

**STAFF REPORT  
C55**

A 37  
S 19

04/05/19  
PRC 8390.9  
D. Simpkin

**AMENDMENT OF LEASE**

**APPLICANT:**

National Park Service – Channel Islands National Park

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Pacific Ocean, Scorpion Cove, Santa Cruz Island, Santa Barbara County.

**AUTHORIZED USE:**

Use and maintenance of a dock at Anacapa, Santa Cruz and Santa Barbara Island, use and maintenance of a pier at Santa Rosa and Santa Cruz Island, use and maintenance of two steel mooring buoys each at Anacapa and Santa Cruz Island, and one steel mooring buoy each at Santa Barbara and Santa Rosa Island.

**LEASE TERM:**

20 years, beginning March 1, 2002.

**CONSIDERATION:**

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

**PROPOSED AMENDMENT:**

- Amend the **Land Use or Purpose and Authorized Improvements**, of the lease to authorize the removal of the existing Scorpion Cove Pier; the construction, use, and maintenance of a new pier; the relocation of one steel mooring buoy; and the retention, use, and maintenance of rock riprap.
- Replace Section 3, Exhibit E, Site and Location Map with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).

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**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;  
California Code of Regulations, title 2, sections 2000 and 2003.

**Public Trust and State's Best Interests Analysis:**

On June 18, 2002, the Commission authorized a 20-year General Lease – Public Agency Use to the Lessee ([Item C27, June 18, 2002](#)) for:

- Use and maintenance of a dock on Anacapa Island, Santa Barbara Island, and Santa Cruz Island
- Reconstruction, use, and maintenance of a pier at Prisoner's Harbor, Santa Cruz Island
- Use and maintenance of a pier at Santa Rosa Island
- Use and maintenance of two steel mooring buoys each at Anacapa Island and Santa Cruz Island
- One steel mooring buoy each at Santa Barbara Island and Santa Rosa Island

On May 5, 2008, the Commission authorized an amendment to the lease to authorize the demolition and construction of a new pier at Becher's Bay, Santa Rosa Island ([Item C13, May 5, 2008](#)). The lease will expire on February 28, 2022.

The Lessee is now applying for an amendment of the lease to allow for the removal of the existing pier and the construction, use, and maintenance of a new 18-foot-wide by 300-foot-long pier with a 31-foot by 60-foot pierhead at Scorpion Cove on Santa Cruz Island.

The existing pier at Scorpion Cove provides access to Santa Cruz Island, the most visited island within Channel Islands National Park. Visitors to the island can enjoy numerous activities and amenities, including hiking trails, a historic district, a 240-person campground, kayaking, swimming, scuba diving, and snorkeling.

The existing pier supports approximately 1,055 vessel landings per year. The pier was originally installed in 2000 using a railcar as a temporary and low-cost solution for providing access to Santa Cruz Island. Since 2000, the flatbed railcar has deteriorated due to wave action and exposure to salt water. Storm damage during the 2015 winter rendered the railcar structurally deficient and the pier was closed. A temporary gangway was installed in 2017 to provide interim access. The existing pier cannot be used by park or concession boats during very low tides or when wave

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heights are greater than 1 or 2 feet. Disembarkation requires visitors and National Park Service (NPS) staff to use ladders. The pier does not meet NPS requirements for administrative use or safe visitor access.

The new pier would accommodate the current range of NPS boats and concessioners' ferry vessels, increase efficiency of loading and offloading cargo, and improve circulation of visitors, cargo, and NPS operations as well as improve overall safety. The gangway, approach road slopes, and pier decking would all meet federal Americans with Disabilities Act of 1990 requirements.

The proposed new pier would be located 300 feet south of the existing pier. The north and east sides of the pierhead would be lined with fiberglass fender piles and the pier could accommodate a mobile crane. A total of 66 piles, comprising 38 steel piles (18 inches in diameter), 9 steel piles (16 inches in diameter) and 19 fiberglass fender piles (12 inches in diameter) will be used.

The new pier will allow the safe transport of visitors to Santa Cruz Island and assist the NPS in implementing safe Park operations. The pier will allow visitors to enjoy water-dependent uses, recreational opportunities, and will not interfere with navigation. The proposed amendment is, therefore, consistent with the Public Trust Doctrine.

