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DATE: May 12, 2022

TO: Coastal Commissioners and Interested Persons

FROM: John Ainsworth, Executive Director
Cassidy Teufel, Energy, Ocean Resources, and Federal Consistency Division Manager
Alexis Barrera, Environmental Scientist

SUBJECT: **NE-0001-22,** U.S. Army Corps of Engineers, Modification to previously concurred with Consistency Determination CD-0002-21 for the Port San Luis Breakwater Repair Project, Port San Luis Harbor Breakwater, San Luis Obispo County

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I. BACKGROUND

On April 16, 2021, the Commission concurred with a consistency determination submitted by the U.S. Army Corps of Engineers (Corps) for the repair of the Port San Luis (PSL) breakwater (CD No. CD-0002-21) adjacent to the town of Avila Beach in San Luis Obispo County (**Exhibit 1**). The project includes the repair of approximately 1,420 feet of existing breakwater by resetting stones and raising the overall height of the breakwater by 3 feet (back to its original design height and configuration). The project also involves the excavation of up to 15,000 cubic yards of sandy sediment from eelgrass habitat to create adequate depths for barges and other construction vessels to access the breakwater during repairs. The first phase of the PSL Breakwater repair involves excavation of the shoaled sediment in the lee of the breakwater and placement of the sediment within approved sites within PSL Harbor. This phase is expected to begin in late April 2022 and will take approximately four weeks. Following excavation, the next phase would be the breakwater repair work.

Following Commission concurrence and finalization of the 2021 Environmental Assessment, the Corps learned that the breakwater repair may result in up to 10,000 tons of displaced existing PSL breakwater stone which may not be able to be reincorporated back into the breakwater structure and would need to be relocated. While some of the existing stone may be re-used and retained within the breakwater, a portion of the stone was found to be too small to meet the current design requirements and maintain the hydraulic stability of the breakwater.

During the Corps' tribal consultation process for the PSL breakwater repair, the yak tityu tityu yak tiłhini - Northern Chumash Tribe and the Northern Chumash Tribal Council informed the

Corps that the stone used to build the PSL breakwater was originally taken from Lisamu' (also known as Morro Rock[1]), a recognized sacred site for the Chumash and Salinan Tribes. The tribes consider the existing breakwater stone as sacred, despite its removal from Lisamu'. To prevent further adverse effects to cultural resources, the consulting tribes requested that the displaced rock be relocated to an area near the PSL Breakwater or near Lisamu', so as to retain the unity of the sacred stone as much as possible. After coordination with tribal groups and resource agencies, the Corps determined that relocating the displaced stone approximately 1,500 feet west of Lisamu' (as shown in **Exhibit 2**) would avoid adverse impacts to sensitive habitat while maintaining the sacredness of the stone.

When the Commission reviews modifications to consistency determinations with which the Commission has previously concurred, the Commission relies on the "reopener" provisions of the federal consistency regulations (in this case, 15 CFR § 930.45) and looks at whether such a project, as modified, would "remain consistent" with the Coastal Act. The motion and resolution for this determination are found below. (This process can be considered the federal consistency equivalent to the Commission's procedures for amending coastal development permits.)

The Commission staff occasionally reviews and makes such determinations administratively. However, due to the potential for impacts to coastal resources including marine species and habitats, commercial and recreational fishing, and cultural resources, Commission staff determined that the proposed modification warranted further evaluation, public noticing and consideration by the Commission. Staff has therefore now scheduled this modification for a public hearing and Commission determination as to whether the project, as modified, remains consistent with the enforceable policies of California's Coastal Management Program (which includes the Chapter 3 policies of the Coastal Act).

