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STAFF REPORT: REGULAR CALENDAR

Application No.:	CD-0004-17
Applicant:	National Park Service - Channel Islands National Park
Agent:	None
Location:	Santa Cruz Island, Santa Barbara County.
Project Description:	Remove existing 9-ft. wide by 96-ft. long pier gangway structure and install new 18- to 30-ft. wide by 300-ft. long pier within the Scorpion Anchorage area, including up to 71 piles and 1,800 cubic yards of rock rip-rap.
Recommendation:	Conditional Concurrence

SUMMARY OF STAFF RECOMMENDATION

The National Park Service (NPS), Channel Islands National Park has submitted a consistency determination for the installation of a new pier within the Scorpion anchorage area of Santa Cruz Island in the Channel Islands National Park. As part of this project, NPS would remove the 9-

foot wide by 96-foot long gangway structure from an existing pier in the same area and re-use it on the new pier. The existing pier is in an area of exposed shallow waters to the north of the new proposed pier site that can often present conditions that are challenging or unsafe for navigation and passenger loading. Because the pier at Scorpion Anchorage provides the primary means of entry for public visitors to the eastern end of Santa Cruz Island (the portion of the island owned and managed by NPS) which provides camping and recreational facilities, NPS is proposing to replace it with a larger, more secure pier at a more southerly location. This new proposed pier would extend into deeper water, allowing it to be safely used by vessels in a wider range of ocean conditions.

At its seaward end, the new proposed pier would include a 30-foot wide by 60-foot long area for passenger loading and unloading, an attached aluminum gangway relocated from the existing pier and a series of 12-inch fiberglass fender piles along the perimeter. From this seaward end, the pier would extend approximately 200-feet to shore, would be 18-feet wide, and would be elevated on a steel support structure stabilized on the seabed with 18-inch steel piles. At its landward end, the pier would extend over the beach and would terminate in a rock rip-rap abutment and improved access road made up of approximately 419-cubic yards of concrete and rock placed inland of the mean high tide line. The surface of the pier would remain an average of 17-ft. above the ocean surface and pass-through access by foot or kayak would be possible during most conditions for much of the pier span.

Coastal Act issues raised by the proposed project include the potential loss or disturbance of sensitive marine habitats located within the proposed pier footprint; the fill of coastal waters and terrestrial wetlands due to the installation of pier piles and the landward abutment; potential adverse impacts to coastal water quality due to accidental discharges or releases of construction materials; the potential for injury or disturbance to marine mammals during piling installation activities; and the temporary loss of public beach use and access during construction.

To address these issues, NPS has proposed to implement a variety of resource protection and mitigation measures, including: (1) carrying out habitat and sensitive wildlife surveys prior to construction; (2) employing marine wildlife observers during pile installation work; (3) removing the existing pier from an area of sensitive marine habitat; and (4) relocating and replacing existing moorings located in an eelgrass bed in order to stop ongoing disturbance that their presence may be causing. These measures would be memorialized and clarified through **Conditions 1, 2 and 3**. In addition, **Conditions 4, 5, 6 and 7** would provide additional protection for coastal water quality, marine wildlife, habitats, and public access through the implementation of water quality best management practices, a prohibition on the use of artificial lighting (beyond what may be required for navigational safety), and the protection of beach access points and beach areas.

With implementation of the NPS proposed impact avoidance and minimization measures and the conditions described above, the Commission staff believes the project will be carried out consistent with the Coastal Act policies related to wetlands, open coastal waters, marine resources, public access, and water quality. The Commission staff recommends the Commission **conditionally concur** with consistency determination CD-0004-17. The standard of review for this consistency determination is the Chapter 3 policies of the Coastal Act.

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EXHIBITS

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[Exhibit 4 - NPS and State Historic Preservation Officer Programmatic Agreement](#)

I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The National Park Service has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

II. MOTION AND RESOLUTION

Motion:

*I move that that the Commission **conditionally concur** with consistency determination CD-0004-17 by concluding that the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the National Park Service agrees to modify the project consistent with the conditions specified below, as provided for in 15 CFR §930.4.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the determination of consistency, provided the project is modified in accordance with the recommended conditions, and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

The Commission hereby conditionally concurs with consistency determination CD-0004-17 by the National Park Service on the grounds that the project will be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the National Park Service agrees to modify the project consistent with the conditions specified below, as provided for in 15 CFR §930.4.

III. CONDITIONS

- 1. Marine Habitat Survey.** PRIOR TO THE INITIATION OF PIER CONSTRUCTION, NPS shall carry out a complete underwater Marine Habitat Survey (survey) of the project site. The survey shall be carried out during the appropriate season by personnel approved by the Executive Director of the Coastal Commission ("Executive Director") with appropriate training and expertise in carrying out marine biological surveys and shall be consistent with the appropriate scientific standards and protocols, including the October 2014 *California Eelgrass Mitigation Policy and Implementing Guidelines* developed by the National Marine Fisheries Service. The survey area shall include the entire shading footprint of the proposed pier and associated gangway, all pile installation sites and all areas in which construction support vessels or barges or their associated anchors would be placed. The survey shall identify, map and provide a narrative description and representative photographs of the types, amounts and locations of marine habitat within the surveyed area, including any areas of exposed rock reef, kelp habitat, and eelgrass beds. The survey shall also record the presence and abundance of any invasive marine algae (such as *Sargassum horneri*) or black abalone (*Haliotis cracherodii*) within the surveyed area. Within 30 days

of survey completion, the results of the survey shall be provided to the Executive Director for review. If the results of the survey indicate that kelp habitat, eelgrass, or invasive marine algae is present within the surveyed area, NPS shall not proceed with construction and shall submit a supplemental consistency determination for Commission review.

2. Vessel Mooring Relocation and Replacement.

PRIOR TO THE COMPLETION OF CONSTRUCTION, NPS shall relocate all existing mooring buoys and associated tackle to locations on sandy bottom outside of known eelgrass habitat, in order to minimize contact of the existing tackle with sensitive marine habitat. In addition, at the time of the next regularly scheduled maintenance of the moorings, NPS shall replace the existing mooring tackle with tackle that minimizes contact with the seafloor.

