

CALIFORNIA COASTAL COMMISSION

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Th14a

DATE: February 14, 2019

TO: Commissioners and Interested Persons

FROM: Steve Hudson, Deputy Director
Barbara Carey, District Manager
Deanna Christensen, Supervising Coastal Program Analyst
Wesley Horn, Coastal Program Analyst

SUBJECT: **Notice of Impending Development (NOID) CIH-NOID-0001-19 at Channel Islands Harbor** for repair and replacement of 1,540 linear feet of rock revetment including regrading the slope to its original grade, installing filter cloth to stabilize the slope, and replacing rock over the reshaped and covered slope located at the end of Peninsula Road, Channel Islands Harbor, City of Oxnard, Ventura County, for Public Hearing and Commission Action at the March 7, 2019, Commission Meeting in Los Angeles, CA.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing, **approve** Notice of Impending Development (NOID) CIH-NOID-0001-19 requested by the Ventura County Harbor Department (Harbor Department), as conditioned. Staff is recommending two special conditions in order to ensure consistency with the certified Channel Islands Harbor Public Works Plan (PWP).

The Harbor Department is proposing repairs along 1,540 linear feet of an existing revetment that has remained unaltered since its original construction by the Army Corp of Engineers (ACOE) in the 1960s. As a result of the wave and tidal action of the harbor waters, in addition to the natural settling of the rock rip rap and underlying earthen material, the rock rip rap has sloughed in areas throughout the revetment leading to erosion and loss of stability. The proposed repairs are necessary to restore the structural integrity of the revetment so that it can properly protect the inner harbor peninsula and associated coastal-dependent development in the area of Peninsula Road. The repairs will include using backhoes operating from the landward side of the revetment to remove the existing ¼ ton rip rap and backing stone so that the existing filter fabric can be discarded and the underlying soil can be regraded by the backhoes to its original slope. After regrading the slope, new filter cloth will be installed and the existing backing stone and ¼ ton rip rap will be reused to the extent feasible to reconstruct the revetment. New backing stone and rip rap will also be added in areas where there is not sufficient existing backing stone and rip rap. All repairs and rock placement will be located within the footprint of the existing revetment

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and will not encroach any further seaward. The project is expected to take six months to complete.

The certified Channel Islands Harbor PWP incorporates Coastal Act Sections 30233, 30235, and 30253 by reference. Coastal Act Section 30233 strictly limits the types of new development and fill allowed within coastal waters; however, the proposed repairs will be completely within the footprint of the existing revetment and will therefore not result in any additional fill so 30233 is not implicated. Additionally, the repairs will ensure that the revetment is able to protect a harbor peninsula that supports a recreational boating marina and visitor serving and public access uses such as a hotel, public parking, and waterfront public promenade and plaza, consistent with Coastal Act Section 30235's override that shoreline protective devices be allowed when required to serve coastal-dependent uses. Lastly, Coastal Act Section 30253 requires new development to minimize risks to life and property in areas of high geologic and flood hazard, and to assure stability and structural integrity while not contributing to erosion, instability, or destruction of the site or surrounding area. The proposed repairs are necessary to restore the stability and structural integrity of the revetment so that it is able to protect the harbor peninsula and minimize risk to development on the peninsula from current and future geologic and flood hazards, consistent with Section 30253.

Regarding water quality and biological resources, the repair of the revetment and use of heavy machinery in the vicinity of harbor waters have the potential to release sediment or pollutants such as chemicals and petroleum into the marine environment. In addition, repair activities included as part of the proposed project have the potential to negatively affect marine organisms or impact bird species. Consistent with the PWP policies requiring protection of coastal waters, the project includes construction best management practices (BMPs) to control potential pollutants or contaminants on site as well as implement protocols and techniques to control spillage and/or runoff from the site. Additionally, the project includes conditions of approval from the Harbor Department requiring pre-construction surveys for sensitive marine and terrestrial species as well as the measures to take if the project has the potential to impact those species. To ensure compliance with these conditions of approval and with the policies of the PWP, staff is recommending **Special Condition 1** to require that all of the Harbor Department's conditions of approval, as submitted, be implemented as part of the proposed project. Lastly, repairs to the revetment will require the removal of up to 25 Mexican Fan Palm trees. Biological Resources Policy 17 of the PWP prohibits tree trimming or tree removal during the bird breeding and nesting season (January through September) and also requires that removal of any breeding and nesting tree shall require mitigation at a 1:1 ratio. Biological Resources Policy 17 also specifies that the replacement trees shall consist of native or non-native, non-invasive tree species as detailed in a tree replacement planting plan. To ensure that replacement tree plantings are consistent with the requirements of PWP Biological Resources Policy 17, as well as the other relevant policies of the PWP, Commission staff recommends **Special Condition 2**, which requires the Harbor Department to submit a tree replacement planting plan to the Executive Director for review prior to the commencement of development.