II. PROCEDURES

The Commission's review of this submittal is being carried out under Section 930.45 of the federal consistency regulations (15 CFR Part 930), which provides:

> § 930.45 Availability of mediation for previously reviewed activities.
>
> (a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.
>
> (b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:
>
> (1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

[1]Through email communication with Chair Mona Olivas Tucker from the yak tityu tityu yak tiłhini – Northern Chumash Tribe on April 20, 2022 and phone communication with Chair Violet Sage Walker from the Northern Chumash Tribal Council on April 18, 2022, Commission staff learned that the original name for Morro Rock is Lisamu'. This name will henceforth be used in the staff report.

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

III. MOTION AND RESOLUTION

Motion. *I move that the Commission concur with the Corps of Engineers' modification (NE-0001-22) to its original consistency determination (CD-0002-21) on the grounds that: 1) the modified project's coastal zone effects are not substantially different than originally described and (2) the modified project remains consistent with the enforceable policies of the California Coastal Management Program.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the modified project and adoption of the following resolution and the findings below. An affirmative vote of a majority of Commissioners present is required to pass the motion.

Resolution. *The Commission hereby **concurs** with modification (NE-0001-22) to the U.S. Army Corps of Engineers' original consistency determination (CD-0002-21) for the proposed project, finding that the project, as modified: 1) will not have coastal zone effects that are substantially different than originally proposed; and 2) remains consistent with the enforceable policies of the California Coastal Management Program.*

IV. FINDINGS AND DECLARATIONS

A. PROJECT MODIFICATION

The Corps proposes to relocate up to 10,000 tons of existing PSL breakwater stone displaced by repair activities to a proposed placement area in the nearshore waters located approximately 1,500 feet west of Lisamu' (roughly 20 miles north of the PSL breakwater). The displaced existing stone from the PSL breakwater would range in size up to approximately 10 tons and would be transported via barge to the placement area. The Corps has written a letter to the Commission (received April 11, 2022), with an attached Briefing Memo (shown in **Exhibit 3**), which elaborates on this modification request. According to the Corps:

> *The footprint of stone placement will encompass up to approximately 3 acres of the sandy ocean bottom at a depth ranging from approximately -50 to -65 feet Mean Lower Low Water. The crest height will be variable from 1-13 feet above the sea floor with an allowable upward tolerance of + 5 feet and a maximum crest elevation of approximately -40 feet MLLW so that the structures exhibit a random low to high vertical relief. Contiguous connected modules will be added based on the volume of stone relocated with additional modules being added in succession.*

Quarried armor stones (approximately 5 to 7 feet in diameter) will be required to serve as anchors and remain in place permanently as part of each module, it is anticipated two armor stones per module will be required.

The Corps modelled the configuration of the relocated stone modules after the Palos Verdes Reef project, approved by the Commission in 2019 (CDP No. 9-18-0629), which included a modular design and varying reef heights. To maintain the unity of the sacred stone and attempt to provide higher value habitat for marine species, the displaced breakwater stone would be placed in an array of up to five contiguous modules interspersed with sandy bottom habitat. Stone relocation would occur concurrently with the PSL breakwater repair, which is expected to extend from April to October 2022. Similar to the PSL breakwater repair, stone relocation would be sea-based, conducted by barges carrying rock/stone, tugboats, small craft support vessels, a track loader, and a crane equipped barge.

More specifically, during the breakwater repair, a crane-equipped barge would place the displaced stone from the breakwater onto a rock barge for transport to the proposed placement site. Two tugboats would then tow the rock barge with the displaced stone approximately 20 miles upcoast to the placement site offshore of Morro Bay. The rock barge is expected to carry approximately 1,000 tons of stone per trip. An estimated 10 roundtrips would be needed to transport all the displaced stone to the project site. Once the rock barge arrives at the project site, it would be anchored using two anchor stones to hold barge position during placement. Once the barge is accurately positioned using GPS, a track loader located on the barge would use a controlled push off method to place the displaced stone into the proposed module configurations. The stone would then sink through the water column and settle on the sea floor in the designated module locations. Stone would be placed in sets of individual modules to maintain cohesion between all stone placed.

