

**CALIFORNIA COASTAL COMMISSION**

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# F13a

**DATE:** April 1, 2021

**TO:** Commissioners and Interested Persons

**FROM:** Karl Schwing, Deputy Director  
Amber Dobson, District Manager

**SUBJECT:** Notice of Impending Development **CCV-NOID-0001-21 (PWP-4-82-15)** for the Crystal Cove State Park Public Works Plan. Public Hearing and Commission Action at the April 16, 2021 Commission Meeting.

**STAFF RECOMMENDATION:** staff recommends that the Commission **approve NOID 1-21**, as submitted, and as described within the staff report.

**Motions and Resolutions: Page 4.**

## SUMMARY

The California Department of Parks and Recreation proposes to remove grouted rip-rap within the upper Los Trancos Creek and install an un-grouted rip rap spillway adjacent to a public pedestrian pathway and remove accumulated creek sediment downstream. The project includes measures to protect trees, nesting and roosting bird species, and mitigation for impacts to native vegetation within the Historic District of the Crystal Cove State Park in Orange County.

The purpose of the project is to repair an existing developed pedestrian crossing, which is being undermined, and remove recent accumulated creek sediment downstream to reduce the likelihood of flooding within the historic district during a large storm flow.

The project includes mitigation measures outlined in the Biological Technical Report and as proposed requires a pre-construction survey for the Southwestern Pond Turtle, a pre-construction survey for Coastal California Gnatcatcher and a construction period outside of nesting season. Impacts to native vegetation are proposed to be mitigated at a 2:1 ratio. Additionally, the project must obtain regulatory permits from the U.S. Army Corps of Engineers, Regional Water

Quality Control Board, and California Department of Fish and Wildlife prior to proceeding.

The required items necessary to provide a complete Notice of Impending Development (NOID) were received in the South Coast Office on February 24, 2021 and the notice was deemed filed on March 3, 2021.

Therefore, staff is recommending that the Commission determine that the impending development **is consistent** with the certified Crystal Cove Public Works Plan (PWP), as proposed. The project is consistent with all resource protection policies and provisions of the Public Works Plan. The standard of review for the proposed NOID is conformity with the policies of the certified PWP.

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**SUBSTANTIVE FILE DOCUMENTS:**

1. Crystal Cove State Parks Public Works Plan, PWP-4-82 and Commission findings dated May 4, 1982
2. PWP Amendment 4-82-A2 Crystal Cove Historic District Preservation and Public Use Plan (PPUP) and Commission findings dated June 13, 2003
3. Draft Historic Landscape Management Plan, submitted by State Parks, 2/17/21

**LIST OF EXHIBITS**

1. Vicinity Map
2. Site Plans
3. Habitat and Impacts

## **I. PROCEDURAL NOTE**

Sections 30605 and 30606 of the Coastal Act and Title 14, Sections 13357(a)(5), 13359, and 13353-54 of the California Code of Regulations govern the Coastal Commission's review of subsequent development where there is a certified PWP. Section 13354 requires the Executive Director or his designee to review the Notice of Impending Development (or development announcement) within five working days of receipt and determine whether it provides sufficient information to determine if the proposed development is consistent with the certified PWP. The notice is deemed filed when all necessary supporting information has been received. Pursuant to Section 13359 of Title 14 of the California Code of Regulations, within thirty working days of filing the Notice of Impending Development, the Executive Director shall report to the Commission the pendency of the development and make a recommendation regarding the consistency of the proposed development with the certified PWP. After public hearing, by a majority of its members present, the Commission shall determine whether the development is consistent with the certified PWP and whether conditions are required to bring the development into conformance with the PWP. No construction shall commence until after the Commission votes to render the proposed development consistent with the certified PWP.

## **II. STAFF RECOMMENDATION: MOTIONS & RESOLUTIONS**

### **A. NOID 1-21: APPROVAL AS SUBMITTED**

#### **B. MOTION:**

I move that the Commission determine that the development described in the Crystal Cove State Park Notice of Impending Development 1-21 (Los Trancos Creek Maintenance) is consistent with the certified Crystal Cove State Park Public Works Plan.

#### **C. STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development **1-21**, as submitted, is consistent with the certified Crystal Cove State Park Public Works Plan, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **D. RESOLUTION:**

The Commission hereby determines that the development described in the Notice of Impending Development 1-21 is consistent with the certified Crystal Cove State Park Public Works Plan for the reasons discussed in the findings herein.

### **III. FINDINGS FOR THE APPROVAL OF THE NOTICE OF IMPENDING DEVELOPMENT**

The Commission hereby finds and declares as follows:

#### **A. Standard of Review**

Section 30605 of the Coastal Act provides, in part, that:

Where a plan for a public works or state university or college or private university development project has been certified by the Commission, any subsequent review by the Commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.

Section 30606 of the Coastal Act states:

Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university, shall notify the Commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified public works plan or long-range development plan. No development shall take place within 30 working days after the notice.

