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STAFF REPORT: REGULAR CALENDAR

Application No.: 1-20-0171

Applicant: City of Point Arena

Agent: Stein Coriell, SHN Consulting Engineers & Geologists

Location: 810 Port Road, Arena Cove, Point Arena, Mendocino County

Project Description: Replace damaged components of the Arena Cove Pier including nine wooden fender piles and one steel guide pile.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The City of Point Arena proposes to replace damaged and missing piles associated with the Arena Cove Pier. The current pier was permitted by the Commission under a 1985 permit to repair and replace the original pier, parking lot, and associated protective devices following a storm. The proposed repairs address damages caused by a 2016 storm that tore nine fender piles away from the pier and sheared one boarding float guide pile at its entry point into the ocean floor.

The proposed work constitutes a repair and maintenance project pursuant to section 30610(d) of the Coastal Act and section 13252 of the Commission's regulations. In its consideration of a repair and maintenance project, the Commission reviews whether the proposed method of repair or maintenance – not the underlying existing development – is consistent with the Chapter 3 policies of the Coastal Act.

The primary Coastal Act issue associated with this project is the potential adverse impacts to the marine environment during project construction. Pile driving in the marine environment can sometimes create acoustic impacts that can cause behavioral changes, injury, or mortality in fish and marine mammals. These impacts are of particular concern when the pile driving is performed with an impact hammer. In this case, the pile driving will be performed by a vibratory hammer, which will result in lower noise levels. A hydroacoustic analysis performed for the project determined that the noise levels generated will be below thresholds of injury and mortality for fish, but above the harassment threshold for marine mammals within an approximately 2,175-meter-radius of the pile driving. As proposed and conditioned, monitors will be employed to observe whether marine mammals are present within that area and halt pile driving until the marine mammals have voluntarily left the area to avoid impacts and maintain healthy populations of marine organisms consistent with Coastal Act requirements.

Staff believes that the project, as conditioned, includes all feasible mitigation measures necessary to find the project consistent with the Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of approval with special conditions is on [page 4](#).

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EXHIBITS

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[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Hydroacoustic Analysis \(excerpts\)](#)

[Exhibit 5 – Marine Mammal Monitoring Plan \(MMRP\) \(excerpts\)](#)

[Exhibit 6 – Section 7 ESA Review Form \(excerpts\)](#)

[Exhibit 7 – Agency Correspondence \(NOAA\)](#)

I. Motion and Resolution

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve coastal development permit 1-20-0171 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby **approves** Coastal Development Permit Application No. 1-20-0171 for the proposed development 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 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 of 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. **Construction Standards, Restrictions, and Responsibilities.** The permittee shall employ construction-related “best management practices” (BMPs) to protect water quality, public access, and adjacent sensitive habitat areas. The permittee shall ensure that all on-site workers and contractors understand and agree to observe the standards and limitations for work outlined in this permit and in the detailed project description included as part of the application submittal and as revised by these conditions.
 - A. The BMPs proposed by the permittee, including but not limited to the following measures, shall be implemented consistent with the additional requirements specified in subsection (B) below:
 - i. Debris Disposal: All trash and construction debris shall be removed from the work area each day that construction occurs to prevent the accumulation of debris that may be discharged into coastal waters. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility, and all construction debris shall be removed from the project site within 24 hours of project completion.
 - ii. Use of Heavy Equipment:
 - a. Equipment operators shall be trained in the procedures to be taken should an accidental spill occur. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available and immediately on-hand at the project site. A registered first-response, professional, hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spills shall be contained rapidly and cleaned up. In the event of a spill, the permittee shall notify the appropriate regulatory agencies immediately.

- b. Heavy equipment used in project construction shall be in good condition, shall be inspected for leakage of coolant and petroleum products prior to construction and regularly throughout construction activities, and shall be repaired offsite if necessary prior to entering the property. If equipment must be washed, washing shall occur offsite and away from the Arena Cove parking area.
 - c. Equipment operated from the pier shall use vegetable oil-based hydraulic fluids only.
 - d. Drip pans shall be used for stationary equipment to capture any drips or leaks.
 - iii. No construction materials, debris, soil, silt, sand, trash, concrete or washings thereof, oil or other petroleum products or washings thereof, or other foreign materials shall be allowed to enter or be placed where it may be washed by rainfall or runoff into coastal waters.
- B. The following additional requirements also apply to the authorized construction work:
 - i. Staging and Stockpile management: Staging and storage of construction equipment and materials shall occur in inland areas at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible. Upon a showing of infeasibility, the permittee may submit a request for review and written approval to the Executive Director for staging and storage of construction equipment and materials closer than 50 feet from coastal water, drainage courses, and storm drain inlets. Construction is prohibited outside of the defined construction, staging, and storage areas.
 - ii. Fueling and Maintenance: Fueling and maintenance of construction equipment and vehicles shall be conducted offsite if feasible. Any fueling and maintenance of equipment required onsite shall take place at a designated staging area located in upland areas at least 100 feet from coastal waters, drainage courses, all other wetlands, and storm drain inlets. The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
 - iii. Rainfall avoidance:

- a. All construction activities shall occur during periods of dry weather only;
- b. If rainfall is forecasted during the time construction activities are being performed (i.e., the National Weather Service's Northwestern California forecast for the Point Arena area predicts a greater than 50 percent chance of precipitation for the timeframe in which the work is to be conducted), all onsite stockpiles of construction debris shall be covered and secured before the onset of precipitation.

2. Pile Removal.

- A. The permittee shall remove timber piles proposed for removal in their entirety. Piles that cannot be removed in their entirety shall be cut off at least two feet below the level of the mudline.
- B. Representative samples of pile waste from removed treated piles shall be transported to an accredited laboratory and tested to determine proper disposal requirements. Nonhazardous materials shall be disposed of at an appropriate disposal site, and hazardous waste shall be transported to and disposed of at a disposal facility capable of receiving such materials.