B. OTHER AGENCY APPROVALS

Central Coast Regional Water Quality Control Board (CCRWQCB)

The Corps requested an amendment to Water Quality Certification No. 34021WQ04 on March 9, 2022 for the proposed project from the CCRWQCB. The amended water quality certification was issued on April 11, 2022.

California Department of Fish & Wildlife (CDFW)

Corps and Commission staff discussed the proposed project modification with CDFW's sea otter program and Marine Region staff. CDFW supports the project purpose of returning sacred Tribal resources and minimizing further damage to marine habitats and ecosystem.

United States Fish & Wildlife Service (USFWS)

USFWS has federal authority over the protection of the southern sea otter, listed as "threatened" under the Endangered Species Act. Corps and Commission staff coordinated with the USFWS regarding the proposed project modification. With the inclusion of the protective measures proposed by the Corps (further described below in the Marine Resources section of this report), USFWS determined that the proposed modification would have no effect on the federally listed southern sea otter.

National Marine Fisheries Service (NMFS)
Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended, the Corps consulted with NMFS regarding the effects of the breakwater repair on essential fish habitat (EFH) and received general concurrence from NMFS on June 7, 2021. The Corps initiated Supplemental EFH Consultation with NMFS regarding the proposed project modification. The Corps received general concurrence from NMFS regarding the modified project on March 25, 2022.

Tribal & State Historic Preservation Officer
Pursuant to Section 106 of the National Historic Preservation Act (NHPA), the Corps is consulting with the State Historic Preservation Officer (SHPO) and Federally and non-Federally recognized tribes regarding the proposed project modification.
The Corps developed the proposed modification in consultation with the yak tityu tityu yak tiłhini - Northern Chumash Tribe and the Northern Chumash Tribal Council. In addition to the two consulting tribes, the Corps invited the Santa Ynez Band of Chumash Indians; Barbareno/Ventureno Band of Mission Indians; Salinan Tribe of Monterey, San Luis Obispo Counties; Xolon-Salinan Tribe; and the Coastal Band of the Chumash Nation to consult on the proposed stone relocation. To date, those tribes have either declined to consult or have deferred to the two consulting tribes. The consulting tribes are in support of the stone relocation as a means to repatriate the sacred stone close to Lisamu'. As requested by the consulting tribes, the Corps has committed to treating all existing PSL Breakwater stone in a respectful manner that minimizes breakage and retains the unity of the stone.

Tribal Consultation
Commission staff reached out to known interested Tribal representatives from the yak tityu tityu yak tiłhini - Northern Chumash Tribe and the Northern Chumash Tribal Council. Through email and phone conversations, both tribes expressed their support for returning rock from Lisamu' to the Morro Bay area and for the proposed project. During consultation with the Northern Chumash Tribal Council, Commission staff learned that the effort to return the rock has been pursued by the tribes for several years now and the repatriation is of great importance to them.

City of Morro Bay and Harbor Department
Corps and Commission staff coordinated with the City of Morro Bay and its Harbor Department regarding the proposed project modification. Both are supportive of the project and the protective measures proposed to be implemented by the Corps.

C. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30232 of the Coastal Act states:

> *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

The project site is located approximately 1,500 feet west of Lisamu', offshore of Morro Bay Harbor in San Luis Obispo County. Directly east of the project site is the exposed rocky shoreline of Lisamu'. The Corps proposes to place up to 10,000 tons of rock offshore of Lisamu' on open sandy bottom habitat in an approximately 3-acre area. The proposed project has the potential to adversely affect marine habitats, wildlife, and water quality.

Marine Habitats

The proposed rock placement area offshore of Lisamu' has no NMFS designated Habitat Area of Particular Concern (HAPC) such as seagrass, canopy kelp, or rocky reef, and is dominated by clean and silty sand open areas. The soft bottom habitat here supports sand dollars and marine snails. During recent surveys carried out by the Corps, flatfish were also observed.

