

**CALIFORNIA COASTAL COMMISSION**

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# F5b

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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-21-0109

**Applicant:** California Department of Parks and Recreation

**Location:** Crystal Cove State Park, 8471 N Coast Highway, Laguna Beach, Orange County (APNs: 120-300-15, 120-280-57)

**Project Description:** Improvements to three existing Crystal Cove State Park public parking lots, including new drainage and ADA compliance features, in addition to like-for-like replacement of an existing pedestrian/vehicle bridge.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The California Department of Parks and Recreation (State Parks) requests a coastal development permit (CDP) for improvements to three existing public parking lots at Crystal Cove State Park. The improvements include installation of a new pipe drainage system and public shower facilities; replacing 18,081 sq. ft. of existing paved area with new permeable pavement; and adjusting parking spaces for Americans with Disabilities Act (ADA) compliance. Additionally, the applicant proposes like-for-like replacement of an existing vehicle/pedestrian bridge which provides public access to Pelican Point Beach. The project is intended to improve water quality and public access to the State Park. No change to the existing number of parking spaces in the subject lots is

proposed. Additionally, the project will not impact the existing development footprint at any of the four project sites.

The four project sites are all located in Crystal Cove State Park in the City of Laguna Beach, Orange County ([Exhibit 1](#)). The standard of review for the proposed work is Chapter 3 of the Coastal Act, with the Crystal Cove certified Public Works Plan (PWP) serving as guidance.

The project includes 59 total cubic yards of grading in areas determined by the Native American Heritage Commission (NAHC) and Gabrieleno Tribe representatives as highly sensitive cultural resources. To ensure that the project is consistent with the cultural resources policies of the Coastal Act, staff recommends that the Commission imposes **Special Condition 1** requiring cultural and archaeological monitoring via a Native American monitor present during all excavation activities.

The replacement of the bridge will require removal of existing footings founded up to two feet below grade, resulting in approximately 75 sq. ft. of temporary impacts to existing environmentally sensitive habitat area (ESHA). However, in addition to facilitating regrowth of all impacted areas with native plants in the project area, the applicant has proposed 150 square feet of new native habitat planted approximately 2.75 miles downcoast of the bridge, within the State Park. This will provide a 2:1 mitigation ratio for all impacts to existing ESHA onsite, consistent with past Commission precedent on public access projects. To further ensure habitat impacts are minimized, **Special Condition 2** would require the applicant to schedule work to avoid bird nesting season and **Special Condition 3** would require the applicant to adhere to construction best management practices.

Commission staff recommends that the Commission **APPROVE** CDP Application 5-20-0109, as conditioned. The motion to carry out the staff recommendation is on page 4.

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## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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, and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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.

## STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

## **SPECIAL CONDITIONS**

1. **Cultural Resource Treatment and Monitoring Plan.** By acceptance of this permit the applicant agrees to comply with the following:

A. Incorporate the following into the archeological monitoring plan:

- i. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of one (1) Native American monitor from each tribal entity with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;
- ii. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
- iii. The Native American Monitor(s) shall be required until sterile soils have been reached.

B. If an area of tribal cultural deposits is discovered during the course of the project:

- i. All construction and subsurface activities that have the potential to uncover or otherwise disturb tribal cultural deposits in the area of the discovery shall cease within 50 feet of the deposit immediately;
- ii. The permittee shall report all discovered resources as soon as possible, by phone or by email to the Executive Director;
- iii. The professional archeological monitor on-site must contact all affected groups of the Native American Tribe that are not present for on-site

monitoring and notify them of the discovery in order to determine the results of (iv) and (v) below;

- iv. Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" ([Appendix B](#)) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.
  - v. The treatment method or mitigation measure for the discovery shall be prepared in consultation with the Native American monitor(s), and the MLD when State Law mandates the identification of a MLD. The permittee shall inform the Executive Director of the treatment method in writing. In-situ preservation is the preferred treatment and can be achieved through such methods such as, but not limited to, project redesign, capping, and deeding the cultural resource areas in open space. The range of treatment and mitigation measures considered shall not be constrained by the approved development plan.
- C. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.
- 2. Construction Timing and Sensitive Bird Species Surveys.** The applicant shall schedule construction of the bridge within environmentally sensitive habitat area outside of bird nesting season. If construction of the bridge cannot be completed within the time frame after nesting season ends and before nesting season begins, construction within environmentally sensitive habitat areas shall be subject to the following requirements.