3. Pile Driving Limitations. All pile-driving activities shall be performed in full accordance with the following provisions:

- A. Fender piles to be installed shall consist of 9-inch-diameter wooden piles. The piles shall be treated only with Ammoniacal Copper Zinc Arsenate (ACZA) and wrapped with industrial grade plastic wrapping.
- B. To protect marine life from the acoustic impacts of pile driving, the use of impact pile driving is prohibited.
- C. The use of water jetting during pile driving is prohibited.

4. Pressure-Treated Wood in the Marine Environment. The permittee shall comply with the following requirements for the use of any pressure treated wood in the pile replacement project:

- A. Pressure-treated wood used in construction of the project shall meet the American Wood Protection Association's (AWPA) wood preservative standards, specifically AWPA Standard U1, the primary specification for pressure-treated wood.
- B. ACZA pressure-treated wood shall be treated to the proper preservative retention standard (i.e., amount of preservative) specified by the AWPA for the appropriate AWPA Use Category. The ACZA

pressure-treated wood used for the project shall not have a preservative retention exceeding the minimum specified for the appropriate Use Category, in order to minimize the amount of preservative present in treated wood on-site that may subsequently leach into the marine environment.

- C. The ACZA preservative-treated wood shall be free of visible surface residues or bleeding of preservatives. No lumber shall be used that has a noticeable ammonia odor, indicating that it has not been properly processed or aged.
 - D. The ACZA preservative-treated wood shall be stored away from the water during construction, until it is needed for installation. The storage area shall have adequate drainage to prevent the wood from being subjected to standing water. If there is a chance of precipitation, the wood shall be covered to minimize exposure to precipitation.
 - E. Cutting or drilling of ACZA preservative-treated wood shall be performed at a site a minimum of 100 feet away from coastal waters, drainage courses, all other wetlands, and storm drain inlets, to minimize transport of sawdust by wind. The resulting sawdust, drill shavings, and wood scraps shall be contained and collected to prevent the discharge of preservative-treated wood to the marine environment. If it is necessary that treated wood be cut or drilled in place on the pier, all sawdust, shavings, and wood scraps shall be collected and prevented from entering the water below by use of tarps secured below the cutting area.
 - F. Application of a topical preservative to treated wood shall be performed at a site a minimum of 100 feet away from coastal waters, drainage courses, all other wetlands, and storm drain inlets, equipped with containment measures for potential drips and spills, to prevent discharge of the preservative to the environment. The topical preservative shall not be applied in the rain. Any excess topical preservative shall be wiped off, and the preservative must be allowed to fully dry before the wood is used in construction. If a small amount of touch-up preservative application must be performed over water, then tarps or containers must be used to capture any potential spills or drips.
- 5. Post-Construction Monitoring and Maintenance of Pile Wrapping.** The industrial grade plastic pile wrapping shall be periodically monitored during the life of the piles and shall be repaired or replaced if the material begins to deteriorate.
- 6. Marine Mammal Protection:** As proposed in the Arena Cove Pier Repair Project Marine Mammal Monitoring Plan (MMMP) completed by SHN dated 11/05/2020, and as agreed to by NOAA Fisheries in technical assistance correspondence

dated 12/9/2020, the permittee shall implement the following measures for marine mammal protection:

- A. One or two qualified marine mammal observers shall be onsite at all times during pile driving. Observer(s) shall be pre-approved to meet the list of qualification prior to the start of pile driving and shall meet the following qualifications:
 - i. Visual acuity in both eyes (correction is permissible) sufficient to discern moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars or spotting scope may be necessary to correctly identify the target.
 - ii. Advanced education in biological science, wildlife management, mammalogy or related fields (Bachelor's degree or higher is preferred), or equivalent Alaska native traditional knowledge.
 - iii. Experience in the field identification of marine mammals (cetaceans and pinnipeds) and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
 - iv. Sufficient training, orientation, or experience with vessel operation and pile-driving operations to provide for personal safety during observations.
- B. Ocean waters within a 2,175-meter radius of pile driving for the project (area of acoustic impact) potential sound effects shall be scanned and monitored for marine mammals 30 minutes prior to and during pile driving. If marine mammals enter or are observed within the area of acoustic impact during or before pile driving, the observer(s) shall immediately notify the onsite supervisor and require that pile driving either not be initiated or temporarily cease until the animal(s) have voluntarily moved outside of the area of acoustic impact.
- C. Monitoring shall occur from the two observer positions described in the MMMP and shown in [Exhibit 5](#).
- D. The waters within the area of acoustic impact shall be scanned using binoculars (10x42 or similar) and/or spotting scopes (20-60 zoom or equivalent), and by making visual observations.
- E. Pile-driving activities shall only occur during daylight hours when observers can visually monitor for marine mammals. If weather or sea conditions restrict the observer's ability to observe for marine mammals, the observer(s) shall contact the onsite supervisor and cease pile installation until conditions allow for monitoring to resume.