As further described by the Corps:

> *The Morro Rock Survey Area stands in stark contrast to the Point San Luis Survey Area in that it is dominated by open sandy bottom with the only rocky features represented being the steep western faces of Morro Rock and the northern breakwater for Morro Bay.*
>
> *…*
>
> *No mappable biotic resources were observed in the Morro Rock Survey Area. Canopy kelp was absent, and no eelgrass occurs in the survey area. Canopy kelp surveys have regularly been performed in portions of the present survey area in association with maintenance dredging activities conducted by the Corps in Morro Bay from 2013-2021 (Merkel & Associates 2013-2021). These surveys, and 1989-2016 data from the CDFW long-term kelp habitat monitoring program (CDFW 2018) have documented an absence of kelp in the survey area. This is likely associated with two factors; a lack of suitable hard bottom habitat at appropriate depths to support kelp, and high reflected wave energy off the steep shoreline*

rock surfaces.

The conversion of soft bottom habitat to rocky bottom habitat would adversely impact species that rely on soft substrate habitats through displacement and habitat loss for mobile species such as fish and burial, injury and loss for sessile and less mobile species such as sand dollars, sea pens and marine worms. Although the placement of breakwater stone on sand would result in a loss of soft bottom habitat, the maximum three-acre footprint of the stone placement area accounts for less than one percent of available soft bottom habitat present in the nearshore waters along the Morro Bay coastline. However, not all such habitats are homogenous and uniform in the species and benthic communities they support. Some areas of soft substrate are known to support extremely high densities of invertebrate organisms such as star fish, tube worms, sea pens or sand dollars while nearby areas that appear physically similar do not. Those areas of more highly productive soft substrate habitats may play a particularly important role in the wider marine ecosystem than has been traditionally recognized. Benthic surveys of the proposed project site carried out in 2021 to evaluate the presence of such high productivity soft substrate habitat and high-density species aggregations did not reveal such resources. The configuration of the stone placement also includes a mosaic of hard substrate with soft bottom habitat to create a more structurally diverse environment in an area that is dominated entirely by sand. Soft substrate habitat will therefore continue to be present in channels and gaps between rock modules following the completion of installation activities.

The addition of the breakwater stone in the placement area also has the potential to benefit a variety of reef-associated marine species, potentially including rare and special-status species such as black abalone and southern sea otter. However, the depth and small size of the proposed rock placement area as well as its distance and isolation from natural rocky reef habitat would likely minimize those potential benefits to marine life and marine biological productivity. Further, the Corps has made clear through its project materials that the purpose of the project modification is not to enhance or benefit marine habitats but rather to relocate stone originally collected from the historic Morro Rock quarry back to the Morro Bay area, as agreed upon during its tribal consultation process.

While the proposed project will adversely affect soft substrate marine habitats and species through the loss and conversion of existing habitat, benthic surveys have demonstrated the limited presence of wildlife within the project site. Further, conversion of this habitat from sand to rock has the potential to provide refuge and forage areas for reef-oriented species and may thus benefit other types of marine life.

Marine Wildlife

Marine mammal species including the southern sea otter (*Enhydra lutris nereis*), harbor seals, California sea lions, bottlenose dolphins and whales such as blue whales, humpback whales and gray whales are known to be present in and transit through the project area. The proposed rock placement has the potential to result in disturbance or injury to these species. Rocks would be brought in on floating barges and placed into module configurations via track loaders using a controlled push off method. Thus, the project could result in: (1) injury or death to marine mammals from falling rocks during rock placement; and (2) ship strikes from project vessels during transit to and from the project site.

Although common within Morro Bay, the federally threatened southern sea otter occurs infrequently in the offshore project area, likely due to its exposure to open ocean conditions and the lack of available rocky habitat. In the unlikely event that a southern sea otter approaches the project area and to avoid injury or death to sea otters from rock placement activities, the Corps has committed to the following:

> *An on-site qualified marine mammal monitor will be on-site at all times during stone placement activities at the Proposed Placement Area west of Morro Rock. A 50- meter safety zone for southern sea otters will be established for this project. Should a sea otter come within 50 meters of the construction activities, operations will be halted until the sea otter leaves the designated safety zone.*

Given the unlikely presence of sea otters at the project site and implementation of this protective measure, potential injury or disturbance to southern sea other would be effectively minimized during project construction.