3. Marine Mammal Precautions.

- A. A qualified marine mammal observer approved by the Executive Director shall be present at all times during pile drilling and underwater sound-generating installation activities. The monitor shall ensure that NPS and its contractors fully comply with the conditions of this permit related to biological protection.
- B. A gradual ramp-up period shall occur whenever starting pile drilling and underwater sound-generating installation activities, and the pile drilling and installation equipment shall be operated at its lowest practicable power setting and shall employ the use of sound dampening techniques and/or devices if such techniques and/or devices can be safely used without interfering with effective operations.
- C. Pile drilling and underwater sound-generating installation activities shall be suspended if any marine mammal is observed within 500-meters of the installation site. Prior to the start of pile drilling or underwater sound-generating installation activities, the 500-meter zone shall be monitored for 30 minutes to ensure that it is clear of marine mammals. Pile drilling or underwater sound-generating installation activities shall only commence once the observer has declared the 500-meter zone clear of marine mammals. If the 500-meter zone is not entirely visible (e.g., due to dark, fog, etc.), pile drilling or underwater sound-generating installation activities shall not commence or, if they are already underway, shall not continue. If a marine mammal approaches or enters the 500-meter zone during the course of pile drilling or underwater sound-generating installation activities, those activities shall be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without redetection.
- D. The observer shall have the appropriate safety and monitoring equipment adequate to conduct their activities.

4. Submittal of Final Construction Plans.

No less than 30 days prior to initiation of construction activities, NPS shall submit to the Executive Director the Final Construction Plans for the pier construction and removal project that includes final pier, roadway and abutment design schematics; configurations of construction, storage and staging areas; and construction plans for the removal of the existing pier structures and installation of the new pier.

5. Protection of Public Access.

Construction shall protect and maximize public access, including by complying with the following:

- A. Staging and storage of construction equipment and materials (including debris) shall not take place on any area of public beach. Staging and storage of construction equipment and materials shall occur in inland areas at least 50 feet from coastal waters, creeks or drainage courses, if feasible. Construction is prohibited outside of the defined construction, staging, and storage areas.
- B. All beaches, beach access points, and other recreational use areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.
- C. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

6. Water Quality Protection.

- A. No preservative-treated wood shall be used in construction of the pier, with the exception that ACZA-treated lumber may be used to construct the pier decking if that lumber is completely and effectively coated with a durable sealant that will minimize leaching and surface dislodgment of the preservative chemicals. The sealant shall be proposed by NPS and approved in writing by the Executive Director. If no such sealant is available, or approval is not granted by the Executive Director, the pier decking shall be constructed from an alternative material instead of treated wood, such as untreated wood, concrete, metal, fiberglass, plastic, wood-plastic composite, or other alternatives that pose a minimal risk of leaching toxic chemicals into the marine environment.
- B. NPS shall exercise due diligence in periodically inspecting HDPE wrapped piles on the Scorpion Anchorage Pier and shall immediately undertake any repairs necessary to maintain the wrapping in an intact condition that would not result in the release or discharge of plastic material into the marine environment.
- C. An onsite water quality monitor shall be present during all rock drilling and pile installation operations. If the water quality monitor observes any persistent turbidity plumes or uncontrolled discharge of drilling wastes into the marine environment (not including filtered and treated seawater), NPS shall cease drilling operations and repair, correct or modify the drilling operations or drilling waste containment system to prevent the occurrence of additional uncontrolled discharges or turbidity plumes.
- D. The discharge of pollutants (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into creeks, runoff or coastal waters resulting from construction activities shall be minimized through the use of appropriate BMPs, including:
 - 1. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:

- a) Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
 - b) Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - c) Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - d) Prompt removal of all construction debris from the beach.
 - e) Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
2. Fueling and maintenance of construction equipment and vehicles shall be conducted off site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, creeks or drainage courses, if feasible. The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- E. Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:
1. Other than pile installation and installation and use of floating devices to aid in the construction effort or deployed to intercept construction debris for entering the water, construction activity shall not be conducted below the mean high tide line unless tidal waters have receded and the area is part of the authorized work area.
 2. Use of anchors and temporary moorings for construction vessels and barges shall be avoided to the extent feasible. Any moorings or anchors that are used shall not be placed within sensitive habitat areas such as eelgrass or kelp beds or areas of rocky reef.
 3. All work shall take place during daylight hours, and lighting of the beach and ocean area is prohibited.
 4. All construction equipment and materials placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction equipment and materials shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions shall be for erosion and sediment controls and/or construction area boundary fencing, where such controls and/or fencing are placed as close to the base of the road revetment/bluff as possible, and are minimized in their extent.
 5. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
 6. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading of the access road is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and

debris from entering the ocean, waterways, and natural drainage swales or being deposited on the beach.

7. Only rubber-tired construction vehicles shall be allowed on the beach; the only exception shall be that tracked vehicles may be used if the Executive Director agrees that they are required to safely carry out construction. When transiting on the beach, all construction vehicles shall remain as high on the upper beach as possible, and shall avoid contact with ocean waters and intertidal areas.
8. All debris resulting from construction activities shall be immediately removed from the beach.

7. Lighting.

With the exception of navigational and safety lighting required by the U.S. Coast Guard or temporary lighting used during vessel loading and offloading, no artificial night lighting shall be installed or used on the Scorpion Anchorage Pier.

IV. FINDINGS AND DECLARATIONS

A. BACKGROUND AND PROJECT DESCRIPTION

Santa Cruz Island, one of central California's Channel Islands, is the most visited island in Channel Islands National Park. Most of the island is owned by The Nature Conservancy, but the National Park Service (NPS) owns and manages approximately 1/3 of the island, including the majority of the island's eastern end. Within this area, Scorpion Anchorage at the northeastern end of the island (shown in [Exhibit 1](#)) serves as the primary entry point for public access to the island and Channel Islands National Park. The pier at Scorpion Anchorage is a critical component of that access. Most park visitors access the park through a ferry service operated by a NPS concessionaire from Channel Islands Harbor in Ventura County. Both the existing and proposed pier sites are located on onshore NPS land and an offshore leased area of state submerged lands. Scorpion Anchorage and the proposed pier site is inside the Scorpion State Marine Reserve – part of California's statewide system of marine protected areas - and the larger Channel Islands National Marine Sanctuary.

As noted in the project EIS:

Santa Cruz Island provides numerous recreational opportunities including beach activities, hiking trails, a historic district, a 240-person campground, kayaking, swimming, scuba diving, and snorkeling sites. Scorpion Anchorage is a semi-protected ocean environment that poses challenges in making boat-to-pier transitions safely, particularly during strong ocean swell conditions. The existing Scorpion Pier was only intended as a temporary and relatively low cost solution for providing urgent access following the Park Service's 1996 acquisition of the east end of the island. The existing pier is rapidly deteriorating due to wave action and salt water, and has never fully met administrative or visitor accessibility needs. Disembarkation requires visitors and NPS staff to use ladders in pitching and shifting seas, and it is not safe for boats to approach or dock when tides are low or when wave heights are greater than 1 or 2 feet. The boats are not moored or tied up to the dock because wave action generally makes the boat unsteady; instead, boat operators thrust into contact with the dock during loading and unloading of passengers and cargo. Any adverse

swells or surges can easily cause dangerous situations to develop—boat operators are sometimes required to quickly power vessels away from the pier to avoid potential damage or injury.

