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STAFF REPORT: CDP HEARING

Application Number: 3-18-1230

Applicant: Port San Luis Harbor District

Project Location: Port San Luis Harbor, Avila Beach, San Luis Obispo County.

Project Description: Five-year repair and maintenance program including ongoing repair and maintenance associated with: pier structural components, boat launch facilities, channel markers, regulatory buoys, moorings, floating docks, seawalls/revetments, decking, stringers, caps, ladders, stairs, parking lot, docks, gangways, and beach grooming. Maintenance and repairs will not expand existing development past its existing permitted configuration and specifications.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

Port San Luis Harbor District (PSLHD) facilities accommodate a number of coastal-related and coastal-dependent activities, including commercial fishing and recreational boating. PSLHD proposes to undertake development associated with routine port repair and maintenance activities over a five-year period. The packaging of all of these development activities into one permit application allows for efficient processing of

routine development activities associated with the operation of a major port facility. The PSLHD Maintenance Manual identifies all proposed ongoing and impromptu repair and maintenance activities of existing facilities, including specialized repairs, replacement, and modification of deteriorated or damaged over-water or waterfront structures or associated mechanical equipment, as well as annual maintenance to prevent unnecessary emergency repairs and to keep these visitor-serving and recreation facilities open and available to the public.

The proposed repair and maintenance activities are located entirely within the Coastal Commission's permit jurisdiction. Thus, the standard of review is the Chapter 3 policies of the California Coastal Act. The Coastal Act requires that marine resources and the biological productivity of coastal waters be maintained, enhanced, and where feasible, restored (Coastal Act Sections 30230 and 30231). Potential impacts of the proposed repair and maintenance activities include the discharge of harmful materials to the marine environment, thereby potentially degrading water quality and harming marine life. For example, toxic chemicals used to preserve timber materials used on piers can break down over time or leach into the water column, resulting in adverse impacts to the biological productivity of the marine environment.

In this case, the project has been designed in a manner that is designed to avoid adverse impacts on marine resources in accordance with staff guidance on Commission standards. The proposed work incorporates measures to protect biological resources, such as seasonal restrictions on certain construction activities to avoid the breeding season of sensitive species, use of a "soft-start technique" for pile-driving to allow fish and mammals to vacate the area, and daily maintenance of equipment to prevent leaks of petroleum products. Measures to protect water quality include provisions regulating the use of certain timber preservatives, adequate separation of construction materials from the water, and maintaining on-site spill containment devices at all times. Other Best Management Practices (BMPs) will be employed throughout the project, including the use of GPS (Global Positioning System), when replacing moorings, immediate collection of any incidentally released debris, prevention of spills, and general good housekeeping of the site at all times (i.e., confining all trash and debris in appropriate enclosed bins and removal of refuse material weekly). Nevertheless, additional measures are needed to minimize potential project impacts on marine resources and the biological productivity of coastal waters consistent with the Coastal Act. Staff therefore recommends that the Commission approve the proposed development subject to special conditions that require: Executive Director review and approval of a revised Maintenance Manual that includes additional debris collection measures when replacing large sections of pier decking and prohibits repair or replacement of pilings at Avila Pier; and submittal of annual activity reports to ensure all activities constitute repair and maintenance and do not lead to additional fill in coastal waters.

As conditioned by this permit, the project is consistent with the Coastal Act Chapter 3 policies regarding marine and biological resources, commercial and recreational fishing and boating, and public recreational access. Therefore, staff recommends approval with conditions. The motion and resolution to effect this recommendation are found on page 4.

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I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission* ***approve*** *Coastal Development Permit Number 3-18-1230 pursuant to the staff recommendation, and I recommend a* ***yes*** *vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-18-1230 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Permit Duration.** Authorization provided by this permit shall be valid for five years from the date of Commission approval, i.e. until March 11, 2025.

2. **Maintenance Manual Revisions. PRIOR TO ISSUANCE OF THE CDP**, the Applicant shall submit, for the review and written approval of the Executive Director, two sets of the revised Maintenance Manual, revised as required below:

    a) **Containment Requirements.** Add the following BMP to Appendix A: "For decking replacement projects over 15 square feet, heavy-duty mesh containment netting shall be maintained below all work areas where construction discards or other materials could fall into the water. Debris in the netting shall be cleared daily." In addition, the description of pier decking repair materials and procedures on page 9 of the Manual shall be amended to describe this requirement.

    b) **Avila Pier Piling Replacement Restriction.** Replace BMP 4N on page 25 of the Manual with the following language: **"**Repair, driving, and replacement of pilings at Avila Pier is not authorized under CDP 3-18-1230." The description of Avila Pier on page 8 of the Manual shall also be amended to describe this restriction.

    The Permittee shall undertake development in conformance with the approved revised Maintenance Manual.

3. **Annual Activity Reports.** The Permittee shall submit for review by the Executive Director annual Pre-Activity and Post-Activity Repair and Maintenance Activity Reports. The Pre-Activity Report shall contain an Annual Work Plan that lists all anticipated routine maintenance for the upcoming calendar year. The Post-Activity report shall list all work completed during the previous calendar year and include a description of any issues that arose when ensuring compliance with that year's repair and maintenance activities. Both reports shall be submitted together annually by January 31st beginning in 2021.