Seal, sea lion, dolphin and porpoise species may also be present infrequently in the project area. In the unlikely event that a marine mammal approaches the project area and to avoid injury or death to these marine mammals from rock placement activities, the Corps has committed to the following:

> *All minimization and avoidance measures concerning marine mammal species committed to under the Incidental Harassment Authorization (IHA) issued to the Corps for the PSL Breakwater Repair Project by the NMFS Office of Protected Resources Division and 2021 FEA (USACE 2021) would apply to the proposed project modification construction activities taking place within PSL Harbor.*
> *…*
> *An on-site qualified marine mammal monitor will be on-site at all times during stone placement activities at the Proposed Placement Area west of Morro Rock. A 200-meter safety zone for marine mammal species (with the exception of the Southern sea otter) will be established for this project. Should a marine mammal species come within 200 meters of the construction activities, operations will be halted until the marine mammal leaves the designated safety zone.*

This is the typical approach used for marine mammal protection during offshore construction activities and has a long history of demonstrated effectiveness (including for the Palos Verdes reef project approved by the Commission through CDP No. 9-18-0629).

Ship strikes (collisions with marine mammals) from barges and their towing vessels as they move to and from the project site also have the potential to adversely affect marine wildlife. The proposed project would involve the use of a crane-equipped barge, support vessels, and storage/rock barges. The Corps has committed to restrict vessel speeds to no greater than 8 nautical miles per hour (knots) which is below the ten knots speed limit typically required by the Commission and recommended by the National Marine Fisheries Service based on existing research to protect large whales from lethal ship strikes.

With the implementation of these mitigation measures, including marine mammal monitors, designated safety zones, and restricted vessel speeds, adverse impacts to marine mammals associated with the proposed project would be minimized.

Water Quality

The proposed modification to the PSL breakwater repair project has the potential to adversely affect water quality through the introduction of contaminants and generation of turbidity during construction. Temporary elevated levels of turbidity may have adverse impacts to federally managed species under the Coastal Pelagic Species, Pacific Coast Groundfish, Pacific Coast Salmon, and Highly Migratory Species Fishery Management Plans (FMP). Increases in turbidity can degrade water quality by reducing light penetration, discoloring the ocean surface, or interfering with filter-feeding benthic organisms sensitive to increased turbidity. However, such adverse impacts are expected to be temporary and limited due to the wave-washed nature of the displaced stone, which is not likely to contain high amounts of fine material.

To further address potential adverse impacts to marine water quality from relocation activities, the mitigation measures included in the previously approved PSL breakwater repair would also continue to be carried out as part of the modified project. These measures include the implementation of a Water Quality Protection and Monitoring Plan which would monitor turbidity, dissolved oxygen, light transmittance, pH, salinity, and temperature during placement activities. In addition, the Spill Prevention and Response Plan required for the PSL breakwater repair would be modified to include the stone relocation activities and would also include prohibitions on marine discharges from project vessels used for the relocation activities. As part of the Spill Prevention and Response Plan, no petroleum products, chemicals, or other toxic or harmful materials would be allowed to enter coastal waters.

Conclusion

With the inclusion of the original mitigation measures for the PSL Breakwater repair (included as **Exhibit 4**), incorporation of water quality mitigation measures including an expanded Water Quality Protection and Monitoring Plan and Spill Prevention and Response Plan, and with the minimization of risks to marine mammal through the use of dedicated observers and safety zones, the Commission concludes the proposed modification would be conducted in a manner that protects marine species and areas of special biological significance, minimizes potential degradation of water quality and would therefore remain consistent with the marine resources and water quality policies of the Coastal Act (Sections 30230, 30231, and 30232)