Section 13359 of the Commission's administrative regulations states:

- (b) The Commission shall ... determine whether the proposed development is consistent with the certified public works plan. If the Commission determines that the project is not consistent with the approved plan and that conditions may be required in accordance with the provisions of Public Resources Code Sections 30605-320607.1, in order to bring the project into conformance with the approved plan, the Commission shall vote on the proposed conditions at the next scheduled public hearing.

The Crystal Cove State Park Public Works Plan was approved with conditions on May 20, 1982. The conditions were met on August 26, 1982. The PWP was amended in 1988 regarding equestrian uses, and amended again in 2003 to incorporate a plan for the historic district and cottage restoration called the Crystal Cove Historic District Preservation and Public Use Plan (PPUP).

The Commission has approved 14 specific project approvals consistent with the PWP.

## **B. Project Description and Location**

Los Trancos Creek is located within the Crystal Cove Historic District (CCHD), which includes a restaurant, retail stores, beach cottages, and other state park facility buildings. Over the last few years, greater storm flow through Los Trancos Creek resulted in sediment deposition and flooding. Due to its proximity to the CCHD, streambed maintenance and sediment removal within the creek is required to prevent flooding, and this project includes construction of a riprap spillway.

The project site is located at Los Trancos Creek on the seaward side of Pacific Coast Highway (Exhibit 1). An access tunnel (arch culvert) runs underneath Pacific Coast Highway, connecting the inland Los Trancos parking lot with the seaward portion of the State Park, which provides access to the beach and the historic district. The access tunnel is used for pedestrian traffic and for lifeguard/ranger vehicular traffic between the Historic District and the Los Trancos parking lot and interpretive center.

There are two paths which visitors at Los Trancos parking lot can use to access the seaward side of the State Park. First, visitors can walk down along the Los Trancos stream, into the tunnel, through the tunnel, and across the asphalt road into the upper reaches of the Crystal Cove State Park Historic District. This is the most aesthetic and direct path. Second, visitors can cross PCH at a signaled intersection and either connect with the access road leading to the Historic District or walk across the marine terrace portion of the State Park to a ramp which takes pedestrians to the beach.

When Pacific Coast Highway was constructed in the early 1930's, portions of Los Trancos Creek and the Crystal Cove area were filled to create slopes supporting the road and a 9-foot by 10-foot arch culvert (access tunnel) was placed under the road. Los Trancos Creek flows through that culvert and empties into the ocean at the Crystal Cove Historic District. The Los Trancos Creek is channelized with retaining walls from the car bridge to the creek mouth at the Pacific Ocean. When the highway was constructed, highway engineers altered the course of Los Trancos stream south of its previous channel and directed it into the culvert (access tunnel) under Pacific Coast Highway. The culvert was constructed in 1932. The stream now flows under Pacific Coast Highway via the culvert and takes a 90 degree turn before flowing through the historic district. The culvert and other portions of the site are subject to drainage and access easements with CalTrans.

During the 1995 and 1998 El Niño storms, the flood waters destroyed the section of road leading from the culvert to the upper parking lot area in Crystal Cove

State Park. Runoff from the El Niño storms undercut and washed out the road, road base and other improvements related to where the tunnel outlets into the stream. In addition, the runoff eroded a slope which bordered the road directly on the north. This slope supports the access road to the Historic District.

In 1995, CDP 5-95-123 was approved by the Commission for reconstruction of a slope adjacent to PCH south of the proposed development. A 221-foot long section of slope bordering Pacific Coast Highway was eroded and threatened the stability of the western lanes of the highway. The storms also caused extensive damage to the channel retaining wall on the north side of the creek downstream of the auto bridge. Coastal Development Permit 5-95-123 was approved by the Commission for reconstruction of the collapsed slope.

After the 1995 storms, FEMA funded repairs at the outlet of the Los Trancos arch culvert. The repairs consisted of replacing the fill for the road, asphalt, un-cemented rip rap protection above and below the road and basically restored the area to its pre-storm condition. However, the El Niño storms of 1998 again destroyed the road. Runoff from the El Niño storms undercut and washed out the road, road base and other improvements related to where the tunnel outlets into the stream. In addition, the runoff eroded a slope which bordered the road directly on the north. This slope supports the access road to the Historic District.

The Commission issued a project specific approval 4-82-13 in 1999 for replacement of the asphalt roadway, embankment and electrical conduit adjacent to the Los Trancos Road access tunnel with grading and placement of 130 cubic yard of grouted rip rap.

The subject site is within the creek, adjacent to the public trail immediately seaward of the access tunnel, and inland of the bridge that crosses over the creek. The rip rap spillway and the reconstructed pedestrian walkway are proposed to be constructed between the tunnel outlet and the visitor drop off area. The removal of sediment will occur downstream from there, between the visitor drop off area and the bridge over the creek.