- F. Observer(s) shall use a marine mammal observation sheet to record the species, date, and time of any marine mammal sightings, as well as marine mammal behavior and any communication between the observer(s) and the onsite supervisor during pile driving. If any dead or dying marine mammal species are observed in the area of acoustic impact, regardless of known cause, the observer(s) shall record the species type (if known), date, time, and location of the observation, photograph the specimen, and immediately notify NOAA Fisheries.
- 7. Point Arena Mountain Beaver (PAMB) Protection:** During the PAMB breeding season (December 1 to June 30), there shall be no use of motorized vibrating equipment (including vibratory pile drivers) within 500 feet of active burrows or unsurveyed suitable habitat. During the non-breeding season, these same restrictions shall apply to all areas within 250 feet of active burrows or unsurveyed suitable habitat areas.
- 8. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the permittee acknowledges and agrees (A) that the site may be subject to hazards from waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, and other natural hazards, many of which will worsen with future sea level rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (D) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 9. Protection of Archaeological Resources.** If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the Manchester Band of Pomo Indians, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (A) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, or (B) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not de minimis, and the permittee has thereafter obtained an amendment to CDP 1-20-0171.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description

The City of Point Arena proposes development to repair storm damage to the public fishing pier that serves Arena Cove, a small commercial and recreational fishing harbor. The repairs consist of replacing nine damaged or missing wooden fender piles and one steel guide pile. Wooden fender piles serve as a protective buffer between fishing boats and the steel components of the pier. The steel guide pile provides structural support to the pier.

The existing fender piles are pressure-treated wooden poles approximately 9 inches in diameter and 50 feet long. The piles were anchored into the ocean floor using land-based pile driving equipment and secured using steel, wood, and rubber hardware to the concrete pier deck. In 2016, a strong winter storm damaged the nine fender piles and tore them away from the pier. Some of the piles are still partially attached to the pier, and some that were detached either were retrieved and disposed of or washed to sea during the storm. Most of the hardware for the fender piles remains, and the proposed project would replace the piles with new pressure-treated wooden piles of the same diameter and length wrapped in plastic wrap to prevent leaching of contaminants from the wood preservative, using the existing intact hardware. The piles would be installed using vibratory pile driving equipment staged on the pier or on land adjacent to the pier. Damaged piles would be fully removed or cut two feet below the mud line if full removal is not possible.

The damaged steel guide pile is 11 inches in diameter and approximately 50 feet in length and was anchored to the concrete pier deck with a T-shaped assembly of welded square tube steel. The damaged steel guide pile was sheared off at its entry point into the ocean floor. The project proposes to replace the steel pile with a new steel pile of the same diameter and length and attach it to the existing steel beam assembly that anchors the top of the pile to the pier deck.

Construction of the pier repairs would include use of a crane and vibratory pile driving equipment, and all equipment would operate from the deck of the pier or from land-based pile driving equipment. Construction equipment and materials would be staged on the southeast portion of the adjacent parking lot. Construction would take approximately 30 days. Although portions of the pier may be closed during construction, project construction will not significantly interrupt commercial or recreational fishing activities, as fishermen will have continued access to the pier, hoist, and dry storage areas during most of the construction period.

B. Background and Environmental Setting

Point Arena is a small incorporated city on the southern Mendocino Coast. Arena Cove is a small sheltered harbor approximately three miles south of the geographic peninsula known as Arena Point. Arena Cove is the primary coastal access point within the city limits, located approximately one mile west of Highway One and the commercial core of the City, at the mouth of Arena Creek. Arena Creek supports a well-developed willow-dominated riparian woodland with a mixed understory comprised of native and non-native species. The federally endangered Point Arena Mountain Beaver (PAMB) resides in burrows along the creek canyon, primarily on north facing slopes.

The original pier at Arena Cove was built in 1866 to support local fishing fleets and the transport of lumber. Heavy storm waves in January 1983 destroyed the pier and a fish-packing house and damaged a café and boathouse. Construction of a new 325-foot-long municipal pier and associated parking access and boat storage was approved by the Commission under CDP 1-85-039 in May of 1985 and included a skiff hoist and storage for 25 skiffs, a 5-ton hoist for launching and retrieving boats, fish cleaning stations, an articulated gangway/boarding system to allow access from the pier to the launched boats, and associated vehicular parking for public coastal access. In addition to these facilities, today the Cove area also is developed with 17 mooring buoys, a small office for pier operations with an adjoining public restroom and shower facility near the shore end of the pier, a National Oceanic and Atmospheric Administration (NOAA) weather and tidal station, 54 parking spaces plus boat storage parking, and (landward of the pier, on adjacent private properties on the north side of the Cove) a restaurant, shops, professional offices, and visitor-serving lodging facilities in the historic pier master's house and Coast Guard house. Arena Cove Pier is a popular destination and supports commercial and recreational fishing both from the pier and from boats that are launched off the pier by the boat hoist.

Arena Cove Pier is located in the coastal waters of Point Arena Cove. The pier is supported by a series of steel piles, with wooden fender piles installed around the perimeter. Water depths in the project area range from the intertidal to approximately 20 feet deep. Substrates below the pier include sand, gravel, and rock. Large kelp beds are present in Arena Cove, including a few small patches within the project area.

As mentioned above, facilities at Arena Cove were again damaged by a January 15, 2016 storm that produced unusually large waves. As a result of the storm, the piles were damaged as described above, and the damage was classified by the Federal Emergency Management Agency (FEMA) as a disaster. To address damages caused by the most recent 2016 storm, and to prevent further pier deterioration, the City proposes to replace the damaged fender piles and steel guide pile. The proposed repairs are funded by FEMA.

C. Standard of Review

The project site is located entirely in the Commission's retained permit jurisdiction. The City of Point Arena has a certified Local Coastal Program (LCP), but the site is within tidelands, submerged lands, and an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, as required by Public Resources Code section 30519(b), the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

D. Other Agency Approvals

U.S. Army Corps of Engineers (Corps)

The Corps of Engineers determined on October 15, 2020, that the project qualified for a Nationwide permit (NWP 3 - Maintenance).

North Coast Regional Water Quality Control Board (Regional Board)

The North Coast RWQCB issued a Water Quality Certification for the project on April 8, 2020 (No 1B20031WNME).

State Lands Commission

The State Lands Commission approved a General Lease for the project on February 28, 2020 (Public Agency Use, Lease 194.1).