4. **Minor Modifications.** Additional development beyond the repair and maintenance activities specified in this approval shall be submitted for a determination of coastal development permit requirements (i.e., a separate coastal development permit, amendment to this permit, or waiver). Minor adjustments to the terms and conditions of this CDP may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary by the Executive Director; and (2) do not adversely impact coastal resources. Any modifications not deemed reasonable or necessary or that may adversely impact coastal resources shall not constitute authorized development under this CDP unless and until the Commission amends this CDP to allow same.

5. **Army Corps of Engineers (ACOE) Approval.** The ACOE permit for the repair and maintenance project is valid until March 18, 2022. By March 1, 2022, the Permittee shall submit evidence of a valid ACOE permit authorizing the ongoing repair and maintenance activities. The Permittee shall inform the Executive Director of any changes to the project required by the new ACOE authorization. Any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP authorizing same, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. Project Location, Background, and Description

Project Location

Port San Luis is located south of Morro Bay and north of Pismo Beach, on the northern portion of San Luis Bay, adjacent to the unincorporated coastal community of Avila Beach in San Luis Obispo County. San Luis Bay is characterized by a number of different habitats including a rocky shoreline with offshore rocks, intermittent sandy beaches, nearshore kelp beds, bluff-top terraces backed by steep hills, and a riparian area near the mouth of San Luis Obispo Creek. A COLREGS Demarcation line[1] extends within the hook-shaped bay from the United States Army Corps of Engineers (ACOE) breakwater to Fossil Point and represents the Port San Luis Harbor District's (PSLHD's) main interest in San Luis Bay (**Exhibit 1**).

Project Background

PSLHD was created in 1954 to maintain the piers in the area, and also to support commerce associated with oil and gas extraction, movement of passengers and cargo, and commercial fishing. In 1967, PSLHD developed an 8.7-acre landfill abutting the foot of the Harford Pier to serve as a parking and boat haul-out and repair area, and subsequently acquired various related properties adjacent to the harbor, including the access road to the pier (which extends from the end of the County right-of-way into the Harford Land Area), the Harford Pier, and the Avila Pier. The PSLHD provides public services and manages the various commercial and recreational uses on the land, piers, and tideland properties of the San Luis Bay.

Port San Luis Harbor is one of three commercial harbors located in San Luis Obispo County (with the others being Morro Bay and San Simeon). Port San Luis Harbor is a major commercial fishing harbor with commercial fish processing facilities, including offloading hoists, ice, fuel, and support facilities. In 2016, Port San Luis was the top performing Pacific hagfish port in California. Port San Luis Harbor is home to a commercial fleet, which grew from 12 boats to at least 20 boats since 2008. The fleet consists of primarily small-scale family owned operations that target a wide diversity of fish species. In addition to commercial fishing activities, Port San Luis is a popular sport

[1] Demarcation lines are lines established specifically to mark where inland or international navigation rules apply, and such lines must comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

fishing site and home to the Port San Luis Boatyard, which is one of the last self-service haul-out boatyards in California, drawing vessel owners from as far as San Diego. The boatyard also sells marine supplies and outboard motors. Port San Luis Harbor is also a recreational destination for the public with charter vessels that conduct thousands of recreational fishing trips every year and visitor-serving facilities, including three restaurants, a live fish retailer, a small market, kayak rental, a surf school, paddle board concessions, a chandlery (i.e. supplies for boats and ships), and RV camping.

Due to the corrosive nature of the marine environment, and constant exposure to the sometimes extreme forces of the Pacific Ocean, PSLHD facilities are in need of recurring repair and maintenance. In addition, high levels of public and commercial use of these facilities demand that the design of these facilities be well thought out, and where possible, improved, in order to accommodate the numbers of recreational boaters, commercial fisherman, and tourists that utilize harbor facilities. Due to the age, type of construction, and heavy use of the two Port-owned historic piers, continual structural maintenance and repairs is required for such pier components including decking and road surfaces and boating access facilities.

Project Description

The proposed project is a five-year repair and maintenance program, and is similar to a previous CDP approved by the Commission in 2008 (CDP 3-08-005).[2] The PSLHD Maintenance Manual (Manual) (see **Exhibit 3**) describes the proposed components and procedures of PSLHD's Repair and Maintenance Program, which includes specialized repair, replacement, and minor modification of Port-owned facilities to cover both critical and non-critical maintenance needs over the next five years to ensure safe and reliable continued and future use of existing PSLHD facilities. The Manual also includes Appendix A, which lists proposed measures to protect water quality, including maintaining good construction site housekeeping controls and procedures, as well as measures to protect biological resources, such as spatial restrictions for certain construction activities during the breeding seasons of certain animal species, use of a "soft-start technique" for pile-driving to allow fish and mammals to vacate the area, and daily maintenance of equipment to prevent leaks of petroleum products (see Appendix A, or pages 23-28, of **Exhibit 3**). The Manual identifies the locations, components, and details of the proposed repair and maintenance program, which can be generally divided up into four areas and includes the following activities for each area (see **Exhibit 2** for each of these areas):

1. **San Luis Bay:** A number of existing offshore facilities, including moorings and navigation aids, may require maintenance from normal use or repairs to damage caused by storms or boating accidents, including: channel markers, regulatory buoys, and permanent and seasonal moorings. The locations of the offshore facilities are shown in **Exhibit 4**, and no new facilities are proposed.

2. **Public Piers:** PSLHD is responsible for two public piers: Harford Pier and Avila

[2] CDP 3-08-005 was amended to extend its authorization for another five years, i.e. until 2018. That CDP, as amended, expired on September 11, 2018.