For any construction activities in environmentally sensitive habitat areas or within 500 feet of environmentally sensitive habitat areas occurring between February 15 and September 1 of any year, including grading, re-vegetation, and

installation of irrigation, the applicant shall retain the services of a qualified biologist or environmental resources specialist (hereinafter, "environmental resources specialist") to conduct nesting bird surveys in order to determine the presence of songbird and raptor and owl species including but not limited to the coastal California gnatcatcher (*Polioptila californica californica*). The environmental resources specialist shall also monitor project operations. At least 30 calendar days prior to commencement of any project operations, the applicant shall submit the name and qualifications of the environmental resources specialist, for the review and approval of the Executive Director. The applicant shall ensure that all project construction operations shall be carried out consistent with the following:

- A. A qualified environmental resources specialist with experience in conducting nesting bird surveys shall conduct the surveys 30 calendar days prior to construction activities within 500 feet of the project. A follow-up survey must be conducted 3 calendar days prior to the initiation of construction, and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.
- B. If an active nest of any songbird is found within 300 feet of the project, or an active nest for any raptor species is found within 500 feet of the project, the applicant shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The nest shall not be removed or disturbed. The environmental resources specialist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The environmental resources specialist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site(s). If construction noise exceeds a peak level of 65 dB at the nest(s) site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction shall cease and shall not recommence until either new sound mitigation can be employed or the birds have fledged.
- C. If an active nest of a federally or state-listed threatened or endangered species or bird species of special concern is found within 300 feet of the project, or an active nest for any species of raptor is found within 500 feet of the project, the applicant will notify the appropriate State and Federal Agencies within 24 hours, and appropriate action specific to each incident will be developed. The applicant will notify the California Coastal Commission by e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.

- D. The environmental resource specialist shall be present during all construction activities during the bird nesting/breeding season if an active nest is identified, until the birds have fledged.
- E. The environmental resource specialist shall require the applicants to cease work should any breach in compliance with this condition occur, or if any unforeseen sensitive habitat issues arise. The environmental resources specialist shall immediately notify the Executive Director if activities outside the scope of the subject CDP occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately mitigate such impacts

**3. Construction Best Management Practices.**

- A. The permittees shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
  - i. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - iii. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - iv. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include but are not limited to the placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - v. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and stored as far from a storm drain inlet and any receiving waters as possible.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
  - i. The permittees shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall



include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from any receiving waters and storm drain inlets as possible;

- ii. The permittees shall develop and implement spill prevention and control measures;
- iii. The permittees shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- iv. The permittees shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
- v. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- vi. The permittees shall not spray landscaping chemicals in or within 25 feet of any drainage swale, and will minimize the use of landscaping chemicals within the project to the extent feasible.
- vii. The permittees shall implement Integrated Pest Management (IPM) for the project to the extent feasible, to minimize the use of landscaping chemicals and to prevent the degradation of coastal water quality.

## **FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

Crystal Cove State Park extends between the community of Corona Del Mar in Newport Beach and the City of Laguna Beach, in Orange County ([Exhibit 1](#)). The 2,791-acre State Park includes a 3.25-mile long coastal section west of Pacific Coast Highway (PCH) and several blufftop trails leading to observation points and sandy beaches. The park is one of the largest remaining areas of natural habitat in Orange County<sup>1</sup> and is located on state-owned lands.

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<sup>1</sup> <http://www.crystalcovestatepark.org/wp-content/uploads/2018/02/CrystalCoveFinalWebLayout120114.pdf>

The proposed project includes four areas of work: Lower Reef Point Parking Lot, Pelican Point Parking Lot #3, Pelican Point Parking Lot #4, and a vehicle/pedestrian bridge ([Exhibit 1](#)). The Lower Reef Point Parking Lot provides public access to Reef Point Beach, while the two Pelican Point parking lots provide access to Pelican Point Beach and offer shower amenities. The vehicle/pedestrian bridge provides access to both Pelican Point Beach and an observation deck located approximately 0.1 mile upcoast of the bridge. All four project sites are located on coastal bluffs seaward of PCH in Crystal Cove State Park.

The applicant proposes water quality and public access improvements to the three existing parking lots described above. This will include installation of a 6-inch diameter perforated pipe system connecting to existing storm drains onsite; replacement of existing shower facilities; reconstructing damaged portions of existing curbs and gutters; re-paving 18,081 sq. ft. of existing pavement with new, permeable pavement; and re-painting parking space delineations for compliance with minimum ADA clearance widths. The parking lot improvements will require a maximum of 50 cu. yds. of cut. No change to the existing number of parking spaces or development footprint is proposed ([Exhibit 2](#)).

