to offer the following advice: First, if talking about species (the first three are species), it would be consistent and more helpful to identify which if not both local species of egret (not a species but a general term for a group of herons) is to be considered; although I presume both. Second, if meaning to encompass all present or potentially present species of Ardeids (members of the Heron Family), it would make more sense to simply refer to the combination as "any species of heron." Third and finally, your inclusion of the Green Heron is surprising: Whether the species nests anywhere near the Harbor (their typical habitat is not present), it is not a colonial nester and to my knowledge its status and welfare has not been put on alert by the Department of Fish and Game or any other responsible agency. I have not personally observed any Green Heron in this area in spite of more than 50 visits.

3. Same first paragraph -- The Staff Report says that if nesting is determined within the linear park or any construction site during the nesting season [1 Feb -- 15 Aug] that construction shall cease until the end of the nesting season, i.e., 15 August. Here, I have three concerns: First, the designation of "nesting anywhere in the linear park or any construction site" is overbroad and results in setbacks in some cases of over 1,500 feet (i.e. the distance from, say, the Great Blue Heron nest in the cypress tree at Channel Islands Park to the portion of Vintage Marina adjacent to the Bahia Cabrillo Marina). Second, it is possible and proven locally for nesting and fledging in a small colony to conclude before the end of the designated nesting season, e.g., by the middle of July. Third, if this scenario plays out, what would happen if heron nesting is still underway on and after 16 August?

In the first instance, the designation of "anywhere in the linear park" has no empirical basis or meaning. The designation is defined only by the physical territory of lawn mowers and not by the observable effects of distance, human activity and particularly the past three years of demonstrated nest site selection by herons at Channel Islands (plus two years each at Marina del Rey and Dana Point Harbor). The rational answer is a measured setback; and I recommend 100 linear feet (measured from the base of nest tree to source of noise; the true-life slope distance of the triangle is actually greater).

Further, re-commencement of construction soon after fledging has been completed (for all active nests within the setback area) would mean that construction would be concluded earlier in the year, and thereby the apparatus and bother would be dismantled and removed from the habitat sooner. In the Staff Report, a CDFG staff biologist commented on the importance of the first foraging season for fledgling herons and the potential for disruption from human activities in the harbor. In this picture, removing construction disturbances as early as possible – while still avoiding disruption to nesting activities – would result in optimal benefits for fledglings that are actively learning to forage and fend for themselves in the marina environment.

In the third instance, re-commencing construction on an artificially set date (16 August) would be unwise, owing to possible threats to still-nesting adults and nest-dependent young (both nestlings and fledglings who are still returning to day-roost at the nest site), critical threats that would be removed by limiting construction during any year to areas outside of 100 ft from active nests, regardless of the calendar date.

SUMMARY OF RECOMMENDATIONS

- ≡ Limit construction to areas outside of 100 ft setback from active heron nests as established by expert personal observation; and
- ≡ Whatever conditions may otherwise apply, construction should be allowed to recommence when the last affected heron pair (including their nestlings) have completed their annual nesting activities and dependency, regardless of the calendar date.

4. Regarding my Letter-Report of 29 March 2006 – There were several incorrect re-phrasings and interpretations of my report that I wish to set straight for the record. First was a simple but poor choice of wording, as I was neither contentious nor had I contended anything in my report. Second and specifically, I did not say or mean that “herons will not arrive [in the nesting area] after mid-April.” I did say, however, that “The latest it is reasonable to expect arriving new birds is mid-late April.” I believe there is a big difference between the two statements, the second being the wiser.

In the same sentence the Staff Report asserted that I *contended* that “setbacks from construction are adequate to protect heronries.” I have read and re-read my report and cannot find such a statement on the subject. Further, barring details of a specific setback – as I did not mention any in my report – John Kelly and I have no disagreement on this subject.

Next, the Staff Report stated that I had *contended* that herons are tolerant of human activity or disturbance; and that John Kelly did not agree with me in that position. It is true that I have several times shared my data showing that herons, like numerous wildlife species in my 32-year urban research career, eventually develop a type of ecological and/or behavioral tolerance for human activity. One would have to read John Kelly's letter more carefully; but I do not think he argues this point of whether herons may adapt to the presence of people or physical structures associated with urban environments.

Lastly, I suggest that one more reading through John Kelly's and my own letters will reveal that he and I do not disagree on any of the fundamental matters of heron conservation. Any disagreement, *per se*, would be more to do with how each of each interprets herons and their circumstances at Channel Islands Harbor. Admittedly, it has been difficult to engage in a satisfactory scientific discourse with John Kelly on the subject of the herons at Channel Islands Harbor: He is from Marin County, works in a much different San Francisco Bay area heronry environment, and by his own admission has spent just a few minutes quickly glancing at the local harbor - once in 2003. In other words, too quickly to form an understanding of Channel Islands Harbor herons, the distinctive urban waterfront habitat that the birds have adopted, and any of the ecological relationships that exist among the herons at Channel Islands Harbor, Ventura Harbor, and Port Hueneme - the real hub of Black-crowned Night-Heron nesting activity.

In the final analysis, I suggest that the four years that I have spent studying the nesting distribution and colony dynamics of the Channel Islands Harbor herons and heronry - plus the past two doing the same at Marina del Rey ought to weigh-in more credibly than my colleague's very limited knowledge of herons and resources in this same geographic realm.

Thank you and best regards,

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

Jeff Froke

W/1/2 + 1/6



JEFFREY B. FROKE, PH.D.
3158 BIRD ROCK ROAD / PEBBLE BEACH CA 93953
(831) 224-8595 / JBFROKE@MSN.COM

31 October 2005, revised

To: Andi Culbertson, Culbertson Adams & Associates

Re: Channel Islands Harbor Heronry / Channel Islands Marina Building

I understand that the County of Ventura has authorized me to proceed with and then publish the results of my ongoing studies (monitoring the colonies of the three nesting species) within the Channel Islands Heronry. To date, this authorization has provided for continuous monitoring and data throughout the nesting periods of 2003, 2004 and 2005.

Question: Presently there is a question about the status of nesting Black-crowned Night-Herons and there the possible use of trees in the vicinity of the existing Channel Islands Marina office building. Specifically, did they nest there in 2005; and when was the last time they nested there?

Answer: Black-crowned Night-Herons did not nest in the vicinity of the Channel Islands Marina office, or anywhere in the so-called BISC vicinity, during 2005. The closest nest (1) was in the area of Bluefin Circle, in a large cypress tree.

Background: Whereas there were +/- 39 Black-crowned Night Heron nests on the West Side (Harbor Boulevard) in 2003, that number diminished to five (5) in 2004, accounted for by a major shift of the colony to Port Hueneme; then that number ended up at one (1) in 2005.

The Port Hueneme colony, made up of over a hundred Black-crowned Night Herons and Snowy Egrets, is thriving and there is no reason to expect that it will not continue to do so in 2006. The habitat, including the make up (species composition and foliar density) of supportive trees is excellent and stable.

The tree base for the former colony site near the Channel Islands Marina office and future BISC could be improved, i.e., for use by nesting herons, essentially by reconfiguring the present composition and layout

of the standing trees. The Metrosideros (New Zealand Christmas Tree), because of their sturdy branches and stiffened foliage, are popular with Black-crowned Night-Herons; but the Myoporum, a soft and wispy tree that is equally as abundant as Metrosideros, is not used and as such is extraneous. In addition, the Myoporum are crowding and shading the Metrosideros to their detriment.

Indeed, if it were my doing as a manager, I would remove 2-3 Myoporum and replace them with Metrosideros and/or Monterey Pine for nest trees. That said, I would not worry about removing the large Metrosideros that grows right up to the building, even though Black-crowned Night-Herons nested in it in 2002 and 2003 (but not 2004 or 2005), as its value could be readily replaced in view of a bird species that has no nest site or nest tree fidelity and builds a new nest as quickly as it adopts an old one.

Respectfully,

A handwritten signature in black ink, appearing to read 'J.B. Froke', followed by a horizontal line.

Also, please refer to:

Froke, J.B., 2004. Synopsis of the Channel Islands Harbor Heronry, 2003-2004 (Black-crowned Night-Heron, Great Blue Heron & Snowy Egret @ Channel Islands Harbor, Port Hueneme & Ventura Harbor, Ventura County, California (October).



W 11a + 11b

Jeffrey B. Froke, Ph.D.

CALIFORNIA WILDLIFE ECOLOGY

3158 Bird Rock Road / Pebble Beach CA 93953

MEMORANDUM

Date: 3 June 2004

To: Andi Culbertson, Culbertson Adams & Associates

Re: Channel Islands Harbor - Heron Observations (30 April, 26 May 2004); and
Confrontation with Trevor Smith (30 April 2004)

This report summarizes observations I made during a one day survey of the Channel Islands Harbor heronry on 30 April 2004. Results of a more brief inspection of the BISC site on 26 May also are included. The all-day survey in April covered the BISC site and its Harbor Blvd. vicinity (the west side portion of the heronry) plus all of the previously identified CIH heron nesting locations from 2003 (Peninsula Park, Casa Sirena, etc.). I also focused on the Port Hueneme colony, which I believe is directly related to or part of the CI Harbor heronry.

The full details of my findings are kept as my field notes; and I also have an extensive set of digital photographs documenting my 30 April survey.