Pier. Rather than doing any large repair projects of the piers, repairs are typically on a much smaller scale and are often done on an as-needed basis by PSLHD's facilities department, which is primarily devoted to Harford Pier repairs.

a. **Harford Pier** is a historic wooden pier that was originally built in 1873. It is approximately 1,456 feet long with an average width of 39 feet except at its terminus, which is approximately 120 feet in width. Harford Pier is supported by approximately 1,200 piles and has four public boat hoists. It has 17 parking spots located at the terminus. Two spots are ADA accessible and one is reserved for law enforcement from 6AM-8PM. Public spaces are available for two hours of use without charge. The pier has loading areas for deliveries, commercial fishing, and boat launching.

b. **Avila Pier** is 1,635 feet long with an average width of 20 feet except at its terminus, which is approximately 120 feet in width. The Pier was originally built in 1908 and then largely reconstructed in 1985 following a major El Niño storm in 1983 that destroyed half of the pier.

    i. **Oil Spill Clean-Up:** In 2000, Unocal (now Chevron) conducted an oil spill clean-up in Avila Beach, which included excavation of most of the town to remove oil-contaminated soils, and replacement of a portion of Avila pier (up to Bent #7).[3] Around this time, it was discovered that there is a hydrocarbon plume (referred to as "the plume") located underneath portions of Avila Pier (see map of the plume in **Exhibit 6**). Since then, PSLHD has worked closely with the Central Coast Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife, and Chevron to address concerns regarding the potential for release of oil from the plume during pile driving maintenance activities and to gather information on the state of the existing plume.

    ii. **Closure:** In 2014, a large storm damaged Avila Pier. In 2015, a large group of humpback whales visited San Luis Bay, which led to a massive increase in foot traffic on Avila Pier and resulted in significant swaying of the pier. Due to structural integrity and public safety concerns, Commission staff granted PSLHD emergency authorization (G-3-15-0018) to close Avila Pier to the public until repair and rehabilitation of the pier was completed. About half of Avila Pier has since been re-opened to the public, but most of the seaward half remains closed to the public. According to the most recent engineering assessment, it is estimated that over 50 piles

[3] The existing Avila Beach neighborhood was a major crude oil shipping port during the 20th century. Union Oil (now Chevron), along with other companies, laid the largest oil pipeline project in the world prior to World War I (over 200 miles), which terminated in the tidewater facilities at Avila. Field storage for 27 million barrels of oil was created at a tank farm in San Luis Obispo as well as at Avila Beach. Unocal transported an average of eight to ten million barrels of crude oil and refined products per year until ceasing operations in the mid-1990s.

will need to be replaced to restore full capacity and access.

Proposed activities for Harford Pier and Avila Pier include repair and maintenance of decking, stringers, caps, rails, piles (including piling replacement with new wooden piles as necessary), ladders, stairs, floating and fixed landings, hoists, and skiff racks. Repair and maintenance activities will not exceed the original pier footprint and structural repairs will be made with materials similar to the original construction. No alterations to the historic quality of Harford Pier are proposed.

3. **Harford Land Area:** The Harford land area is a combination of reinforced concrete or asphalt over an aggregate base adjacent to a seawall/revetment armoring structure. This area includes the public boat hoists designed to haul and launch commercial and recreational vessels, a paved parking area, a boat wash-down facility, a boat repair yard, and coastal-related shops. The following existing facilities may require repair and maintenance under the proposed program: mobile hoist pier, trailer boat hoist, parking lot, concrete seawall (repairs only; no expansion in size or configuration), and riprap restacking of existing rock (no new or supplementary rock). Repair and maintenance activities will not exceed the existing configurations of these facilities/structures and any structural repairs will be made with materials similar to the original construction.

4. **Beaches:** The PSLHD oversees three beaches: Avila Beach, Olde Port Beach, and Fisherman's Beach. Olde Port Beach and Fisherman's Beach are located between the Harford Land Area and the mouth of San Luis Obispo Creek. Avila Beach is located between the mouth of San Luis Obispo Creek and Fossil Point. The proposed maintenance includes the creation of temporary sand berms and beach grooming. Sand berms may be necessary to protect facilities, i.e. lifeguard towers which are present on the beach year-round, from wave uprush and storm damage. Beach grooming may be necessary to remove trash and debris while leaving natural material, such as kelp, on the beach. All sand-moving maintenance activities that occur on these beaches propose to employ the best management practices outlined in "Standard Operating Procedure for Beach Cleaning" (pages 30-31 of **Exhibit 3**).

See **Exhibit 3** for a detailed description of each respective element of the proposed repair and maintenance program, including proposed best management practices (BMPs) to protect water quality during repair and maintenance activities. The proposed project also includes after-the-fact authorization for the placement of two new navigation channel markers in 2014, restoration of the Mobile Hoist Pier in 2015, and placement of a new Lifeguard tower on Fisherman's Beach in 2016.

Notably, the proposed project does not include repairs or improvements to existing buildings on the Harford Pier or the Harford Land Area, new or supplemental shoreline armoring, or repair or replacement of concrete or steel pilings. PSLHD currently has permits authorizing the proposed repair and maintenance from the ACOE (SPL-2012-00628-LM), which expires on March 18, 2022, and the Central Coastal RWQCB (34017WQ17), which expires on April 14, 2027.