A portion of the Lower Reef Point Parking Lot will be closed during improvements, but the larger Upper Reef Point Parking Lot will remain fully open for visitor parking. The improvements to Pelican Point Parking Lot #3 and #4 will require temporary closure of each lot, but the work will be timed to ensure at least three of the four Pelican Point lots remain open for parking (except for less than a week in which both the #3 and #4 lots will be closed to allow transferal of construction equipment between locations). The work is proposed to begin in late September 2021 and conclude in mid-February 2022, which will avoid impacts during peak summer beach and trail use season.

In addition, the applicant proposes like-for-like replacement of the existing bridge. The bridge replacement will require removal of the existing metal frame structure, 6-inch high concrete berm directing runoff to a storm drain adjacent to the bridge, and multiple footings founded up to 2-ft. below grade. Upon removal of these features, the applicant will re-install new metal framing, rope safety rails, and a 6-inch high concrete berm immediately adjacent to the bridge entrance. The bridge reconstruction will require approximately 9.3 cu. yds. of cut. No increase in the development footprint associated with the bridge is proposed ([Exhibit 2](#)).

The subject parking lots were constructed prior to certification of the Coastal Act in 1976. The Commission approved de minimis waiver 5-20-0334-W on July 8, 2020 for ADA improvements to restrooms of the subject lots (independent of the currently proposed ADA improvements to the parking lot spaces.) The subject bridge was constructed in the early 1990s, pursuant to CDP 5-84-188-A4 approved by the Commission on November 16, 1993. The CDP approved construction of a 10-ft. wide, approximately 78-ft. long bridge spanning a minor canyon on the Crystal Cove Trail. The bridge is immediately seaward of an Irvine Company golf course and includes a metal overhead fence to protect pedestrians from errant golf balls ([Exhibit 3](#)). The Crystal Cove Trail is used primarily by pedestrians, but also serves as an accessway for

State Parks and emergency response vehicles, as well as equestrian uses. The applicant indicates that the bridge has not been reconstructed or significantly improved since initial construction.

## **B. Standard of Review**

Section 30605 of the Coastal Act states, in relevant part:

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, in relevant part:

(b) The Commission shall...determine whether the proposed development is consistent with the certified public works plan...

The Crystal Cove State Park PWP was certified by the Commission on May 20, 1982. The Commission approved a certified PWP amendment on May 19, 1988 to include new regulation of equestrian use, and a second amendment on December 12, 2003 to approve renovation of the State Park historic district. The certified 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 establishes the standard of review for the subject project. If the specific project is contained in the certified PWP, the Commission's review is limited to the imposition of conditions. If the project is not contained in the certified PWP, the work will require a CDP approved and issued by the Commission.

In this case, the proposed project is not contained in the certified PWP and the applicant has submitted the project as a CDP application. Thus, the standard of review for this project is Chapter 3 policies of the Coastal Act, with the certified PWP serving as guidance.

## **C. Environmentally Sensitive Habitat Area (ESHA)**

Section 30240 of the Coastal Act states:

(a) 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.

(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.

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The Land Use and Facilities Element of the certified PWP states, in relevant part:

Improvements may be undertaken to provide for such recreational activities...so long as such improvements involve no major modification of lands, forests, or waters.

The Resource Element of the certified PWP states, in relevant part:

Rare and endangered plants can be inadvertently destroyed by development of facilities, maintenance activities, or visitor use, especially when their exact location, habitat requirements, and tolerances are unknown. All rare and endangered plants in the park shall be protected and managed for their perpetuation...The department shall restore altered wildlife habitats as nearly as possible to conditions they would be in today had natural ecological process not been disturbed.

The biological assessment conducted by California State Parks staff, dated July 8, 2021, indicates that all four proposed areas of work are surrounded by existing ESHA. However, there is no ESHA located within the existing footprints of the three parking lots and the applicant has confirmed the parking lot improvements will not result in impacts to any existing native species.

The existing vehicle/pedestrian bridge is located over a vegetated bluff canyon, and does include ESHA within the development footprint. The applicant's biological assessment describes the bridge project area as follows:

The vegetation surrounding the abutments is [al]most entirely mature lemonade berry, with a small area on the coast side of the west abutment which contains a few individuals of California Buckwheat, Big Berry Saltbush, and Coyote bush. Specifically at this location, there are two individual California Buckwheat, two individual Big Berry Saltbush, and one Lemonade Berry. These individuals may be trimmed or possibly require removal for the replacement of the abutments. The remainder of the vegetation surrounding the bridge is mature Lemonade Berry,

which can be trimmed back without harming or killing the plant. Temporary ESHA impacts are addressed through the natural regrowth of these mature shrubs. For the 5 individuals that may require removal, they will be replaced with like-kind species after abutment work is completed.

