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# Th16a

**Prepared September 8, 2021 for September 9, 2021 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Susan Craig, Central Coast District Manager  
Alexandra McCoy, Coastal Planner  
**Subject: STAFF REPORT ADDENDUM for Th16a  
CDP Application Number 3-18-1081 (Santa Cruz Wharf Repair and  
Maintenance Program)**

In the time since the staff report was distributed, the Applicant, the City of Santa Cruz, has submitted comments on the staff recommendation for the above-referenced item (see the City's letter dated September 3, 2021 in the correspondence package for this item). In their letter, the City requests that the special condition providing nesting bird protections be modified to eliminate its specificity and to instead allow the City's project biologist to use their discretion to identify buffers and other measures to protect nesting birds during repair and maintenance work at the Santa Cruz Wharf. The City is concerned that the staff recommended nesting bird requirements will impact their ability to perform the proposed repair and maintenance activities, including as they are perceived by the City to be too rigid. Staff does not agree, and notes that the staff recommended conditions include both general prescriptions for nesting buffers, but also the flexibility to reduce such buffers in specific circumstances, such as where the project is minor in scope and minor in expected noise/impacts. Staff believes that these parameters provide appropriate flexibility, and do not recommend adopting the City's suggestion that all such buffers and related measures be up to the discretion of the City's project biologist. Again, staff believes that the flexibility the City seeks is appropriately accommodated in the recommendation.

Staff here provides a brief response to the City's comments, and also makes three small corrections (unrelated to the City's nesting bird comments) to the recommendation. However, this addendum does not change the staff recommendation, which continues to be approval with conditions.

First, the City argues that other state and federal resource agencies have not required nesting bird protections similar to staff's recommended measures, and thus the Commission shouldn't either. The City's comments misunderstand that the Commission has an independent responsibility for coastal resource protection, including for nesting birds, under the Coastal Act. In discharging that responsibility, staff, including the

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Commission's ecologist, Dr. Lauren Garske-Garcia, arrived at the necessary nesting bird mitigation measures (including related to surveys and no-activity buffers) in order to protect sensitive bird species that nest on the wharf (including the pigeon guillemot, which are considered sensitive during their reproductive life history phase and are afforded protection under the Migratory Bird Treaty Act). As described in the staff report, the Commission typically either requires complete avoidance of the general bird nesting season (February 1st through August 31st) or, when complete avoidance is infeasible, requires buffers for active nests, typically of either 500 feet (for raptor species) or 300 feet (for other covered species) throughout the nesting season. These distances are based on a combination of published scientific literature and a cumulative professional experience among regulatory agencies. In particular, Dr. Garske-Garcia consulted with multiple seabird experts in the region, including partners at state and federal agencies, to develop similar buffer distance recommendations for most circumstances at the Santa Cruz Wharf. At the same time, Dr. Garske-Garcia also acknowledges that given the unique nature of the wharf environment, including the level of activity and noise on a regular basis, reduced buffers may be applied when warranted, such as where the project is minor in scope and minor in expected noise/potential impacts (see staff report page 9, and see Dr. Garske-Garcia's memo in staff report Exhibit 6). Staff believes that the recommendation provides both appropriate protections and appropriate flexibility, and continues to recommend that Special Condition 4 be adopted as written.

Second, the City argues that the nesting bird requirements here differ from the requirements that the Commission has imposed through other CDPs. Two things should be noted in this respect. First, every proposed project is unique and is analyzed based on the project's relevant components and context. Here, while obviously informed by past requirements of a similar sort, the recommended nesting bird protections are geared to the specific circumstances at the Santa Cruz Wharf, including with respect to pigeon guillemot. In this respect, the City points to the requirements associated with the Commission's approval of the Port San Luis Harbor District Repair and Maintenance Program (CDP 3-18-1230) which covers similar types of work on the Harford Pier to that proposed. However, that case is decidedly different, including because birds are not known to nest on the Harford Pier, and thus a different factset applied there. And second, the nesting bird requirements for the Santa Cruz Wharf are actually very similar to those that have been applied to other similar wharf projects with similar nesting bird context recently permitted by the Commission, including in CDPs for the City of Monterey Wharves last November and the City of Capitola Wharf just two months ago in July.<sup>1</sup>

Third, the City cites "normally acceptable community noise exposure levels at the Wharf as ranging from 50-75 dB", arguing that staff's recommendations that nests should not be exposed to more than 60-65 dB is already exceeded on a regular basis, and the birds are thus acclimated to such noise. First, the 50-75 dB noted by the City is not, as far as staff is aware, based on actual data from the Wharf itself. In fact, the Commission's ecologist has previously encouraged the Applicant to provide such

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<sup>1</sup> See CDPs 3-20-0127 (Monterey Wharves) and 3-20-0431 (Capitola Wharf).