After disembarking, visitors are required to traverse approximately 400 feet across an access road consisting of a sandy, gravelly, and rocky surface that can be difficult to negotiate, especially for older individuals or visitors with mobility disabilities, while carrying bags, packs, and other gear. This access road must be repaired and re-graded several times per year due to impacts from storms, wave erosion, and the flooding of Scorpion Creek, a nearby seasonal stream.

In response to these issues with the existing Scorpion pier, NPS developed this project to construct a new, larger, more secure pier “to provide a safe, high-quality, and environmentally responsible pier and landside approach to allow year-round access to Santa Cruz Island at Scorpion Anchorage in a variety of weather conditions for visitors and NPS staff. The project will improve the visitor experience; improve the pier while protecting marine and terrestrial environments; improve access for NPS and concessionaire boats; improve passenger, cargo, and operations circulation; protect archeological resources; preserve and enhance the historic and visual character of Scorpion Ranch and the Project area; and improve efficiency and sustainability.”

Specifically, NPS is proposing to construct a longer, wider pier approximately 300 feet south of the existing pier, which is significantly closer to the Scorpion Canyon North Road. This new pier would occupy nearly 7,000-square feet, extend roughly 17-feet above the ocean surface and be supported by 71 12-inch or 18-inch steel and fiberglass piles. Once the new pier is completed, the 732-square foot pier gangway from the existing pier would be removed and attached to the new pier structure. In addition, the timber fender piles attached to the outer perimeter of the existing pier abutment would also be removed. NPS is not currently proposing to remove the existing pier’s seaward and landward concrete abutments as part of this project. The new pier would accommodate various water depths for safe embarkation and would be equipped with a mobile crane. To access the pier by boat, visitors and NPS staff would use the gangway and landing that would be aligned parallel to the new pier (as shown in [Exhibit 2](#)).

The relatively short access road that would connect the new pier terminus to North Scorpion Valley Road would be supported by a steel sheetpile retaining wall that would be protected from extreme waves and flood waters by rock rip-rap armoring installed above the mean high-tide line near the landward edge of the cobblestone beach at Scorpion Anchorage. The road would be paved with an even layer of crushed rock and extended slightly to the south in the direction of Scorpion Creek through the placement of concrete and rock fill material. The total volume of material that would be installed at the landward pier abutment (both rock rip-rap and concrete and rock fill) would be 419-cubic yards, as shown in [Exhibit 3](#). A small stairway would also be constructed to provide beach access from the road and elevated pier.

Once construction is complete, NPS anticipates that site access and arrival options for this area of Santa Cruz Island would be generally consistent with current conditions, although greatly improved in terms of safety and accessibility.

Although the number of visitors to Santa Cruz Island has risen steadily in the past and future visitation levels are anticipated to remain close to maximum capacity, visitor levels are ultimately controlled by the concessionaire contract (which determines the number and frequency of the ferry trips from the mainland coast), weather, and park rules and regulations. While NPS has stated that the pier would provide improved access and efficiency of operations, it is not expected to inherently increase visitation to Santa Cruz Island.

Construction

The proposed pier construction methods are described by NPS in the materials submitted in support of its consistency determination:

The pier would be constructed inside out— meaning, within its own footprint. An air driven rock hammer would be needed to create the borings into the hard volcanic rock in Scorpion Anchorage. The contractor would position a temporary staging platform to support the pile drilling equipment. This platform would not be driven into the ground. Once landside piles are installed, the platform and drilling equipment would be positioned and advanced as portions of the pier have been completed, thus constructing the pier progressively. Bracing and framing would be added before proceeding to the next pile bent. This assemblage of equipment is shown in ATT 5. Barges may be used to supplement, where water depths are sufficient.

The seafloor at Scorpion Anchorage comprises beach deposits consisting of sand, gravel, cobble, and boulder underlain by hard volcanic rock. The bedrock is sufficiently hard enough to preclude any conventional drilling or pile driving, including H-piles with driving shoes. To construct a replacement pier, holes or sockets for the piles would need to be created in the bedrock with a down-the-hole rock hammer drill. An air-driven rock hammer would be needed to create the borings into the hard volcanic rock in the Project area. Waste materials from the pile drilling process would be extracted, contained, and treated. Waste water would be filtered and treated and discharged back to the ocean. Rock waste and other solid debris would be transported off site by the contractor and disposed of in an appropriate location. There would be no use of drilling muds. Only rock debris and seawater are expected byproducts of this operation. After sockets are drilled, piles would be placed in the sockets in a pipe casing. Grout would then be placed in the socket to anchor the piles in place and the casing would be subsequently removed. For a graphic depicting this sequence, see ATT 6. For the nearshore portion of the pier, pile installation may be performed with drilling equipment placed on the beach, as opposed to from the pier itself.

The drilling equipment would be powered by diesel-powered air compressors located in the upland or floating barge. The contractor would surround the compressors with a noise wall or shroud to shield visitors, National Park Service staff, and biota from the noise from these compressors.

Staging

NPS also describes construction staging activities and areas in the materials submitted in support of its consistency determination:

The primary staging area for construction would be located at the existing kayak storage area inland of Scorpion Beach and south of Scorpion Creek, while secondary staging for construction contractor housing and passive use would be located at the existing corral approximately 0.25 mile inland (ATT 7). Materials and equipment would likely be transported by the contractor on barges or other vessels. During construction, crews would remain on site during the work week to minimize travel costs and maximize their available time on the island. Crews would likely stay in temporary contractor housing facilities (rented trailers) located in the corral staging area. No new facilities would be constructed. Heavy machinery would not be operated within the corral staging area. During construction, it is likely that access to the park by visitors or employees could be restricted or eliminated for periods of time.

Removal of Existing Pier

As part of construction of the new pier, the metal gangway (approximately eight feet wide by 90-foot long) on the existing pier structure shall be removed and relocated for reuse as an access ramp for vessel loading and unloading. Removal and relocation of this gangway would be carried out through the use of a barge mounted crane. The crane would lift the gangway from its existing abutment structures and the barge would be used to bring it to its new proposed location for installation.

B. FEDERAL CONSISTENCY

On September 6, 2017, Commission staff received a consistency determination from the National Park Service (NPS) for the proposed pier replacement project described above. On October 19, NPS extended the Commission's review period for this consistency determination through December 15, 2017.