A portion of the public access way, approximately 50 feet long, near the top of the creek (just beyond the tunnel outlet) will be demolished and reconstructed (Exhibit 2). A portion of existing grouted rip rap on the west side of the accessway will remain in place. The grouted rip rap on the east side (creek side) of the accessway is proposed to be demolished, broken into pieces, and used to construct an ungrouted riprap spillway, which will dissipate flows and protect the adjacent pedestrian sidewalk. The ungrouted rip rap will be placed under the accessway as a foundation to protect against erosion from the adjacent creek, and the new accessway will be constructed over and adjacent to the new ungrouted rip rap spillway. A retaining wall will be constructed immediately adjacent to the accessway on the east side (creek side).

Storm events over the last few decades have discharged a large amount of sediment into Los Trancos Creek south of the existing grouted riprap, raising the streambed elevation. Sediment will be removed in this area to restore flood capacity to its originally designed condition from approximately 100 feet south of the proposed riprap spillway to the bridge over the creek. Sediment and vegetation (including trees and shrubs) within this area will be removed, thereby lowering streambed elevation and restoring Los Trancos to its original design contours. The removed sediment will be properly disposed of off-site. Approximately 370 cubic yards of sediment will be removed from the creek.

Two areas are proposed to allow construction access during maintenance activities. One construction access area is located south and east of the proposed riprap spillway. Construction personnel and equipment would enter this area from the pedestrian sidewalk to the west. The other construction access area is located west of the upstream portion of the proposed sediment removal area. Construction personnel and equipment would enter this area just north of Cottage 15A.

Vegetation in the stream channel seaward of PCH consists primarily of non-native plants. The subject site includes the non-channelized segments of the creek, which are subject to scour during storm events. The non-channelized segment from the arch culvert to the channelized sections (near the auto bridge) of the Los Trancos Creek is approximately 50-100 feet. Any natural resources or development at the mouth of the arch culvert bears the brunt of floodwater runoff and scour; hence the need for the replacement of the rip rap as proposed by this project.

Other related actions and past permits include project specific approval 4-82-11, for the reconstruction of the existing pedestrian bridge and replacement of an existing automobile bridge in the Crystal Cove Historic District. The Commission found that the repairs to bridges, although not specifically identified in the public works plan, are consistent with the public works plan. The findings state that the Certified Public Works Plan recognizes the need to rehabilitate structures to maintain serviceability, to protect the structures, and to conform to existing health and safety code requirements.

Accordingly, the work proposed to maintain the creek flows and protect the pedestrian accessway qualifies as work needed to maintain the structures and, as discussed in the sections that follow, conforms to the Historic Preservation, public use, and access policies of the Certified Public Works plan.

### **C. Consistency with the Public Works Plan**



The Crystal Cove State Park Public Works Plan (PWP) was certified by the Commission in May of 1982 and has been amended twice. The PWP includes the Crystal Cove State Park General Plan, the On-Site Maintenance Plan, and the Preservation and Public Use Plan. Section 30605 of the Coastal Act, cited above, establishes the standard of review for the project. The first threshold question is whether the specific project is contained in the Certified Public Works Plan. If it is, then the Commission's review is limited to the imposition of conditions. The Commission cannot deny a project which it previously certified as part of the public works plan; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the public works plan.

The On-Site Maintenance Program applies to areas of the State Park outside of the historic district. The Preservation and Public Use Plan (PUPP) for the historic district pertains primarily to the existing cottages and their rehabilitation, but also preservation of the historic nature and character of the area. Pertinent policies in the General Plan of the PWP relate to protection of archaeological sites, provision of access, erosion control and maintenance of existing facilities.

PUPP description:

"Several natural landscape features such as site topography and slopes, the Los Trancos Creek and the beach front also serve as components of the Crystal Cove historic landscape. Although somewhat modified in locations, these features form the foundation for which all other cultural features and elements of the landscape are placed or bounded.... The overall character of the site and its development is derived from the mosaic of individual cottages nestled against and on the coastal bluffs that converge on the mouth of Los Trancos Creek."

Additionally, the PUPP calls for: "efforts must be made to consider stabilization methods that protect historic features while not impeding natural processes in a negative way."

PUPP POLICY (in part): As a part of carrying out the cultural resource preservation objectives of the PPUP, a Historic Landscape Management Plan (HLMP) will be prepared for the Crystal Cove Historic District. The Historic Landscape Management Plan should address the following topics:

- Native Vegetation and Habitat Management within the Historic District and in adjacent vegetation transition areas.
- **Los Trancos Creek management.**
- Strategies for on-going maintenance.

PUPP POLICY:

Los Trancos Creek Constraint: Any future Crystal Cove rehabilitation should not reduce the existing channel flow capacity. **Additional stabilization treatment**

**should be done for the creek channel between the PCH undercrossing and Cottage #45 to reduce the potential for future damage.** Treatments should be done in keeping with the historic character of the area and in a sustainable manner.