**Climate Change:**

The lease area consists of sovereign land located in the Pacific Ocean adjacent to Santa Cruz Island in Santa Barbara County.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. Projected sea-level rise scenarios for the lease area (Santa Barbara tide gauge) are listed in Table 1.

**Table 1. Projected Sea-Level Rise for Santa Barbara<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.7
2040	1.1
2050	1.8
2100	6.6

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Source: Table 22, State of California Sea-Level Rise

Guidance: 2018 Update

Note: <sup>1</sup> Projections are with respect to a baseline of the year 2000.

Additional climate change impacts such as more frequent and stronger winter storm and flooding events may contribute to increased vulnerability throughout the lease area. These cumulative impacts could result in accelerated rates of erosion and beach loss. Over the next 30 years sea levels will continue to rise, and storm impacts are likely to increase, potentially increasing the risk to Public Trust resources and values located within and around the lease area, including recreational values associated with the beach. The combination of increased wave action, storm activity, sea-level rise, and beach scour could result in additional damage or degradation to the pier.

The new pier design includes the selection of steel piles and superstructure that will allow the pier to be modified (elevated) in the future, by which time better estimates and understanding of the sea-level rise projections will be available to make informed decisions on the modified deck elevation. In this way, the new pier is adaptable to increasing sea-level rise and climate change. However, the pier may require maintenance to ensure continued function during and after storm seasons, and to reduce the risk it potentially poses to public safety, should it become a source of marine debris or a coastal hazard as a result of dislodgement or structural failure.

Rock riprap has existed at Scorpion Cove for many years but was not previously included in the lease. The riprap provides protection for the upland and nearby access roads from storm waves and wave uprush.

The lease expires in 2022 and will provide both the Commission and the Lessee an opportunity to evaluate the effects of sea-level rise and the design and functionality of the pier in order to make incremental adaptation steps as necessary and appropriate in a new lease at that time.

### **Conclusion:**

For all the reasons above, staff believes the authorization of this amendment is consistent with the common law Public Trust Doctrine and in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and

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resources under the Commission's jurisdiction; and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. Under the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) was prepared for this project by the NPS. The EIS and a Record of Decision were certified on August 14, 2018. The NPS circulated the EIS for public review under State Clearinghouse No. 2015101041, as broadly as state and local law require and notice was given meeting the standards in California Code of Regulations, title 14, section 15072, subdivision (a).

Commission staff prepared supplemental information (Exhibit C) to address the Environmentally Superior Alternative (State CEQA Guidelines, § 15126.6), and Mandatory Findings of Significance. The supplemental information also presents analysis and conclusions relating to potentially significant impacts to Tribal cultural resources, consultation with California Native American tribes, and confidentiality (see below). In addition, on December 15, 2017, the California Coastal Commission (CCC) conditionally concurred with the project's consistency determination as prepared by the NPS (CD-0004-17). Commission staff believes the EIS together with the CCC's Consistency Determination, and the supplemental information prepared by Commission staff meets both the procedural and substantive requirements of CEQA as mandated by State CEQA Guidelines section 15225, subdivision (a). Therefore, pursuant to California Code of Regulations, title 14, sections 15221 and 15225, staff is using the federal EIS in place of an Environmental Impact Report. Accordingly, Commission staff has prepared a Mitigation and Monitoring Program and Statement of Findings providing written, specific reasons to support the Commission's decision under CEQA to approve the Project (Exhibit D and Exhibit E).

3. The Project is located within the Scorpion State Marine Reserve (SMR), which adjoins the federal Scorpion Marine Reserve. The SMR prohibits damage or take of all marine resources (living, geologic, or cultural) including recreational and commercial take. The NPS consulted extensively with the California Department of Fish and Wildlife and the California Fish and Game Commission during Project development, and mitigation was included in the EIS to insure that there would be no significant impact to the SMR.

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4. As the lead agency for compliance under CEQA, and in keeping with its Tribal coordination practices and the requirements of Assembly Bill 52 (Statutes 2014, chapter 532), staff reviewed the NPS EIS, along with the associated Section 106 Programmatic Agreement (PA) signed by the NPS, the California State Historic Preservation Officer, and the Chairs of the Santa Ynez Band of Chumash Mission Indians, the Santa Ynez Band of Chumash Mission Indians Elders Council, and the Barbareño/Ventureño Band of Chumash Mission Indians. Staff also informally coordinated with the Cultural Preservation Advisor to the Elders Council to ensure staff understood all concerns and prior federal Consultation. Staff has determined that:
  - a. The government-to-government Consultation conducted by NPS resulted in the PA, which requires further mitigation of impacts to tribal cultural resources than originally contemplated, and
  - b. Collectively, the commitments agreed to in the PA, the mitigation measures included in the Commission's Exhibit D – Mitigation and Monitoring Program will ensure the Project will not cause a significant impact on Tribal Cultural Resources.
  