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Wharf-specific data on ambient sound levels (as well as noise associated with the proposed repair and maintenance activities, nesting bird success, and other noise-related evidence) that could inform a potentially more refined approach to needed buffering (see Dr. Garske-Garcia's memo in Exhibit 6). However, no such information has been provided. Second, even if ambient noise levels above the wharf exceed 60-65 dB as claimed, the wharf is a highly complex physical environment and sound transmission is likely to be highly variable. Absent more case-specific information, it is not appropriate to just assume that birds are acclimated to such a degree that ambient noise is not detrimental, or that louder noises above that will not lead to impacts. And again, staff's recommendation still allows for potential buffer deviations in light of data showing a lack of specific impact in any particular case, should it be provided by the City. And in any case, pigeon guillemots, the most sensitive of the species known to nest on the wharf, are known to nest under the wharf, where ambient noise attributes are likely different in any case, including in terms of potential structural noise attenuation. Third, if ambient noise already exceeds 60-65 dB, it is not clear how much more noise can be tolerated by these species. In fact, starting from an elevated baseline likely means that tolerance will more rapidly be exceeded, particularly where the additional noise may mask animal communication (such as that between parent and chick, distress calls, etc.). Thus, in the absence of more specific noise data to further refine nesting bird protections, staff continues to believe that the recommendation is both sound and adequately protective on this point (see also discussion of such noise impacts and measurements on staff report pages 34 and 35).

Fourth, the City contends that the recommended nesting bird buffers do not account for the Wharf structures themselves acting as visual blinds and noise barriers. It is true that the wharf is a structurally complex environment; however, the general paucity of data to-date does not allow for technically-informed adjustments at this time and, by default, recommendations must be conservative and favor the sensitive resource. As previously described by Dr. Garske-Garcia (again see staff report Exhibit 6), the Commission typically requires buffers of 300 feet for non-raptor species nests and 500 feet for raptor species nests when the season cannot be altogether avoided. In limited circumstances, these buffers may be reduced with the inclusion of additional mitigating measures but minimum buffer distances are still generally required, as is behavioral monitoring. In addition, the Commission has not typically allowed for an applicant's consultant to prescribe buffer distances without these caveats, over extended periods such as a 5-year program, and/or without consultation. In this case, recognizing the physical complexity of the wharf and reasonable expectation that minor work would not add substantially to the disturbance typical of this environment, Dr. Garske-Garcia has indicated that such activities might occur as near as within 50 feet of nests without the use of additional barriers so long as it is of limited timing, duration, and animal behavior does not indicate distress. Again, these recommendations were developed following consultation with numerous seabird experts working along the central coast as applied to the Santa Cruz Wharf context and environment. Further, staff's recommended provisions allow the City the type of flexibility – driven by actual data about any particular work activity – that it ostensibly seeks, but without leaving it just to the City's project consultant's discretion, as is requested of the Commission by the City.

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Fifth, the City contends that implementing the recommended nesting buffers will reduce their ability to perform critical maintenance work on the Wharf. Staff respectfully disagrees. First, work can be targeted inasmuch as possible to avoid the nesting season for the subject species<sup>2</sup> and even to continue strategically into the shoulder periods before seabirds begin to establish nests. In fact, significant continuing maintenance and repair work may deter seabirds from even setting up near active work areas. Moreover, the City has previously communicated that they aim to avoid significant work during the tourist season, which coincides with the seabird nesting season, so arguably, major maintenance and repair work would already be fairly limited during the nesting season. Second, simple deterrents could be deployed preemptively to strategically discourage nest setup in areas where work is scheduled (this may be particularly useful for gulls). Third, buffers would be applied 300 feet out surrounding active nests (or as reduced via specific data on the work involved), not to the full length of the approximately 2,700-foot long wharf. Thus, maintenance activities could still proceed in unbuffered areas. In effect, surveys and work could thus be completed on a rolling basis such that some fraction of the wharf might always be available to shift focus to. Fourth, based on pigeon guillemot and western gull biologies, any given nest would limit a work area for at most 50-80 days of the year, leaving the remaining nine to ten months available. Fifth, staff continues to be open to continuous behavioral monitoring by a qualified biologist in combination with the use of reduced buffers to ensure nesting seabirds and their offspring are not being significantly disturbed as activities proceed, though this would presumably add costs for the City and require Executive Director sign-off. And finally, should true emergency situations arise that would require intrusion on established buffers, that work would still be possible with an emergency CDP.