Conditional Concurrences

Section 15 CFR § 930.4 of the Federal Consistency regulations provides, in part, that:

(a) Federal agencies...should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a . . . Federal agency's final decision under subpart C ... of this part, would allow the State agency to concur with the Federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from

the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for Subpart C),... shall modify the applicable plan,[or] project proposal, pursuant to the State agency's conditions. The Federal agency, shall immediately notify the State agency if the State agency's conditions are not acceptable...;

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

Supplemental Coordination and Supplemental Consistency Determination

Section 15 CFR § 930.46 of the Federal Consistency regulations provides that:

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

C. COORDINATION AND OTHER AGENCY APPROVALS

Santa Ynez Band of Chumash Indians

As discussed in the report below, over the past several years NPS has carried out extensive coordination and consultation with members of potentially affected tribes, including the Santa Ynez Band of Chumash Indians. Input from this consultation has been integrated into the

proposed project and has resulted in several modifications that would minimize its potential to adversely affect cultural and historic resources. In addition, NPS developed a Programmatic Agreement with the State Historic Preservation Officer and local representatives of the Chumash people. This Programmatic Agreement is included as [Exhibit 4](#) to this report and establishes a variety of protective measures and best practices that would be followed during construction. During its review of the project, Commission staff confirmed with the cultural preservation consultant of the Santa Ynez Band of Chumash Indians that NPS has been consulting with the Tribe and working collaboratively to address their concerns.

California Fish and Game Commission

California's Fish and Game Commission is one of the key state agencies responsible for management and protection of California's network of marine protected areas. While NPS is not actively seeking discretionary approval from the Fish and Game Commission (FGC) for the proposed pier project, Commission staff coordinated with FGC staff because the project would be located within one of the state's marine protected areas – specifically, the “no take” Scorpion State Marine Reserve. Commission staff provided input about the project, its potential to result in adverse impacts to the Scorpion State Marine Reserve, its marine habitat and wildlife, and solicited input from Fish and Game Commission staff regarding potential options for avoiding, minimizing and mitigating those impacts.

California Department of Fish and Wildlife

The California Department of Fish and Wildlife is also a key marine protected area management agency, and Commission staff coordinated closely with CDFW's Marine Region staff regarding potential project impacts to the Scorpion State Marine Reserve and its marine habitat and wildlife. The technical information and suggestions received from CDFW staff informed the development of the analysis included below and the recommended conditions.

California State Lands Commission

The California State Lands Commission (CSLC) is currently reviewing an application from NPS to amend its state tidelands lease to include removal of the existing pier and construction of the new pier. Although the CSLC review process is still at an early stage, Coastal Commission staff worked closely with CSLC staff to share information regarding the project's potential adverse impacts to coastal resources and solicit input on the Commission staff's recommended approaches for addressing them. Discussions with CSLC staff helped inform the analysis included below and recommended conditions of concurrence.

Channel Islands National Marine Sanctuary

Because the proposed project would be located within the Channel Island National Marine Sanctuary (Sanctuary) and the Sanctuary regulates seafloor disturbance and alteration, NPS is required to receive authorization from the Sanctuary before proceeding with construction of the proposed pier. While NPS has not yet started the permitting process with the Sanctuary, Commission staff coordinated closely with the Sanctuary during its review of the project and integrated initial feedback and suggestions into the staff recommendation.

National Marine Fisheries Service

The proposed project has the potential to affect both marine mammals and Essential Fish Habitat, two marine biological resources managed by the National Marine Fisheries Service (NMFS) under the authority granted through the Marine Mammal Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act. As noted in the project EIS, the Park Service has completed consultations with NMFS under both of these regulations and has determined that the project may affect, but is not likely to adversely affect several marine species, and that it would have only temporary and minimal effects on Essential Fish Habitat. To address these impacts, the project EIS includes several mitigation measures, including implementation of a marine mammal safety zone during pile installation activities and relocation and replacement of existing vessel moorings located within an area of eelgrass habitat. These mitigation measures are also memorialized as recommended conditions of concurrence. In addition, Commission staff discussed the project impacts to marine biological resources with NMFS staff during its review and have integrated technical input and information into the analysis included below.

U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (ACOE) is responsible for reviewing and authorizing the proposed project under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. While NPS has not yet submitted permit application materials to the ACOE for review, Commission staff have shared with ACOE permitting staff relevant project information and the results of its analysis and review – including the various approaches staff is recommending to address the project’s potential to adversely affect coastal resources.

D. FILL OF WETLANDS AND OPEN COASTAL WATERS

Section 30233(a) of the Coastal Act states:

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

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act Section 30108.2 defines “fill” as “earth or any other substance or material ... placed in a submerged area.” As part of its project, NPS proposes to install into nearshore waters and underlying bedrock 28 18-inch diameter steel piles within 22-inch diameter HDPE plastic sleeves and 14 16-inch diameter steel piles. Ten additional 18-inch diameter steel piles would also be installed on the beach above the mean-high tide line and 19 12-inch diameter fiberglass fender piles would be installed around the perimeter of the pier’s seaward end (fender piles protect the edge of the pier from damage due to vessel contact and are bolted to the pier itself rather than into the seabed). [Exhibit 2](#) shows the anticipated location and configuration of these piles. Installation of the 42 steel piles into the submerged nearshore zone would constitute “fill” of approximately 92-square feet of open coastal waters, as that term is defined in the Coastal Act.

In addition, NPS also proposes to place concrete and fill rock within as much as 1,000 square feet of terrestrial wetlands located within the footprint of the onshore pier abutment and roadway. This area estimate is based on Commission staff’s conservative worst-case estimation based on the revised configuration for the landward abutment (transmitted from NPS to Commission staff via email on November 13, 2017), and the supporting information provided by NPS to Commission staff via email on November 16, 2017 about the vegetation and habitat located within the proposed onshore construction footprint. Installation of this material within wetland habitat also would constitute “fill” of wetlands, as that term is defined in the Coastal Act.

The Commission may find a project that includes filling of open coastal waters and wetlands to be consistent with the California Coastal Management Program (CCMP) if the project meets the three tests of Coastal Act Section 30233. The first test requires that the proposed activity fit within one of seven use categories described in Coastal Act Section 30233(a)(1)-(7). The second test requires that no feasible less environmentally damaging alternative exists. The third and final test mandates that feasible mitigation measures are provided to minimize any of the project’s adverse environmental effects.

Allowable use

The overall purpose of the proposed project is to construct a pier and gangway structure for temporarily mooring vessels for unloading and loading passengers and supplies. This pier would also provide public access and recreational opportunities – both on the pier itself and in Santa Cruz Island and Channel Islands National Park – and its construction would require the installation of structural pilings. As such, the project would result in the creation of a “new...boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities,” described as an allowed use in Coastal Act

Section 30233(a)(3). Therefore, the Commission finds that the project meets the allowable use test for fill of open coastal waters under Coastal Act Section 30233(a).

Alternatives

To find a proposed project consistent with section 30233, the Commission must further find that there is no feasible less environmentally damaging alternative to placing the fill in open coastal waters. Coastal Act Section 30108 defines “feasible” as “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.”