Regarding the Herons:

As with last year at this time, the individual pairs of Black-crowned Night-Herons displayed a wide range of nesting stages or phases: some were just starting to nest while

others already had young ready to fledge. Some nest areas were burgeoning and boisterous, particularly parts of Port Hueneme, while other areas such as CI Marina, including the BISC site were very quiet.

Because this was just a one day inspection, it turned out that I was not able to determine whether the old (last year's) nests in the 'BISC trees' were or just appeared empty in April, and whether the apparent emptiness was because (1) birds had not started to nest in them, (2) had started to do so but then abandoned their effort, or (3) (least likely) had nested and completed their effort (either by fledging or failing young). A few of the nests certainly were empty because daylight could be seen throughout the stick structure.

With one exception -- that of a single adult BCNH quietly moving in the treetops near a nest -- there was no evidence of current or recent nesting effort in the BISC trees: no white wash, no recently added sticks to the nest platforms, and no eggshells. There were no nestling skeletons hanging in the tree branches, an indication of hard luck but proof of an attempt to nest.

The most striking difference in the 'greater harbor heronry' relative to 2003 was the dramatic increase in Black-crowned Night-Heron pairs nesting with the Snowy Egrets at Port Hueneme. Last year, I recall a total colony of about 24-25 nests, most of which were Snowy Egrets. This year, there were closer to 70 active nests, and roughly half of those were BCNHs. Although the majority of the nests are concentrated in fewer than 6 trees

in the original (2003) location, this year the colony is expanding physically to other parts of the residential and industrial neighborhood, as well.

The other change this year, meaning from what was observed during 2002-2003, is that BCNH in the harbor heronry also are nesting in eucalyptus trees. Heretofore, the birds had been recorded only in New Zealand Christmas Trees, Monterey Pine and Monterey Cypress Trees. If successful, taking on gum trees potentially would open up a broader ecological realm of opportunity for night-herons, as there are many growing in the close vicinity of water in the harbor environment.

I also made a quick stop at the BISC site on 26 May: At that time, I observed no change in the circumstance or status of BCNH there or its vicinity, except that the single adult seen near the marina office on 30 April was not present, or at least visible. No evidence of heron nesting (individuals, eggshells, whitewash, sounds, etc.) was discernable in trees immediately associated with the BISC during the brief inspection in May. The closest active pairs of BCNH that I found on 30 April and 26 May were (1) adjacent to the Yacht Club (one pair), and (2) one pair in with the pairs of GBH and single pair of Snowy Egrets the double cypress trees by Barracuda Circle.

Regarding Trevor Smith:

On April 30th, within minutes of stepping into the BISC footprint (about 930 AM), I was again confronted and hassled by Trevor Smith. I had been standing quietly under one of the BISC trees, looking up and listening for nesting herons. However, it was hard not to

be distracted by the voice of Trevor who was complaining vividly to a couple in front of the marina office about something to do with the marina and the harbor, etc. When that conversation ended, Trevor made a bee-line for me and immediately got in my face.

Trevor *said* to me, as if he were asking a question, "You're working for the County." I looked at him as though I did not hear him or wasn't quite paying attention. This time, he *asked* "Are you working for the County?"

I said, "I'm working." To that, he replied "You're working for the County."

Trevor went on, more excitedly, really starting to rant and just 12-18 inches from my face: "Well, they've had their big trucks all over in here scaring the birds. And the new aggressive managers (of the marina) have spray painted the building as if the birds are supposed to come back. I don't know if they're going to try to nest again or not. So, you're working for them."

I repeated to him in my original - flat - tone, "I'm working." To that, he took off and walked down to his boat.

Five minutes later, Trevor was back on the sidewalk by the marina - this time with his Sheltie - and talking in an even more animated way to another dog-walker, and older, taller grey-haired guy I have seen before with a big Golden Retriever. Trevor was yelling to the guy about me, telling him that "that guy over there -- works for the County -- he's a liar -- he says that the herons are a nuisance -- he says that they are

cosmopolitan....," etc. Trevor repeated announcing me as a 'liar' to this guy, so loudly that he could be heard from several hundred feet away.

A few minutes later, as the gentleman with the retriever moved on, Trevor began walking toward his house via the parking lot south of the marina office -- while I was still under the trees. However, he was still yelling and laughing by himself, or at me: "You're liar and you know it... liar, liar! You are a liar and you are going to be exposed for it... liar, liar!"

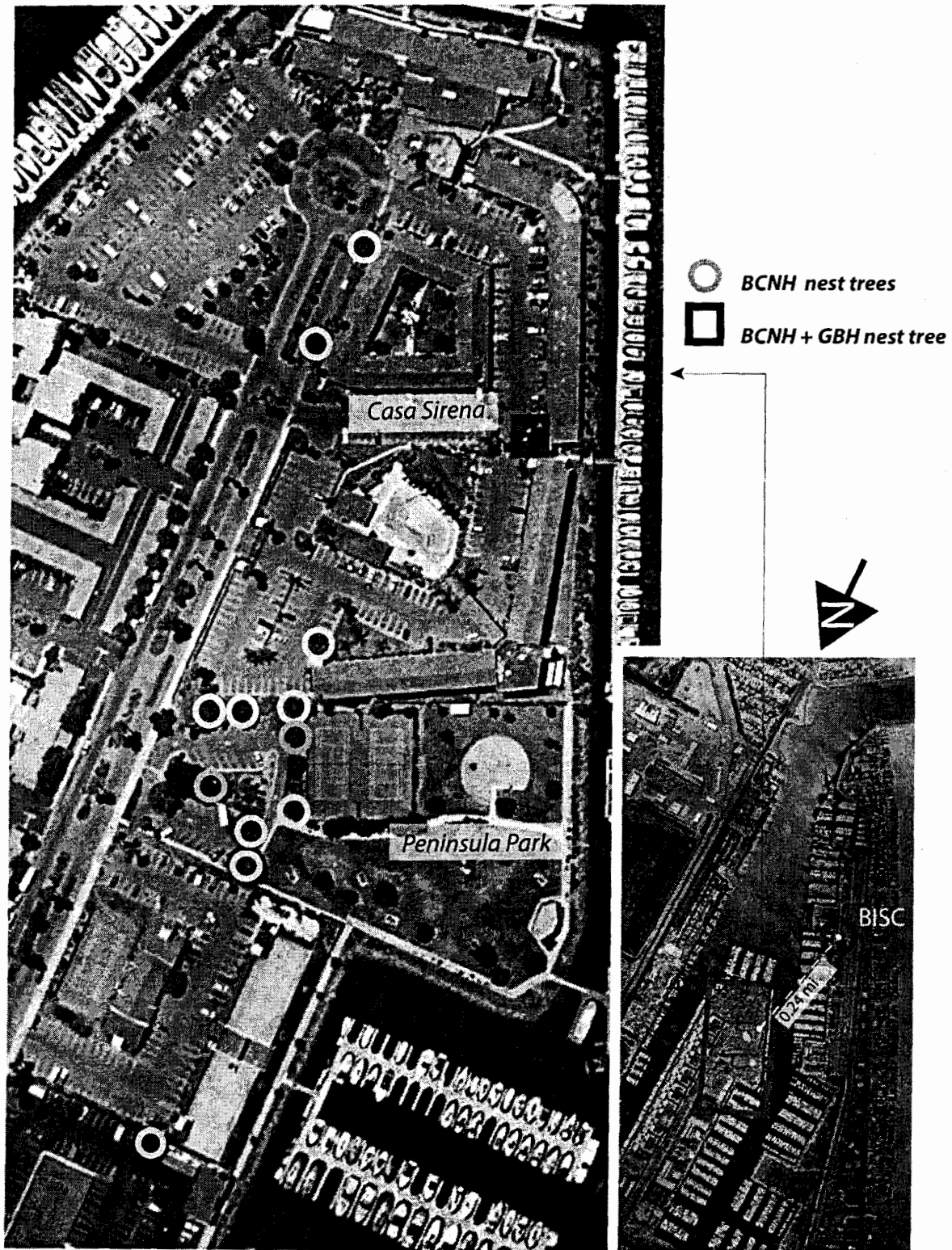
Even though I know better than to interact with someone behaving like Trevor had been, he bugged me; so as he passed by I said to him, "Trevor, you are so full of it." Not sure he heard me the first time, I said it again. To which he repeated before leaving, "Liar, liar."

This concludes my report.

-- Jeff

Channel Islands Harbor Heronry 2003-2004

Figure E Overview of the Peninsula heron colony, Channel Islands Harbor, Ventura County, California (2003-2004). Nesting herons in 2004 included approximately 22 pairs of Black-crowned Night-Herons and 3 pairs of Great Blue Herons.