B. Standard of Review

The proposed project site is located seaward of the mean high tide line (e.g., on beaches, piers, and boating facility areas), and on filled tidelands where the public trust may exist (e.g., parking lots and boat ramps), and thus is located within the Commission's retained CDP jurisdiction. The standard of review for development within the Commission's retained jurisdiction is the Coastal Act.

C. Land Use Priorities

The Coastal Act defines coastal-dependent and coastal-related as follows:

> **Section 30101:** "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.
>
> **Section 30101.3:** "Coastal-related development" means any use that is dependent on a coastal-dependent development or use.

Coastal Act Section 30001.5 states, in relevant part:

> **Section 30001.5:** The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:
>
> (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources….
>
> (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
>
> (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast….

Coastal Act Sections 30234 and 30234.5 also provide specific protections for boating harbors and commercial fishing, including:

> **Section 30234:** Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.
>
> **Section 30234.5:** The economic, commercial, and recreational importance of

fishing activities shall be recognized and protected.

Coastal-dependent and coastal-related developments are among the highest priority Coastal Act uses. As indicated, Port San Luis Harbor provides an array of commercial and recreational boating, fishing, and coastal-related opportunities. Commercial fishing and related waterfront activities in Port San Luis generate jobs, provide recreational opportunities, and draw tourists from around the world. The proposed operations and maintenance activities not only support coastal-dependent uses but are integral to such uses and therefore have a priority under the Coastal Act. Further, commercial and recreational boating and fishing are coastal-dependent priority uses that cannot function without safe piers and maintenance of mooring facilities. Accordingly, the repair and maintenance program is considered a high priority under the Coastal Act.

Coastal Act Section 30234 calls for the protection of commercial fishing and recreational boating industries, as well as upgrading such facilities where feasible. PSLHD has numerous ongoing and impromptu repair and maintenance activities of these existing facilities. In an effort to decrease delays and cost, PSLHD has proposed to package all repair and maintenance activities into one permit application to allow for efficient processing of such activities required for safe operation of the port facilities. While the Coastal Act provides exemptions from CDP requirements for repair and maintenance activities in order to facilitate ongoing work that does not involve a risk of substantial adverse environmental impact,[4] Section 13252 of the California Coastal Commission's regulations requires a CDP for repair and maintenance in this case because the proposed activities are located in, adjacent to, and above coastal waters, and thus such activities involve a risk of substantial adverse environmental impact.

PSLHD facilities accommodate a number of coastal-related and coastal-dependent activities, including commercial fishing and recreational boating. Marine biological resources in the Bay support numerous activities at Port San Luis such as recreational fishing (which includes fishing from piers, small boats, and charter fishing boats), commercial fishing, sightseeing, whale watching, scuba diving, and bird watching, among others. The proposed repair and maintenance program described in **Exhibit 3** is limited to activities that generally involve ordinary repair and maintenance of Port facilities. Such activities include restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment as well as annual maintenance to prevent unnecessary emergency repairs that have a greater risk for environmental impacts. Thus, the proposed project is considered the least environmentally damaging feasible alternative available.[5] This CDP allows PSLHD to proceed with repair and maintenance activities that are essential to maintaining and operating the commercial fishing fleet, as well as recreational boating. Therefore, the Commission finds that this project implements, and is consistent with, Coastal Act Sections 30234 and 30234.5.

[4] Coastal Act Section 30610.

[5] The no project alternative is not considered feasible because facilities repair is necessary to adequately maintain existing boating facilities and to enhance their usability by the public and commercial fishing industry. Not undertaking such repair and maintenance would lead to degradation and potential loss of these facilities, which would not be consistent with the objectives contained in Coastal Act Section 30234.

D. Marine and Biological Resources

1. Fill in Open Coastal Waters

Coastal Act Section 30233 (in relevant part) addresses filling of open coastal waters, stating:

> **Section 30233(a).** The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
>
> (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.…
>
> (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…

The proposed project includes "filling" of open coastal waters through the repair/replacement of pilings and mooring blocks, and repairs (i.e. restacking) of riprap revetments as needed (no new or additional riprap is proposed under this Program). More accurately, it is that these Program activities involve re-filling of coastal waters when existing structures in coastal waters are replaced, such as pilings, within the existing footprint, as opposed to new fill per se. This CDP is not intended to cover significant future developments, but is intended to provide for the repair, maintenance, and replacement of existing structures as necessary. For example, the Mooring Map (**Exhibit 4**) shows the pre-determined locations of existing moorings that may be retrieved for repair and maintenance, or replacement, if necessary, but any repaired or new replacement moorings will be placed in the same location as existing moorings using GPS. Another example is along the waterfront in the Harford Land Area and along Avila Beach Drive where existing riprap revetments are located (see **Exhibit 5**); extreme wave action may dislodge or displace riprap boulders from existing riprap revetments. PSLHD originally proposed to include placement of supplemental riprap to existing revetments, as well as restacking of existing errant riprap, in order to protect the Harbor's facilities, including public parking. After coordination with Commission staff, PSLHD revised its project description to exclude the placement of new or supplemental riprap to the existing revetments; instead, the proposed project description provides only for the use of heavy machinery from the Harford Land Area to retrieve and restack any errant existing riprap. Thus, the existing revetment footprints will not be increased as a result of the project. Instead, the revetments' original footprints will be maintained as necessary to protect the Harford Land Area, which supports public access, recreation, and coastal-dependent uses.