Finally, Coastal Act Section 30214 that is incorporated into the PWP by reference requires that implementation of public access take into account the need to regulate the time, place, and

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manner of public access depending on the facts and circumstances in each case. There is an existing public waterfront walkway located immediately landward of the subject revetment and the proposed repairs will necessitate the use of backhoes which will require closure of the walkway during work on the revetment. In addition to the subject NOID, two other projects have been approved in this area of the Harbor and are nearing commencement of development including redevelopment of the existing hotel and restaurant as well as redevelopment of the Peninsula Yacht Marina. Both of these projects will also require closure of the walkway and the Harbor Department has specifically requested to coordinate the proposed repairs to the revetment in conjunction with those projects to minimize the impacts to public access in this area of the Harbor. However, given that the ultimate purpose of the revetment repair is to protect numerous public-access oriented amenities on the peninsula, allowance of the proposed development can be deemed consistent with Section 30214 because it manages public access in a manner that takes into account the need to regulate time, place and manner depending on the specific facts and circumstances presented (*i.e.*, temporary public access impacts are justified to ensure long-term public access at this location).

Therefore, staff recommends that the Commission determine that the NOID, as conditioned, is consistent with the certified PWP.

<p>Additional Information: Please contact Wesley Horn at the South Central Coast District Office of the Coastal Commission at (805) 585-1800 or 89 S. California St, Second Floor, Ventura, CA 93001</p>

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I. PROCEDURAL ISSUES

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

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

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commence until after the Commission votes to render the proposed development consistent with the certified PWP.

II. MOTION & RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

*I move that the Commission determine that the development described in the Notice of Impending Development CIH-NOID-0001-19, as conditioned, is **consistent with** the certified Channel Islands Harbor Public Works Plan.*

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development CIH-NOID-0001-19, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby determines that the development described in the Notice of Impending Development CIH-NOID-0001-19, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan for the reasons discussed in the findings herein.

III. SPECIAL CONDITIONS

1. Implementation of Proposed NOID

The project shall be subject to all conditions of approval by the Ventura County Harbor Department included as part of the proposed NOID, except as modified by the required conditions of approval for Notice of Impending Development CIH-NOID-0001-19. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Coastal Commission.

2. Tree Replacement Planting Plan

Prior to the commencement of development, the Harbor Department shall submit a tree replacement planting plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plan shall incorporate the criteria set forth below:

- A. Any breeding or nesting tree that must be removed shall be replaced at a 1:1 ratio. Replacement trees shall be native or regionally appropriate non-natives and non-invasive. Replacement trees shall be selected from the plant palette approved by the County Board

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of Supervisors in the Channel Islands Harbor Public Areas Plan and Design Guidelines on June 24, 2008.

- B. The tree replacement planting plan for each tree replacement shall specify replacement tree locations, tree size (no less than 36" box size), planting specifications, and a five-year monitoring program with specific performance standards.
- C. An annual monitoring report for tree replacement shall be submitted for the review and approval of the Harbor Director and maintained on file as public information.

The Harbor Department shall undertake development in accordance with the final approved tree replacement planting plan. Any changes to the final approved plan shall be reported to the Executive Director.