In addition to the proposed pile replacement activities, NPS also considered repairing and expanding the existing pier at Scorpion Anchorage. However, this alternative would have resulted in significantly greater adverse environmental impacts compared to the proposed project. Specifically, the existing pier is located within an area of exposed rocky reef that consistently supports a large area of both submerged and canopy forming kelp. Expansion of the existing pier in this location would result in the loss and damage to the rocky reef through the installation of pilings as well as additional loss and degradation of kelp plants and habitat due to shading from the piles and pier structure. When compared to the proposed new pier site, located within an area that underwater surveys have shown to support only un-vegetated cobblestones and sandy habitat, this alternative would clearly result in more significant adverse impacts to sensitive marine habitat. The Commission therefore agrees with NPS that on balance, this alternative would be more environmentally damaging when compared to the proposed construction of a new pier at a different location that does not support sensitive habitat.

The project EIS also considered a "no project" alternative that would not include construction of a new pier and instead rely on continuing use of the existing pier at Scorpion Anchorage. However, this would have resulted in continued public safety and access challenges for Channel Islands National Park as well as continuing adverse impacts to the kelp and reef habitat located adjacent to and below the existing pier structure. Because the proposed project would include removal of the approximately 732-square foot existing pier decking/gangway structure from within a recognized area of sensitive marine habitat and the resulting elimination of the ongoing shading impacts that the gangway is causing to this habitat, this project represents an improvement over the existing condition. Therefore, the proposed project would be less environmentally damaging than the existing condition and the “no project” alternative.

For the reasons described above, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and therefore the second test of Coastal Act Section 30233(a) is satisfied.

Mitigation Measures

The final requirement of Coastal Act Section 30233(a) is that filling of wetlands and coastal waters may be permitted if feasible mitigation measures have been provided to minimize any adverse environmental impacts. As described in greater detail in the wetlands, water quality and marine resources section of this report, the mitigation measures associated with this project consist of: construction and water quality best management practices; marine habitat survey requirements and protective measures; additional spill prevention measures to prevent spillage

and/or run-off of construction related materials, sediment, or contaminants; a requirement to immediately recover and remove fugitive project materials that enter the ocean or beach area; limits on when and how pile driving can occur, in order to minimize its disturbance to marine life; wetland survey and restoration requirements; and prohibitions on the use of night lighting within the State Marine Reserve.

Additionally, prior to the proposed project and its potential fill of as much as 1,000-square feet of onshore coastal wetlands near the mouth of the seasonal Scorpion Creek, NPS designed and implemented a coastal wetland restoration project at the nearby Prisoner's Harbor area of Santa Cruz Island. The restoration of this wetland area resulted in the creation of a three acre coastal wetland and the restoration of one mile of the riparian corridor for the seasonal Canada del Puerto creek. Therefore, even assuming a worst-case level of impacts from the proposed project to coastal wetlands of 1,000-square feet, NPS' recent wetland restoration efforts on Santa Cruz Island have far exceeded the level of mitigation that would be necessary to ensure that the project does not result in a net loss of wetlands or wetland functions on Santa Cruz Island. Further, because the wetland habitat created through this restoration project is currently functioning, there would be no temporal lag between the project's impacts to wetlands and the mitigation response. The Prisoner's Harbor wetland restoration project is described in additional detail in the subsequent section of this report.

These feasible mitigation measures will minimize the project's adverse environmental impacts. Thus, with NPS' wetland restoration efforts and the imposition of the conditions described above, the Commission finds that the third and final test of Coastal Act Section 30233(a) has been met.

Conclusion

Because the three tests have been met, the Commission finds the proposed project consistent with Section 30233 of the Coastal Act.

E. WATER QUALITY AND MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and

substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project site is within Scorpion Anchorage, an area of Channel Islands National Park that is also included within the Channel Islands National Marine Sanctuary and Scorpion State Marine Reserve. These protective designations are in place in this location in part due to the abundance and variety of rare, sensitive and important marine habitats and wildlife species it supports. For example, an extensive subtidal eelgrass bed can be found beyond the outer edge of the proposed pier footprint and a large area of exposed rocky reef that is colonized by macro-algae, and a kelp forest is located slightly to the north, surrounding the site of the existing pier structure. Additionally, the rare black abalone (*Haliotis cracherodii*) may also be present in the area.

As shown in [Exhibits 1 and 2](#), the pier replacement project site is located within and above nearshore coastal waters adjacent to the mouth of the seasonal Scorpion Creek. Installation of the proposed 300-foot long pier would include placement of up to 419-cubic yards of concrete, gravel and rock across 4,500-square feet onshore, to strengthen and reconfigure an existing access road so that it may serve as a landing site or abutment for the pier. Additionally, a hydraulic rock hammer and drill would be used to place 42 steel piles (28 18-inch diameter piles encased in 22-inch diameter HDPE plastic sleeves, and 14 16-inch diameter piles) within nearshore waters, as well as an additional ten piles on the beach above the mean-high tide line. Approximately 92-square feet of seafloor and 26-square feet of beach would be occupied by the proposed piles. Additionally, the project includes construction of approximately 5,500-square feet of treated lumber pier decking above these waters. An additional 1,500-square feet of decking would also be placed above the beach.

Pier

The installation and maintenance of these pier elements has the potential to adversely affect coastal and marine water quality, habitats and wildlife through habitat loss and disturbance from pile installation; shading from the above-water pier decking; release of plastic debris (due to degradation of plastic pile wrappings) and construction waste; and leaching of wood preservative chemicals over time.

Pile Installation

The project includes installation via pile drilling of 42 steel piles from the mean-high-tide line to approximately 200-feet offshore (as shown in [Exhibit 2](#)). Because these activities would be carried out both above and within marine waters, the project has the potential to result in adverse impacts to both marine organisms and the marine environment. Specifically, the proposed pile drilling would result in the generation of elevated levels of underwater sound in nearshore waters known to support several species of marine mammals, including harbor seals, California sea lions, several species of common dolphin and whales. While the proposed method of pile installation – using a drill and rock hammer to bore holes in the bedrock into which piles would be inserted – is known to generate lower levels of underwater sound than most types of impact-hammer pile driving, marine mammals, in particular cetaceans such as whales and dolphins, are known to be susceptible to disturbance and injury from high levels of human-generated

underwater sound. In addition, a variety of fish and invertebrate species are also known to suffer disturbance and injury as a result of elevated underwater sound levels.

Marine mammals rely on sound to navigate, and to find food, mates, and companions. Elevated levels of human generated underwater sound have been shown to interfere with these activities and in some cases to cause internal injury, stranding, and mortality. To prevent and minimize these damaging effects of sound to marine mammals, NPS is proposing to establish a 500-meter stop-work zone monitored by a National Marine Fisheries Service-approved protected species observer and to perform an initial ramp-up period during pile-drilling activities. This proposal is memorialized through **Condition 3** which would provide for the Executive Director's approval of the protected species observers and additionally require pile-drilling activities to be conducted using the lowest available power setting on the equipment - thus reducing the resulting sound energy transmitted into the marine environment. Further, the modified **Condition 3** would help ensure that feasible sound dampening devices and techniques are used to further reduce the underwater sound levels during pile drilling. These measures would help ensure that the sound levels during pile drilling are as low as possible and thus reduce the potential for sound to pass outside of the 500-meter stop-work zone that exceeds the marine wildlife injury and disturbance thresholds.