The only potential for new fill[6] from the proposed project is when removal of existing pilings is not possible[7] and another is driven alongside the existing piling. In order to ensure that no new fill (other than new pilings necessary due to the constraints described in footnote 7 below,) is placed in coastal waters and that all potential impacts to coastal resources have been appropriately mitigated for, **Special Condition 3** requires submittal of annual pre-activity and post-activity reports. These reports shall be submitted together by January 31 of the following year. The submittal will include a post-activity report that describes all repair and maintenance activities authorized by this permit completed in the previous year. The submittal will also include a pre-activity report that describes all potential or anticipated repair and maintenance activities to be completed in the upcoming year. This allows the Executive Director to review work proposed in any particular year to ensure no additional fill (except for necessary piling replacement, as described above) will be placed in open coastal waters. Additionally, the proposed project also incorporates measures to ensure that repair and maintenance activities do not result in new fill of coastal waters, such as the use of GPS when placing repaired or new moorings to ensure they are located in the same place as retrieved, removal of existing piles when replaced with other piles (when feasible), and limiting maintenance and repair activities in coastal waters to that which will not expand existing development past its existing permitted configuration and specifications. Thus, as conditioned, the Commission finds that the proposed project is consistent with the Coastal Act standards for development, including Section 30233(a)(3).

2. Biological Resources and Water Quality

Coastal Act Sections 30230 and 30231 protect marine and inland watercourse biological resources, stating:

> **Section 30230.** Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
>
> **Section 30231.** 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,

[6] The proposed project also includes after-the-fact authorization for development that did create additional fill in coastal waters (i.e., installation of two new navigation channel markers in 2014). These channel markers improve the safety of boaters by providing additional navigational aids to guide boats to the Harford pier, and they are lighted for nighttime navigation (whereas the other existing navigation channel markers are not lighted). The additional navigational aids are allowable pursuant to Coastal Act Section 30233(a)(1) because they constitute an expanded port facility.

[7] Pilings, or a portion of a piling, may not be able to be removed if water jetting fails to dislodge the existing piling or if a piling is broken during removal.

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.

Biological Resources

Port San Luis Harbor is formed by a natural outcrop on the west, Point San Luis, and a man-made breakwater to the south. This large rock breakwater forms a protective coastal embayment that provides sheltered habitats with a relatively deep-water connection to the ocean that supports a diverse complex of marine and coastal habitats, including open ocean, kelp forests, rocky subtidal, sandy beaches, and a coastal river mouth. Many marine mammals are present year-round or occur transiently when migrating whales come close to shore from the offshore habitat in search of small schooling fish such as anchovies and sardines. Endangered or sensitive species have the potential to occur within the proposed project location and include western snowy plover (*Charadrius nivosus nivosus*), California grunion (*Leuresthes tenuis*), tidewater goby (*Eucyclogobius newberryi*), Southern sea otter (*Enhydra lutris nereis*), blue whales, fin whales, Black Abalone (*Haliotis cracherodii*), South-Central Coast California steelhead (*Oncorhynchus mykiss*), and giant kelp (*Macrocystis pyrifera*). The area also has a significant bird population ranging from shorebirds that make their nests on various structural developments within the harbor, or migratory birds resting during their journey on the Pacific Flyway.

The proposed project represents a comprehensive program for repair and maintenance activities necessary to maintain and improve facilities for recreational boating and commercial fishing. Proposed activities with the potential to adversely affect sensitive biological resources include beach grooming, repair or replacement of structures in coastal waters, the use and transporting of materials hazardous to marine resources, including concrete, asphalt, wood preservatives, as well as fluids and oils associated with mechanized equipment. Potential direct and indirect impacts to biological resources from operation and maintenance activities are anticipated to be similar to those associated with previously permitted activities and include damage to sensitive habitats or resources from equipment operation or interference with movement, foraging, and/or reproduction of sensitive species from equipment operation (noise, disturbance), and the discharge of harmful materials into the marine environment. Because the activities as proposed have the potential to impact marine resources, BMPs are incorporated into the repair and maintenance program (see Appendix A, or pages 30-31, of **Exhibit 3**) to minimize effects and additional special conditions (as described below) are attached to this permit that will protect the quality and biological productivity of coastal waters.

The three beaches that the PSLHD maintains include Olde Port Beach, Avila Beach, and Fisherman's Beach (see **Exhibit 2**). These beaches provide primary habitat for invertebrates; forage and resting, habitat for birds, including the threatened western snowy plover;[8] and spawning habitat for California grunion, which spawn on the beach

[8] No nesting of snowy plovers has been observed on these beaches. Olde Port Beach and Fisherman's Beach are relatively narrow in size (and nests would be washed away during higher tides), and Avila