IV. FINDINGS FOR APPROVAL OF THE NOTICE OF IMPENDING DEVELOPMENT

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The Harbor Department submitted NOID application CIH-NOID-0001-19 on January 7, 2019 and the application was deemed complete and filed on January 30, 2019. The Harbor Department waived the 30 working day Commission hearing requirement of Section 13359(b) of Title 14 of the California Code of Regulations on February 6, 2019 and requested that the NOID be scheduled for the March 2019 meeting.

The proposed project is for the repair and replacement of 1,540 linear feet of rock revetment located along the southern terminus of Harbor Peninsula and Peninsula Road within Channel Islands Harbor ([Exhibit 3](#)). The repairs will include using backhoes operating from the landward side of the revetment to remove the existing ¼ ton rip rap and backing stone so that the existing filter fabric can be discarded and the underlying soil can be regraded by the backhoes to its original slope. After regrading, new filter cloth will be installed and existing backing stone and ¼ ton rip rap will be reused to the extent feasible to reconstruct the revetment. New backing stone and rip rap will be added in areas where there is not sufficient existing backing stone and rip rap.

The existing revetment was constructed in the 1960's with an approximate slope of 1.75/2:1 and with the toe elevation ending at approximately -5 feet Mean Lower Low Water (MLLW). The inner harbor peninsula that the revetment protects supports a recreational boating marina and visitor serving and public access uses such as a hotel, public parking, and waterfront public promenade. Over the course of five decades following construction of the revetment, the wave and tidal action of harbor waters, as well as settling of the rock revetment and the underlying earthen material, has resulted in sloughing of the rock revetment and erosion in some areas. This shifting of the rock revetment and erosion has reduced the stability and shoreline protection afforded by the revetment. In addition, the sloughing has impaired the use of recreational boat slips at the adjacent Peninsula Yacht Marina.

B. HAZARDS, FILL AND SHORELINE PROCESSES

The certified Channel Islands Harbor PWP incorporates by reference Sections 30233, 30235 and 30253 of the Coastal Act.

Section 30233 of the Coastal Act states (in relevant part):

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no less feasible 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 in 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...*

Section 30235 of the Coastal Act states (in relevant part):

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30253 of the Coastal Act states (in relevant part):

New development shall do all of the following:

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- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30233 recognizes the importance of open coastal waters, wetlands, estuaries, and lakes, and only allows for the dredging or filling of those areas when there is no feasible less environmentally damaging alternative and feasible mitigation measures have been provided. Additionally, due to the importance of these areas and the impact of new fill can have on these areas despite the implementation of least damaging alternatives and mitigation measures, Section 30233 limits filling to only certain specified uses including: new or expanded port, energy, and coastal-dependent industrial facilities; maintaining existing or restoring previously dredged depths; new or expanded boating facilities; incidental public services; mineral extraction; restoration; and nature study.

As discussed previously, the subject NOID application is a repair and replacement project necessary to stabilize the eroding portions of the revetment. Section 30233 strictly limits the types of new development allowed within open coastal waters, wetlands, estuaries, and lakes and repair work to a revetment, including the regrading of a slope and placement of rip rap, has the potential to result in dredging and additional fill of the coastal waters within Channel Islands Harbor. In the subject NOID application the Harbor Department included an analysis of the existing footprint of the revetment with regards to the proposed repairs as well as detailed site plans with cross-sections depicting the existing and proposed revetment footprint and determined that the repairs will be completely within the footprint of the existing revetment resulting in no new dredging or fill of coastal waters, thus 30233 is not implicated by the proposed development.

Coastal Act Section 30235 acknowledges that seawalls, revetments, groins and other such structural or hard methods designed to prevent erosion also alter natural landforms and natural shoreline processes. Accordingly, Section 30235 allows for the construction of shoreline protective works to serve coastal-dependent uses or to protect existing structures or public beaches in danger of erosion (notwithstanding said impacts, and subject to other requirements set forth in Section 30235 to mitigate some of these impacts). The Coastal Act limits this override for mandatory approval of shoreline protection because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

The subject revetment protects an inner harbor peninsula that supports a recreational boating marina and visitor serving and public access uses such as a hotel, public parking, and waterfront public promenade, which are an important coastal-dependent visitor serving uses within the Harbor. Without the proposed repairs to the revetment, the harbor peninsula will not be stable to support those uses and will be susceptible to tidal impacts eventually leading to further erosion and possible failure. Therefore, the proposed repairs to the revetment are necessary to support