U.S. Fish & Wildlife Service (USFWS)

USFWS reviewed the Endangered Species Act (ESA) Review Form and concurred with FEMA's determination that the project is not likely to adversely affect the Point Arena Mountain Beaver (PAMB).

E. Protection of Commercial Fishing & Recreational Boating Facilities

Section 30224 of the Coastal Act states the following (emphasis added):

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

Section 30234 of the Coastal Act states, in applicable part, the following (emphasis added):

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded...

Section 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Arena Cove has long been used as a launch site for commercial and recreational fishermen since the original construction of the cove area in 1866. As discussed above, commercial fishing and recreational boating facilities in the Cove continue to operate from the pier. The pier provides the only commercial fishing boat launching facility between Fort Bragg (45 miles north) and Bodega Bay (62 miles south). The City of Point Arena General Plan highlights Arena Cove as a special area to be reserved for commercial activities in conjunction with commercial and recreational fishing. The General Plan states that “The City of Point Arena, recognizing the key role that commercial and recreational fishing and boating plays in the local and regional coastal economy, shall continue to encourage the enhancement of coastal dependent industry at Arena Cove by assigning a high priority status to improvement and/or expansion of existing coastal or marine dependent uses at Arena Cove as well as encouraging new uses which directly enhance or supplement the existing commercial/recreational boating and fishing opportunities at the Cove.”

The proposed pier repair project will maintain and protect commercial fishing facilities at Arena Cove. The repaired pier will allow for the continued use of the commercial fishing amenity and will prevent further damage that could close the pier and, as a result, halt commercial fishing activities. Project construction will not cause any significant interruption of commercial or recreational fishing activities and will not interfere with any major commercial fishing seasons. Fishermen will have continued access to the pier, hoist, and dry storage areas. Further, in recognition of the importance of such activities, this project will improve and protect the facilities used for both commercial and recreational fishing.

Therefore, the Commission finds that the method of repair and maintenance, will maintain and protect the existing boat launching facility that serves commercial fishing and recreational boating, consistent with Coastal Act sections 30224, 30234, and 30234.5.

F. Permit Authority for Repair and Maintenance Development

Section 30610 of the Coastal Act provides, in relevant part (emphasis added):

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252 of the Commission administrative regulations (14 CCR 13000 et seq.) provides, in relevant part (emphasis added):

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

...

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. ...

The proposed development involves the replacement of nine damaged or missing wooden fender piles and one steel guide pile. Coastal Act section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in section 13252 of the Commission regulations.

The proposed project qualifies as a repair and maintenance project under section 30601(d) of the Coastal Act and section 13252 of the Commission's regulations because it does not involve an addition to or enlargement or expansion of the subject pier. Although certain types of repair projects are exempt from CDP requirements, the

proposed repair work involves the presence of construction materials and placement and removal of solid materials within 20 feet of coastal waters. The proposed repair project therefore requires a CDP under 14 CCR section 13252(a)(3) as an extraordinary method of repair and maintenance of existing structures that involves a risk of substantial adverse environmental impact.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the use and location of the underlying existing development.

The Applicant proposes to repair portions of the pier by replacing timber piles and the steel guide pile associated with the pier. If not properly undertaken with appropriate mitigation, the necessary pier repair activities could have adverse impacts on coastal resources, including threatened marine mammals, fish, and water quality.

While the Applicant has proposed some mitigation measures to protect coastal resources, more specific measures are needed to further minimize the project's expected and potential impacts on marine habitats, water quality and wetlands. The conditions required to ensure that these measures are part of the project are discussed in the following findings relevant to marine resources, water quality, and fill in coastal waters. Therefore, as conditioned in these findings, the Commission finds that the proposed method of repair and maintenance development is consistent with all applicable Chapter 3 policies of the Coastal Act.

G. Marine Resources and Water Quality

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 the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with the surface water flow,

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

Section 30232 of the Coastal Act states:

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.

The above-cited policies require protection of marine resources, water quality and the marine environment to sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. The project proposes methods of repair and maintenance over the Pacific Ocean. Water depths in the project area range from the intertidal to approximately 20 feet deep. Substrates below the pier include sand, gravel, and rock. Large kelp beds are present in Arena Cove, including a few small patches within the project area. In addition to several species of fish, crustaceans, and other aquatic resources, harbor seals and several other species of marine mammals have the potential to occur in the project area. FEMA completed a Pile Driving Noise Evaluation for the project (May 2020) and found that five federally listed cetaceans, one pinniped, and five federally listed species of fish may occur in the coastal waters of Northern California and within the proposed pier replacement project area.¹ In addition, the waters near Point Arena are designated as critical habitat for the leatherback sea turtle (*Dermochyls coriacea*), a federally endangered species. Several non-listed mammals, including Pacific Harbor Seal (*Phoca vituline richardii*) and California Sea Lion (*Zalophus californianus*), are also likely to occur in the project area.

Protection of Marine Mammals:

The project consists of the replacement of wooden fender piles and one steel support pile. The City is proposing to conduct pile driving for a period of 40 minutes or less per day, over approximately five days of pile driving. Piles will be driven with a vibratory pile driver. Damaged piles will be removed with a crane staged on the pier or on land adjacent to the pier. No water jetting is proposed for pile removal or installation.

¹ Blue Whale (*Balaenoptera musculus*); Fin Whale (*Balaenoptera physalus*); Sei Whale (*Balaenoptera borealis*); Humpback Whale (*Megaptera novaeangliae*)- Mexico Distinct Population Segment (DPS) and Central America DPS; Killer Whale (*Orcinus orca*), Southern Resident DPS (J, K, and L pods); and Guadalupe Fur Seal (*Arctocephalus townsendi*). Federally listed fish include Coho Salmon (*Oncorhynchus kisutch*) - Central California Coast Evolutionarily Significant Unit (ESU); Steelhead (*Oncorhynchus mykiss*) - Northern California DPS; Chinook Salmon (*Oncorhynchus tshawytscha*) - California Coastal ESU; Eulachon (*Thaleichthys pacificus*) - Southern DPS; and Green Sturgeon (*Acipenser medirostris*) - Southern DPS.