The On-Site maintenance plan states (in part):

Preservation measures will include, but are not limited to, the following actions:  
-grading and plant clearance for drainage and ventilation.

The PWP documents and policies above reference Los Trancos Creek Management and specifically allow for additional stabilization treatments for the creek between the tunnel outlet and the cottages (within the subject project site). The proposed rip rap and the new retaining wall are consistent with approved treatment methods of the PWP and the removal of sediment is consistent with the needed maintenance and management of the creek as anticipated by the PWP. Within the Historic District (portions of the state park seaward of PCH) the controlling document of the PWP is the PUPP. However, in the rest of the state park, the PUPP doesn't apply and instead the On-site maintenance program applies. Portions of the Los Trancos Creek outside of the historic district are subject to the above language regarding plant clearance for drainage. While that statement doesn't apply specifically within the subject site, it is still relevant in that it indicates that the project for regular creek maintenance was anticipated in the PWP.

State Parks did develop a draft Historic Landscape Management Plan, although the document was not reviewed or certified by the Commission as part of the PWP and was not finalized. The Landscape Management Plan discusses creek maintenance in relation to the specific historic cottages and contains directives for protection of the cottages.

Because the project proposed is consistent with the PWP and regular maintenance of the creek was anticipated by the PWP at the time of Commission approval.

### **Protection of Archaeological Resources**

The PWP discusses potential archaeological sites in the area, including the possibility that a site exists along Los Trancos Creek, and discusses measures to protect them. There are no archaeological resources in the immediate area of the subject site, however there are sacred lands nearby. However, replacement of rip-rap and maintenance of the creek will halt further erosion and deterioration of the streambed and surrounding area, which will protect any potential archaeological sites in the vicinity.

A Sacred Lands search request and a Tribal Representative contact list request was submitted to the Native American Heritage Committee (NAHC) on 06/24/2019. A response from the NAHC was received on 07/15/2019. The Sacred Lands search was positive, and the list had a total of 21 individuals. The Juaneno Band of Mission Indians Acjachemen Nation were identified as the local group. Letters were sent by both mail and email on 08/01/2019 to the 21 individuals identified by the NAHC. A follow up email was sent on 08/05/2019.

Joyce Perry (Acjachemen Nation) stated via phone conversation that the whole Crystal Cove area was sensitive, and that human remains have been encountered in the Crystal Cove area in the past. Ms. Perry discussed the known locations of these discoveries, and confirmed that the project as currently scoped is not taking place in close proximity to previously encountered human remains. Perry asked that a Native American monitor be present for all ground disturbing activities, and that monitors from her group would be available to monitor these activities.

The Gabrieleno Band of Mission Indians - Kizh Nation sent an email on 8/5/2019 saying that if any ground disturbance would be taking place during the project, the Tribal government would like to consult. State Parks responded stating that ground disturbance was planned as part of the project, and offered to consult at their convenience and asking whether email, telephone, or in-person meeting would be preferred and also offered to send project plans and/or archaeological reports and did not receive any further response.

On September 30, 2019, a response letter was sent by email from the Tribal Historic Preservation Officer Shasta Gaughen with the Pala Band of Mission Indians. The letter stated that the project, as described, is "beyond the boundaries of the territory that the tribe considers it Traditional Use Area" and that the Pala Band defers to the wishes of tribes in closer proximity to the project area.

State Parks has secured a Native American monitor consistent with the recommendations of the tribal consultation and the applicant will defer to the monitors, and a Most Likely Descendant (MLD) when State law mandates the presence of a MLD, for treatment and testing of any uncovered tribal cultural resources. In-situ preservation is the preferred treatment method. Finally, an archaeologist will be on site during the construction to ensure that no archaeological resources are disturbed.

The On-Site Maintenance Program discusses the protection of archaeological sites. It states:

8. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

The PUPP states:

There are three known archeological sites located in the Historic District.

Therefore, implementation of the proposed development is consistent with the certified Public Works Plan policies regarding protection of archaeological resources.

### **Public Access**

One of the primary goals of the PWP is to provide and maintain public access to the park and its unique facilities, including the Historic District. The Historic District is primarily reached either by walking along the beach via public beach access ramps or via the Los Trancos parking lot on the inland side of PCH.

Among the policies in the CCSP General Plan are the following:

Page 25:

In a manner consistent with the purpose of the historic district, the department shall provide access as necessary for public enjoyment of the recreational, cultural, and natural values of the Crystal Cove Historic District.

The project includes protection of the existing public trail by preventing future erosion caused by strong storm flows through the adjacent creek.

The pedestrian trail and tunnel provide a linkage between the Los Trancos parking lot and the Crystal Cove Historic District. As described above, the public can park in the Los Trancos parking lot and cross PCH at a signaled intersection, but the tunnel provides a more direct linkage between the beach, the Historic District and the Los Trancos parking lot. Finally, the tunnel and asphalt road connecting to the upper parking area in the Historic District are essential as an alternative emergency access for park personnel. There will be temporary impacts to access as a result of the proposed project, but because there are two accessways from the main parking lot down to the historic district and many other accessways to the beach, the project will not significantly or permanently impact coastal access. Members of the public will be directed to use the alternative accessway temporarily. Once the repairs are made, the accessway through the tunnel and along the creek will be re-opened to the public.