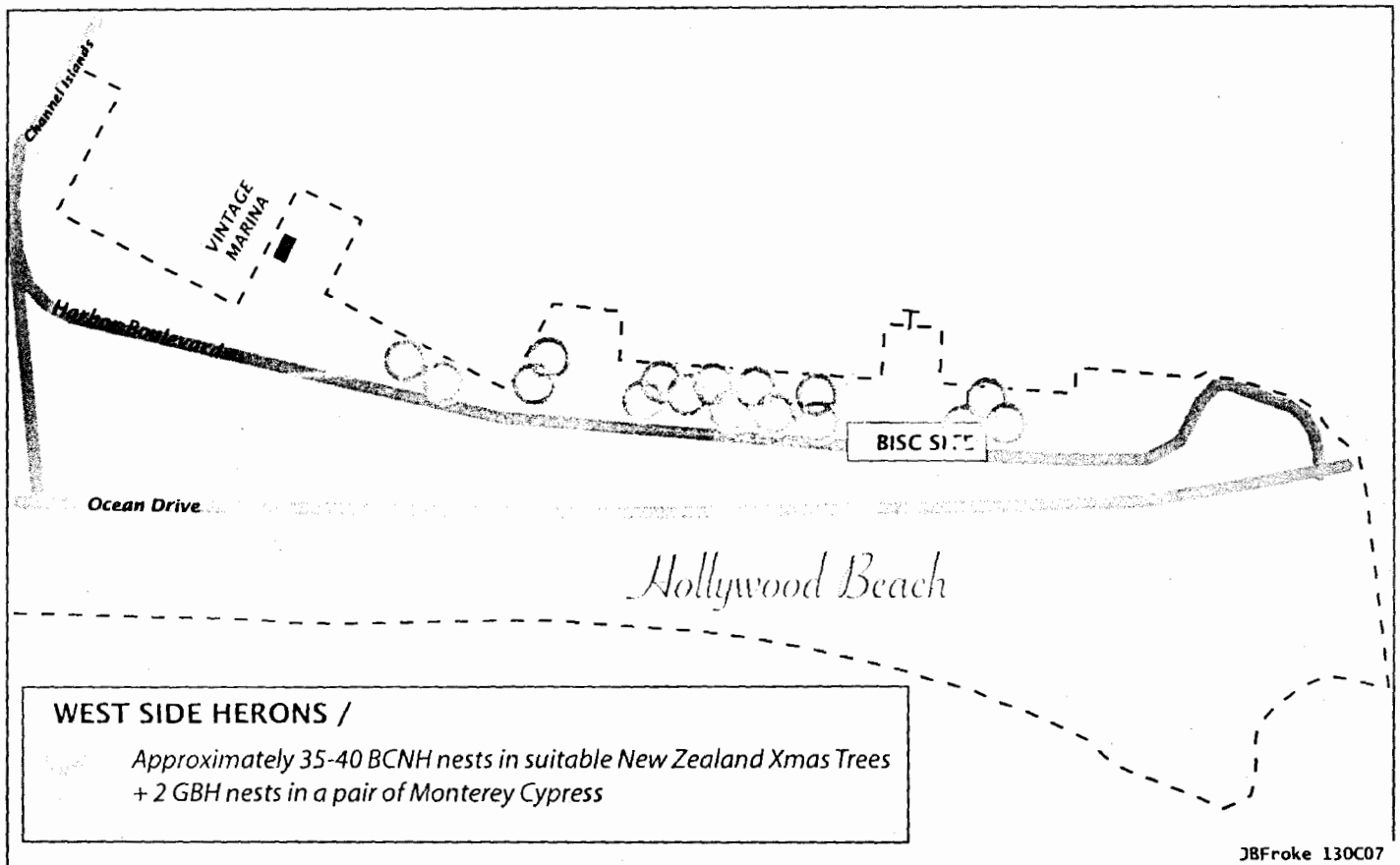
Heron Nest Trees, CHANNEL ISLANDS HARBOR, Ventura Co., California (2003-2005)



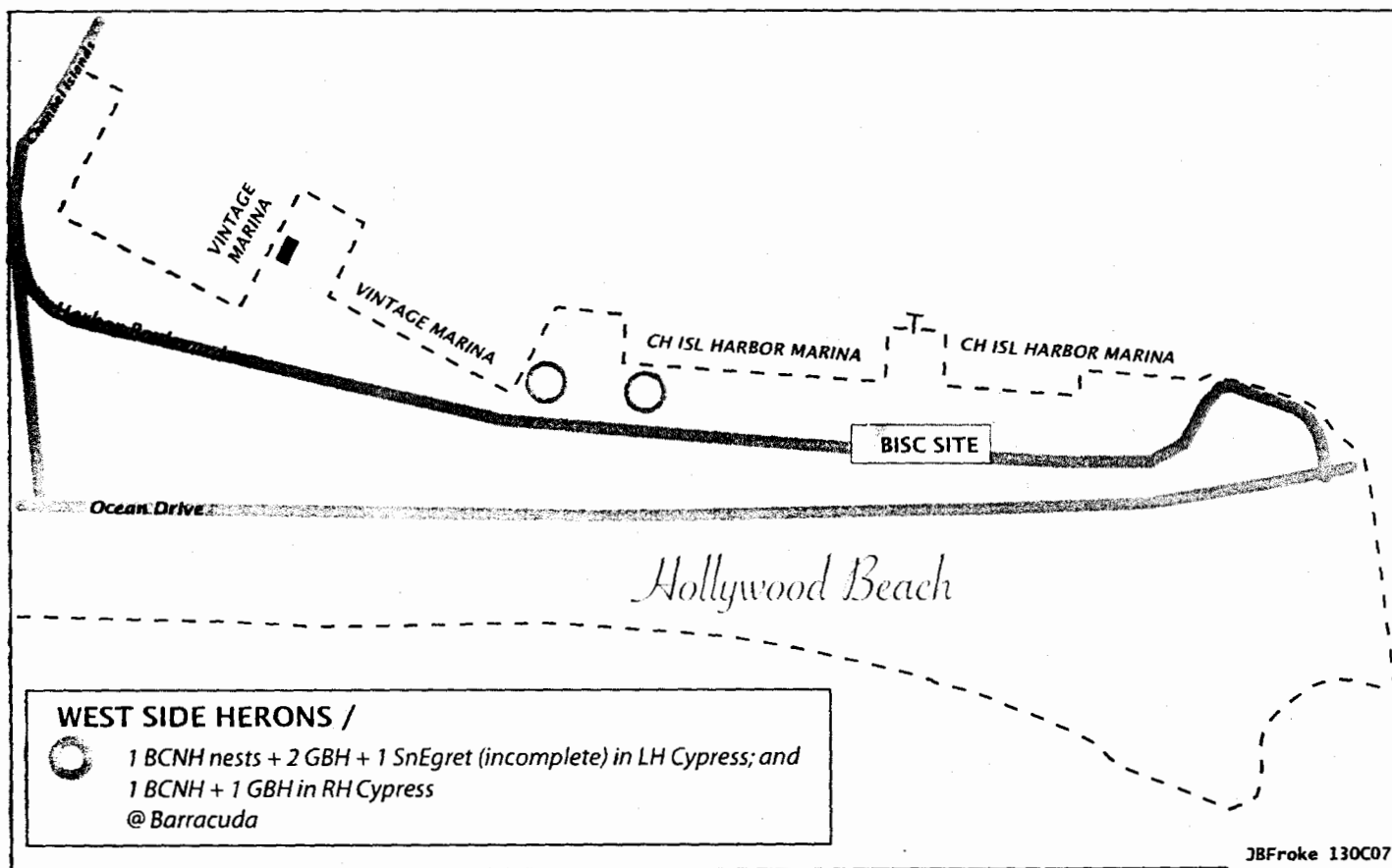
This map shows all trees in the CIH study area that were confirmed as used by nesting herons during 2003, 2004 and 2005. Tree species are New Zealand Christmas Trees (METEXC), Monterey Pine (PINRAD), Monterey Cypress (CUPMAC), and a Magnolia (MAGNOLIA). Heron species are Black-crowned Night-Heron (BCNH), Snowy Egret (SnEg), and Great Blue Heron (GBH). Heron studies will continue throughout 2006.

Note: Black-crowned Night-Herons, which were most numerous @ CIH in 2003 (39 nesting pairs on the West Side), have since declined in numbers: 5 pairs in 2004, then a single pair in 2005. Simultaneously, BCNH numbers have grown to match Snowy Egrets' at Port Hueneme (approx. 100 pairs total); and approximately 17 pairs of Great Blue Herons nested at Ventura Harbor during 2005.