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**APPROVALS OBTAINED:**

California Coastal Commission

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map
- C. Supplemental Information for CEQA Compliance
- D. Mitigation and Monitoring Program
- E. Statement of Findings

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the EIS and Record of Decision were certified by the NPS on August 14, 2018, for this project and that the Supplemental Information to the EIS and the CCC's Conditional Concurrence support and are consistent with the Commission's independent judgment and analysis and, together with the EIS, meet the requirements of CEQA. Therefore, pursuant to California Code of Regulations, title 14, sections 15221 and 15225, adopt such federal documents for use in place of an Environmental Impact Report.

Adopt the Mitigation and Monitoring Program, as contained in the attached Exhibit D.

Adopt the Statement of Findings, made in conformance with California Code of Regulations, title 14, section 15091, as contained in the attached Exhibit E.

Determine that the Project, as approved, will not have a significant effect on the environment.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

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**AUTHORIZATION:**

Authorize amendment of Lease No. PRC 8390.9, a General Lease – Public Agency Use, effective April 5, 2019, for the removal of the existing pier at Scorpion Cove; construction, use, and maintenance of a new 18-foot-wide by 300-foot-long pier with a 31-foot by 60-foot pierhead; the relocation of an existing steel mooring buoy; and the retention, use, and maintenance of rock riprap, as described in Exhibit A and shown on Exhibit B (for references purposes only); replace the existing Exhibit E, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.



**EXHIBIT A**

**PRC 8390.9**

**LAND DESCRIPTION**

THREE (3) parcels of submerged land situate in the Pacific Ocean on the easterly side of Santa Cruz Island, County of Santa Barbara, State of California, lying adjacent to Tract 6 as shown on Record of Survey titled "Map of Santa Cruz Island", filed January, 1926 in Book 17 of Maps at Pages 178 to 181, Santa Barbara County Records, and being more particularly described as follows:

**PARCEL 1 – PROPOSED PIER**

COMMENCING at a NGS monument "SANTA CRUZ EAST, PID EW8055" (Epoch 1991.35) which bears North 33° 32' 49" West, 8756.09 feet from a NGS monument "ROCKY, PID EW8056" (Epoch 1991.35); thence South 49° 21' 43" East, 3190.25 feet to the POINT OF BEGINNING; thence from said POINT OF BEGINNING the following twelve (12) courses:

- 1) North 58° 50' 27" East, 24.52 feet;
- 2) North 31° 09' 33" West, 8.87 feet;
- 3) North 58° 50' 27" East, 19.00 feet;
- 4) South 31° 09' 33" East, 8.87 feet;
- 5) North 58° 50' 27" East, 194.98 feet;
- 6) North 31° 09' 33" West, 12.00 feet;
- 7) North 58° 50' 27" East, 61.50 feet;
- 8) South 31° 09' 33" East, 64.00 feet;
- 9) South 58° 50' 27" West, 121.40 feet;
- 10) North 31° 09' 33" West, 34.00 feet;
- 11) South 58° 50' 27" West, 178.60 feet;
- 12) North 31° 09' 33" West, 18.00 feet to the POINT OF BEGINNING.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any riprap protection structure lying adjacent to said tract.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark of the Pacific Ocean.

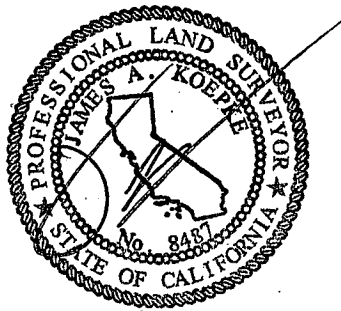
PARCELS 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to said Tract 6 as shown on Record of Survey titled "Map of Santa Cruz Island", filed January 1926 in Book 17 of Maps at Pages 178 to 181, Santa Barbara County Records.