## **Water Quality and Erosion Control**

CCSP General Plan Page 19: Erosion Control Policies

Destructive or unnatural erosion shall be controlled or prevented by means that are in harmony with the purposes of the park.

Steps shall be taken to correct existing erosion problems and eroded areas in the park. Revegetation of problem areas with native plants may be warranted in some areas, and shall be undertaken when needed.

Page 17 of CCSP General Plan:

The function of the Department of Parks and Recreation at Crystal Cove State Park is to manage, protect, and, where necessary, to restore its natural and cultural resources and values for their perpetuation in accordance with the park purpose; to interpret these values effectively; and to provide facilities and services, consistent with the purpose of the park, that are necessary for full enjoyment of the park.

The changes to the rip rap spillway and the removal of sediment buildup will enhance the drainage function of the Los Trancos Creek. Grouted rip rap can sometimes lead to increased erosion downstream and can have negative impacts on the function of the watercourse as natural habitat. In this case, the applicant will (on the creek side) replace grouted rip rap with ungrouted rip rap. This will prevent more erosion downstream of the rip rap spillway when compared to current conditions. The applicant is not proposing to channelize this existing unchannelized portion of the creek. Increased erosion in the creek and sediment build up can be detrimental to the protection of the cottages and the historic district and can also be detrimental to the water quality downstream where the creek outlets into the ocean. The creek south of the bridge where it meets the ocean is channelized. The Pacific Ocean just offshore of the State Park is a Marine Protected Area. Increase turbidity due to uncontrolled erosion through the channelized creek mouth can have negative impacts on the MPA.

Therefore, the Commission finds that an erosion problem exists at the project site and that the proposed development is necessary to minimize future erosion and further protect the marine resources and the cultural resources of the park, consistent with the above PWP policies. Therefore, the Commission finds that the proposed development is consistent with the erosion control and facilities maintenance policies of the certified Public Works Plan.

## **Biological Resources**

**PUPP POLICY:**

Preserve and protect sensitive habitats when rehabilitating and developing the Historic District. Specific guidelines on Environmentally Sensitive Habitat Areas (ESHA), including coastal sage scrub (CSS), are incorporated into this PUPP document and they include:

- o Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- o 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.
- o Future development that affects potential environmentally sensitive habitat area must come back to the Commission for specific project review or a coastal development permit. A site-specific biological survey must accompany any specific project proposal or CDP application so that a determination of ESHA can be made.

Consistent with the above policy, the applicant provided a Biological survey which outlines the habitat of the creek, wetlands, and sensitive vegetation.

The Los Trancos Creek is mapped by the U.S. Geological Survey as an intermittent blue-line stream. The headwaters of the Los Trancos Creek originate approximately 2.4 miles to the northeast of the study area in the San Joaquin Hills. Los Trancos Creek enters a cement tunnel on the northwest side of Pacific Coast Highway and flows southwest under the highway and then resurfaces. The lower reach of the creek then drains into the Pacific Ocean approximately 170 feet to the south of the project site.

***Habitat and Wildlife on site***

The Biological survey was conducted in 2017. Sensitive and native vegetation communities were identified on the site including 0.042 acres of quail brush scrub and 0.067 acres of southern willow scrub although there were no rare plants found onsite (Exhibit 3). Southern willow scrub is considered a sensitive vegetation community pursuant to the California Department of Fish and Wildlife. A 0.104-acre stand of Eucalyptus trees (with a few scattered native shrubs in the community including coast live oak (*Quercus agrifolia*), lemonade berry, mule fat (*Baccharis salicifolia*), red willow, and western sycamore) was identified as a potential raptor nesting area. Large areas within the creek contain non-native ornamental vegetation. The Biological survey identified approximately 0.002 acres of jurisdictional wetlands in a small patch the upstream portion of Los Trancos Creek.

***Impacts to Habitat and Wildlife***

The proposed project will result in 0.005 and 0.086 acres of permanent and temporary impacts, respectively, to the intermittent creek bed.

The project will temporarily impact 0.028 acres of native quail brush on east side bank of the Los Trancos Creek, with no permanent impacts, and will temporarily impact 0.039 acres of the Eucalyptus stand. The project will have 0.011 acres of permanent impact to the native understory of a Eucalyptus stand, and other permanent impacts to ornamental vegetation.

The project will have 0.025 acres of permanent impact to the southern willow scrub, with no temporary impacts.

In total, the project will temporarily impact 0.067 acres and will permanently impact 0.036 acres of sensitive vegetation and potential raptor nesting habitat.

No temporary or permanent impacts are proposed to the wetland.