between March and September. Macrophytic wrack (e.g., algae, kelp, and seagrasses that have washed ashore) provides nutrients for invertebrates and a secondary foraging base for birds, such as gulls and plovers. The proposed project includes sand moving activities at Avila Beach and Fisherman's beach (which are both heavily used by the public), including sand berm formation (to protect adjacent lifeguard towers) and beach grooming. The removal of trash and other debris from the beach may be desirable for human health and safety and can also provide some ecological benefits through the interception of such debris prior to entry into the marine environment where it can adversely impact seabirds and marine mammals. However, the process of removing such debris from beaches has been shown to adversely impact the natural processes of the beach ecosystem and result in the reduced diversity, abundance, and functions of sandy beach flora and fauna. Mechanical beach grooming also reduces sand compaction and eliminates stabilizing vegetation, which can increase beach erosion. However, in this case, the beaches do not have any adjacent sensitive stabilizing dune habitat. To reduce adverse environmental impacts while maintaining the beneficial aspects of trash removal, the proposed project incorporates mitigation measures to ensure all sand moving activities are conducted in a manner that will minimize disturbance and maximize environmental protections. Specifically, PSLHD hired a local environmental consultant to prepare a guidance document in order to ensure that beach grooming of the beach and shorefront of Avila Beach is performed in an environmentally sensitive manner ("Standard Operating Procedure for Beach Cleaning at the San Luis Obispo Creek mouth" – see pages 30-31 of **Exhibit 3**). As proposed, the majority of the trash will be picked up by hand and kelp will be left undisturbed on the beach when possible, or moved to the wet sand area if necessary to open up beach space for public use. In addition, the proposed project includes protections for sensitive species that may be present in the vicinity of the project site, including prohibiting sand moving activities on beach areas when spawning grunion are present. Additionally, the mitigation measures applicable to sand berm formation, such as seasonal restrictions on sand movement activities, will be observed to further reduce the potential for impacts to sensitive coastal resources. Thus as proposed, sand grooming and sand berm formation activities will protect special status species and coastal resources, consistent with the above-cited Coastal Act provisions.

The littoral habitat (i.e. the water column from the surface to a depth of approximately 33 feet) in San Luis Bay is rich with marine life as it is generally protected from violent wave action. Schooling baitfish, such as anchovies and krill, attracts a wide variety of marine mammals, including gray and humpback whales, as well as birds to feed within the bay. California sea lions, harbor porpoises, and sea otters are also often observed in San Luis Bay. The proposed project has the potential to adversely affect marine mammals and other marine organisms from elevated levels of underwater sound associated with pile driving, and adverse water quality effects from project-related activities (see also "Water Quality" discussion below). Short-term impacts on sensitive marine mammals and fish could occur from

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Beach, although wider than the other two beaches, is located adjacent to a major visitor-serving area (i.e., the town of Avila Beach) and is highly used by the visiting public throughout the year and thus is not a suitable beach for nesting snowy plovers.

increased noise levels during pile installation and from water quality impacts associated with jetting and other maintenance work. Impacts that are typically associated with these activities include temporary elevated sound pressure levels, the short-term loss of access to foraging habitat, and temporary impacts to water quality through increased turbidity levels. These impacts, however, would be temporary in nature. Nevertheless, to ensure that impacts to fish and mammal species are minimized, PSLHD proposes to implement the "soft-start technique" for pile-driving to allow fish and mammals to vacate the area before full pile driving activities commence, which should mitigate sound impacts on these species to a less than significant level (see page 27 of **Exhibit 3**).

There are also important fisheries that are associated with soft bottom habitats (e.g., Dungeness crab, halibut, Washington clam) in the area, yet these generally yield less overall commercial catch value than hard bottom or pelagic fisheries. Benthic fauna may be impacted (crushed and displaced) by piling replacement or riprap restacking activities. However, since natural disturbance of the harbor bottom is high and benthic fauna are generally considered to be sparse and transitory in nature, these species are not expected to be significantly adversely affected by these activities at this location. Most benthic invertebrates are able to adapt to such changes due to their ability to migrate to suitable depths and bottom habitats. Additionally, based on notes from the biotic survey of the nearshore intertidal area, there appear to be very few organisms present in the sandy areas fronting the project site. Nevertheless, mitigation measures are incorporated into the project to reduce the potential for adverse impacts to benthic organisms, such as the use of GPS to ensure repaired or replaced moorings are set back in the same location to reduce benthic disturbance, removal of existing piles when replaced with other piles where feasible (to maintain a similar amount of open benthic area), use of a "soft-start technique" for pile-driving to allow fish and marine mammals to vacate the area, and limiting maintenance and repair activities to that which will not expand development past its existing permitted configuration and specifications (see **Exhibit 3**). Therefore, the proposed project will not have significant adverse impacts on benthic resources.

Water Quality

The proposed project involves construction within or adjacent to coastal waters, which can cause water quality impairment from sediment disturbance and runoff, equipment leaks, and spills of construction materials with the potential to adversely affect water quality through the discharge of harmful materials and disturbance of contaminated sediments in coastal waters. Of additional concern is the use of preservative-treated wood in or over aquatic environments. Preservative-treated wood has been commonly used for the construction of piers because it is economical, easy to install, and provides protection from corrosive saltwater, fungal decay, and marine boring organisms. However, the wood preservatives used to protect the integrity of the wood piles can adversely impact aquatic organisms, especially fish and invertebrates, by leaching into the water column or accumulating in the underlying sediment. When Harford pier piling replacement is necessary, PSLHD proposes to use ACZA-treated Douglas fir piles dipped with a marine-grade

epoxy/polyurethane coating. The marine-grade polyurea is applied to encapsulate all areas above the mudline and beyond the area in contact with water. This type of coating is consistent with the Commission's action in other cases to minimize leaching of preservatives, and Commission Water Quality staff finds that this material is appropriate to use in coastal waters. Thus, the Commission finds that the proposed pilings are suitable for use in the Port San Luis Harbor.