The Executive Director-approved protected species observers on site would have the authority to suspend pile driving if a marine mammal passes within the hazard zone. Therefore, although underwater noise from the project could disturb or injure marine mammals known to be occasionally present in the area, the project's conditional concurrence is predicated on an approach that would minimize these potential effects and therefore ensure that healthy populations of marine organisms are maintained and special protection is provided for the Scorpion State Marine Reserve – an area of special biological significance – and the marine species of special biological significance that may be present within it.

In addition to the potential adverse impacts to marine biological resources associated with the underwater sound levels associated with pile drilling, the uncontrolled discharge of drilling wastes and untreated waste water that would be generated during these activities also has the potential to adversely affect marine wildlife, habitat, and water quality. NPS proposes to carry out all drilling operations within a containment system and to extract all rock debris and waste water from the system so that it can be filtered and treated prior to discharge into the ocean. The project EIS describes the drilling process as follows:

Waste materials from the pile drilling process would be extracted, contained, and treated. Waste water would be filtered, treated, and discharged back to the ocean. Rock waste and other solid debris would be transported off site by the contractor and disposed of in an appropriate location. There would be no use of drilling muds. Only rock debris and seawater are expected byproducts of this operation. Any potential impacts on water quality would be short-term, and conditions would quickly return to baseline levels after pile installation activities are completed.

While there are many examples of the past use of this proposed method of addressing drilling waste water and debris and its success at limiting turbidity and containing waste materials,

examples of its unsuccessful implementation are also available. For example, if the containment system is not correctly designed, installed, or used, it may lead to uncontrolled discharges of untreated waste waters (water infused with fine silts and particulates) that may lead to turbidity plumes and sedimentation of nearby habitat. Due to the recognized ecological value of the project site and the sensitive habitats and wildlife located nearby, **Condition 6** requires a water quality monitor to be present during all pile drilling activities in order for the Commission to be able to concur. If this monitor observes any persistent turbidity plumes or uncontrolled discharge of drilling wastes into the marine environment (not including filtered and treated seawater), NPS would have to cease drilling operations and repair, correct or modify the drilling operations or drilling waste containment system to prevent the occurrence of additional uncontrolled discharges or turbidity plumes. This condition would help ensure that the drilling waste containment system is effectively and successfully used and would help prevent adverse impacts to water quality and nearby habitats and wildlife that would result from uncontrolled releases of untreated waste waters. In this way, the project – carried out consistent with this condition - would ensure that healthy populations of marine organisms are maintained and special protection is provided for the Scorpion State Marine Reserve – an area of special biological significance – and the species of special biological significance that may be present within it.

The proposed drilling and placement of the project's 42 pier piles into the seafloor may also adversely affect marine biological resources at the project site due to the disturbance and destruction of habitat within the individual footprint of these piles. Although the footprint of each pile is relatively small – roughly between one and three square feet – in total they would cover nearly 100-square feet of habitat and have both an individual and cumulative negative effect on the habitat at Scorpion Anchorage. This effect would be made more significant if the habitat within the proposed pile installation sites were found to be rare or sensitive or supported rare or sensitive species. While the initial investigations and analysis carried out by NPS indicates that no such habitats or species are present within the offshore footprint of the proposed project, and that the entire site is made up of either sand laying atop buried bedrock or highly mobile cobblestones that do not support kelp, detailed information from surveys carried out more recently is not available. As such, **Condition 1** would require NPS to carry out a series of confirmation surveys to verify that eelgrass, kelp, and rocky reef habitat is not present within the installation footprint of the pier. In addition, the surveys would also document any black abalone or invasive marine algae that is observed. While neither of these species is expected to be found at the pier site, the survey would be able to confirm this assumption.

If any of these target species or habitats are encountered during the underwater surveys, **Condition 1** would require NPS to submit this information to the Executive Direction within 30 days and not proceed with construction. Instead NPS would engage in a supplemental coordination and consistency review process with the Commission to evaluate how to proceed with this substantially different information about the project's foreseeable effects to coastal resources. The additional review and coordination afforded under this process would allow for the Commission and NPS to consider and evaluate the potential need for additional impact avoidance, minimization and mitigation measures.

Shading

The proposed replacement pier would extend approximately 200-feet seaward of the shoreline at Scorpion Anchorage and range in width from 18- to 60-feet. The total over-water footprint of the pier would be approximately 5,500-square feet. Due to the proposed height of the pier piles at 17-feet above the water surface, on average, and movement of the sun, the pier's *shading* footprint would extend a short distance beyond the overwater footprint, thus enlarging the area of marine habitat that would be affected by the pier. This shading footprint would be enlarged slightly more due to the frequent presence of vessels moored to the outer edge of the pier and gangway. The pier's total shading footprint is therefore anticipated to exceed 6,000-square feet.

Shading caused by overwater structures can result in a variety of direct and indirect affects to marine habitats. While not all effects from overwater structures are inherently negative – for example, pier pilings are often colonized by fouling organisms and can provide novel vertical structure in an area – large overwater structures such as piers can alter habitats and ecosystems in noticeable and measurable ways. For example, they can lead to changes in the composition and abundance of species in communities and altering foraging rates and success levels (benefiting low-light specialists and negatively affecting visual foragers). Most significantly, however, shading can limit the amount of light available for marine vegetation and algae to use for photosynthesis and therefore contribute to the reduction, decline and loss of these species that often serve a role as the foundation for ecological systems. The proposed project is not expected to contribute substantially to these types of shading impacts to marine vegetation. Information submitted to Commission staff by NPS in support of its consistency determination – including the results of an informal survey carried out by NPS and CDFW staff in 2015 - suggests that the proposed pier site is comprised entirely of sand and mobile nearshore cobblestones that do not support macro-algae or large kelp. Accordingly, the types of large marine algae that would be most negatively affected by shading from the pier are not expected to be found at the project site.

Additionally, because the proposed project includes removal of the approximately 700-square foot gangway structure from the existing pier – located in an area with an abundance of sensitive habitat, including rocky reef and kelp beds – and its relocation to the new pier site within an area that supports only sand, it is anticipated to provide a direct and fairly immediate benefit to marine habitats within the project area. The kelp bed and marine algae within the shading footprint of the existing pier is expected to respond positively to the additional light that would be made available due to removal of the gangway and the quality of habitat at this location, which is already high, is likely to improve further.