Because pile driving activities will be carried out both above and within marine waters, the proposed repair and maintenance project has the potential to result in adverse impacts to marine organisms. Specifically, the proposed pile driving would result in the generation of elevated levels of underwater sound in the waters surrounding the pier. Pile driving generates hydroacoustic pressure impulses and particle velocities that can cause effects on fish and marine mammals ranging from altered behavior, hearing loss, and tissue injuries, to immediate mortality. These underwater sound impacts can be measured by “Peak Sound Pressure Level (SPL),” the maximum value of an instantaneous sound pressure, such as that generated by a single strike on a pile by a pile driver, and “Cumulative Sound Exposure Level (SEL),” the summation of the sound energy associated with all pile strikes that occur over a given day.

Marine mammals, in particular cetaceans such as whales, are known to be susceptible to disturbance and injury from high levels of human-generated underwater sound. Marine mammals rely on communication and the ability to sense their environment for a variety of critical life functions (traveling, finding mates or young, foraging, etc.). Although an animal may communicate and sense its environment in many ways and with a variety of different sensory organs, because seawater is relatively opaque to light and chemicals diffuse slowly in it, marine mammals have evolved to rely primarily on sound to sense their environment and communicate. Increased anthropogenic-generated noise in the marine environment has been shown to interfere with these activities and in some cases to cause internal injury, stranding, and mortality. Exposure to low levels of sound for a relatively long period of time, or exposure to higher levels of sound for shorter periods of time, may result in auditory tissue damage (damage to the sensory hair cells of the ear) or temporary hearing loss referred to as a “temporary threshold shift” (TTS). Species may recover from TTS minutes to days following exposure. An additional possible effect on hearing from loud underwater sound is referred to as a permanent threshold shift (PTS). PTS is a permanent loss of hearing and is generally accompanied by death of the sensory hair cells of the ear. Several studies carried out in recent years suggest that instantaneous exposure to a peak sound pressure level (SPL) as well as from accumulated exposure to a lower sound level over a longer period of time (SEL) can affect hearing through auditory tissue damage or TTS.

Potential injury and mortality of fish are anticipated to occur from exposure to impact pile driving noise exceeding established thresholds for the onset of injury. In 2008, a Fisheries Hydroacoustic Working Group, composed of staff from federal and state agencies and supported by a panel of hydroacoustic and fisheries experts, generally agreed in principal to interim criteria to protect fish from pile driving activities. These criteria were a 206 peak dB for peak SPL and a Cumulative SEL limit of 187 dB, except in the case of fish weighing equal to or less than 2 grams, in which case the Cumulative SEL was set to a maximum of 183 dB. The peak SPL is seldom reached, so pile driving is generally constrained by the Cumulative SEL.

The noise produced during vibratory driving is lower in intensity, accumulates more slowly, and can be considered continuous in comparison to the pulse-type noise

produced during impact driving. Peak noise levels from vibratory driving are typically 10 to 20 dB lower than impact driving (Caltrans, 2015). The Pile Driving Noise Evaluation completed for the project found that proposed vibratory pile driving will generate noise levels below levels expected to cause mortality or injury to fish, but above the harassment threshold for marine mammals over an impact area of approximately 2,175 meters in radius. This impact area does not extend into deeper waters that are more likely to support cetaceans, though it likely does include areas where pinnipeds like the Pacific harbor seal and California sea lion may be exposed to underwater noise above harassment thresholds.

To minimize the damaging effects of sound to marine mammals, sea turtles, and fish during pile driving activities, the Applicant has completed a Marine Mammal Monitoring Plan (MMMP). The MMMP outlines monitoring and reporting protocol to observe marine mammals in the 2,175-meter radius defined area of potential sound effects. Monitoring is intended to avoid serious injury of marine mammals and to minimize behavioral disturbance. Staff from NOAA Fisheries reviewed the MMMP and found that, with the implementation of the monitoring plan, the harassment to marine mammals is highly unlikely and the Applicant does not need to apply for an Incidental Harassment Agreement ([Exhibit 7](#)). **Special Condition 6** requires the measures outlined in the MMMP to be implemented and requires that qualified Marine Mammal Monitor(s) be present during all pile driving activities to effectively observe the area of potential sound effects and halt work that poses a threat to any observed marine mammals. In addition, Special Condition 6 requires daily logs to be kept during pile-driving events and the submission of an annual report summarizing the results of the project's monitoring activities. In addition, **Special Condition 3** prohibits the use of impact pile driving for the proposed repair and maintenance activities. Impact pile driving would cause greater noise impacts to marine organisms, including marine mammals.

Use of treated wood in the marine environment:

The City proposes to replace damaged wooden piles with new, ACZA preservative-treated wood. ACZA is a metal-arsenate preservative that is used to preserve wood from decay, fungi, wood-attacking insects, and marine borers. While ACZA is an approved product for treating new wooden piles, it is still toxic and can produce adverse impacts when used where it has the potential to leach into the aquatic environment. To prevent chemical leaching from the new piles, the Applicant proposes to wrap the piles with industrial grade plastic wrapping that extends at least two feet below the mudline and at least two feet above ordinary high water.