**END OF DESCRIPTION**

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

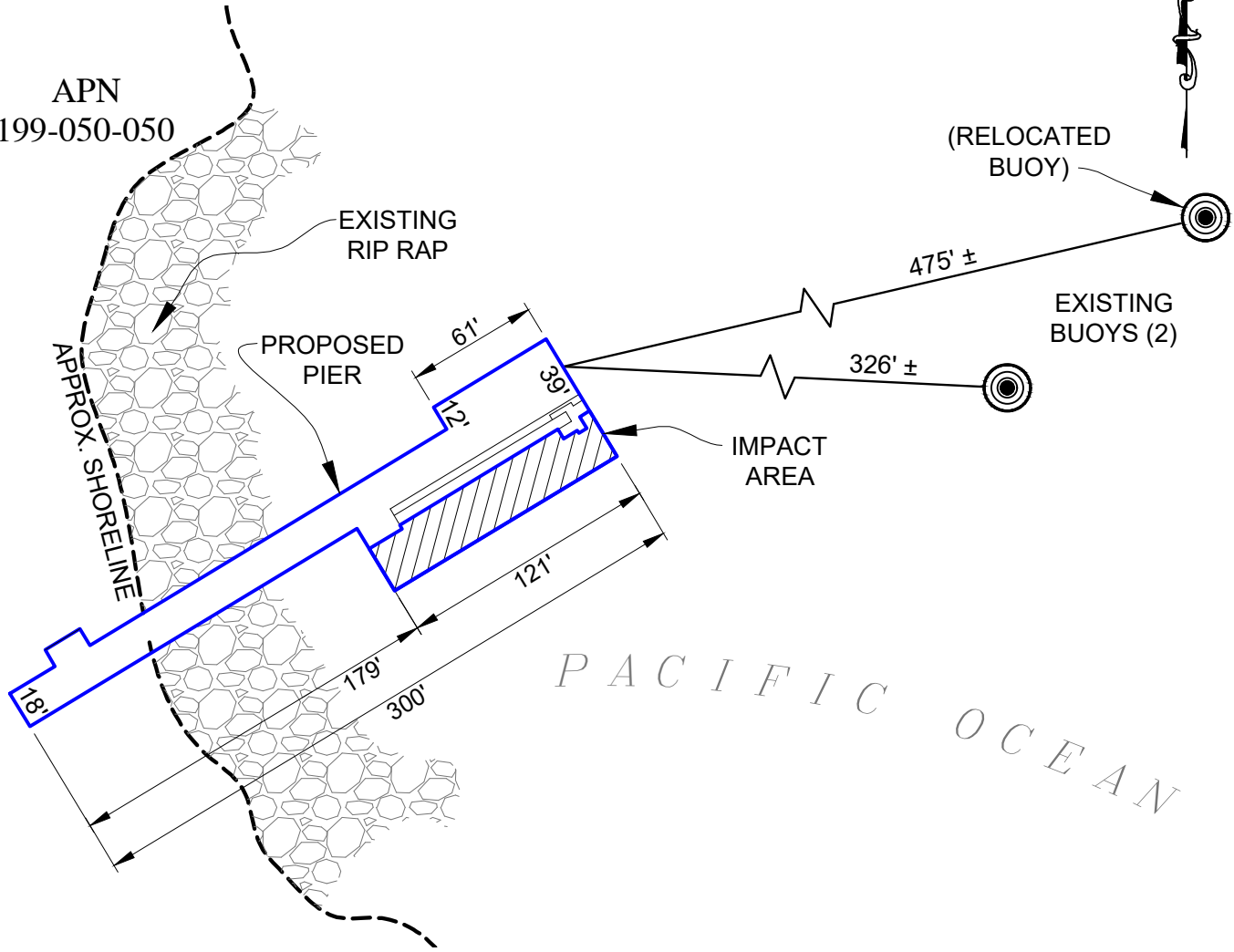
Prepared 12/14/2018 by the California State Lands Commission Boundary Unit.