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coastal-dependent uses, consistent with Coastal Act Section 30235. Additionally, because the existing revetment was constructed in the 1960's within the inner portions of the Channel Islands Harbor ([Exhibit 2](#)) that is not subject to direct ocean wave action and the proposed repairs will maintain the revetment within its existing footprint and same construction, the project will not result in any adverse effects on sand supply or shoreline beach dynamics (and thus will not result in adverse impacts to local shoreline sand supply, and there is no need to evaluate less than environmentally impactful alternatives) consistent with Section 30235.

Finally, Coastal Act Section 30253 requires new development to minimize risks to life and property in areas of high geologic and flood hazard and to assure stability and structural integrity while not contributing to erosion, instability, or destruction of the site or surrounding area and not require the construction of protective devices that would substantially alter landforms along bluffs and cliffs. The subject inner harbor peninsula and revetment is subject to tidal impacts and periodic wave attacks during the winter storm season. The existing revetment has remained unaltered since its original construction by the Army Corp of Engineers (ACOE) in the 1960's. As a result of the wave and tidal action of the harbor waters, in addition to the natural settling of the rock rip rap and underlying earthen material, the rock rip rap has sloughed in areas throughout the revetment leading to erosion and loss of stability. Additionally, considering climate change and sea level rise, wave and tidal action along this section of the revetment will intensify moving forward into the future leading to increased stressors on the revetment. The Harbor Department has confirmed that the revetment repair and replacement, as depicted on the stamped engineering plans, has been designed to assure stability and structural integrity. Without the proposed repairs, the revetment will continue to erode until it ultimately fails and is unable to stabilize the area located at the end of Peninsula Road. As such, the proposed repairs are necessary to restore the stability and structural integrity of the revetment and to ensure that it is able to minimize risk to development in the area from current and future geologic and flood hazards consistent with Section 30253. Since the repair of the revetment will occur within the same existing footprint, it will not substantially alter landforms along bluffs and cliffs.

Therefore, for the reasons discussed above, the Commission finds that the NOID is consistent with the PWP regarding geology and hazards.

C. WATER AND BIOLOGICAL RESOURCES

The Channel Islands Harbor PWP contains policies to protect water and biological resources within the Harbor.

Water Quality Policy 1 of the PWP states:

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

Water Quality Policy 4 of the PWP states (in relevant part):

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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...

Water Quality Policy 5 of the PWP states:

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

A. No demolition or construction materials, debris or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.

B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to ESHA, wetlands or their buffers.

C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.

D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located within the coastal zone, a separate Notice of Impending Development shall be required before disposal can take place.

H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

J. The discharge of any hazardous materials into any receiving waters shall be prohibited.

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K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

L. The least damaging method shall be used for the construction of pilings and any other activity that will disturb benthic sediments. The suspension of benthic sediments into the water column shall be minimized to the greatest extent practicable.

M. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the onset of such activity.

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

Biological Resources Policy 12 of the PWP states:

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

Biological Resources Policy 13 of the PWP states:

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

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

Within 300 feet of any identified active nesting sites, noise monitors shall be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed 65

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dB at any point in time, at any active nesting site. If construction noise exceeds the standard above, sound mitigation measures shall be employed. If these sound mitigation measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

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

Biological Resources Policy 14 of the PWP states:

*All new development or redevelopment that involves disturbance to marine water substrate within the Harbor and other shallow waters (up to approx. 250 ft. depth) shall minimize impacts to marine resources through the introduction and/or spread of nonnative invasive aquatic species. All such projects shall provide a survey, prior to the commencement of development, for the presence of *Caulerpa taxifolia* (*C. taxifolia*) or other non-native invasive aquatic species within the project site and extending to the surrounding area at least 10 meters beyond the project area. The survey shall be prepared consistent with the survey protocol required by the Southern California *Caulerpa* Action Team (SCCAT). If *C. taxifolia* or other non-native invasive aquatic species is found within or in close proximity to the project site, it shall be eradicated prior to the commencement of the project.*

Biological Resources Policy 15 of the PWP states:

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

Biological Resources Policy 17 of the PWP states (in relevant part):

...The trimming or removal of any tree that has been used for breeding and nesting within the past 5 years, determined by a qualified biologist, shall be undertaken in compliance with all applicable codes or regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act and

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shall require approval through a Notice of Impending Development undertaken pursuant to the parameters listed below...