The native species composition described above constitutes coastal sage scrub habitat. While the Commission has not always determined coastal sage scrub to be ESHA, habitat areas that are utilized by, or necessary for, the survival of California gnatcatcher are designated as ESHA. The canyon and vegetation within the bridge area of work constitute a relatively large, unfragmented area of native plants—considering the species distribution and range of brush heights and sizes present, the area is likely to function as possible California gnatcatcher habitat and constitute ESHA as defined by the Coastal Act. The applicants have confirmed the ESHA characterization.

Coastal Act Section 30240 limits uses within ESHA to those dependent on the ESHA resources. The project is intended to preserve a public access way to the coastal bluff trails adjacent to the ESHA. The Commission has historically considered nature trails and accessways a resource dependent use, and thus allowable under Section 30240.

Section 30240 also requires that ESHAs be protected against any significant disruption of habitat values and that all ESHA-adjacent development be sited and designed for compatibility with the ESHA. The submitted biological assessment estimates that bridge replacement will result in temporary impacts to approximately 75 sq. ft. of ESHA (specifically, five native plants shown in [Exhibit 3](#)). The Commission in the past has accepted a 2:1 mitigation ratio for ESHA impacts necessary for public access improvement projects within State Parks. The applicant proposes to mitigate at a 2:1 ratio with 150 sq. ft. of new native species established approximately 2.75 miles downcoast of the bridge work area within the State Park ([Exhibit 1](#)). The applicant indicates this mitigation site location was determined based on proximity to an existing restoration site, where restoration monitoring protocol (including removal of invasive species and watering by hand as needed) is already in place. The proposed project includes adequate mitigation for the impacts to ESHA has been designed to protect against any significant destruction of habitat values, consistent with the PWP policies.

The applicant has proposed an Erosion Control and Spill Prevention Plan which includes construction practices intended to avoid and minimize any impact to existing habitat. To further ensure the minimization of impacts, **Special Condition 2** requires the applicant to adhere to additional construction Best Management Practices (BMPs). The applicant has also proposed a comprehensive species protection plan which includes measures to avoid disturbance of bats, tree roots, or nesting birds during construction. **Special Condition 3** additionally requires the applicant to conduct nesting bird surveys at least 30 days prior to construction, and continue monitoring any discovered nests for disturbance during the proposed work.

As proposed and conditioned, the Commission finds the proposed development consistent with Sections 30240 of the Coastal Act and relevant policies of the certified PWP.

## D. Cultural Resources

Section 30244 of the Coastal Act states:

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

The Resource Element of the certified PWP states, in relevant part:

State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archeological, ecological, geological, or other such values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values...

A Sacred Lands search request and Tribal Representative contact list request was submitted to the Native American Heritage Commission (NAHC). The NAHC provided a positive Sacred Lands search response and a list with 30 Tribal Representatives. The applicant sent letters describing the proposed project via mail to all individuals on the contact list and received responses from the Juaneno Band of Mission Indians Acjachemen Nation; the Gabrieleno Band of Mission Indians Kizh Nation; and the Gabrieleno Tongva Indians of California Tribal Council. Responses indicated that the project area is a highly sensitive and sacred area and that an archaeologist and Native American monitor should be present for all ground-disturbing activities, including removal of asphalt and cement.

On May 7, 2021, consistent with the Commission's Tribal Consultation Policy, Commission staff additionally contacted representatives of the Juaneno Band of Mission Indians—Acjachemen Nation; the Gabrieleno Band of Mission Indians—Kizh Nation; and the Gabrieleno Tongva Indians of California Tribal Council, to describe the proposed project and request further consultation. Staff received a response from Chairperson Salas of the Gabrieleno Band of Mission Indians - Kizh Nation and discussed the project via phone conversation. Chairperson Salas requested status as the Native American monitor to be present for all ground disturbing activities.

The applicant has proposed a cultural resource monitoring and mitigation plan, which includes deferring to a Native American monitor and Most Likely Descendent (MLD) for treatment and testing of any uncovered tribal cultural resources. Preservation in place is the preferred treatment method for any uncovered resources.