# SITE

NO SCALE

APN  
199-050-050



SCORPION COVE, SANTA CRUZ ISLAND, CA

# LOCATION

NO SCALE



MAP SOURCE: USGS QUAD

# Exhibit B

PRC 8390.9  
NATIONAL PARK SERVICE  
APN 199-050-050  
GENERAL LEASE -  
PUBLIC AGENCY USE  
SANTA BARBARA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## EXHIBIT C. SUPPLEMENTAL INFORMATION NEEDED TO COMPLY WITH CEQA

### 1.1 INTRODUCTION

Although the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) are similar in many respects, NEPA does not require a discussion of several key issues under CEQA. Because of these differences, section 15221, subdivision (b) of the State CEQA Guidelines indicates these sections should be added by the State lead agency when it uses an Environmental Impact Study (EIS) in place of an Environmental Impact Report (EIR). In accordance with the above requirement, California State Lands Commission staff (Commission staff) have provided the table below, which portrays the key issues that were covered by the EIS, and where those items can be found, followed by a discussion of any key issues not discussed.

<b>Reference Guide for Locating Required EIR Contents in the EIS</b>	
<b>Required Content</b>	<b>EIS Location</b>
1. A clear statement within the NEPA document that indicates the State's intent to use the document as a CEQA equivalent and/or to use it as the basis for preparing future environmental documents as required by CEQA	Page ix of the Executive Summary
2. A discussion of state-listed threatened endangered sensitive and fully-protected species including those that qualify for analysis pursuant to CCR section 15380	Page 98
3. A discussion of the threshold of significance and the criteria used to judge whether an impact is above or below that threshold (CCR section 15064(f))	All resource sections
4. A discussion of the significant environmental effects that cannot be avoided if the proposed project is implemented (CEQA Guidelines section 15126.2(b)) and significant irreversible environmental changes which would be caused by the proposed project should it be implemented (CEQA Guidelines section 15126.2(c))	Page 207
5. A discussion of the effects not found to be significant (CEQA Guidelines section 15128)	Page 19
6. A discussion of feasible mitigation measures for each significant impact pursuant to CCR section 15126.4(a)	All resource sections

7. A discussion of cumulative impacts (CEQA Guidelines section 15130)	Pages 133 to 135, and all resource sections
8. An analysis of growth-inducing impacts as a separate section in the NEPA document pursuant to CCR section 15126.2(d)	Page 207
9. A greenhouse gas analysis per State of California Assembly Bill 32 (Nunez 2006)	Page 144
10. Discusses in general those state parcels subject to the project as identified in the NEPA document	Page 16
11. An increased public notice and circulation program as required by CEQA (CCR section 15225)	Page xii of the Executive Summary
12. A section on Environmental Justice. The Commission voted to adopt an updated comprehensive Environmental Justice Policy on December 3, 2018. Before developing its Policy, the Commission activated a robust public engagement campaign, meeting with environmental justice communities throughout California to learn about their priorities and hear about their concerns and struggles.	Page 20
13. A section on Tribal consultation. Assembly Bill AB 52 (effective July 1, 2015) adds sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to CEQA, relating to consultation with California Native American tribes, consideration of tribal cultural resources, and confidentiality.	Page xii of the Executive Summary and Appendix B. Additional Information provided below.
14. Environmentally Superior Alternative. Section 15126.6 of the State CEQA Guidelines	Page 48. Additional information provided below.
15. Mandatory Findings of Significance	See below

### 1.1.1 Environmentally Superior Alternative

Section 15126.6 of the State CEQA Guidelines requires State lead agencies to identify a range of reasonable alternatives to the proposed Project or location of the proposed Project that would achieve the project goals while reducing one or more of the significant environmental effects. Further, the lead agency, in addition to evaluating the “no project” alternative, must identify an “environmentally superior alternative” that is different from the “no project” alternative. Page 48 of the EIS identifies Alternative 2 as the

“environmentally preferred” alternative. The NPS approved Alternative 2 in its Record of Decision dated August 14, 2018. The Final EIS can be found here: [NPS-FinalEIS](#).

### 1.1.2 Mandatory Findings of Significance

Appendix G of the State CEQA Guidelines indicates that lead agencies should review projects for the presence of “Mandatory Findings of Significance.” Commission staff has reviewed the potentially significant impacts that could result from the replacement of the Scorpion Pier as described in the EIS, and has concluded that the impacts are either less than significant, or that the EIS describes measures that reduce the potential impact to the extent feasible, as discussed below. However, for the Project to be approved by the Commission, the Commission would need to make a mandatory finding of significance for the items below.

***a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?***

**Less than Significant Impact with Mitigation.** The overall proposed action in the EIS includes activities that could result in negligible impacts on invertebrates, marine vegetation, wetlands, and EFH; short-term, minor, adverse impacts on fish and marine mammals; and no impact to black abalone or eelgrass. Based on the analysis presented in the EIS, the Project would result in temporary and minimal effects to EFH; and may result in incidental harassment of marine mammals.