Permanent impacts would occur in order to install the riprap spillway in the upstream portion of the creek bed and to remove sediment within the southern willow scrub community. No trees would be removed during installation of the riprap spillway. Mule fat (*Baccharis salicifolia*) and willows (*Salix* spp.) species of the southern willow scrub community within the sediment removal area would only be trimmed as necessary and root structures would remain intact.

Temporary impacts are required for construction access to install the riprap spillway and remove sediment and vegetation within Los Trancos Creek downstream of the spillway. Temporary impacts would be required in order to trim Eucalyptus tree canopies for construction equipment to access the proposed work areas and remove sediment from the streambed. Although it appears that 0.028 acre of quail brush scrub would be temporarily impacted, only sediment and vegetation within the creek bed would be cleared (to return streambed to original baseline contours) and vegetation on the slope would be avoided. As such the quail brush scrub along the bank of the creek would not be disturbed.

The applicants propose 2:1 mitigation for permanently impacted areas in the form of on-site habitat restoration. The entire project site is within the Habitat Conservation Plan for the region and is considered a conservation area. The NCCP/HCP is a multi-jurisdictional conservation plan that includes portions of Orange County and multiple cities within the County. Within the project site, 0.095 acres of non-native vegetation within the creek will be removed to provide mitigation for impacts by replacing the non-native vegetation with native vegetation at a 2:1 ratio. Specially, the proposal includes mitigation for permanent impacts 0.036 acres of creek bed, which includes 0.025 acres of southern willow scrub and 0.011 acres of the native understory of Eucalyptus stand.

No rare plants or listed wildlife species were observed on the project site during focused surveys, though potential significant impacts were identified for other sensitive species that may be in the area including the southwestern pond turtle, Coastal Gnatcatcher (indirect noise impacts), and nesting bird species. Construction noise could cause indirect impacts to both Coastal Gnatcatcher and Migratory bird species nesting the Eucalyptus stand. Trimming of the Eucalyptus trees could impact nests. Removal of vegetation and sediment in the creek could impact the pond turtle.

In order to avoid impacts to these sensitive species, the applicant proposes the following mitigation measures:

**BIO-1 Southwestern Pond Turtle:** A clearance survey for southwestern pond turtle shall be conducted by a qualified biologist within the proposed work areas no more than 14 days prior to construction activities (i.e., earthwork, clearing, grubbing, etc.). The clearance survey shall be conducted within the work areas and shall consist of three consecutive days of trapping. If no pond turtles are found during the clearance survey, then no further avoidance or minimization measures would be warranted.

If the qualified biologist determines that southwestern pond turtles are present within the work areas during the clearance survey, no construction shall occur until the pond turtles are moved out of the work areas by a qualified biologist. Once the qualified biologist determines that there are no southwestern pond turtles within the work areas, an exclusionary fence shall be placed around the work areas to prevent pond turtles from reentering. The qualified biologist shall determine the placement of the exclusionary fencing. Prior to commencement of construction activities and after the exclusionary fencing has been erected, a final clearance survey consisting of three consecutive days of trapping shall be conducted within the work areas to confirm there are no southwestern pond turtles present. Exclusionary fencing will be required to stay in place for the duration of any construction activities to deter southwestern pond turtles from entering the work areas. The results of the clearance surveys shall be documented by the qualified biologist and submitted to CDP. All project personnel shall attend a training program presented by a qualified biologist prior to commencement of construction activities. The training program will inform project personnel about the life history of southwestern pond turtle and all avoidance and minimization measures to prevent harm to individuals from vehicles and/or construction equipment.

**BIO-2 Coastal California Gnatcatcher:** Due to presence of CAGN in the study area, the following measures shall be implemented to avoid or minimize potential indirect impacts:

1. Construction activities (i.e., earthwork, clearing, and grubbing) shall occur outside of the nesting season for CAGN (February 15 through July 15) to the extent feasible.
2. If construction activities (i.e., earthwork, clearing, grubbing, etc.) are proposed within the CAGN nesting season, the following avoidance/minimization measures shall be taken:
  - a. If construction activities are planned within the CAGN nesting season, focused



protocol survey shall be conducted within all suitable habitat on the study area and suitable habitat located within a 100-foot buffer of the study area to determine the location(s) of occupied habitat. The focused survey shall be conducted by a qualified biologist with a CAGN recovery permit in accordance with the most recent USFWS guidelines. The results of the focused surveys shall be documented by the qualified biologist and submitted to CDPR, CDFW, and USFWS.