To further reduce the potential for wood preservatives to enter coastal waters, the City has proposed several BMPs consistent with the American Wood Protection Association's (AWPA) wood preservation standards. **Special Condition 4** requires the BMPs proposed by the Applicant be implemented to protect water quality. Measures proposed by the Applicant and required by the condition include, but are not limited to, the following: (1) adhering to the AWPA wood preservative standards; (2) limiting the amount of preservative to the minimum level specified for the appropriate AWPA Use

Category; (3) inspecting treated wood onsite to assure it has been properly processed; (4) storing treated wood away from the water in stacks above ground with adequate drainage to prevent the wood from being subjected to standing water; (5) cutting or drilling treated wood at least 100 feet away from the water whenever possible and immediately collecting sawdust, drill shavings, and wood scraps; and (7) applying topical (non-pressure-treated) preservative to the cut ends of treated wood at least 100 feet away from the water and containing any drips and spills, wiping off any excess preservative, and allowing the preservative to fully dry before using the wood in construction. Special Condition 3 requires that the wooden piles to be installed be treated only with the ACZA wood preservative and wrapped with industrial grade plastic wrapping as proposed by the Applicant, and **Special Condition 5** requires that deteriorated plastic pile wrapping be repaired or replaced over the life of the piles in part to ensure that wood preservative contaminants within the piles are not discharged into the environment.

To further minimize water quality impacts of the project from the removal of the old treated piles to be replaced, **Special Condition 2** requires removal of the old timber piles in their entirety and proper testing and disposal of pile waste. The condition requires that nonhazardous materials be disposed of at an appropriate disposal site and hazardous waste be transported to and disposed of at the correct disposal facility capable of receiving such materials.

Construction-related water quality impacts:

The City has proposed a number of BMPs to be implemented during construction to protect water quality and prevent leaks and accidental spills. **Special Condition 1** outlines BMPs proposed by the Applicant (Condition 1A) and additional measures imposed by the Commission (Condition 1B) to protect water quality. Measures proposed by the Applicant and required by **Special Condition 1A** include, but are not limited to, the following: (1) disposing of all construction debris each day that construction occurs and within 24 hours of project completion; (2) training equipment operators in procedures to be taken should accidental spills occur; (3) maintaining heavy equipment in good condition free of leakage of coolant and petroleum products; (4) using vegetable oil-based hydraulic fluids in all equipment operated from the pier; (5) requiring that drip pans be used for stationary equipment to capture any drips or leaks and to prevent such pollutants from potentially entering coastal waters; and (6) using appropriate BMPs to prevent construction materials from entering coastal waters.

While the measures proposed by the Applicant are appropriate, in some cases they do not go far enough or include enough detail to ensure that appropriate feasible measures are included to minimize adverse environmental effects. For example, no measures are proposed to prevent equipment fueling, maintenance, and/or washing from occurring too close to wetlands and coastal waters to adequately protect these areas. Therefore, **Special Condition 1B** requires several additional water quality protection measures, including but not limited to: (1) staging construction materials at least 50 feet away from coastal waters; (2) limiting refueling of construction equipment to designated staging

areas at least 100 feet from coastal waters; (3) limiting timing of construction activities to periods of dry weather; and (4) covering and securing all onsite stockpiles of construction debris before the onset of precipitation.

Special Condition 3 requires implementation of additional measures proposed by the Applicant that will further ensure that construction activities include appropriate measures to minimize adverse environmental effects. Special Condition 3 prohibits the use of impact pile driving and water jetting during pile driving activities, as proposed by the Applicant.

Minimizing Plastic Pollution in the Marine Environment:

The Applicant has proposed to wrap piles in an industrial grade plastic pile wrapping to minimize the exposure of the treated wood in the marine environment. The plastic may break down over time and contribute to plastic pollution in the marine environment. Therefore, **Special Condition 5** requires the industrial grade plastic pile wrapping to be periodically monitored during the life of the structure and to be repaired or replaced if the material begins to deteriorate, in part, to minimize the potential for plastic fragments to contribute to marine debris pollution.

The Commission finds that the method of repair and maintenance, as conditioned, will maintain the biological productivity and quality of coastal waters consistent with sections 30230, 30231, and 30232.

H. Development Within Coastal Waters

Section 30233 of the Coastal Act provides, in applicable part, as follows (emphasis added):

- 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.
 - (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.
- b. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.
 - c. In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

Section 30108.2 defines fill as the placement of earth or other substance or material in a submerged area. The proposed pile replacement project includes the placement of 5.2 square feet of fill within the Pacific Ocean. However, the piles will replace piles of the same size that will be removed. Therefore, the proposed project will not result in a net increase of fill of coastal waters.

a. Allowable Uses

As discussed above, in its consideration of a permit application for a repair or maintenance project, the Commission must review whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. As previously discussed in Finding E above, the Arena Cove Pier supports a diverse marine industry with a major portion devoted to commercial boating and fishing. The pier itself is used for launching commercial fishing boats and also as a location for recreational fishermen to fish. The proposed pile replacement project will protect the pier serving these coastal dependent uses from damage during heavy storms.

b. Alternatives

For projects involving diking, dredging, and filling of coastal waters, the Commission must ensure that the method of repair and maintenance has no feasible less environmentally damaging alternative to the diking, dredging, and filling aspects of a project. Coastal Act section 30108 defines "feasible" as "...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." In this case the Commission must consider whether there are any feasible less environmentally

damaging alternatives to the placement of 5.2 square feet of pile fill in the Pacific Ocean.

- i. No Project Alternative: The primary purposed of the proposed project is to repair or replace nine damaged wooden fender piles and one new steel guide pile associated with the Arena Cove pier, to ensure the safe and continued usage of the pier by the commercial fishing industry and the public. Under the “no project” alternative, the objectives of the project – to repair and maintain a safe and structurally secure facility and to provide protection to fishing boats using the facility – would not be met. The pier would continue to deteriorate, and further fender pile failure could result in damage to commercial and recreational fishing vessels as well as to the pier steel support structure itself. As the project is necessary to protect commercial fishing vessels and to maintain a structurally secure dock, the no project alternative is not a feasible, less environmentally damaging alternative to the proposed project as conditioned.
- ii. Increasing wooden fender piles: Wooden fender piles provide protection for fishing vessels docked at the pier. Increasing the number or size of wooden fender piles could provide even more protection. However, placing more piles along the pier would increase fill in coastal waters. Therefore, the increased pile alternative is not a feasible less environmentally damaging method of repair and maintenance alternative to the proposed project, as conditioned.