Tree trimming or tree removal shall be prohibited during the breeding and nesting season of the bird species referenced above (January – September) unless the Harbor Department, in consultation with a certified arborist, determines that a tree causes danger to public health and safety. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in imminent danger of collapse or breaking away. Trees or branches with a nest that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.

The removal of any breeding and nesting tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree locations, tree size (no less than 36" box size), planting specifications, and a five-year monitoring program with specific performance standards. An annual monitoring report for tree replacement shall be submitted for the review and approval of the Harbor Director and maintained on file as public information.

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

- 1. Prior to tree trimming or removal, a qualified biologist shall survey the trees to be trimmed or removed to detect nests and submit the survey(s) to the Harbor Department. Tree trimming or removal may proceed if a nest is found, but has not been used within the prior 5 years.*
- 2. In the event that any of the bird species referenced above return or continue to occupy trees during the non-nesting season, trimming shall not take place until a qualified biologist has assessed the site, determined that courtship behavior has not commenced, and given approval to proceed within 300 feet of any occupied tree.*
- 3. Trimming of nesting trees shall not encroach within 10 feet of an unoccupied nest of any of the bird species referenced above. The amount of trimming at any one time shall be limited to preserve the suitability of the nesting tree for breeding and/or nesting habitat.*

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

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

- 1. A qualified biologist shall conduct surveys and submit a report at least one week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to*

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detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/or removal plan shall be prepared by an arborist in consultation with the qualified biologist. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of Harbor Director and maintained on file as public information. The plan shall incorporate the following:

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

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

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

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

In addition, the certified Channel Islands Harbor PWP incorporates by reference Coastal Act Sections 30230 and 30231.

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 of adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30231 requires maintaining the biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes by minimizing adverse effects of waste water discharges and entrainment. Similarly, Water Quality Policies 1, 4, and 5 of the PWP require the

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protection of the coastal waters within Channel Islands Harbor by ensuring that new development incorporates measures to minimize or prevent sediment and other contaminants from entering coastal waterways. Coastal Act Section 30230 requires that the use of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and maintain healthy populations of marine organisms. Biological Resource Policies 12, 13 and 17 include preconstruction surveys for nesting and roosting birds while also requiring new development to reduce impacts to bird populations. Biological Resource Policies 14 and 15 ensure protection of marine populations by requiring new development that has the potential to disturb marine substrate to survey for eelgrass and non-native invasive aquatic species.

The proposed project is located in and adjacent to the waters of the Channel Islands Harbor and construction of any kind, adjacent to or in coastal waters, has the potential to adversely impact marine resources and water quality through the introduction of pollutants associated with construction. Additionally, storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species by interfering with their ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Coastal Act Section 30231 requires the production and quality of coastal waters be maintained and PWP Water Quality Policies 1,4, and 5 require new development to prevent impacts to water resources by implementing construction best management practices (BMPs) to control potential pollutants or contaminants on site and implement protocols and techniques to control any spillage and/or runoff from the site.

Consistent with the requirements of Coastal Act Section 30231 and the PWP Water Quality Policies identified above, the Harbor Department included conditions of approval with the subject NOID to ensure protection of the Harbor waters ([Exhibit 4](#)). Those conditions include construction BMPs to control pollutants or contaminants on site and protocols and techniques to contain any spillage and/or runoff from the site. To ensure consistency with Coastal Act Section 30231 and the water quality resource policies of the certified PWP, the Commission finds that **Special Condition 1** is necessary to require that all of the Harbor Department's conditions of approval, as submitted, be implemented as part of the proposed project.