As a result, the NPS included the implementation of mitigation measures Aquatic-MM-1 through Aquatic-MM-5. In addition, the California Coastal Commission (CCC) conditionally concurred with Consistency Determination CD-0004-17 submitted by the NPS. The Consistency Determination included measures that clarify the EIS’s mitigation measures (Conditions 1, 2 and 3) and provide additional protection for coastal water quality, marine wildlife, habitats, and public access through the implementation of water quality best management practices, a prohibition on the use of artificial lighting (beyond what may be required for navigational safety), and the protection of beach access points and beach areas (Conditions 4, 5, 6 and 7). Therefore, the Project impacts on the environment would be less than significant with mitigation.

***b) Does the project have impacts that would be individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)***

**Less than Significant Impact.** The Project has the potential to significantly impact the following environmental disciplines: transportation and circulation; air quality; noise and vibration; geology, soils, and seismicity; water quality and hydrology; aquatic biological resources; terrestrial biological resources; visual resources; cultural and historic resources; recreation and visitor use; and public health and safety. However, measures have been identified that would reduce these impacts to a level of less than significant. For any impact to act cumulatively on any past, present, or reasonable foreseeable projects, these projects would have to have individual impacts in the same resource areas, some at the same time, or occur within an overlapping area as the proposed Project. No such project was identified that would result in cumulative impacts; therefore, this impact would be less than significant.

***c) Does the project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?***

**Less than Significant with Mitigation.** The Project's potential to impact human beings is addressed in various sections of this document, including those that affect resources used or enjoyed by the public, residents, and others in the Project area (such as aesthetics, public services, and recreation); those that are protective of public safety and well-being (such as air quality, geology and soils, greenhouse gas emissions, hydrology and water quality, and noise); and those that address community character and essential infrastructure (such as land use and planning, population and housing, transportation, and utilities). None of these analyses identified a potential adverse effect on human beings that could not be avoided or minimized through the mitigation measures described or compliance with standard regulatory requirements. As such, with mitigation in place, Project impacts on human beings would be less than significant.

### **1.1.3 Tribal Consultation**

Following Governor Brown's issuance of Executive Order B-10-11 concerning coordination with Tribal governments in public decision making, the Commission adopted a Tribal Consultation Policy (Policy) in August 2016 to provide guidance and consistency in its interactions with California Native American Tribes. The Policy, which was developed in collaboration with Tribes, other State agencies and departments, and the Governor's Tribal Advisor, recognizes that Tribes have a connection to areas that may be affected by Commission actions and "that these Tribes and their members have unique and valuable knowledge and practices for conserving and using these resources sustainably."

Assembly Bill (AB) 52 (Gatto; Stats. 2014, ch. 532), which was enacted in September 2014, sets forth both procedural and substantive requirements for analysis of Tribal cultural resources, as defined in Public Resources Code section 21074, and consultation with California Native American Tribes. Commission staff prepared this analysis as part

of its lead agency obligation to comply with CEQA. The analysis draws on and supplements the information in the Scorpion Pier Replacement Final EIS regarding cultural resources, because NEPA does not require separate discussion of Tribal cultural resources so the information must be added before the EIS can be used as an EIR (see State CEQA Guidelines, § 15221). The discussion below identifies Tribal cultural resources or other resources potentially important to California Native American Tribes in the Project area, evaluates the type and significance of impacts that may occur as a result of the Project, and identifies measures to avoid or substantially lessen any impacts found to be potentially significant.

“Tribal cultural resources” is a newly defined class of resources established under AB 52. These resources include sites, features, places, cultural landscapes, and sacred places or objects that have cultural value or significance to a Tribe. A Tribal cultural resource is one that is either: 1) listed on, or eligible for listing on the CRHR or local register of historical resources; or 2) a resource that the lead agency, at its discretion and supported by substantial evidence, determines is significant pursuant to the criteria in Public Resources Code section 5024.1 subdivision (c) (see Pub. Resources Code, § 21074). Further, because Tribes traditionally and culturally affiliated with a geographic area may have specific expertise concerning their Tribal cultural resources, AB 52 sets forth requirements for notification and invitation to government-to-government consultation between the CEQA lead agency and geographically affiliated Tribes (Pub. Resources Code, § 21080.3.1 subd (a)). Under AB 52, lead agencies must avoid damaging effects to Tribal cultural resources, when feasible, regardless of whether consultation occurred or is required.