While this element of the project is likely to partially balance some of the potentially negative effects of the project that would result from its approximately 6,000-square foot shading footprint, the project would nevertheless result in a substantial net increase in overwater structures and shading within Scorpion Anchorage. To further address this change to the project area and any negative affects it may result in, **Condition 2** would memorialize the mitigation measure from the project EIS that addresses the ongoing damage to an eelgrass bed at Scorpion Anchorage that is being caused by the presence of two vessel moorings within the eelgrass bed. These moorings rely on a single anchor point to which a heavy chain is attached. As currents and waves move the mooring's surface buoy, the chain is dragged across the seafloor around the mooring and scours and destroys the eelgrass that would otherwise occupy that area. **Condition**

2 would require NPS to relocate these moorings to an area outside the eelgrass bed and to replace them with a different style of mooring that would result in much more limited contact on the seafloor. Through relocation and replacement of the moorings, as indicated in **Condition 2**, NPS estimates that an ongoing source of habitat disturbance would be eliminated from more than 5,600-square feet of eelgrass habitat and that this habitat would naturally re-vegetate and recover.

With the removal of the existing pier gangway and existing moorings from within two of the most sensitive marine habitat areas of Scorpion Anchorage, and the expectation that the proposed pier site includes only sand and un-vegetated cobble, the proposed project would result in a significant overall benefit to marine resources.

However, because the available information about the absence of sensitive marine habitat within the proposed pier footprint is several years old and was only informally documented, **Condition 1** would require NPS to carry out a series of underwater biological surveys of the proposed pier site prior to construction. The results of these surveys would be submitted to the Executive Director for review. These surveys are intended to provide confirmation that the pier site only supports sand and un-vegetated cobble that would not be negatively affected by shading from the pier. In this way, **Condition 1** would help ensure that this shading does not result in significant adverse impacts to the site's marine biological productivity and sensitive habitats.

If the survey results provide substantially different information from that which NPS has provided in its consistency determination about marine habitat at the project site, agreement to **Condition 1** would mean that NPS would not proceed with construction. Instead NPS would engage in a supplemental coordination and consistency review process with the Commission to evaluate how to proceed with this substantially different information about the project's foreseeable effects to coastal resources. The additional review and coordination afforded under this process would allow for the Commission and NPS to consider and evaluate the potential need for additional impact avoidance, minimization and mitigation measures. In this way, the project would ensure that healthy populations of marine organisms are maintained and special protection is provided for the Scorpion State Marine Reserve – an area of special biological significance – and the marine species of special biological significance that may be present within it.

Pier Decking

While the pier pilings and support structure are proposed to be steel, NPS proposes to use preservative-treated lumber for the surface decking of the pier – specifically, ACZA treated lumber. ACZA is a mix of preservative chemicals and compounds used to prevent insect infestation, rot, and other sources of wood degradation and breakdown. This mix includes both copper and arsenic, substances that are known to be toxic to marine life.

Dissolved copper is highly toxic to a broad range of aquatic species. However, the arsenic, chromium, and zinc in the metal-arsenate preservatives are less toxic than copper to aquatic organisms in both freshwater and marine environments. The U.S. EPA has determined it is unlikely that arsenic or chromium leaching from metal-arsenate treated wood would result in significant water or sediment contamination, and therefore there is a “relatively low likelihood of

significant ecological exposure to arsenic and/or chromium” from metal-arsenate treated wood. However, arsenic has high mammalian toxicity and is a known human carcinogen, and thus raises human and marine mammal health concerns if used where human or mammal contact may occur.

Due to the large area of the proposed pier that would be covered with ACZA treated lumber – approximately 7,000-square feet – and the location of the pier within both a National Marine Sanctuary and State Marine Reserve that support a wide variety of sensitive marine habitats and wildlife species, the possible leaching of toxic compounds from the pier into adjacent marine waters presents a potential source of adverse impacts to both water quality and marine biological productivity. To address this issue, agreement to **Condition 6** would mean that NPS would not use ACZA lumber or other preservative-treated lumber unless it can demonstrate to the satisfaction of the Executive Director that the lumber would be coated with a secondary material (such as epoxy resin) to provide a durable sealant to prevent leaching. If no such method of sealing the treated lumber can be found, agreement to **Condition 6** would mean that NPS would use an alternative decking material for the pier, such as composite lumber, concrete, or metal grating. In this way, the project would be carried out in a way that would ensure that healthy populations of marine organisms are maintained and special protection is provided for the Scorpion State Marine Reserve – an area of special biological significance – and the marine species of special biological significance that may be present within it.

Conclusion

The Commission finds that, assuming the NPS agrees to the conditions, the project, as conditioned, would be carried out in a manner that maintains marine resources and the biological productivity of coastal waters and is therefore consistent with Coastal Act Sections 30230 and 30231.

F. CULTURAL RESOURCES

Section 30244 of the Coastal Act protects cultural resources in the coastal zone and states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact identified archaeological resources. These resources may be sacred lands, traditional cultural places and resources, and archaeological sites.

The proposed project area has a long history of use by the Chumash people. The traditional territory of the Chumash people “encompassed 7,000 square miles that spanned from the beaches of Malibu to Paso Robles. The tribe also inhabited inland to the western edge of the San Joaquin Valley” and the offshore Channel Islands (Santa Ynez Band of Chumash Indians 2009). Santa Cruz Island, called *Limuw* by the Chumash, contained at least ten and possibly 12 historic Chumash villages. One of those villages, *Swaxil*, was likely located at Scorpion Anchorage

(Glassow 2013; Kennett et al. 2000). Because NPS is proposing to carry out construction activities in this area, the project has the potential to affect cultural resources.

Section 106 of the National Historic Preservation Act requires that federal agencies consult with the Advisory Council on Historic Preservation, State Historic Preservation Officer, interested and affected federally recognized Indian tribes, other interested parties, and the public. Section 106 regulations at 36 CFR 800.8(c) allow federal agencies to use “the process and documentation,” required under NEPA to fulfill all or part of Section 106 requirements. Through the development of the project’s draft Environmental Impact Statement, its associated public comment period and the response to these comments in the April 2017 Final Environmental Impact Statement, NPS has worked to follow the process required under NEPA and complete the required documents.

As part of this process, on June of 2013, the Park Service notified the Advisory Council on Historic Preservation (ACHP), the California State Historic Preservation Officer (SHPO), and the federally recognized Santa Ynez Band of Chumash Mission Indians of the proposed pier replacement project. This notice included the notice of intent to prepare an EIS, and a statement that the NEPA process would be used to fulfill some Section 106 requirements related to consulting the public and other interested parties. The following excerpt from the project EIS provides a summary of consultations carried out prior to and subsequent to issuance of the Draft EIS, as well as a summary of concerns raised and how they were addressed.