The proposed project also has the potential to impact marine resources and coastal water quality through the incidental release of preserved wood into the marine environment during pier decking removal and replacement. The proposed project includes replacement of up to 300 square feet of pier decking sections on an intermittent basis once it has been determined that decking must be replaced to ensure public safety. This is particularly concerning as some of the portions of the older section's timber decking may been preserved with creosote, which has been shown to contribute polycyclic aromatic hydrocarbons to the marine environment at levels that may be toxic to biological resources. Scientific studies have demonstrated that creosote is partially soluble, and mobile in aquatic environments. Even small amounts of creosote constituents that dissolve and mobilize in water over time can have adverse effects on marine resources ranging from death to reduced reproductive success. The only proposed containment measure of errant decking during such projects is limit to retrieval of debris by hand using a skiff at the end of each day. But that would not capture any smaller pieces of errant material that would sink soon after touching the water. In order to ensure that the hazardous substances associated with the proposed development activities are adequately contained, consistent with Coastal Act Sections 30230 and 30231, **Special Condition 2(a)** requires the Manual to be revised to include additional protection measures to prevent foreign materials from entering the water in accordance with Commission standards. Specifically, it requires heavy-duty mesh containment netting be installed below all work areas where construction discards or other material could fall into the water when replacing over 15 square feet of decking.

The Army Corps of Engineers nationwide permit that authorizes the described repair and maintenance program incorporates conditions including requiring adherence to the avoidance and minimization measures described in the "Standard Operating Procedures for Beach Cleaning at the San Luis Obispo Creek Mouth" (as described previously), submittal of an annual work summary, and the prohibition of using creosote piles. This permit expires on March 20, 2022 prior to the expiration of the activities allowed by this CDP. **Special Condition 1** authorizes the activities described by this CDP for five years (i.e. until March 11, 2025). To ensure the repair and maintenance program is authorized by all regulatory agencies, **Special Condition 5** requires PSLHD to submit a valid ACOE permit by March 1, 2022 (prior to expiration of the ACOE permit).

In addition, as proposed, replacing larger sections of decking less frequently is the least environmentally damaging alternative as it reduces the frequency of work. PSLHD also proposes to replace existing decking with timber preserved in the type and quantity of preservation that are acceptable per the Commission's water quality

staff to minimize leaching of preservatives. The proposed work incorporates measures to protect marine resources and coastal water quality such as a restriction on materials that can leach into the marine environment, adequate separation of construction materials from the water, and maintaining on-site spill containment devices at all times. Other BMPs will be employed throughout the project, including the immediate collection of any debris, prevention of spills, and general good housekeeping of the site at all times (see Appendix A of **Exhibit 3**). Accordingly, the project, as conditioned by the permit, will not have any significant adverse impacts on water quality.

Biological Resources and Water Quality Conclusion

The project represents a comprehensive program for repair and maintenance activities necessary to maintain and improve facilities for recreational boating and commercial fishing. Regarding the majority of the proposed routine repair and maintenance program activities other than pile driving, such construction would be relatively minor or would occur in the Harford Land Area, avoiding the need for equipment in the water, and minimizing impacts on marine resources and water quality. The proposed project generally includes appropriate BMPs to protect water quality and marine resources, including maintaining good construction site housekeeping controls and procedures, a prohibition on equipment washing, refueling, or servicing overwater, daily maintenance of equipment to prevent leaks of petroleum products and precautionary measures limiting the use of certain types of chemically treated wood products. Further proposed BMPs include a “soft start” technique for pile driving to allow fish and mammals to vacate the area and appropriate procedures for beach grooming and sand berm formation to protect grunion and other species. To further protect marine habitat, **Special Condition 2(a)** requires the use netting for pier decking replacement projects over 15 square feet in size.

As conditioned, the project is consistent with Coastal Act Sections 30230 and 30231 regarding protection of marine resources and offshore habitats and will not have any significant adverse impacts on marine and coastal resources.

E. Oil Spill Prevention

Coastal Act Section 30232 requires that development protect against the release of hazardous substances:

> **Section 30232.** Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Avila Pier was constructed in 1908 and largely reconstructed in 1985 following a major storm that destroyed about half of the pier. Avila Pier (up to Bent #7) was replaced in 2000 when Unocal (now Chevron) conducted a large oil spill cleanup project of Avila Beach to remove oil-contaminated soils under the beach town (see discussion of this above in “Project Description”). Since 2000 repair, no piles have

been driven at Avila Pier and the pier has only seen relatively minor repairs that are typically limited to the upper structure, such as replacement of deck boards and railing after being vandalized or damaged by storms. Avila Pier is currently in disrepair and in need of a significant rehabilitation project to restore the pier's structural capacity. Specifically, PSLHD was provided with emergency authorization to close Avila Pier to the public in 2015 (G-3-15-0018) when whale activity in San Luis Bay caused a massive increase in foot traffic on Avila Pier, resulting in significant swaying of the pier. The Pier has since been partially reopened but the terminus remains closed to the public.