D. PLACEMENT OF FILL IN COASTAL WATERS

Section 30233(a) of the Coastal Act states:

> *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
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> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
>
> *(2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

The proposed project involves placement of up to 10,000 tons of rock within an approximately 3-acre area roughly 1,500 feet offshore of Lisamu' and has been proposed by the Corps as a necessary component of the PSL breakwater repair effort, an activity that would result in the placement of rock and dredging of sand. Similar to that proposed as part of the PSL breakwater repair effort, this newly proposed placement of rock constitutes the filling of coastal waters and therefore triggers the three-part test of Section 30233(a): (1) the project must be one of the seven enumerated allowable uses; (2) the project must be the least environmentally damaging feasible alternative; and (3) the project must include feasible mitigation measures to minimize adverse environmental impacts.

The previously approved PSL Breakwater repair (CD-0002-21) included the following discussion:

> *Regarding the first test, the recovery and replacement of stones and the dredging of Port San Luis Harbor for restoration of the breakwater is necessary to maintain and improve the breakwater, which serves coastal-dependent fishing and other commercial and industrial facilities. The project is thus an allowable use under Section 30233(a)(1) and (a)(2).*

As a necessary component of the associated PSL breakwater repair activities, the placement of rock offshore of Lisamu' serves the same purpose. Thus, the relocation of the displaced stone remains an allowable use under Section 30233(a)(1) and (a)(2).

Regarding the second test, no less environmentally damaging feasible alternative to the proposed stone relocation is available. Previous Corps analysis of placing the displaced stone near the PSL breakwater determined that it would not be the least environmentally damaging feasible alternative due to the presence of natural rocky reef in that area and potential for those reefs to support federally endangered black abalone. The Corps summarized their findings as follows:

> *PSL Harbor is located within the federally endangered black abalone's historic*

habitat range. Designated critical habitat (Specific Area 10) for black abalone encompasses PSL Harbor and the project area. The LA District (LAD) conducted two focused surveys of the proposed PSL breakwater repair area in June/July 2018 and January/February 2019 in accordance with the NMFS's black abalone habitat assessment/survey requirements. While no black abalone were discovered within the proposed breakwater repair area, black abalone have been observed within the vicinity of PSL Harbor. During the 2018 and 2019 focused black abalone surveys it was noted the structural rock formations within the PSL breakwater area provide a possibility for suitable habitat to support juvenile and adult black abalone.

Due to the documented observations of black abalone within the San Luis Obispo County region, and the habitat assessment's conclusion that the PSL breakwater provides suitable habitat to support juvenile and adult black abalone, the LAD has determined there is potential for black abalone to occur within the project area.

Because the displaced stone was originally taken from Lisamu', a site of great cultural significance to the Chumash and Salinan Tribes, the consulting tribes requested that the displaced stone be kept together as a unit and repatriated either near Lisamu' or maintained within one mile of the PSL breakwater (which is still largely comprised of Lisamu' stone). Survey results of the offshore area within one mile of the PSL breakwater showed a complex mosaic of rocky habitat and sandy bottom habitat. In addition to the black abalone critical habitat and eelgrass beds in the lee of the PSL breakwater, the rocky habitat in the surveyed area also supports patches of both bull kelp and giant kelp. The Corps described the survey area as follows:

One characteristic of the Point San Luis Survey Area is the strong integration of soft and hard bottom habitat. While the arrangement of habitat features would not preclude being able to place the displaced rock purely on sand bottom, as some of the areas of sand flat are several acres in size, the site is somewhat constraining to vessel positioning and anchoring in a manner that may result in some damage to existing reef during rock placement. Further, the present mosaic of rock at Point San Luis already provides a diverse and complex habitat condition with tall boulder outcrops, low relief reef, soft-hard bottom ecotones, and intermittent sparse to heavy kelp canopy that would provide enhanced marine habitat function. In other words, a reef located within this area would not provide a substantively unique habitat feature and thus would be expected to provide less net functional habitat benefit than a reef located in a less physically complex environment.