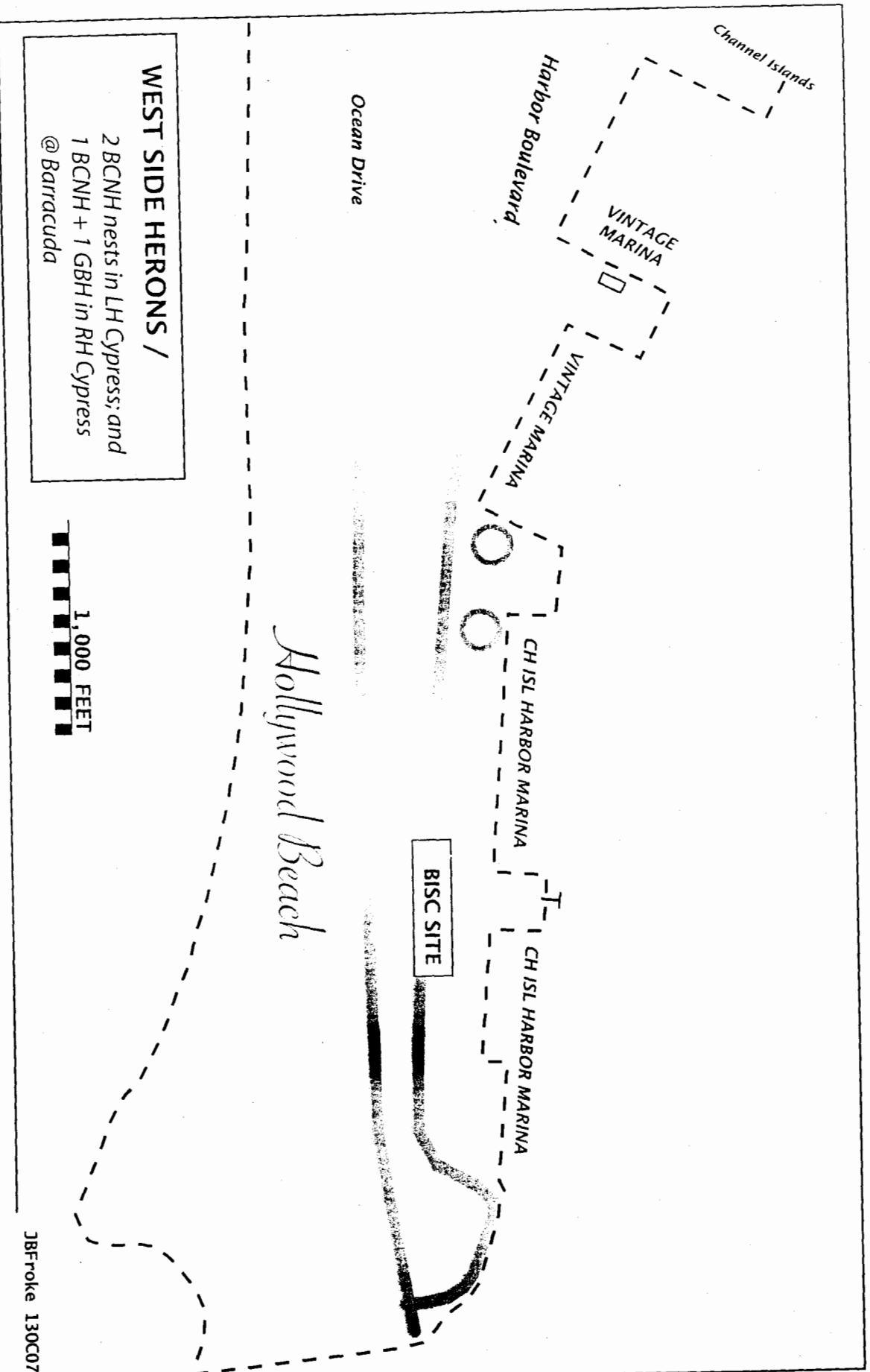
Total Confirmed Heron Nest Trees / WEST SIDE STUDY AREA of Channel Islands Harbor / 2003-2007



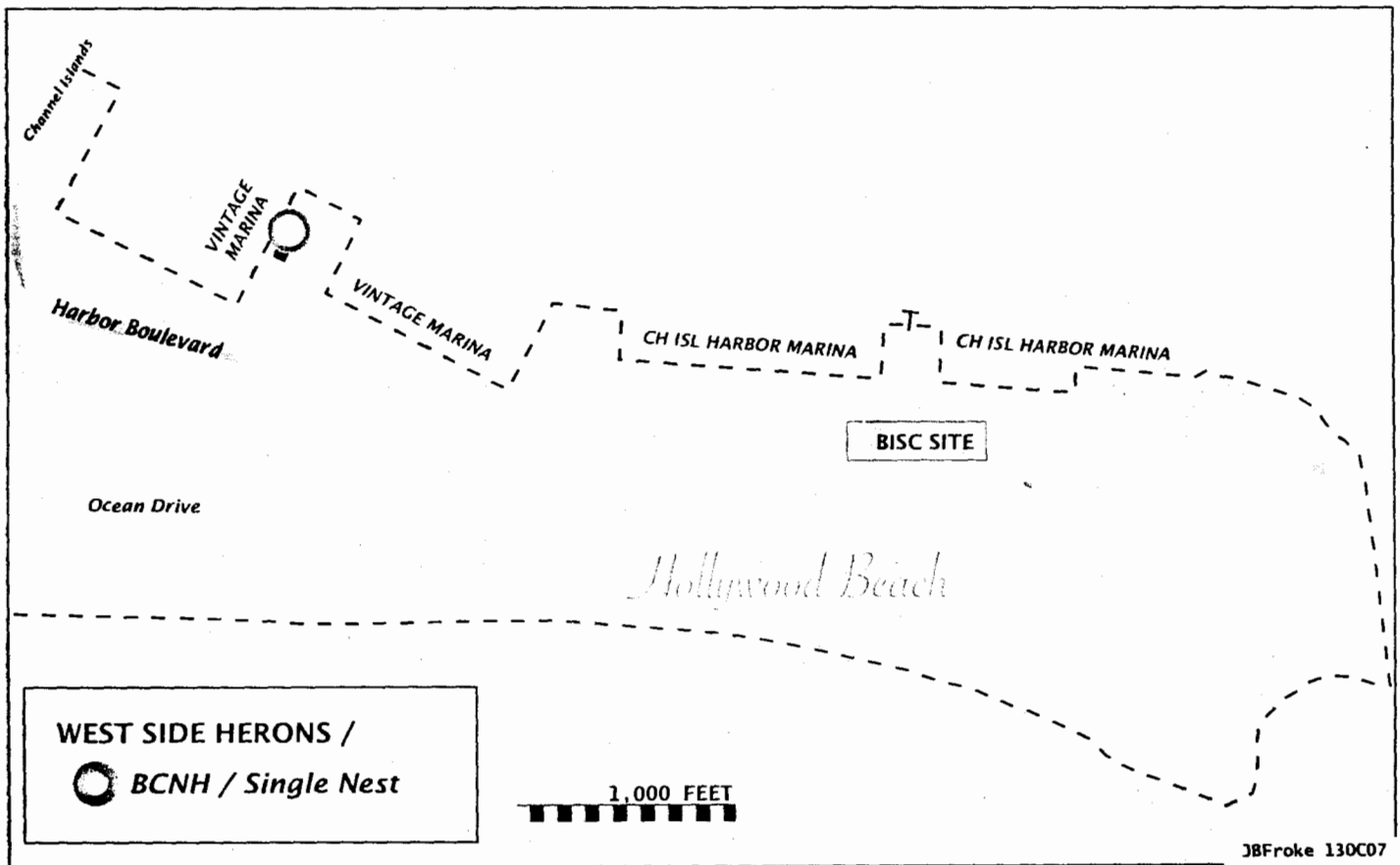
Total Confirmed Heron Nest Trees / WEST SIDE STUDY AREA of Channel Islands Harbor / 2003-2007



Total Confirmed Heron Nest Trees / WEST SIDE STUDY AREA of Channel Islands Harbor / 2003-2007



Total Confirmed Heron Nest Trees / WEST SIDE STUDY AREA of Channel Islands Harbor / 2003-2007





AUDUBON CANYON RANCH

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

12 November 2007

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

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

Dear Commissioners:

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

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

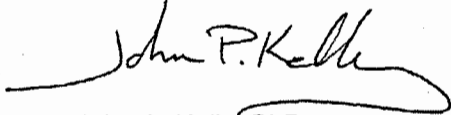
Second, following the work by Coastal Commission biologist Jonna Engels in Marina del Rey, I encourage the Commission to consider establishing Environmentally Sensitive Habitat Areas (ESHA) that would protect non-native trees and other vegetation needed to provide suitable nesting substrate for herons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

Exhibit 11
PWPA 1-04, NOID 1-05
Audubon Canyon
Ranch letters

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

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

Sincerely,

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

John P. Kelly, PhD
Director, Conservation Science



AUDUBON CANYON RANCH

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7 April 2006

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

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

Dear Commissioners:

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

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

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

(continued)

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

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

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

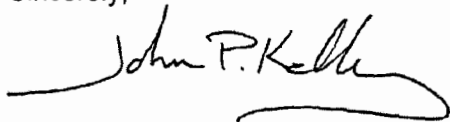
(continued)

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

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

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

Sincerely,

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

John P. Kelly, PhD
Director, Conservation Science

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



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9 March 2005

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

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

Dear Commissioners:

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

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

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

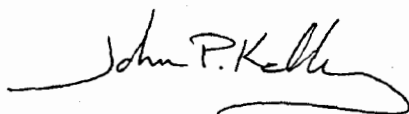
I share Dr. Froke's suspicion that many of the nesting Black-crowned Night-Herons moved from the Channel Islands Harbor in 2003 to Port Hueneme in 2004. Such movements are common in this species and can be stimulated by changes in feeding conditions (degraded locally or improved elsewhere), nesting habitat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

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

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

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

Sincerely,

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

John P. Kelly, PhD
Research Director

ANGEL LAW LAW OFFICES OF FRANK P. ANGEL

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December 17, 2007

California Coastal Commission
South Central Coast District Office
Attn: Gary Timm, District Manager
89 South California Street, Suite 200
Ventura, CA 93001-2801

*Re Proposed Channel Islands Harbor Public Works Plan Major
Amendment 1-04; & Notice of Impending Development 1-05
for Boating and Instruction Safety Center (BISC)*

Dear Mr. Timm:

Angel Law represents Habitat for Hollywood Beach (HHB) in the administrative proceedings before the California Coastal Commission (Commission) in the above-captioned matter. As you are aware, Angel Law also has been representing HBB in the litigation that successfully challenged the Commission's approvals on March 16, 2005, of (1) the Channel Islands Harbor Public Works Plan (PWP) amendment no. 1-04, and (2) the related notice of impending development (NOID) no. 1-05. Both approvals were for the Boating and Instruction Safety Center (BISC) project, proposed by the County of Ventura (county) on the west side of Channel Islands Harbor, right next to a black-crowned night heron rookery, on public parkland heavily used for passive open space recreational

Exhibit 12
PWPA 1-04, NOID 1-05
Frank Angel letters

purposes. The PWP amendment and NOID are now being resubmitted for a new decision by the Commission.