During the oil spill cleanup project of Avila Beach in 2000, a subsurface (i.e. below the sand) petroleum hydrocarbon plume was discovered under and near Avila Pier during excavation activities (see a mapping of the plume in **Exhibit 6**). Coastal Commission staff, RWQCB staff, and staff from numerous other federal, state, and local agencies have worked closely with Unocal since then to investigate and monitor the state of the plume as well as complete risk assessments to analyze potential for impacts to coastal resources in the event of a release (catastrophic or otherwise). Studies produced in 2001 determined that the plume is a weathered asphalt-like material that is stuck to and between sand grains, buried under two to eight feet of sand (depending on the season and position), and is approximately two acres in size. These initial studies ultimately concluded that the petroleum-contaminated sediment did not adversely impact human health, ecological receptors, or water quality in its buried state. The agencies agreed the plume should remain undisturbed in place and recommended avoidance as the best strategy to reduce the risk of plume release as a precautionary measure, while monitoring the plume regularly to assess the potential for future incidental release. In 2013, following completion of a ten-year monitoring program to track the minimum sand cover over the plume,[9] the agencies determined that further monitoring was not warranted at that time but also concluded that "agencies need to coordinate with Chevron for pier piling replacement and prepare a contingency plan focused on pier maintenance work in the areas of the Outlier Plume."

Since the before-mentioned 2000 repair, no piles have been driven at Avila Pier and the pier has only seen relatively minor repairs that are typically limited to the upper structure, such as replacement of deck boards and railing after being vandalized or damaged by storms. All aspects of piling replacement, including the use of heavy equipment (cranes and barges) over the water and in the intertidal zone for jetting and hammering piles (i.e., water jetting to remove and air/gravity hammers to install), is included in the proposed project with the limitation that "replacement of wooden piles in the plume area on Avila Pier is not covered under this permit" (see BMP 4O on page 25 of **Exhibit 3**), though no quantitative information has been provided to date on how the Port proposes to distinguish "near the plume." The Commission's Oil Spill Program Coordinator expressed his concerns in a Memo about proposed piling replacement at Avila Pier as a component of the proposed project (**Exhibit 7**), stating in part that: "The

[9] *2009-2011 Avila Beach Pier Plume Monitoring and Survey* prepared by TerraCosta Consulting Group, Inc.

concern is that jetting and hammering pier piles could disrupt the hydrocarbon plume and cause a release of hydrocarbons/hydrocarbon laden sediment into the ocean. While the likelihood of a release is believed to be low at this time, it remains a risk with the proposed pile driving operation, which could have adverse impacts to coastal resources if a spill/release does occur."

Further, Coastal Act Section 30232 requires evidence of oil spill prevention technologies, programs, and procedures "to protect against the spillage of crude oil, gas, or hazardous materials…". It also requires a proposed project to provide sufficient oil spill response capability to provide "effective containment and cleanup facilities and procedures…for accidental spills that do occur." Here, there has been no analysis of alternatives to driving piles at the plume, such as through the use of different piling driving/replacement methodologies. Nor does the Manual include a project-specific oil contingency plan that demonstrates that effective protection, containment, and clean up equipment and procedures would be in place to protect coastal resources from potential oil spill impacts from Avila Pier piling repair/replacement, as required by Coastal Act Section 30232.

However, the proposed project includes repair or replacement of pilings at Avila Pier. For the above-stated reasons, it would be inconsistent with Coastal Act Section 30232 to include piling replacement at Avila Pier in this authorization of a repair and maintenance program given the potential for severe environmental impacts if hydrocarbon material from the plume is released during pile repair or replacement activities. In order for the Avila Pier rehabilitation project to move forward in the future, an alternatives analysis that addresses plume issues would need to be reviewed under a separate and distinct CDP application when plans for such become available. Thus, and for the above-stated reasons, **Special Condition 2(b)** prohibits the repair or replacement of pilings at Avila Pier.

F. Public Access and Recreation

The following Coastal Act policies intend to maximize public recreational access opportunities within the Coastal Zone:

> **Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.
>
> **Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

> **Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred….
>
> **Section 30220.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.
>
> **Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.
>
> **Section 30224.** Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The proposed repair and maintenance activities will protect and enhance the water-oriented access and recreation facilities provided by Port San Luis Harbor. However, the proposed repair and maintenance activities also have the potential to temporarily disrupt coastal access and recreation opportunities during operations. For example, the proposed maintenance program includes maintenance of the Harford Land Area parking lot such as seal coating and replacement of existing asphalt, during which times the available number of parking spaces would be temporarily reduced. To mitigate for impacts to public access and parking, the parking lot has been divided into five distinct maintenance areas and maintenance would only happen to one or two of those areas annually and the areas to be maintained would rotate every three to five years. This ensures minimal disruption to public parking access from necessary ongoing maintenance activities. Another example is that beach-grooming activities will be done in the early morning hours to avoid impacts to beachgoers during the late morning and afternoon peak beach-visiting hours. The proposed project will maintain and enhance public recreational access and facilities, including for fishing, beach-going, and other visitor-serving activities, and is therefore consistent with the Coastal Act regarding public access recreational access, including parking.

G. Other

Minor Modifications

This CDP authorizes the project as proposed by PSLHD, except as modified by the special conditions. Any modifications to activities authorized by this CDP shall require a CDP amendment authorizing same, unless the Executive Director determines that no amendment is legally required.

H. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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 which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Port San Luis Harbor District, acting as the lead CEQA agency, determined that the project qualifies for a categorical exemption under CEQA guidelines Section 15301. The lead agency states that, in accordance with Section 15301, the project is limited to operations, repair, and maintenance or minor alterations of existing structures involving negligible or no expansion of use. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS[10]

- CDP 3-93-027
- CDP 3-97-078, -A1
- CDP 3-02-071
- CDP 3-08-005, -A1

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
- CENTRAL COASTAL REGIONAL WATER QUALITY CONTROL BOARD
- TENERA ENVIRONMENTAL CONSULTING

[10] These documents are available for review in the Commission's Central Coast District office.