…

While it is technically feasible to fit the full reef configuration illustrated in Figure 4 within soft bottom of the Point San Luis Study Area, and within the tidelands grant boundary, it is unlikely that a reef could be readily constructed in this area without some potential to damage rocky reef habitat in proximity through anchor placement and cable drags. Such effects may result in significant damage to marine resources, particularly because dragging of anchor cables may be expected to shear many vertical sessile organisms and clear overstory and understory kelp from rock. As a result, should this site be selected, additional analysis working in concert with the breakwater contractor would be necessary to

> *determine if potential exists to avoid risk of significant temporary impact to marine resources. Construction of a reef within the open sand bottom of the Morro Rock Study Area does not have similar inherent risk of damage to an HAPC due to the absence of reefs in the area.*

Thus, in order to avoid adverse impacts to rocky reefs, the Corps did not select the offshore area near the PSL breakwater to place the displaced breakwater stone. For the reasons discussed above, this location is not a feasible, less environmentally damaging alternative to the proposed site near Lisamu'.

As discussed previously, while the placement of stone on soft bottom habitat near Lisamu' would result in localized adverse impacts to soft bottom dwelling marine species, the proposed placement site would avoid sensitive marine habitats (including black abalones critical habitat and NMFS designated Habitat Areas of Particular Concern such as natural reefs and eelgrass beds). Accordingly, for the reasons described above, the Commission finds that the there are no less damaging feasible alternatives to the proposed project and it therefore meets the second test of Coastal Act Section 30233(a).

Regarding the third and final test of Section 30233(a), the proposed project includes feasible mitigation measures to minimize adverse environmental impacts. The Corps will follow the mitigation measures that were approved in the initial PSL Breakwater repair (briefly summarized in the Corps' Modification Briefing Memo and provided in **Exhibit 4**). These measures include the implementation of a Spill Prevention and Response Plan, Water Quality Protection and Monitoring Plan, Environmental Protection Plan, marine discharge prohibitions, and avoidance of sensitive habitats including rocky reef habitat. The displaced rock would be located at a depth and on a soft substrate seafloor area that does not support exposed reef or sensitive biological resources. As discussed in other sections of this report, conservation and mitigation measures are incorporated into the proposed project where necessary to protect coastal resources from adverse effects arising from the relocation of the displaced rock. With these measures, the Commission finds that the proposed modification is consistent with Coastal Act Section 30233(a).

D. 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.*

Section 30220 of the Coastal Act states:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

The area surrounding the project area includes Morro Rock Beach and Morro Bay which are used for recreational activities such as surfing, boating, and fishing. The proposed placement area however is not heavily used for recreational activities and is beyond the

appropriate depth range for surfing. To eliminate any potential for the displaced stone to dampen or divert wave energy from surfing area, the proposed stone configuration would be located in deeper waters (50 to 65 feet) and the modules would be restricted in height, based on the Palos Verdes reef design. In addition, the proposed site would be outside of the swell direction window for the primary surfing locations around Lisamu'. The Corps proposes to minimize navigational impacts during construction by issuing a notice to mariners and properly marking the construction area so that surfers, kayakers, and boaters would safely avoid the waters in the immediate project area. In addition, the Corps will also provide the proper information to NOAA's office of Coast Survey to ensure the nautical charts are updated to include the final structure.

Therefore, for the reasons described above, the proposed modification will not have a substantial negative effect on the public's ability to access and enjoy the coast, and the project is consistent with the public access and recreation policies of the Coastal Act.

E. CONCLUSION

Given the above discussion concerning the Corps' commitments to avoid and minimize adverse impacts to coastal resources, the Commission concludes that the project, as modified, remains consistent with the California Coastal Management Program.

EXHIBITS

Exhibit 1 – Project Location
Exhibit 2 – Proposed Placement Area Site Map
Exhibit 3 – Corps Letter and Briefing Memo
Exhibit 4 – Mitigation Measures