The location of the revetment on the southern terminus of the Harbor Peninsula at the end of Peninsula Road encompasses an area comprised of abandoned buildings, paved areas for parking, and scattered populations of New Zealand Christmas Trees, Monterey Cypress trees, and Mexican fan palms. The subject site was constructed during the man-made formation of the Harbor in the 1960's and the landward side has been developed with the existing hotel and restaurant complex since the 1970's. Associated parking areas and landscaping were installed

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with the existing building's initial construction. The revetment has remained unaltered since its initial construction in the 1960's.

The certified PWP states that the Harbor 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. In past Commission actions, it has been recognized that several bird species, such as great blue herons, black-crowned night herons, and snowy egrets utilize the trees in the Harbor for roosting and nesting. Although none of these species is listed as threatened or endangered, their presence is considered important because some species of herons and egrets are considered sensitive species under the PWP (*see* Biological Resources Policy 12) and play an integral role in the ecosystem as top wetland predators. The Harbor Department has consequently monitored bird nesting activity for several years.

In June 2018 the Commission approved Channel Islands Harbor NOID No. 0002-18 requested by the Harbor Department for the redevelopment of the dilapidated Casa Sirena Hotel and Lobster Trap restaurant located immediately adjacent to the revetment that is the subject of this NOID. Included in the NOID application for NOID No. 0002-18, the Harbor Department provided biological surveys of trees within the area at the southern terminus of Peninsula Road, including the area of the rock revetment, for evidence of any breeding or nesting behavior for sensitive bird species. A total of 25 inactive Black-Crowned Night Heron (BCNH) nests, 3 inactive Great Blue Heron (GBH) nests, and one active Great Blue GBH nest were observed in the trees that were inspected. Previous surveys of the bird colonies within the Harbor have found birds roosting in a variety of trees throughout the Harbor, including the trees within the site of the existing hotel and restaurant complex, without any particular fidelity to specific groupings of trees. The subject NOID for the repair of the revetment identified several Mexican Fan Palms located at the top of the revetment slope that will need to be removed as part of the project. However, because the birds regularly nest within various trees throughout the Harbor, the removal of these trees (when not being nested) is not expected to result in a significant impact to sensitive bird species within the Harbor.

While surveys of the project area did identify breeding and nesting trees for sensitive bird species, and removal of those trees is not expected to have a significant adverse impact on sensitive bird species due to the availability of other trees throughout the Harbor in conjunction with the birds' tendency to utilize various tree populations, removal of existing trees still has the potential to impact any sensitive bird species that may be actively roosting at the time of tree removal. Pursuant to Biological Resources Policy 17 identified above the Harbor Department included Conditions of Approval with the subject NOID ([Exhibit 4](#)) that specify the appropriate measures to take regarding removal of trees during non-breeding/non-nesting season as well as during breeding/nesting season. Those measures require surveys of trees to be removed and require maintaining sufficient distance from any sensitive bird species to prevent any impacts. The condition also states that if removal of trees takes place during the breeding and nesting season (January – September) and birds are discovered in the trees to be removed, a qualified

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biologist shall prepare a tree removal plan incorporating measures to minimize any impacts to birds.

However, Biological Resources Policy 17 prohibits the removal of trees during the bird breeding and nesting season unless there is an identified health and safety danger, which is not the case in the subject project. Biological Resources Policy 17 also requires that the removal of any breeding and nesting tree shall require mitigation at a 1:1 ratio and specifies that replacement trees shall consist of native or non-native, non-invasive tree species as detailed in a tree replacement planting plan. The biological survey submitted by the project biologist for NOID No. 0002-18 states that there is sufficient area within Peninsula Park to plant the replacement trees while maintaining the viewshed of open water from the main park area; however, no specifics regarding the exact location and type of plantings was provided. To ensure that replacement tree plantings are consistent with the requirements of Biological Resources Policy 17, as well as the other relevant policies of the PWP, the Commission finds it necessary to incorporate **Special Condition 2** which requires the Harbor Department to submit a tree replacement planting plan, prepared by a licensed landscape architect or qualified resource specialist, that specifies the tree species selected for replacement planting as well as the parameters for planting and monitoring.