The Commission concludes that, as conditioned to include the feasible mitigation measures discussed in part above and reiterated below, the proposed method of repair and maintenance is the least environmentally damaging feasible alternative and consistent with the alternatives test of section 30233(a).

c. Feasible Mitigation Measures

In addition to requiring that diking, dredging, and filling in coastal wetlands and waters only be permitted if found to be an allowable use and the least environmentally damaging feasible alternative, section 30233 further requires that feasible mitigation measures be provided to minimize adverse environmental effects. In addition, the proposed method of repair and maintenance must maintain and enhance the functional capacity of coastal wetlands and waters consistent with section 30233.

As discussed above, the replacement piles will not result in a net increase of the amount of fill in coastal waters. The Applicant has designed the repair and maintenance project with minimal impacts to coastal and marine resources and has proposed several measures to further minimize any adverse environmental effects. As previously discussed in Finding G, **Special Condition 1** outlines various BMPs required to be implemented during construction, including, but not limited to: (1) disposing of all construction debris each day that construction occurs and within 24 hours of project completion; (2) training equipment operators in procedures to be taken should

accidental spills occur; (3) maintaining heavy equipment in good condition free of leakage of coolant and petroleum products; (4) using vegetable oil-based hydraulic fluids in all equipment operated from the pier; and (5) requiring that drip pans be used for stationary equipment to capture any drips or leaks and to prevent such pollutants from potentially entering coastal waters. Also as previously discussed in Finding G, **Special Condition 2** requires removal of timber piles in their entirety and proper testing and disposal of pile waste. The condition requires that nonhazardous materials be disposed of at an appropriate disposal site and hazardous waste be transported to and disposed of at the correct disposal facility capable of receiving such materials. **Special Condition 3** outlines pile driving limitations (previously discussed) to ensure that pile driving will not result in excessive acoustic impacts or sedimentation associated with impact driving and water jetting. **Special Condition 4** and **Special Condition 5**, also as discussed above, will ensure various BMPs are implemented for the use of ACZA pressure-treated wood in the marine environment and for the maintenance and monitoring of pile wrapping material. Finally, **Special Condition 6** requires implementation of the Applicant's proposed Marine Mammal Monitoring Plan discussed in Finding G above to ensure the protection of marine mammals that may occur in the project area during noise generating pile driving activities.

Therefore, the Commission finds that the proposed method of repair and maintenance, as conditioned, provides feasible mitigation measures to minimize adverse environmental effects consistent with section 30233(a).

d. Biological Productivity and Functionality

The fourth general limitation set by section 30233(c) is that any proposed dredging or filling in coastal wetlands or estuaries must maintain or enhance the functional capacity of the wetland.

The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the method of repair and maintenance will not have significant adverse impacts on coastal waters or wetlands in and around the project vicinity. Therefore, the Commission finds that the proposed method of repair and maintenance, as conditioned, will maintain and enhance the functional capacity of wetlands consistent with the requirements of section 30233 of the Coastal Act.

Conclusion

For all of the reasons set forth above, the Commission finds that the proposed development, as conditioned, is consistent with section 30233 of the Coastal Act.

I. Protection of Adjacent ESHA

Section 30240(b) of the Coastal Act states:

- b. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which

would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Environmentally sensitive habitat areas (ESHA) in the project vicinity include active breeding habitat for the federally endangered Point Arena Mountain Beaver (*Aplodontia rufa nigra*; PAMB) throughout the Arena Creek watershed, including within 500 feet of the project site. A PAMB habitat assessment and survey and biological report was prepared for the project in 2020 (SHN, November 2020), and no PAMB were observed within the study area. Although the proposed repair and maintenance activities will occur more than 250 feet from suitable PAMB habitat, pile driving activities will produce noise and vibration that may influence nearby PAMB habitat.

The City's Local Coastal Program (LCP), Zoning Code section 5.24 discusses the importance of protecting the federally listed PAMB and its habitat. The LCP identifies several threats to PAMB, such as road construction and maintenance, storm water runoff, and irrigation. PAMB reside in underground burrows and are particularly sensitive to disturbances in the form of noise and ground vibrations. Actions involving noise-generating activities within 500 feet of occupied PAMB habitat have the potential to harm the animals, especially during the breeding season of December 15 to June 15. The LCP, which is not the standard of review but may be used as guidance and is especially relevant for consideration of geographic-specific ESHA, such as PAMB habitat, requires PAMB surveys and, where appropriate, implementation of PAMB protection measures for proposed actions that involve noise-generating or habitat-modifying activities within PAMB habitat and the 500-foot buffer area.

PAMB habitat exists southeast of the project area within the willow habitat associated with Arena Creek. The animals prefer areas with abundant herbaceous vegetation, particularly along north-facing slopes or gulleys where soils are well drained and friable. The animals are typically found in riparian habitat, moist coastal scrub, and dune scrub comprised of a wide variety of brushy and herbaceous cover.² The City contracted with local planning and engineering firm SHN to conduct PAMB habitat assessments³ including surveying for and mapping suitable habitat for PAMB within the vicinity of the project area, including indicator species.