HHB is not opposed to a Boating and Instruction Safety Center in the Channel Islands Harbor. For the reasons more extensively discussed in our related submittals (and in our previous submittals, preceding the Commission's original decision in March of 2005), however, HHB continues to strongly object to the proposed BISC site. HHB therefore urges the Commission to now enforce its mandates under the California Environmental Quality Act (CEQA) and its own regulatory program, and to deny the BISC project as presently proposed.

Following up on an earlier discussion we had after the Commission's first hearing on remand from the Superior Court, I was to provide you the legal authority supporting HHB's position that in-depth alternatives review and alternatives selection, as required by CEQA (see Pub. Resources Code, § 21080.5, subd. (d) (2) (A)), and the Commission's regulatory program, may *not* be avoided or restricted based on claims that existing contractual commitments render infeasible otherwise reasonable alternative sites.

Preliminarily, we note that the county has made such a claim only with respect to the currently non-performing Port Royal restaurant lease. The site of the Port Royal restaurant is a feasible alternative location for the BISC on the west side of Channel Islands Harbor.¹ Importantly, no such claim has even been made for the preferred east side BISC site, the Cisco parcel and parcel Q, which offer 900 linear feet of east channel frontage (of a total 1,200 feet, with 300 feet used by commercial sports fishing boats). There is no existing lease affecting the Cisco parcel. In fact, just two months ago, on October 16, 2007, Ms. Lyn Krieger, the county harbor department director, in an appearance before the Oxnard city council, made to update the city council on development projects in Channel Islands Harbor, confirmed that the county is "interested in input for what kinds of uses the public is interested in there [i.e., the Cisco site]" (<http://oxnard.granicus.com/ViewPublisher.php?view_id=3> [October 16, 2007 agenda archive video; agenda item Q1].)²

¹ The leaseholder wants out of the lease.

² Parcel Q is available as well. While part of it is leased short-term for private dry boat storage, as you have quite properly advised the harbor department, this use is in violation of the public visitor-serving boating access land uses and view corridor designations applicable to this parcel under the PWP.

This being said, contracts entered into, or even expenses incurred, prior to review of a project cannot be used to avoid the scrutiny envisioned by CEQA. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, the Court of Appeal specifically rejected an agency's argument that prior contractual commitments and substantial investments in a given project proposal precluded review of an environmentally superior alternative. (*Id.* at 735-737.)³ In *Kings County*, the lead agency rejected evaluation of a natural gas alternative to a proposed coal-fired cogeneration plant, on the ground that if the project proponent were to convert to natural gas, it would be unable to meet a long-term commitment to sell electricity under a power sales agreement already entered into with a third party. (*Id.* at 708, 735-736.) The Court held:

"Since CEQA charges the agency, not the applicant, with the task of determining whether alternatives are feasible, the circumstances that led the applicant in the planning stage to select the project for which approval is sought and to reject alternatives cannot be determinative of their feasibility."

(*Id.* at 736; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 425 ("We shall not countenance any attempt to reject an alternative on the ground that [the site selected by the project proponent, the University of California, for the relocation of a biomedical research facility] has already been purchased or that activities there have already commenced").)

You may remember that these legal principles also led the Second District Court of Appeal to set aside the Commission's approval in 1998, of a coastal development permit for the (now defunct) Soka expansion project in the Santa Monica Mountains. (*Sierra Club v. California Coastal Com.* (Feb. 27, 2003, B138627) [nonpub. opn.] 2003 Cal. App. Unpub. Lexis 1883.) In that case, it was the Commission's failure to recognize the existence of a feasible alternative location for the proposed university

³ In the case of the BISC, it is undisputed that from an environmental perspective, the Port Royal and the east side alternative sites are substantially superior to the site proposed by the county. No black-crowned night heron tree habitat will be impacted on the east side; and the Port Royal site is at substantially greater distance from the adversely impacted tree habitat than the BISC site the county proposes. Moreover, neither the east side nor the Port Royal site will cause removal of any existing passive parkland uses. Given those circumstances, re-approval of the BISC at its present location violates CEQA. (See Pub. Resources Code, § 21080.5, subd. (d)(2)(A).)

California Coastal Commission
December 17, 2007
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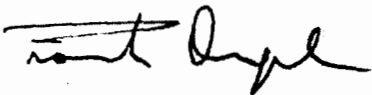
expansion (Soka's Orange County campus property) that was of concern to the Court. Rejecting the Commission's deference to the County of Los Angeles' EIR alternatives review, the Court emphasized, in light of the Commission's independent duty to protect and implement the goals and policies of the California Coastal Act of 1976, that it would have been particularly relevant to consider the expansion of Soka's Orange County campus, rather than its campus in the Santa Monica Mountains which was located in an environmentally more sensitive area. The Court noted, among other things, that such an alternative would have protected "existing coastal zone natural resources," and "would also have impacted the Commission's consideration of Public Resources Code section 30250, which requires that new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it." (2003 Cal. App. Unpub. Lexis 1883, at *22-23.) So it is here -- especially in the case of the Cisco and Port Royal sites, which are redevelopment sites, i.e., sites that do not cause incremental harm to existing coastal zone natural resources. (See also fn. 3, *supra*.)

Please make sure a copy of this letter is attached as an exhibit to the District Office's staff report for the Commission. Also, please feel free to call if you have any questions.

Thank you very much for your assistance.

Very truly yours,

ANGEL LAW

A handwritten signature in black ink, appearing to read "Frank P. Angel", written in a cursive style.

Frank P. Angel

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October 1, 2007

California Coastal Commission
South Central Coast District Office
Attn: Gary Timm, District Manager
89 South California Street, Suite 200
Ventura, CA 93001-2801

*Re: Wednesday, October 10, 2007 Agenda Items 11a & 11b – Staff Report
for Boating and Instruction Safety Center (BISC)*

Dear Mr. Timm:

Angel Law represents Habitat for Hollywood Beach (HHB) in the administrative proceedings before the California Coastal Commission (Commission) in the above-captioned matter. As you are aware, Angel Law also is representing HBB in the litigation challenging the Commission's approvals on March 16, 2005, of (1) the Channel Islands Harbor Public Works Plan (PWP) amendment no. 1-04, and (2) the related notice of impending development (NOID) no. 1-05. Both approvals were for the Boating and Instruction Safety Center (BISC) project, proposed by the County of Ventura on the west side of Channel Islands Harbor, right next to a black-crowned night heron rookery, on public parkland open space.

The PWP amendment and NOID are now being resubmitted for a new decision by the Commission, based on a staff report that purports to comply with the judgment entered in favor of HBB, which, among other things, found that the Commission had failed to provide environmental

disclosure and analyses of alternatives to the BISC project, and of project-related cumulative impacts, as required by the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the Commission's own regulatory program. The Superior Court thus ordered the Commission to conduct new environmental CEQA review in compliance with the Court's detailed statement of decision filed October 16, 2006, CEQA and the CEQA Guidelines (should the County of Ventura still intend to proceed with the project). The judgment and statement of decision call attention to the Commission's discretion to approve an alternative to the BISC as proposed, including the East side alternative.

The new staff report, comprised of 149 pages (including exhibits), is dated September 27, 2007. It was neither publicly released nor otherwise available prior to Thursday, September 27, 2007. Assuming it was circulated for public review not later than September 27, that leaves only 13 days of public review prior to the scheduled October 10, 2007 Commission hearing on the project. Once again, thus, the staff report is not being circulated the minimum 30-day period mandated by CEQA -- which serves to ensure proper public participation and comment, as well as written responses from staff.¹

At this time, therefore, HBB requests that this matter be continued, so as to enforce the public's rights under CEQA to have a meaningful opportunity to prepare proper comments, and the Commission's own duty under CEQA to consider both such comments and staff's written responses. These environmental process requirements should not be shrugged off. Compliance will avoid another substantial CEQA violation by the Commission. These procedures are intended to help "to shape and inform" the Commission's exercise of its discretion (*Mountain Lion Foundation v. Fish & Game Com.* (1996) 16 Cal.4th 105, 122); and to "sharpen [its] understanding of the significant points raised in opposition to" the BISC project. (*Id.* at 123.) They go hand in hand with the Commission's separate duty under the California Coastal Act of 1976, to secure "maximum opportunities" for public participation in matters such as the PWP amendment at issue. (Pub. Resources Code, § 30503; see *id.*, §, 30006.)

¹ A detailed explanation of the legal basis for the minimum 30-day public review period we request is set forth on pages 3-4, *post*.

Before explaining the 30-day requirement for public review, please note that we already raised this issue before the Court in the pending litigation. The Court found it could not decide the issue in the challenge to the March 16, 2005 decisions, because HHB had not raised the issue before the Commission on March 16, 2005, when it held its first de novo hearing on the project. (Statement of decision at 12.) Therefore, we now do raise this important CEQA process issue by this letter. We further hasten to point out that the Court reasoned that our request for a 30-day comment period "has merit." (*Id.*) This strongly suggests that should the Commission go forward with the October 10, 2007 hearing, thereby violating the 30-day CEQA-mandated public comment period, its decision will again be vulnerable to the Court's writ.