As previously discussed, due to the availability of tree populations throughout the Harbor as well as the tendency for bird species within the Harbor to breed and nest in different areas, removal of the trees as part of the revetment repair is not expected to have significant impacts to sensitive bird species. However that condition is limited to activities associated with the removal of trees and does not address the revetment repair activities associated with the project. Due to the potential for sensitive bird species to be present nearby during all revetment repair activities, and in order to find the proposed NOID consistent with the PWP pursuant to Biological Resources Policy 12 of the PWP requiring new development to minimize impacts to sensitive bird species and Biological Resources Policy 13 requiring new development to conduct pre-construction surveys for sensitive bird species, the Commission finds it necessary to incorporate **Special Condition 1** which incorporates the Harbor Department's Conditions of Approval including the requirement to conduct sensitive bird surveys within a 500 foot radius of the project site within just prior to commencing construction, and once a week upon commencement of construction activities that include grading or the use of other heavy equipment so long as any nesting or fledging activity is identified, and that will be carried out between December 1st and September 30th. In the event that the surveys identify any sensitive bird species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 500 feet of any construction activities), then the condition also requires that special protective measures are implemented including monitoring for noise during all pile driving, concrete demolition, or other hardscape demolition. If construction noise exceeds 65 dB at any point in time during monitoring, sound mitigation measures shall be employed. If sound mitigation measures do not reduce noise levels within 48 hours, then construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

Lastly, the certified PWP states that the relatively rich complement of marine algae invertebrates and fishes present at the Harbor entrance diminish rapidly moving through the mid-Harbor area

to the Mandalay Bay development due to pollutant and coliform bacteria concentrations present in the Harbor. The PWP goes on to state that impacts on the distribution and diversity of marine species will not occur with implementation of the PWP, but that the PWP contains policies and actions to protect the biological productivity of the Harbor's marine waters.

The proposed project includes development directly adjacent to and within coastal waters and has the potential to impact biological resources. Development in and near coastal waters can potentially cause the spreading of non-native and invasive species, such as *Caulerpa taxifolia*, and can cause the removal or disturbance of biological resources, including eelgrass, that may be present in the project area. Biological Resources Policies 14 and 15 of the certified PWP require any new development in the harbor that involves disturbance to marine substrate to minimize impacts to marine resources by conducting pre-construction surveys for non-native invasive aquatic species and pre-construction surveys for sensitive marine resources, including eelgrass. Furthermore, conducting pre-construction surveys of the marine environment will allow the project to minimize impacts to biological resources, consistent with the requirements of Coastal Act Section 30230 which is incorporated into the PWP by reference. As such, the Harbor Department has proposed the necessary pre-construction surveys of the marine substrate and actions for remediating any impacts. To ensure consistency with the biological resource policies of the certified PWP, the Commission finds that **Special Condition 1** is necessary to require that all of the applicant's conditions of approval, as submitted, be implemented as part of the proposed project.

Therefore, for the reasons discussed above, the Commission finds that the NOID, as conditioned, is consistent with the PWP regarding water and biological resources.

D. PUBLIC ACCESS

The certified Channel Islands Harbor PWP incorporates by reference Coastal Act Section 30214.

Section 30214 of the Coastal Act states (in relevant part):

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques...

As previously discussed, the revetment that is the subject of the proposed NOID has existed in its location and configuration since construction in the 1960's. A public waterfront walkway is located immediately landward of the revetment that extends around nearly the entire perimeter of the area at the end of Peninsula Road and Peninsula Yacht Marina, a public small boat marina, operates in the waterside lease adjacent to the revetment.

