

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
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Th16a

Prepared September 7, 2021 for September 9, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Alexandra McCoy, Coastal Planner

**Subject: Additional hearing materials for Th16a
CDP Number 3-18-1081 (Santa Cruz Wharf Maintenance)**

This package includes additional materials related to the above-referenced hearing item as follows:

Additional correspondence received in the time since the staff report was distributed



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September 3, 2021

California Coastal Commission
455 Market Street, Suite 300
San Francisco, California 94105

Dear California Coastal Commissioners,

On behalf of the City of Santa Cruz, we would like to express our gratitude for the care and attention that Coastal Commission staff have given to this permit application. Through substantive dialog with staff over the past two years we have reached agreement on many issues. We appreciate their recommendation for approval. Nevertheless, the City has concerns about the special conditions relating to nesting birds. The City requests that the Commission consider an equally protective but more targeted proposal to allow a qualified biologist to recommend appropriate buffers prior to work commencing.

The Santa Cruz Wharf is a unique and invaluable coastal resource, deserving of specific consideration. The Wharf extends one-half mile into the Monterey Bay National Marine Sanctuary and provides unparalleled access for an estimated two million visitors annually to fishing, recreational boating, wildlife-watching, and strolling, shopping, and dining on a historic structure in an ocean environment. It also houses the headquarters of Santa Cruz's Marine Safety Division, which provides lifeguarding and rescue services for the City's immensely popular beaches and surf breaks.

The City of Santa Cruz has committed to the future of the Wharf, approving in November 2020 the Santa Cruz Wharf Master Plan, which lays out an exciting future for the facility, with expanded pedestrian and boating access, enhanced recreational opportunities, and upgraded amenities. The Master Plan also charts a course to fiscal sustainability for the Wharf and establishes a framework to address significant deferred maintenance.

Maintaining a hundred-year-old, half-mile-long wooden pier with over 4,400 pilings, eight acres of deck, and more than 45,000 square feet of building would be an enormous undertaking for any community. The City of Santa Cruz is a relatively small city with a population of 65,000 residents and limited financial resources. In the current fiscal year the City of Santa Cruz has budgeted over \$2,300,000 to maintenance of the Wharf, which is equivalent to just over two percent of the City's entire general fund budget. We employ a full-time, year-round staff of construction and maintenance workers to carry out needed work on a daily basis. We work around the public, we work around the ocean and the weather, and we work around the wildlife. The complaints we receive from the public are not about interfering with access or

with biological resources, but about the conditions of our facility and the maintenance work that is obviously needed.

We have worked for several years to secure permits for maintenance work from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the California Coastal Commission. The consultations with various agencies and the research and analysis involved in the permitting process have helped us further refine our best management practices, for example around marine mammal protection. Each required condition, however, brings with it both a financial and an opportunity cost. Increased staff time for monitoring and reporting, consulting services required, material and equipment modifications and purchases, and scheduling constraints collectively translate into reduced amounts of maintenance work that can be performed, adding to the backlog of deferred maintenance, and ultimately reducing the quality of public access and the resilience of the Wharf structure.

Wharf maintenance costs are partially offset by rents and parking revenues, however balancing revenue generation with public access has left the City needing to subsidize the Wharf by more than \$1,000,000 per year, a figure that continues to climb as maintenance needs and costs escalate. This fiscal year the City was forced to cut department budgets due to the acute economic impacts of the COVID-19 pandemic and an identified structural budget deficit. Similar cuts are anticipated for the next budget cycle and shortfalls are forecast to persist through at least 2028. In these circumstances, we cannot simply throw more resources at Wharf maintenance. It is therefore imperative that the conditions required in our maintenance permits be carefully considered and demonstrate that they lead to meaningful impacts that justify the costs of their implementation.

While there are a number of special conditions for this permit whose balance of impact and cost we question, there is just one we are asking the Commission to reconsider at this juncture. For several reasons that we will outline below, we are asking that the Coastal Commission revise the recommended conditions to allow more flexibility in how buffers are applied around nesting birds.

First, several federal and state agencies with jurisdiction over biological resources have reviewed the proposed work plan and none of these agencies is requiring similar bird protection measures. National Marine Fisheries Service and U.S. Fish and Wildlife Service concluded that the implementation of the Wharf Maintenance Program is not likely to adversely affect species listed as threatened or endangered or critical habitats designated under the Endangered Species Act. The California Department of Fish and Wildlife noted, “As the Project is currently described in the supplemental document you have provided, no permit from CDFW would be necessary.” It is a given that protections to nesting birds afforded by the Migratory Bird Treaty Act apply regardless of permit conditions from any agency.