Legal Discussion Explaining 30-Day Public Comment Period Requirement

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." (§ 21080.5, subd. (d)(3)(B); see *id.*, subd. (d)(2)(F).) The Commission's regulations likewise require that staff reports be distributed "within a reasonable time to assure adequate notification prior to the scheduled public hearing. (Cal. Code Regs., tit. 14, § 13059.) Here, at best, the Commission circulated the staff report recommending re-approval of the PWP amendment and the BISC NOID, 13 days prior to the October 10, 2007 hearing. The staff report's findings include discussion of serious coastal issues raised by the project, and attempt to deal with curing the omissions concerning alternatives and cumulative impacts review.

The 13-day public review period provided by the Commission falls short of CEQA's public review periods for environmental impact reports (EIRs), and even for negative declarations. Like the staff reports of other agencies with regulatory programs that the Secretary for Resources has exempted from the requirement to prepare an EIR, the Commission's staff report serves as its CEQA disclosure document. This means it is considered the "functional equivalent" of an EIR. (*Mountain Lion Foundation*, 16 Cal.4th 105, 113-114; see Pub. Resources Code, § 21080.5, subs (a), (b) & (c).)

Under CEQA provisions from which the Commission's regulatory program specifically is not exempt, the public review period for a draft EIR may not be less than 30 days, and for a negative declaration, not less than 20 days. (See § 21091, subs. (a), (b); see also CEQA Guidelines, §§ 15205,

15206, subd. (b)(4)(C).)² The 30-day public review time period requirement for EIRs thus dictates the public review time period requirement for the Commission's staff reports. (See *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 698-700.) Holding that section 21091, subdivision (a)'s requirement of a 30-day review period for draft EIRs applies to EIR functional equivalents, *Ultramar, Inc.* states:

"The fact that this section refers to EIR's, rather than EA's [environmental assessments of a certified regulatory agency], is of no consequence."

(*Id.* at 699.) In *Ultramar, Inc.*, the South Coast Air Quality Management District (SCAQMD) circulated its written documentation for a proposed regulation more than 30 days. However, this initial distribution was missing a portion of the documentation. The SCAQMD subsequently distributed the missing pages a few days less than 30 days before a scheduled public hearing. (*Id.* at 697.) The *Ultramar, Inc.* court upheld the trial court's determination that the SCAQMD's failure to circulate a complete copy of its written documentation for at least 30 days constituted a prejudicial abuse of discretion under CEQA. (*Id.* at 698-704.)

Here, the Commission provides the public with even less time to review its staff report than the SCAQMD did in *Ultramar, Inc.* In *Ultramar, Inc.*, the SCAQMD released most of its environmental documentation to the public at least 30 days before the hearing. However, the *Ultramar, Inc.* court still held that the comment period was inadequate because the balance of the SCAQMD's written documentation was distributed to the public less than 30 days before the hearing. (17 Cal.App.4th 689, 697.) Here, the entire 149-page long staff report is available a mere 13 days before the hearing. Because CEQA's requirements for public circulation and review of EIRs are applicable to the written documentation prepared pursuant to section 21080.5, i.e., Commission staff reports, the Commission must circulate its staff report for at least 30 days. As *Ultramar, Inc.* teaches, the Commission's failure to comply with this standard is a prejudicial failure to proceed in the manner required by CEQA.

² The Commission is exempt only from CEQA's EIR preparation requirement and statutes of limitations (§ 21167). (See § 21080.5, subd. (c).) It "must comply with all of CEQA's other requirements. [Citations.]" (*Mountain Lion Foundation*, 16 Cal.4th 105, 114, emphasis added.) These include, among other things, the 30-day circulation requirement for EIRs, contained in Public Resources Code section 21091.

California Coastal Commission
October 1, 2007
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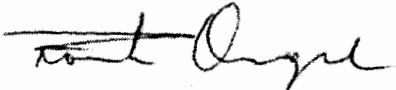
Beyond this, we do need the full 30-day circulation period CEQA affords us, in order to prepare adequate comment on the staff report prepared on remand from the Court. Our review, including review by our experts, followed by preparation both of written comments (all the more necessary in light of the strict time limitations on speakers at Commission hearings, and ex parte communications from the County of Ventura's lobbyist, Ms. Andy Culbertson), and of testimony before the Commission, cannot possibly be accomplished in 13 days. Also, personally, I have a previously scheduled trip out-of-state from today to October 7.

Please make sure a copy of this letter is included in the District Office's addendum for all Commissioners for the Wednesday, October 10, 2007, agenda.

Thank you very much for your assistance.

Very truly yours,

ANGEL LAW

A handwritten signature in dark ink, appearing to read "Frank P. Angel", written over a horizontal line.

Frank P. Angel

ANGEL LAW LAW OFFICES OF FRANK P. ANGEL

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February 8, 2008

California Coastal Commission
South Central Coast District Office
Attn: Jack Ainsworth, District Manager
Oceanside Marina Suites
2008 Harbor Dr N
Oceanside, CA 92054

Via E-Mail (jainsworth@coastal.ca.gov) and Fax to Ocean Marina Suites,
Oceanside (760) 439-9758

Re *Proposed Channel Islands Harbor Public Works Plan Major
Amendment (PWPA) 1-04; & Notice of Impending Development
(NOID) 1-05 for Boating and Instruction Safety Center (BISC)*

Dear Mr. Ainsworth:

This letter replies to the Coastal Commission staff responses to Angel Law's written comments last December and offers supplemental comments on behalf of Habitat for Hollywood Beach (HHB). Again, we ask the Commission to deny the BISC project, *as presently sited*. As we have emphasized time and again, denial of the PWPA and NOID for this project need not mark the end of a BISC for Channel Islands Harbor. Denial can mark the beginning of a better boating center solution: location of the BISC at an environmentally far superior BISC site on the harbor's east side -- near an east side area where sailing instruction has occurred safely for many years. While we understand that the Commission can only say "yes" or "no" to the County of Ventura's project application, past Commission practice proves that a "no" with appropriate explanatory comments from Commissioners is a "yes" to relocation to an environmentally superior site - in this case, a site that leaves an existing, heavily visited linear public

parkland intact (see Pub. Resources Code, § 30213), preserves the park's black-crowned night heron (BCNH) habitat (see *id.*, §§ 30240, 30250), and keeps novice sailors out of harm's way, i.e., the heavy boat traffic in the harbor's west channel. These environmental benefits also avoid inconsistency with Public Resources Code section 30351 and PWP policy 22c.¹ No good argument can be made under the Coastal Act, the PWP (implementing the Coastal Act) and CEQA to support the BISC at the location chosen by the County -- a choice favored by commercial west-side harbor lessees who hope to gain business from BISC visitors.

In its decision ordering the Commission to rescind its 2005 BISC approvals, the Los Angeles County Superior Court required the Commission to give " ' due consideration ' " to alternatives *in its staff report*, thus offering " ' solid evidence of meaningful [alternatives] review.' [Citation.]" (Statement of decision, at 15.)² The Court ruled:

"As [Habitat for Hollywood Beach] states, the staff report must discuss feasible alternatives, including a no project alternative, and should also discuss alternatives rejected as infeasible."

(Statement of decision, at 18.) Unfortunately, these standards have not been met. Furthermore, contrary to CEQA Guidelines section 15126.6, subdivision (d), staff's review of alternatives does not allow for "meaningful evaluation, analysis, and *comparison with the proposed project*." (Emphasis added.) With the exception of the east side alternative, there is no comparison of the alternatives' impacts on coastal resources to the impacts of the project. The environmental document (staff report) before the Commission fails to comply with the Court's ruling and CEQA.

First, the staff report does not summarize, let alone evaluate the comments of the sailing experts who support the east side alternative. There is no consideration "*in detail* giving reasons why specific [expert] comments and suggestions were not accepted." (CEQA Guidelines, § 15088, subd. (c), emphasis added.) Nor does the staff report include an independent comparative evaluation to sustain its recommendation that the Commission accept the opinion of the sailing experts supporting the county's choice of the west side location for the BISC. As the Court emphasized, "[w]here the Commission chooses to rely on one expert's

¹ We note that the loss of public view corridor has not been offset.