In conclusion, staff believes that the recommended nesting bird parameters are scientifically sound, specific to the context and information applicable to this wharf, and provide appropriate flexibility for buffer reductions, and staff does not recommend adopting the City's suggestion that all such buffers and related measures be up to the discretion of the City's project biologist.

And finally, as indicated at the onset, the secondary purpose of this addendum is to make some minor corrections due to inadvertent mischaracterizations. Specifically, the staff report and recommendation that was published on August 27, 2021 is modified as follows (where applicable, text in underline format indicates text to be added, and text in ~~strike through~~ format indicates text to be deleted):

#### 1. **Modify Special Condition 5(a)(4) on staff report page 11 as follows:**

***Sealed Fixed Landings.*** ~~All replacement decking on the lower ledges of the Wharf's fixed landings~~ and all replacement lower ledgers shall be entirely coated on all

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<sup>2</sup> And further note that the nesting season identified here for the Santa Cruz Wharf is actually a smaller window by two months than is typically applied by the Commission (namely March 15th to August 15th here rather than February 1st to August 31st as is more typical). Staff made these changes based on the specific nesting characteristics of applicable birds at the Santa Cruz Wharf, and is more indication of the manner in which staff has attempted to address the City's concerns in a way that continues to respect required coastal resource protection as applied to the Santa Cruz Wharf's specific context.

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sides with a penetrating sealer prior to installation to protect sea lions and harbor seals from coming into direct contact with Ammoniacal Copper Zinc Arsenate (ACZA)-treated wood.

#### 2. Modify text on staff report pages 25-26 as follows:

Another concern with the proposed use of ACZA-treated wood at this wharf is with respect to sea lions and harbor seals that haul out on the Wharf's lower ledgers<sup>3</sup> as well as the Wharf's fixed decking and landings, because the arsenic in ACZA is highly toxic to marine mammals. Further, the ACZA-treated wood used for decking on the boat landings and lower ledgers/docks is subject to saltwater splash, and thus requires a higher preservative retention level (0.60 pcf) than the decking wood on the wharf itself (0.25 pcf), meaning potentially more toxicity to marine mammals and more ACZA leaching into the marine environment. While not described in the Wharf Maintenance Plan, the City has proposed to coat the entirety of the replaced ACZA-treated wood on the lower ledgers of the Wharf's and on the Wharf's fixed landings (i.e., where marine mammals are known to haul out) with a penetrating sealant to address this issue. **Special Condition 5(a)(4)** codifies this proposed measure and **Special Condition 8** requires submittal of a revised Wharf Maintenance Plan to incorporate the terms and conditions of this permit into the Wharf Maintenance Plan...

#### 3. Modify text on staff report page 28 as follows:

The existing Wharf piles are 14-inch diameter Douglas Fir timber piles that have been treated by a preservative to minimize marine borer degradation in the marine environment. The proposed project includes the replacement of up to two piles per day and up to ~~twenty~~forty piles in one year, for a cumulative total of up to 200 pilings that may be replaced over the five-year maintenance period. Replacement piles will be 16-inch (or less) diameter Douglas fir timber piles installed using an impact hammer. As discussed above, these piles will be treated with an ACZA preservative (see **Special Condition 5(a)(1)**) and encapsulated within a continuous marine grade polyurea coating, from just below the mudline to just above the ordinary high-water line (see **Special Condition 5(a)(6v)**) to prevent leaching of wood preservatives into the marine environment. As proposed, a cushion block will also be used between the pile cap and the impact hammer to attenuate sound during pile driving.

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<sup>3</sup> Lower ledgers are horizontal beams located near the ocean surface that connect the pilings in order to provide additional stability to the Wharf.