Second, not all Coastal Development Permits for maintenance work at piers include similar bird restrictions and where they do different circumstances apply. For example, the Port San Luis Harbor District Repair and Maintenance Program ([CDP 3-18-1230](#)) covers similar types of work on the Harford Pier to that proposed in our maintenance plan. The staff report for the project acknowledges that “the area also has a significant bird population ranging from shorebirds that make nests on various structural developments within the harbor, or migratory birds resting during their journey on the Pacific flyway.” Yet the coastal development permit approved September 11, 2020 includes no special conditions regarding nesting birds and was found to be consistent with Coastal Act Sections 30230 and 30231.

Another recently approved Coastal Development Permits for maintenance of the wharves in the City of Monterey ([CDP 3-20-0127](#)) does include bird buffers similar to those recommended for our project. The

Monterey Wharves, however, support higher populations of pigeon guillemot and are smaller and more tightly built up, making work during nesting and tourist season next to impossible in any case (John Haynes, Monterey Harbormaster, personal communication). At the Santa Cruz Wharf our experience shows that it is possible to perform maintenance work successfully during nesting season without disturbing birds.

Third, the noise limits that form the basis of Commission staff's case for buffers may not be the most appropriate standard to apply at the Santa Cruz Wharf given background noise conditions. The staff report for this item states on page 35 that "The Commission's general recommendation is that noise from construction activities at a sensitive receptor (an active nest in this case) should never exceed 60-65 dB due to development activities." These noise levels are likely to be regularly exceeded by non-development activities and that requiring all development activities to remain below them is an unnecessary mitigation measure.

[The City of Santa Cruz 2030 General Plan](#) describes normally acceptable community noise exposure levels at the Wharf as ranging from 50-75 dB (pp.89-90). This aligns with data from the California Department of Transportation, which identify commercial areas as having typical noise levels of 65dB and a noisy urban area during the daytime of up to 75dB ([Technical Noise Supplement, California Department of Transportation, September 2013](#), p.2-20).

Based on the information above, it is reasonable to expect that during bird nesting season, which overlaps with the Wharf's peak visitation season, background noise levels regularly exceed 60-65 dB. If it is helpful to the Commission, the City can conduct acoustical studies to measure actual background noise levels at the Wharf during the nesting season in comparison to noise generated by construction equipment.

Fourth, Wharf buildings and the Wharf structure itself often act as visual blinds and noise barriers in ways that are not taken into account by fixed buffer distances. Bird surveys conducted by the City ([Santa Cruz Wharf Master Plan EIR Appendix C](#)) confirm the common-sense observation that nesting birds locate themselves in areas where they feel safe, such as inaccessible walkways on the west side of the Wharf, on building rooftops, and underneath the deck of the Wharf amidst the dense forest of piles, heavy timbers, and utility infrastructure. All of these locations create visual blinds and some measure of sound attenuation from regular Wharf activities, including maintenance work.

Fifth, the proposed buffer requirements for major and minor maintenance work proposed in the Santa Cruz Wharf Maintenance Plan expand on scientifically-based mitigation requirements included in the [Santa Cruz Wharf Master Plan Environmental Impact Report](#) (EIR). The EIR was prepared by the environmental consulting firm Dudek and has been certified by the Santa Cruz City Council after receiving comment from state agencies and the public. The studies done in preparation of the EIR are the most detailed biological assessment of the Wharf to date. For the significant work covered by the Master Plan, including the construction of new walkways requiring hundreds of piles and new buildings on the Wharf surface, the certified mitigation requirements for nesting birds are that a 150-foot buffer shall be applied between active nests of pigeon guillemots and pelagic cormorants and construction activities, and a 100-foot buffer shall be applied between active nests of western gulls and other species protected under the Migratory Bird Treaty Act and/or the California Fish and Game Code. These buffers were recommended by three professional biologists who worked on the EIR based on their professional experience, as assessment of conditions at the Santa Cruz Wharf, and published data on typical setbacks for the types of birds known to nest on the Wharf.

The Seabird Risk Mitigation requirements for major and minor maintenance work proposed in the Santa Cruz Wharf Maintenance Plan build off of the mitigation measures in the certified EIR to apply to the disturbance presented by varying and intermittent maintenance activities. For example, the City's maintenance plan proposes reduced buffer distances where blinds or wharf structures fall between construction activities and active nests.

Finally, implementing Coastal Commission staff's recommended buffers will reduce our ability to perform critical maintenance work on the Wharf. We will endeavor to perform as much work as possible outside of the nesting season (March 15 – August 15). However, the months of November through March bring our highest rainfall amounts, most frequent periods of high waves, and greatest number of storms. These conditions limit the amount of work we can safely perform during this time period. Emergency maintenance work is often required during the summer months. An example of emergency major maintenance work that we experience frequently is decking failure. A decking failure can restrict vehicle circulation on the Wharf or reduce available parking. Applying a 300-foot buffer from a seagull nest on the roof of a building would preclude us from making a decking repairs across the full width of the Wharf in the vicinity of that building. An example of emergency minor maintenance work that we experience frequently is replacing broken hangers on gas, electric, water, sewer, and fire sprinkler lines underneath the wharf. A pigeon guillemot nest three bents (45 feet) away would prevent us from making such a repair, potentially disrupting business operations or putting the Wharf itself at risk. A small number of nests with overlapping buffers could effectively postpone critical maintenance on most of the Wharf.