To ensure the applicant adheres to the Commission's typically required Cultural and Archeological Monitoring measures (which may be more stringent than those proposed by the applicant), **Special Condition 1** imposes a monitoring plan which ensures a Native American monitor shall be present along with an archaeological monitor at the site during excavation activities to monitor the work. If a discovery is made, the professional archeologist must inform each tribal group and discuss treatment options.

Therefore, as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act, which requires reasonable mitigation measures be provided to offset impacts to archaeological resources, and applicable policies of the certified PWP.

## **E. Public Access and Recreation**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The Land Use and Facilities Element of the certified PWP states, in relevant part:

The emphasis for recreational use at Crystal Cove State Park will be placed on providing a variety of appropriate recreation opportunities to enhance visitor enjoyment of the park...

### Pelican Point Coastal Strip

Day-Use Facilities:... Existing beach access trails along the bluffs will be improved to provide safe pedestrian access from bluff top to beach...

Section 30210 of the Coastal Act encourages the provision of maximum coastal access and recreational opportunities for the public. The proposed project will improve the existing parking lot accessibility for visitors with disabilities by adjusting existing parking space delineations for ADA compliance. It will additionally improve existing restroom and shower amenities for Crystal Cove State Park visitors and protect safe, continued use of the Pelican Point Bridge through replacement of the damaged access structure.

The State Park provides four parking lots which provide access to Pelican Point. The proposed improvements to Pelican Point Parking Lot #3 and 4 will require complete closure of the subject lot—however, the work will be scheduled so that three parking lots will always remain open to visitor use (except for a timeframe of less than a week, during which the construction equipment must be transported between lot #3 and 4 for the proposed improvements to continue). No work is proposed for Pelican Point Parking Lot #1 and 2. There are two State Park parking lots which provide access to Reef Point. The Lower Reef Point Parking Lot will not require complete closure, as the proposed improvements are limited in size and can be protected by caution tape during construction. The Upper Reef Parking Lot is larger than the Lower Lot and will remain open throughout construction. No work is proposed for the Upper Lot.

Regarding the bridge repair, full closure of the bridge will be necessary during construction and visitors will not be able to access Pelican Point beach via the ramp immediately north of the bridge. However, visitors will retain access to Pelican Point Beach via a ramp located approximately 600 feet downcoast of the stairs.

The proposed improvements will result in temporary impacts to availability of parking and use of the Crystal Cove Trail. However, the applicant proposes for the work to occur from late September 2021 to early March 2022 and indicates this timeframe as a less popular season for visitors, which will avoid impacts during peak summer beach and trail use season. As such, the temporary impacts to public access have been avoided and minimized to the greatest extent feasible.

As proposed, the project will maximize public access and recreational opportunities consistent with the public access and recreation policies of the Coastal Act.

## F. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Environmental Impact Element of the certified PWP states, in relevant part:

Construction of roads, trails, and parking areas will alter surface runoff rates. If the surface runoff is not mitigated, serious erosion may result. Surface runoff from trails and parking areas will contain pollutants such as petrochemicals and asbestos; the amounts produced should not significantly affect the water quality of the intermittent streams.

The proposed project will install new drainage features and 18,081 sq. ft. of permeable pavement in three existing parking lots. This will improve on-site percolation and the directing of contaminated runoff into onsite storm drains. However, the proposed construction still has a potential for a discharge of polluted runoff from the project site into coastal waters. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

The applicant has provided a plan for Erosion Control and Spill Prevention that includes equipment staging and cleaning protocol to avoid site contamination. To further avoid adverse construction-related impacts upon marine resources, **Special Condition 2**



outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding untreated lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Therefore, the Commission finds that the proposed development, as conditioned, conforms with Section 30231 of the Coastal Act regarding the protection of water quality, as well as relevant policies of the certified PWP.

## **G. Visual Resources**

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The proposed project includes re-painting parking spaces and replacing existing pavement in three parking lots. The project will also replace an aging bridge which shows visible signs of rust and damage. As such, the project will improve scenic qualities of existing public amenities in the Crystal Cove State Park. As proposed, the Commission finds the proposed project will not have an adverse impact on visual resources and is consistent with Section 30251 of the Coastal Act, as well as relevant policies of the certified PWP.

## **H. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications 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"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental impacts to ESHA, water quality, cultural resources, visual resources, and public access protected under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

## **APPENDIX A – 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.

## **APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES**

- A. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
  2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
  3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in the special condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures.

The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If 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, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.