² The Commissioners should have been provided the Court decision, since *they* must decide whether the staff report meets the Court's standards.

opinion over another, it should summarize the two opinions and state which one has been relied on and why.” (Statement of decision, at 18, citing CEQA Guidelines, § 15151.) The staff report fails to adhere to this mandate, and, by the same token, violates CEQA’s written response requirements. (See Pub. Resources Code, §§ 21080.5, subd. (d) (2) (B) & (D), 21091, subd. (d)(2)(B); Cal. Code Regs., title 14, § 13057; CEQA Guidelines, § 15088, subd. (c); *Mountain Lion Foundation v. Fish & Game Com.* (1996) 16 Cal.4th 105, 127, 133 (“[t]he written response requirement ensures that members of the Commission will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences”); *Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 678 (the “response is ‘a keystone to the public’s participation in the approval process’”).) None of the significant issues raised by the experts recommending in favor of the east side are being addressed. Staff simply concludes that “wind direction characteristics” (staff report at 59) support the conclusion that it is safer to build the BISC on the west side than on the east side. (*Id.* at 61.) But no wind characteristics (e.g., wind speeds, specific direction in relation to the dock as designed etc.) are being revealed. *Nor does the staff report address the overwhelming evidence showing that safe sailing and sailing instruction has occurred for many years at the Anacapa Yacht Club on the harbor’s east side (just north of the preferred east side location).*

Second, staff’s rejection of the Port Royal alternative site reads distinctions without a difference into *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, the case we previously cited for the proposition that prior contractual commitments and substantial investments in a given project proposal cannot be used to justify a failure to review an environmentally superior alternative. (See *id.* at 735-737.) Staff’s suggestion to the contrary notwithstanding, nothing in *Kings County* indicates a judicial intent that the timing of or reasons behind a prior contract relied on by a project proponent to avoid an environmentally superior alternative, are in any way relevant to the question whether an environmentally superior alternative deserves environmental review. *Kings County* held *without qualification* that where a prior contract led the applicant in the planning stage to reject alternatives, such circumstances “cannot be determinative of their feasibility.” (*Id.* at 736.) Also, it has been recently held that “[e]ven when the project proponent does not own a potential alternative site, the development of the project on the alternative site may nevertheless be feasible when the alternative site can be acquired through a land exchange with a public entity.” (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App.4th 1437, 1457.) If

this is so, then, surely, development of a project on an alternative site (the Port Royal site) *owned by the project proponent* (the county), and leased to a restaurant business that *wants out of an otherwise non-performing lease*, cannot be rejected as infeasible. Staff's justification for rejecting evaluation of the Port Royal site is especially untenable in light of the fact that after the Superior Court's decision in this case, the county itself, in a settlement discussion with us in March 2007, proposed relocation of the BISC to the Port Royal site.³ While we repeatedly brought these facts to staff's attention, the staff report does not respond.

Third, the staff report offers nary a discussion of the no-project alternative. (Staff report at 50.) Without independent evaluation, it simply reiterates an EIR conclusion that the no-project alternative would not achieve the basic project objective of providing a sailing and marine-oriented instructional center to county residents. Staff here ignores the Ventura Harbor BISC -- presumably based on its factually erroneous finding that there is no BISC program in Ventura Harbor. (See *id.* at 62.) Indisputable contrary evidence entered in the administrative record by HHB negates this finding.

Fourth, there is no evaluation of the smaller, one-story BISC alternative cited by the Court. As in 2005, this alternative is being ignored.

The Superior Court also ordered the Commission to separately address cumulative impacts of the BISC, i.e., impacts which do at least in part result from the BISC. (Statement of decision, at 18-19.)

Here, too, the staff report fails to comply. It merely purports to evaluate nearby projects "that have undertaken construction" (staff report, at 3), but not "probable future" projects, as required by the Coastal Act and CEQA (Pub. Resources Code, §30105.5; see *Joy Road Area Forest*, 142 Cal.App.4th 656, 679-680.) Such probable future projects include Channel Islands Harbor projects also on the Commission's February 8, 2008 agenda -- items F5a (PWPA no. 1-07 for waterside improvements) and 6F (NOID for land side improvements to office buildings and restrooms of Vintage Marina, impacting BCNH habitat);⁴ and proposed future major landside improvements.⁵

³ We were unable to agree to certain conditions the county attached to this proposal (e.g., procuring support for the BISC from organizations that are not controlled by HHB).

⁴ This pending Vintage Marina remodel project would result in the loss of an additional tree in the heron grove. Sadly, the county has already severely

Furthermore, there is no disclosure, much less explanation, of any science-based thresholds of significance relied upon by staff to determine that cumulative impacts to the BCNH are insignificant.⁵ In fact, cumulative impacts on the BCNH, the great blue heron and any other listed bird species are not even mentioned in staff's cumulative impacts discussion. (Staff report at 64-68.) And, if particular thresholds of significance have been used (which the reader is left to guess), there is no statement of reasons for the Commission's implicit determination that the cumulative adverse environmental effects of the BISC on the BCNH and other listed

trimmed the tree earmarked for removal, obviously to avoid its use as a nesting site this season. See Beacon Foundation comment letters dated January 7 and 8, 2008, and photos provided to your office.

⁵ The staff report downplays the cumulative effect of the BISC in comparison to the future landside project by using a ratio theory/comparative approach, which measures the project's incremental impact *relative to* collective cumulative effects, instead of directing analytical focus on the *collective cumulative effects of all relevant past, present and probable future projects*. (Staff report at 68.) Staff's standard for cumulative impacts assessment has been rejected as contrary to CEQA. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117-123.)

⁶ As explained in *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App.4th 1099, at 1107:

"Under the [CEQA] Guidelines ... '[e]ach public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.' ([CEQA] Guidelines, § 15064.7, subd. (a).) Such thresholds can be drawn from existing environmental standards, such as other statutes or regulations. ' "[A] lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation." ' (*Communities for a Better Environment v. California Resources Agency* [(2002)] 103 Cal.App.4th [98], at p. 111.)"

bird species are insignificant.⁷ This, too, is contrary to CEQA, and precludes a finding of project consistency with Public Resources Code section 30250 (which is part of the applicable local coastal program of the City of Oxnard). (*Protect the Historic Amador Waterways*, 116 Cal. App.4th 1099, 1111-1112 (“[a] statement of reasons is necessary to assure meaningful judicial review”); see *Joy Road Area Forest & Watershed Assn.*, 142 Cal.App.4th 656, 675-676 (CEQA documents prepared in lieu of an EIR must include a cumulative impact analysis, and that analysis “must be substantively meaningful”).)

The staff report contains no evidence that the Commission has consulted with responsible agencies, including the U.S. Army Corps of Engineers (concerning BISC-related project activity in the waters of the United States); the U.S. Coast Guard (concerning the issue of boater safety); the U.S. Fish and Wildlife Service and the California Department of Fish and Game (concerning the project’s impacts on herons, which, as staff correctly notes at page 34 of the staff report, are afforded protection under the Migratory Bird Treaty Act and the Fish and Game Code); and transportation planning agencies. This manner of proceeding deprives the Commission of these agencies’ views and input, and fails to comply with Public Resources Code sections 21080.5, subdivision (d) (2) (C), and 21092.4.

Lastly, the staff-recommended motions for the Commission fail to incorporate the mandates of Public Resources Code sections 21081.6, and CEQA Guidelines sections 15090 or 15096. Whether for CEQA purposes the Commission is the lead agency for the BISC project (as we pointed out in Court), or is a responsible agency, these provisions require the Commission to adopt a mitigation monitoring program to ensure county compliance with the Commission’s suggested modifications to the PWPA and the NOID conditions of approval during project implementation. Also contrary to CEQA, performance standards for proposed mitigations are

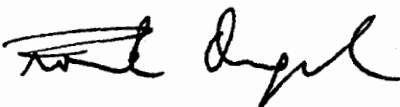
⁷ Staff’s reference to “alternative trees available for nesting” in the project’s “near vicinity” (staff report, at 38) to conclude that direct project impacts on the BCNH are insignificant fails to specify the location of these trees in relation to the BISC, BISC-related activities and the other development proposed in and along the linear park, and thus fails to demonstrate that cumulative biological impacts in the near vicinity have been accounted for. This issue is all the more serious as the adverse effects of tree trimming activities in the linear park and in the harbor generally have not been evaluated, and standards for trimming have been deferred to the future, and thus remain unregulated by the BISC approval conditions. Yet, staff agrees that this related activity can lead to *significant damage* to heron breeding habitat. (*Id.* at 39.)

missing. (See CEQA Guidelines, § 15126.4, subd. (a)(1) (B).) For example, NOID condition no. 4 requires "low intensity" lighting on the north side of the BISC building to avoid disturbance of nesting herons. (Staff report, at 22.) What is "low intensity"? Put another way, what standards does the Commission use to define "low intensity" lighting? Likewise, how much noise or vibration is "excessive" for purposes of compliance with the special events condition -- NOID condition no. 11? (Staff report at 28.) What performance criteria define "feasible" for purposes of enforcing this condition? How can conditions nos. 4 and 11 -- and, for that matter, other conditions without performance standards -- be enforced against the county if its understanding of "low intensity," "excessive noise or vibrations" or "feasible" differs from that of the Commission? This vagueness and lack of Commission-approved mitigation monitoring does not ensure compliance during project implementation. Understaffing and insufficient funding for the Commission's enforcement program only exacerbate these shortfalls, and only encourage the kind of county violations witnessed, recorded and reported to the Commission within the last year.

We note that staff's failure to provide the Commissioners the county-prepared EIR precludes certification by the Commission that the "the decisionmaking body [i.e., the Commissioners, as opposed to staff] reviewed and considered the information contained in the final EIR prior to approving the project." (CEQA Guidelines, § 15090, subd. (a)(2); see *id.*, § 15096, subd. (a).) CEQA does not allow delegation of the functions of reviewing and considering a final EIR to an agency's staff. (See *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, *passim*.) CEQA Guidelines section 15025, subdivision (b)(1) provides: "The decisionmaking body of a public agency shall not delegate the following functions: [¶] (1) [r]eviewing and considering a final EIR" The Commission thus may not approve this project without review and consideration of the final EIR for the BISC. In light of the Superior Court's ruling that Commission may use the EIR in its review of the project, it is puzzling that the Commissioners were not provided the EIR.

Very truly yours,

ANGEL LAW



Frank P. Angel

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

From: Frank Angel [mailto:fangel@angellaw.com]

Sent: Tuesday, March 25, 2008 8:29 PM

To: Gary Timm

Cc: sam.overton@doj.ca.gov

Subject: BISC Project

Dear Gary:

This email serves to share with you additional information showing that, contrary to what the Ventura County Harbor Department has been representing to you and the Coastal Commission, the Port Royal site is available as an alternative site for the BISC.