In June 2013, the Park Service met with the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation (Tribe) to initiate formal consultation. The Park Service provided information on the plan to replace the pier; described the planning process, preliminary alternatives, and the likely necessity of archeological investigations; and invited the Tribe’s participation. The Park Service again met with the Tribe in April 2014 to provide an update about the planning process underway, reiterating the potential for effects to archeological resources at Scorpion Anchorage, particularly the historic Chumash village site of Swaxil.

In November 2014, the Park Service conducted an informal tour of the project area with a representative of the Tribe. This site visit resulted in recommendations from the Tribe specific to protection of the archeological resources, a request that the Park Service investigate the potential for submerged cultural resources in the area proposed for offshore construction, and a request to review a draft plan for archeological investigations. The Tribe requested the Park Service include the Barbareno-Venturano Band of Chumash Mission Indians (Band) in the consultations.

The Park Service subsequently initiated consultation with the Band. In December, 2014 the Park Service undertook limited archeological investigations of the project area.

The Park Service, SHPO, Tribe, and Band engaged in more detailed communications in 2015. In April 2015 the Park Service provided the Tribe and Band with draft results of the archeological investigations for review and comment. In May, 2015 the Park Service provided the ACHP, SHPO, Tribe, and the Band with a detailed status of the project

planning, the tentative selection of a preferred alternative for new pier construction, the historic properties identified within the area of potential effects, and notification of the Park Service's proposed resolution to Section 106 consultations through a Programmatic Agreement (PA). The Park Service invited the SHPO, Tribe, and Band to participate in a site visit, and requested input on proposed stipulations for the PA. In July 2015 the Park Service provided the SHPO, Tribe, and Band with the final report of archeological investigations.

The SHPO notified the Park Service in July 2015 of their concurrence with: identification of the area of potential effects; the plan to continue identification and evaluation of historic properties; and the plan to continue consultation as additional information regarding historic properties and project design becomes available. The SHPO also confirmed that a PA is appropriate for addressing Section 106 responsibilities. In September 2015, the Park Service provided the SHPO, Tribe, and Band with an advance copy of the Draft EIS and a draft PA for review and comment.

Additional, more detailed project consultations took place in late 2015 and early 2016. In December 2015, SHPO provided preliminary comments on the draft PA. The Park Service and representatives from the Tribe and Band conducted a site visit in November 2015. Specific concerns were discussed, including impacts to the archeological site, visual impacts of the proposed structure, and concerns about potential for increased visitation. Two follow-up consultation meetings were held in March 2016 to address ideas presented by the Tribe for reducing the potential for effects to archeological resources. Please refer to the "Summary of Public Comments and Responses" chapter for responses to comments.

The PA has been signed and is included as Appendix B. In general, this document stipulates continuing consultation throughout the design process to avoid or minimize the potential for adverse effects; conducting further archeological investigations; planning for archeological site stabilization; and implementation of mitigating measures determined through these ongoing consultations.

To provide further information about the project's potential to affect cultural resources and follow the requirements of the PA, NPS also commissioned a detailed archeological survey and investigation of the proposed work area at the pier's landward abutment. This investigation resulted in the development of the *Scorpion Pier Replacement Archeological Testing Report* in August of 2017. The report was prepared to summarize the results of the site investigation carried out in February of 2017 by three professional archeologists, an expert in identifying bones and bone fragments, and a tribal monitor from the Venturano/Barbareno Band of Chumash Mission Indians.

The report summarizes its findings as follows:

No intact sediments that could contribute to the [National Register of Historic Places] eligibility of CA-ScRI-423 [the historic site located in the vicinity of the pier landing] were identified in test excavations. At the pier retaining wall, disturbed sediments mixed with modern debris are present to well below the upper tidal limit. It would be nearly impossible

for there to be any intact cultural sediments between the ground surface and bedrock in that area. At the pier approach road, disturbed sediments mixed with modern debris are present to at least 30 cmbs, below the likely depth of impact of placing rock on the surface.

Therefore, construction of the retaining wall and approach road will not adversely affect CA-SCrI-423. Testing has indicated that archaeological monitoring is not necessary. It may be beneficial to have an osteologist on site during construction, given the presence of fragmentary terrestrial mammal bone. This would ensure that construction is not unnecessarily halted for non-human bone, and also that any human remains are treated with respect and in compliance with the NAGPRA.

Tribal concerns are distinct from NRHP-eligibility issues. The Tribe and Band may consider artifacts or fauna to have ceremonial importance regardless of their stratigraphic context. Also, the possibility of discovering redeposited human remains may require a Tribal member to be present.

Consistent with the findings and recommendations of this report and the Programmatic Agreement (PA) with the State Historic Preservation Officer, the Santa Ynez Band of Chumash Indians and the Barbareno/Venturano Band of Chumash Mission Indians, NPS would have a Tribal member present during all construction activities at the onshore pier abutment. In addition, NPS has modified its initial design for this feature of the project to eliminate excavation work and to significantly reduce the amount of proposed rock fill and rip-rap that would be installed. As such, the proposed work would primarily result in the placement of a limited amount of material above-ground and therefore have a very low likelihood to affect buried cultural resources or artifacts. The only below-ground work that would be carried out onshore would be the placement of a sheetpile wall within a limited footprint in the area evaluated in the *Scorpion Pier Replacement Archeological Testing Report* and found to be heavily disturbed through natural processes (mainly erosion, flood, and wave action) and past human uses. As described in the PA (included as [Exhibit 4](#)), this work would be carried out under the oversight of a Tribal Monitor and would follow the best management practices and impact avoidance protocols recommended by the State Historic Preservation Officer.

Conclusion

As proposed, the project would avoid impacts to known archeological resource areas and include reasonable mitigation measures to address potential adverse impacts to archaeological or paleontological resources. The Commission therefore finds the proposed project consistent with Section 30244 of the Coastal Act.

Appendix A: Substantive File Documents

National Park Service, 2017. Consistency Determination number CD-0004-17 and associated file.

National Park Service, 2017. Final Environmental Impact Statement – Scorpion Pier Replacement.

U.S. EPA. (2008). Reregistration Eligibility Decision (RED) Document for Chromated Arsenicals. EPA 739-R-08-006.

Bundy, B. 2017. Archeological Testing Report - Scorpion Pier Replacement.

Santa Ynez Band of Chumash Indians, 2009. Chumash History. Cited November 2017. Available from: <http://www.santaynezchumash.org/history.html>.

Kennett, DJ, and Clifford, R. 2004. Final Report: An Archaeological Survey on Eastern Santa Cruz Island, California, Conducted by Robert Clifford.

Glassow, M. 2013. Santa Cruz Island Archaeological District, Boundary Increase and Updated Documentation. National Register of Historic Places. National Park Service, Washington, DC.