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Coastal Act Section 30214 specifies that public access policies of the Coastal Act shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances of each case. Moreover, subsection (c) of Section 30214 states that innovative access management techniques should be considered and encouraged. The proposed repairs to the revetment will require the use of heavy machinery in the area immediately adjacent to the existing waterfront walkway and due to safety reasons will require the temporary closure of the walkway. Additionally, the Peninsula Yacht Marina is accessed via gangways that connect to the existing walkway and the proposed repairs to the revetment will also impact access to the marina. While the proposed project would serve to protect the harbor peninsula that supports public access and recreational uses, there will be unavoidable temporary impacts to these uses during construction. It is also important to consider the other projects approved by the Commission in this area of Peninsula Road that are in the process of redevelopment. In 2018 the Commission approved NOID No. 0002-18 for the demolition of the non-operational and dilapidated Casa Sirena Hotel and Lobster Trap Restaurant and for new construction consisting of a new hotel, restaurant, waterfront public plaza and promenade, boater restroom and marina facilities. Additionally, in 2011 the Commission approved NOID No. 1-11 to reconfigure and replace the boat slips of the Peninsula Yacht Marina as well as demolish and replace dock infrastructure, including placement of new piers, abutments, gangways, dock boxes and electrical utility systems. Similar to the proposed revetment repairs, these projects will require temporary closures of access along the waterfront to ensure public safety. In the aggregate and considered together, these impacts are cumulative but, for the reasons discussed below, are still less than significant. The Harbor Department has specifically requested to perform the subject revetment repairs in conjunction with the redevelopment of the hotel, restaurant and public plaza and promenade so that the limitation of access along the waterfront can be minimized via efficiently-coordinated construction. Additionally, redevelopment of the marina boat slips will require the replacement of gangways and closure of the existing waterfront walkway in those areas. Similar to the hotel redevelopment, the Harbor Department has requested to perform the subject revetment repairs in conjunction with the redevelopment of the marina so that the limitation of access along the waterfront can be minimized via efficiently-coordinated construction. Lastly, an additional measure to avoid significant impacts to public access during construction as proposed by the Harbor Department includes phasing the revetment repairs and moving along the shoreline of Peninsula Road in a counter-clockwise direction so that only a select portion of the waterfront walkway and boat slips is closed at any one time.

By itself and considered cumulatively with other repair projects happening in the vicinity at the same time, the repairs to the revetment would temporarily disrupt public access to this area of the Harbor ; however, by scheduling the revetment repairs in coordination with other redevelopment projects approved in the immediate vicinity and by phasing the repairs so that only a select area of the peninsula is closed at any one time, the proposed project would avoid significant impacts to public access and recreation during construction by limiting and concentrating the temporal and geographic scope of the temporary impacts to public access resulting from this and the other cumulatively-considered projects. Furthermore, given that the ultimate purpose of the revetment repair is to protect numerous public-access oriented amenities on the peninsula, allowance of the proposed development can be deemed consistent with Section 30214 because it manages public

access in a manner that takes into account the need to regulate time, place and manner depending on the specific facts and circumstances presented (*i.e.*, temporary public access impacts are justified to ensure long-term public access at this location).

Therefore, for the reasons discussed above, the Commission finds that the NOID is consistent with the PWP regarding public access.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Harbor Department, in its role as lead agency for the PWP and the NOID for purposes of the California Environmental Quality Act (“CEQA”),¹ has determined that the project is categorically exempt from the provisions of CEQA under CEQA Guidelines Section 15302. 14 C.C.R. § 15302 (“Replacement or Reconstruction”).

As a responsible agency with authority to approve a Notice of Impending Development, the Commission has some CEQA responsibilities as well. Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications and Notices of Impending Development (NOID) to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the CEQA.

Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect which the activity may have on the environment. For the reasons discussed in this report, the project, as conditioned, is consistent with the governing PWP and its coastal zone protection policies, and there are no other further feasible alternatives that would substantially lessen significant adverse effects that the approval could have on the environment.

The Commission incorporates its findings on Coastal Act and PWP consistency at this point as if set forth in full. As discussed in the preceding sections, the proposed development approved by this NOID is consistent with the policies and provisions of the certified PWP, as conditioned. There are no further feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the activity may have on the environment, and as conditioned, the project will not have any significant impacts on the environment within the meaning of CEQA. Therefore, the Commission finds that the NOID is consistent with CEQA, the Coastal Act, and the applicable polices and provisions of the certified PWP.

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

Appendix A - Substantive File Documents

Channel Islands Harbor certified Public Works Plan; Channel Islands Harbor Notice of Impending Development No. CIH-NOID-0001-19, dated January 9, 2019; Channel Islands Harbor Notice of Impending Development No. CIH-NOID-0002-18; Channel Islands Harbor Notice of Impending Development No. 1-11