The proposed project includes construction activities within the 500-foot buffer area for PAMB. Construction activities include staging and stockpile management, construction access for equipment and construction personnel, and vibratory pile driving activities associated with replacing pier pilings. Pile driving activities include up to 210 minutes of

² USFWS, "Point Arena Mountain Beaver Recover Plan" (1998)

³ The PAMB surveys were conducted by a biologist who is USFWS PAMB survey trained and has three years PAMB surveying experience. Surveys employed methods described in the "Draft Guidelines for Project Related Habitat Assessments and Presence-Absence Surveys for the Point Arena Mountain Beaver" (USFWS, 2017a).

vibratory driving to install the nine new wooden piles and one new steel pile. Unsurveyed PAMB habitat is presumed occupied just over 250 feet south of the project area and within the recommended 500-foot buffer area from the LCP. USFWS staff has confirmed that the unsurveyed habitat has been occupied by PAMB regularly since 1991. The area between the occupied habitat and the pier consists of open water, the Arena Cove parking lot, a stretch of riparian willows, Arena Creek, and a small service road.

The City has proposed protective measures consistent with the USFWS's Draft Point Arena Mountain Beaver Standard Protection Measures for "No-Take" Determinations and protective measures have been incorporated into Section 7 Consultation between FEMA and the USFWS. These measures are included in **Special Condition 7** and limit the use of noise-generating vibratory equipment within PAMB buffer areas. The City is required to maintain a 500-foot buffer distance from unsurveyed suitable PAMB habitat during the PAMB breeding season (December 15 – June 15) and a 250-foot buffer distance from unsurveyed suitable PAMB habitat during the non-breeding season. FEMA, as the federal lead agency, completed Section 7 Consultation with USFWS. USFWS staff concurred with FEMA's determination that the project may affect but is not likely to adversely affect the PAMB. The Commission therefore finds that the method of repair and maintenance, as conditioned, will prevent impacts that would significantly degrade the habitat value of the adjacent PAMB habitat areas and will be compatible with the continuance of the habitat, consistent with the requirements of section 30240(b).

J. Public Access and Recreation

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30214 provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying these sections, the Commission considers whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed project is designed to protect existing public access and to enhance public access opportunities. Arena Cove Pier is the only public pier within the City and is a popular access point for commercial and recreational anglers. The pier repair project will protect fishing vessels and support safe and continued access to the pier.

The main access road to Arena Cove and access to the beach will remain open throughout construction. Construction will not result in closures of the parking lot. Although portions of the pier may be closed during construction, project construction will not significantly interrupt recreational fishing activities, as fishermen will have continued

access to the pier during most of the construction period. Signage will indicate which areas of the pier are available for use during construction.

Therefore, as the repair and maintenance project will enhance public access use, the temporary construction interference with public access and recreational use of the site will be limited to a relatively short duration, and as pedestrian and fishing access will be maintained to the site for the duration of the project, the Commission finds that the method of repair and maintenance, as conditioned, will not have a significant adverse effect on public access, and that the proposed method of repair and maintenance as proposed is consistent with the requirements of Coastal Act sections 30210, 30211, and 30214.

K. Coastal Hazards

Section 30253 states in applicable part:

New development shall do all of the following:

- A. Minimize risks to life 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...

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic and flood hazard. The proposed development is in an area of the coastal zone that has been identified as subject to potential hazards from wave action during the winter storm season. The pier has previously been subject to substantial damage as the result of storm occurrences. The Coastal Act recognizes that certain types of development, such as the proposed project to replace damaged piles on the pier, involve some level of risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the owner's property rights. As such, the Commission finds that due to the unforeseen possibility of liquefaction, storm waves, surges, and erosion, the Applicant shall assume these risks as a condition of approval. Therefore, **Special Condition 7** requires the City to assume the risks of extraordinary erosion, flooding, and geologic hazards and waive any claim of liability on the part of the Commission.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act section 30253.

L. Protection of Archaeological Resources

Coastal Act section 30244 states as follows:

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

The project area lies within the traditional territory of the Bokeya Pomo, a tribe of the Central Pomo. The Manchester Band of Pomo of the Manchester Rancheria, located four miles upstream from the coastal mouth of the Garcia River, consists of members of tribal groups known formerly as the Boya and the Bokeya who lived between the Russian River Valley and the coast.

A cultural resources investigation and report was completed for the subject property in April 2020 by William Rich and Associates (WRA). The investigation included a record search at the Northwest Information Center and a review of archaeological/historical reports and published literature pertinent to the project area. WRA referred the project to the Native American Heritage Commission and tribal representatives. A field survey was performed of the pier and a surrounding buffer, which encompassed 0.7 acres, on March 4, 2020. In addition, the Commission referred the project to the Manchester Band of Pomo on December 10, 2020 and notified the Tribes of the Commission hearing on February 19, 2021. To date, no comments have been received from any Tribe.

The cultural resource investigation did not find any archaeological, ethnographic or historic-period sites, artifacts, features or deposits at the project site that would be considered an historical resource, or a historic property. The proposed project scope is limited to the pier and the waters of the Pacific Ocean underneath the pier, and no effect to archaeological resources is anticipated as a result of the proposed development. Nevertheless, to ensure protection of any archaeological resources that may be inadvertently discovered at the site during pile driving activities associated with the proposed development, the cultural resource investigation recommends that construction be halted, and the discovery evaluated. Therefore, **Special Condition 10** requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease. To recommence construction following discovery of cultural deposits, the Applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director, who determines whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required.

The Commission finds that the proposed method of repair and maintenance, as conditioned, is consistent with section 30244, as the development includes reasonable mitigation measures to address adverse impacts to archaeological resources.

M. California Environmental Quality Act (CEQA)

The City of Point Arena, as the lead agency, determined the project to be categorically exempt from CEQA review.

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing 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 approval of a proposed development if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).)

The Commission incorporates its findings on Coastal Act consistency as if set forth in full herein. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As discussed above, the project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

1-20-0171 (City of Point Arena)

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. CDP Application File No. 1-85-039
2. City of Point Arena Certified Local Coastal Program