For all of the above reasons, summarized below, we believe that the bird buffer conditions recommended by Commission staff should be reconsidered.

1. Other state and federal regulatory agencies have not required similarly restrictive buffer conditions;
2. Coastal Development Permits for maintenance work on other piers have not always required similar conditions with respect to birds;
3. Background noise levels on the Wharf likely already exceed maximum noise levels on which staff has based thresholds for the currently restrictive buffer conditions;
4. Fixed buffers, as currently proposed, do not consider variable site conditions on the Wharf that create natural sight and sound buffering and in many cases complete separation from nearby construction activities;
5. Lower buffer requirements have been recommended by independent biological experts in anticipation of potentially more significant work planned in the Wharf Master Plan EIR; and,
6. Currently proposed buffers would greatly limit our ability to perform needed maintenance work, including emergency repairs, during the months with safe working weather.

Given the differences between the City's proposal and Commission staff's recommendations for bird buffers and the difficulties of adequately accounting for all the nuances of noise levels, bird species, nesting location, existing visual blinds and noise barriers from Wharf structures, and type of work to be performed, we propose that rather than agreeing in advance to fixed buffer requirements, a qualified biologist approved by Coastal Commission staff set bird buffer requirements on a case-by-case basis. All nest identification survey requirements would remain as outlined by staff.

Specifically, we request that the Commission make the following redlined specific changes to the Special Conditions:

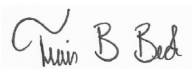
4.c. Nest Identification and Buffers: The qualified biologist shall establish a no-disturbance buffer around the nests and all project work shall halt within the buffer until the qualified biologist determines the nest is no longer in use. ~~The buffers shall be applied around active nests as follows:~~

- ~~1. **Major Activities Buffer.** A 300-foot buffer shall be applied between active nests and any major activities (see Special Condition 2), unless evidence is provided to the Executive Director to conclusively show that a different distance is appropriate, and the Executive Director concurs with that determination.~~
- ~~2. **Minor Activities Buffer.** A 50-foot buffer shall be applied between active nest sites and any minor activities (see Special Condition 2). Additional measures shall be applied to active nests located between 50 feet and 300 feet from minor repair and maintenance work sites as follows:~~
 - ~~a. **Above Deck:** When only minor activities will be conducted along the topside of the wharf, work shall not commence prior to 10:00 AM and shall not exceed four hours per day or three consecutive days at a time. Should minor maintenance and repair work necessarily exceed the four hours per day or three consecutive days at a time threshold identified above, the qualified biologist shall conduct additional behavioral monitoring to assure the nesting seabirds are not being further impacted by the ongoing activities in close proximity. Once satisfied, the biologist may approve planned activities near observed nests. Under no circumstances, shall buffers be less than 50 feet or shall work commence prior to 10:00 AM.~~
 - ~~b. **Below Deck:** When only minor activities will be conducted along the underside or substructure of the wharf, the same restrictions as described above in (a) will apply. In addition, if minor activities are expected to exceed two hours in duration, blinds and similar materials shall be placed between the active nests and the work area to avoid visually disturbing nesting birds. The placement of the blinds shall be overseen by the qualified biologist, who will observe nest sites and parent behavior over the course of activities, or until he/she is satisfied that the nesting birds will not be significantly disturbed by the work in that area.~~

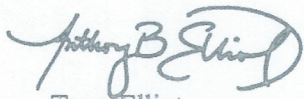
From a resource protection standpoint the impact of these changes should be non-existent, as biologist-mandated buffers would appropriately protect nesting birds. From an operational standpoint, it would give us potential flexibility to perform greater amounts of both planned and emergency work during bird-nesting season as circumstances allow.

Thank you for your time and attention. We look forward to your discussion of our permit at the hearing.

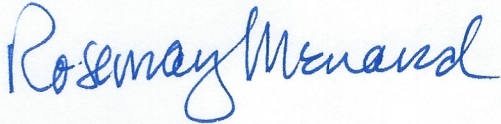
Sincerely,

A handwritten signature in black ink that reads "Travis Beck". The signature is written in a cursive, slightly stylized font.

Travis Beck
Superintendent of Parks



Tony Elliot
Director, Parks & Recreation



Rosemary Menard
Interim City Manager