First, negotiations between the county and the non-profit Maritime Museum for a lease of the Port Royal site have been going on since at least January 2008, as reflected on Board of Supervisors' closed session agendas since January 2008. They continue through today's board meeting, March 25, 2008. The dates the Supervisors discussed this proposed lease, according to the closed session agendas are: January 8, 2008; January 15, 2008; February 26, 2008; March 4, 2008; March 18, 2008; and March 25, 2008. I have attached a jpeg copy of the March 25, 2008 agenda item.

Second, I am also providing you the link to an article, entitled "Westlake Village Real Estate Investor Expects Big Things for Oxnard Harbor," which appeared in the Ventura County Star on February 24, 2008: (<http://venturacountystar.com/news/2008/feb/24/westlake-village-real-estate-investor-says-he-expe/> [as of March 24, 2008].) This news article, too, confirms that the Port Royal site is not unavailable as an alternative site for the BISC, much less legally infeasible. The article shows, as I brought to your attention as early as October 2007, at the Commission's meeting in San Pedro, that the harbor department, for many months, has been contemplating an end to the existing nonperforming restaurant operation at the Port Royal site. Why otherwise would it have negotiated with Younan Properties (headed by Zaya Younan of Westlake Village) which, as the Star article reports, has been planning to "build a new five-star restaurant, Zaya's by the Sea, which would replace the closed Port Royal." Also, according to the article, "Lyn Krieger, director of Ventura County's Channel Islands Harbor Department, said she could not comment on whether the request was strong, if it had been denied, or whether the request is pending, because 'this isn't totally finished.' " If "this isn't totally finished," something obviously has begun -- "eight months of talks," to be precise (according to the article).

Again, this only proves that the Port Royal site is in play, and that the county harbor department uses the existing nonperforming lease as a

sheer pretext for diverting the Commission's attention from environmentally superior alternative BISC sites. Habitat for Hollywood Beach (HHB) requests that the Coastal Commission conduct independent alternatives review, as required by CEQA and the Coastal Act, and refrain from accepting at face value unsupported, post hoc county harbor department rationalizations for rejecting environmentally superior alternatives.

HHB is increasingly concerned and continues to take issue with the uncharacteristic, high level of deference Coastal Commission staff is giving to unsubstantiated claims made by the county harbor department and its paid lobbyist, Andy Culbertson, concerning the BISC project, and the lack of independent Coastal Commission investigation or verification of their accuracy. Without independent Coastal Commission investigation and review of the coastal issues relevant to the Commission's decision on the BISC, there can be no *independent* Commission decision on the BISC -- contrary to what the Legislature intended for the Commission when it enacted the Coastal Act.

The Commission need not say "yes" to the county's preferred choice of the BISC location, or take it as a given. Such an approach to coastal permit review defeats the Commission's *raison d'être* under its enabling statute: it hampers its ability to enforce the Chapter 3 policies -- the very standards that govern the permissibility of the BISC. The Legislature created the Commission and granted it statewide police powers in response to local governments' limited ability to advance legitimate state interests in the protection of coastal zone resources. (See *CEED v. California Coastal Zone Cons. etc. Com.* (1974) 43 Cal. App.3d 306, 318-324; §§ 30001, 30001.5, 30004.) Thus, it did not intend to create a "statewide rubberstamp agency." (*City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 489.) Commission authority over coastal zone development is not subordinate to local regulation. (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 388.)

Acceptance at face value of county harbor development choices or claims made to rationalize such choices, influenced in no small part by local harbor lessee interests, does not even begin to balance coastal policies in a manner most protective of significant coastal resources, such as passive parkland, heron habitat, scenic harbor visual resources, and public recreation. (See Pub. Resources code, section 30007.5.) Sailing instruction (the rationale used by the county harbor department for building the two-story BISC building), as public recreation, is a need already met both on the BISC project site (by the dock put in place in 2006), and in Channel Islands Harbor through another youth sailing program

established by the Commission in conjunction with the Seaport project. Some circumstances that led the Commission to narrowly approve the BISC in March of 2005, have substantially changed since. At the time, these sailing programs were not in place. Other circumstances have changed for the worse, and point to a greater present need to preserve the BISC site, such as heron habitat disturbance on the west side of the harbor both last year (repeatedly) and now again just last month. The Commission's mission under its enabling statute differs from that of local government -- just as it differs from that of the California Department of Boating and Waterways. Acceptance at face value of a county development location choice, based on outdated circumstances and premises, is poor coastal planning. It results in irretrievable commitments of coastal resources, while transforming the Commission's independent approval power into administrative deferral to a county decision already made -- one that has now taken on a meaningless life of its own.

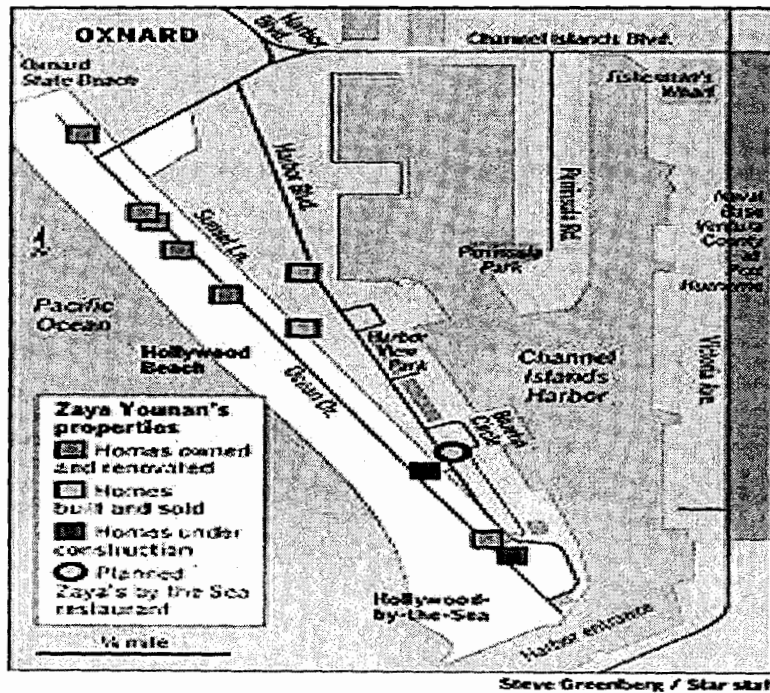
HHB is also increasingly concerned with the county harbor department's institutionalized disregard of Coastal Commission conditions of past approvals of harbor projects. The department's blemished compliance track record (documented in separate submittals from HHB and its supporters, as well as in the Commission staff's own enforcement investigations) raises the troubling yet pivotal question whether consistency with applicable Coastal Act, LCP and amended PWP provisions can reasonably be expected. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 420 ("a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR").) Unfortunately, staff's prior reports and CEQA review (supposed to be functionally equivalent to EIR review) have blinked at this vexing question. The county harbor department's blemished compliance track record should be evaluated and accounted for in the Coastal Commission staff report recommendations concerning the BISC project, and by the Commission itself at the April 9, 2008 hearing.

Please attach this email and its attachments, as well as my February 08 letter addressed to deputy director Jack Ainsworth, to your staff report for the Commissioners' April 9, 2008 meeting, and also please make sure this email, its attachments and staff's enforcement investigations for coastal violations in Channel Islands Harbor are part of the record of the Commission's proceeding on remand from the Los Angeles County Superior Court concerning the BISC project.

Thank you very much for considering these comments.

Frank P. Angel

P.S. See circled area on map below, which is the Port Royal site which the Ventura County Harbor Department has not considered unavailable for other uses, as discussed above.



BEFORE THE VENTURA COUNTY BOARD OF SUPERVISORS:

24. CONFERENCE WITH LABOR NEGOTIATORS (Gov. Code, § 54957.6)

COUNTY DESIGNATED REPRESENTATIVES: Marty Robinson, John K. Nicoll

EMPLOYEE ORGANIZATIONS:

California Nurses Association

International Union of Operating Engineers, Local 501

Service Employees International Union, Local 721

Specialized Peace Officers' Association of Ventura County

Ventura County Professional Peace Officers' Association

Ventura County Sheriff's Correctional Officers' Association

25. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code, § 54956.8)

PROPERTY: Port Royal Restaurant, 3900 Bluefin Circle, Oxnard, CA 93035,
Parcel K-2

COUNTY NEGOTIATOR: Lyn Krieger, Director, Harbor Department

NEGOTIATING PARTY: Alan Griffin and Ventura County Maritime Museum

UNDER NEGOTIATION: Price and Terms of Lease



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED
JAN 16 2008

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

January 15, 2008

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

REQUEST TO POSTPONE ACTION PENDING MARINA DEL REY FINDINGS

Dear Mr. Timm and Ms. Tysor:

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

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

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

1. Protection of Avian Species.

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

Exhibit 13
PWPA 1-04, NOID 1-05
The Beacon
Foundation letters

2. Comprehensive Disclosure of Development Plans

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

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

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

CONCLUSION

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

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



Lee Quaintance

Encl.
CC: Peter Douglas



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

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

January 16, 2008

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

Dear Mr. Timm and Ms. Tysor:

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

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

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

Sincerely,

Lee Quaintance
Secretary

Ends.

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JAN 16 2008

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

[Click here to go to part one
of additional materials.](#)

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of additional materials](#)