If the qualified biologist determines that CAGN do not occur within 100 feet of the proposed construction activities, the activities shall be allowed to proceed without any further requirements. If the qualified biologist determines that the habitat is occupied by CAGN, the following avoidance and minimization measures shall be implemented:

- b. A qualified biological monitor shall clearly delineate a 100-foot buffer around occupied CAGN habitat. The buffer shall be clearly marked with flags and/or fencing prior to the initiation of construction activities.
- c. The biological monitor shall be present during any construction activities conducted within the nesting season to observe the birds' behavior. The construction supervisor shall be notified if the construction activities appear to be altering the birds' normal behavior. Construction activities shall cease until additional minimization measures have been performed. Measures may include, but are not limited to, limitation on the use of certain equipment, placement of equipment, restrictions on the simultaneous use of equipment, or noise attenuation measures (e.g., berm, wall). If the birds' behavior is still altered from normal breeding behavior, construction activities shall cease until CDPR, CDFW, and USFWS are contacted to discuss alternative methods.
- d. If construction activities (e.g., ground disturbance and vegetation trimming) are planned within or adjacent to the 100-foot buffer, a qualified acoustician shall be retained to determine ambient noise levels and project-related noise levels at the edge of occupied habitat. The need for sound monitoring and attenuation shall be recommended by the biological monitor based on the presence of nesting individuals and observation of the birds' behavior. Noise levels at the edge of the occupied habitat shall not exceed an hourly average of 60 decibels (dB[A]), or a 3-dB(A) increase if existing ambient noise levels exceed 60 dB(A). If project-related noise levels exceed the threshold described above, construction activities shall cease until additional minimization measures are taken to reduce project-related noise levels to below an hourly average of 60 dB(A), or below a 3-dB(A) increase if existing ambient noise levels exceed 60 dB(A). If additional measures do not decrease project-related noise levels below the thresholds described above, construction activities shall cease until CDPR, CDFW, and USFWS are contacted to discuss alternative methods.
- e. All project personnel shall attend a training program presented by a qualified biologist prior to construction activities. The training program will inform project personnel about the life history of CAGN and all avoidance and minimization measures.
- f. The construction contractor shall only allow construction activities to occur during daylight hours.
- g. The construction contractor shall require functional mufflers on all construction equipment (stationery or mobile) used within or immediately adjacent to any 100-foot buffers to reduce construction equipment noise. Stationary equipment

shall be situated so that noise generated from the equipment is not directed towards habitat occupied by CAGN.

h. The construction contractor shall place staging areas as far as feasible from habitat occupied by CAGN.

i. The biological monitor shall prepare written documentation of all monitoring activities at the completion of construction activities, which shall be submitted to CDPR, CDFW, and USFWS.

**BIO-3 Jurisdictional Resources:** Prior to impacts to jurisdictional resources, the Project Applicant shall obtain regulatory permits from USACE, RWQCB, and CDFW.

Compensatory mitigation for permanent impacts to jurisdictional resources shall be required as part of subsequent permitting requirements. Permanent impacts to jurisdiction shall be mitigated through on-site or off-site enhancement and/or restoration of jurisdictional

streambed at a ratio no less than 2:1. Temporary impact areas will be returned to original design contours and revegetated in coordination with the CDPR. Mule fat and willows within the temporary impact areas shall only be trimmed as necessary and root structures shall remain intact. The following minimization measures will be implemented during construction:

- The work limits shall be clearly marked with flags and/or fencing prior to the initiation of construction activities.
- A biological monitor shall be present during vegetation clearing and trimming to limit removals to the lowest practicable amount.
- Use of standard Best Management Practices (BMPs) to minimize the impacts during construction.
- Construction-related equipment will be stored in developed areas, outside of drainages.
- Source control and treatment control BMPs will be implemented to minimize the potential contaminants that are generated during and after construction. Water quality BMPs will be implemented throughout the project to capture and treat potential contaminants.
- To avoid attracting predators during construction, the project shall be kept clean of debris to the greatest extent possible. All food-related trash items shall be enclosed in sealed containers and regularly removed from site.
- Employees shall strictly limit their activities, vehicles, equipment and construction material to the proposed project footprint, staging areas, and designated routes of travel.

**BIO-4 Nesting Birds:** Construction activities (i.e., earthwork, clearing, and grubbing) shall occur outside of the general bird nesting season for migratory birds. The general nesting season is February 15 through August 31 for songbirds and January 15 through August 31 for raptors.

If construction activities (i.e., earthwork, clearing, and grubbing) must occur during the general bird nesting season for migratory birds and raptors (January 15 through August 31), a qualified biologist shall perform a pre-construction survey of potential nesting habitat to confirm the absence of active nests belonging to migratory birds and raptors afforded protection under the MBTA and CFG Code. The pre-construction survey shall be performed no more than seven days prior to the commencement of construction activities. The results of the pre-construction survey shall be documented by the qualified biologist.

If the qualified biologist determines that no active migratory bird or raptor nests exist, the activities shall be allowed to proceed without any further requirements. If the qualified biologist determines that an active migratory bird or raptor nest is present, no impacts within 300 feet (500 feet for raptors) of the active nest shall occur until the young have fledged the nest and the nest is confirmed to no longer be active, as determined by the qualified biologist. The biological monitor may modify the buffer or propose other recommendations in order to minimize disturbance to nesting birds.

As discussed above, the application also proposes to implement the following mitigation plan to create a total of 0.072 acres (0.036 acres at a 2:1 ratio) of new non-wetland habitat within Los Trancos Creek through a combination of:

- a. Treat and remove a total of 0.072 acres of targeted invasive plants species. Invasive plants will be treated and removed through a combination of hand removal and, in the case of large perennial species, water-safe herbicide application.
- b. Revegetate a minimum of 0.072 acres with native plant species appropriate for the site. Revegetation will occur within areas temporarily impacted by maintenance project activities and/or where invasive plants existed previously and were removed as part of actions described in 1a. A combination of cuttings, container plants, and seed of native species will be used to revegetate treated areas. A minimum of three species will be utilized in the final seed mix along with the proposed cuttings and containers.
- c. Install 10 willow and 20 mulefat cuttings along the banks of Los Trancos creek. Cuttings will be placed at elevations above the area of temporary impacts to avoid being disturbed during future maintenance activities.
- d. Monitor the area of revegetation monthly during the first year of establishment and hand weed as needed to reduce competition with native plantings/seedlings.
- e. Replace any willow and mulefat cuttings that do not survive within one year of installation.

All plant material (seed and cuttings) will be locally sourced from within the Park if possible, or from the region (coastal Orange County/Coastal Reserve of NCCP). Willow and mulefat cuttings will be salvaged from plants identified to be removed and/or cut as part of the maintenance project activities.

The applicant is required to conform to the project as proposed in order to maintain the approval of the streambed alteration agreement from California Department of Fish and Wildlife. If the applicant changes the project or does not conform to the self-imposed conditions, they must seek a new streambed alteration agreement from the Department of Fish and Wildlife. If there are any changes to the project, the applicant must also provide a new notice of impending development to the Coastal Commission for a new review of the project's consistency with the PWP.

The PUPP policy calls for the applicant to: preserve and protect sensitive habitats when rehabilitating and developing the Historic District and that 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. According to the PUPP, environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas (a mirror policy of Chapter 3 Section 30240 of the Coastal Act).

Commission staff Ecologist Dr. Jonna Engel confirmed that the sensitive plant community, Southern willow scrub and riparian habitat within the creek (native vegetation within the understory of the Eucalyptus stand) does rise to the level of ESHA. Dr. Engel advised that under Chapter 3 of the Coastal Act, creek habitat is subject to consistency with Section 30240 and Section 30236.

Coastal Act Section 30236 states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

In this case, the standard of review is the PWP, which does not contain a policy similar to 30236. However the purpose of the proposed project is consistent with sub-section (2) above, and as explained earlier in the staff report, the project is consistent with the PWP policies for maintenance and preservation of the Los Trancos Creek which states: "additional stabilization treatment should be done for the creek channel between the PCH undercrossing and Cottage #45 to reduce the potential for future damage" and states that "efforts must be made to consider stabilization methods that protect historic features while not impeding natural processes in a negative way." The proposed project does reduce the potential for future damage by addressing the creek flooding and does stabilize the pedestrian path in a way that does not impede the natural creek erosion or natural creek flows.

The ESHA that will be impacted as a result of the proposed project is within the creek bed, and the measures necessary to control flooding within the creek must take place within the creek. Further, the purpose of the project is also to preserve a public access way to the coast adjacent to the creek. The Commission has historically considered nature trails and accessways a resource dependent use.

The proposed project includes adequate mitigation for the impacts to ESHA and restoration of the creek bed and habitat once the necessary repairs and removal of sediment have occurred. Therefore, the project has been designed to protect against any significant destruction of habitat values, consistent with the PWP policies.

The proposed project has been designed such that the development within the environmentally sensitive habitat area will prevent impacts that will significantly degrade the habitat by protecting the native habitat to the maximum extent feasible, will not significantly degrade the area, and will be compatible with the continuance of the habitat and recreational area. The Commission finds that the proposed project is consistent with the policies and land uses of the Certified Public Works Plan as submitted.

#### **E. California Environmental Quality Act**

The California Department of Parks and Recreation, in its role as lead agency for the PWP and the NOID for purposes of the California Environmental Quality Act ("CEQA"), has determined that the project is categorically exempt from the provisions of CEQA, under CEQA Guidelines Section 15302. 14 C.C.R. § 15302 ("Replacement or Reconstruction"); see *also* CEQA section 21084 (authorizing promulgation of regulations listing categorical exemptions). A Notice of Exemption (NOE) was filed in August 2019 under Categorical Exemption 15301 (Class 1), maintenance of "Existing Facilities."

In addition, Section 13096 of the Commission's administrative regulations requires Commission approval of Notices of Impending Development to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying LRDPs qualifies for certification under Section 21080.5 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. As proposed, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activities may have on the environment. Therefore, the Commission finds that the Notice of Impending Development is consistent with CEQA Section 21080.5(d)(2)(A), and the applicable provisions of the Public Works Plan.