As described in the EIS, the Project is located in an area that has been inhabited for over 12,000 years; the area is generally correlated historically and ethnographically with the Chumash peoples. It is estimated that Santa Cruz Island is the site of 10 to 12 historic Chumash villages, including sites near the Scorpion Pier. Today, Tribes asserting cultural affiliation or expressing interest in the Project area include the Santa Ynez Band of Mission Indians, Coastal Band of the Chumash Nations, and Barbareño/Ventureño Band of Mission Indians.

As the lead agency for compliance under CEQA, and in keeping with its Tribal coordination practices and the requirements of Assembly Bill (AB) 52 (Gatto; Stats. 2014, ch. 532), Commission staff reviewed the NPS EIS, along with the associated Section 106 Programmatic Agreement (PA) signed by NPS, the California State Historic Preservation Officer, and the Chairs of the Santa Ynez Band of Chumash Mission Indians, the Santa Ynez Band of Chumash Mission Indians Elders Council, and the Barbareño/Ventureño Band of Chumash Mission Indians. Commission staff also informally coordinated with Freddie Romero, Cultural Preservation Advisor to the Elders Council, on January 2, 2018, to ensure staff understood all concerns and prior federal Consultation. Mr. Romero



encouraged Commission staff to consider the following concerns, consistent with the concerns raised during federal Consultation:

- The proximity of the new pier to the historic/prehistoric village site and potential impacts to terrestrial and submerged Tribal Cultural Resources
- The density of artifacts and potential for looting or damage to those artifacts by construction personnel and equipment
- The potential for unearthing of ancestral remains both during construction and as a result of erosion of the bluff after road abandonment

Commission staff has determined that the government-to-government Consultation conducted by NPS resulted in the PA, which requires mitigation of impacts to Tribal cultural resources, and collectively, the commitments agreed to in the PA and the mitigation measures listed below and included in Exhibit D, Mitigation and Monitoring Program would ensure the Project will not cause a significant impact on Tribal Cultural Resources.

The Commission makes the following determinations with respect to Tribal Cultural Resources, consistent with Appendix G of the State CEQA Guidelines.

***Would the project cause a substantial adverse change in the significance of a Tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:***

***(i) Listed or eligible for listing in the California Register of Historical Resources (CRHR), or in a local register of historical resources as defined in Public Resources Code section 5020.1, subdivision (k)***

***(ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.***

**Less than Significant Impact with Mitigation.** The Project is proposed within the Santa Cruz Island Archeological District. The District was listed in the National Register of Historic Places (NRHP) because it was found to be significant under Criteria A, B and D, meaning the area contributes to a major pattern of American History, is associated with significant people of the American past, and contains information potential, or data, important to prehistory or history. The area is home to several Native American sacred sites and sensitive artifacts, including a site in the bluff above the road that currently serves the existing pier but that is proposed to be abandoned as part of the Project. Archeological sites CA-SCrI-423 and CA-SCrI-507 at Scorpion Harbor are contributing

elements of the District and are also considered potentially eligible as individual historic properties under Criteria A, B and D.

Because of the significance, sensitivity, and density of the sites and artifacts associated with Tribal occupation and use of Santa Cruz Island, most aspects of the construction of the new pier and decommissioning of the old pier could affect resources the Commission considers Tribal Cultural Resources. These activities are explained in detail in the Environmental Consequences section of the EIS, and include impacts related to the pier footprint itself, the approach road, and staging areas and construction traffic. In addition, Commission staff determined that the abandonment of the road serving the existing pier could pose a risk to the sensitive cultural area above that road, if the abandoned road (and its supporting rip-rap), left unmaintained and unstabilized, were to degrade and erode due to storms and sea-level rise.

To avoid potential impacts on tribal cultural resources or mitigate them to a less than significant level, the following mitigation measures would be implemented. These measures are in addition to the Stipulations contained in the January 2017 PA. The measures would ensure that Tribal monitors are able to oversee construction activities and watch for unanticipated discoveries, that any intact discoveries are protected in place, if feasible, or otherwise handled in accordance with a treatment plan, and that the abandoned road be inspected and maintained until a stabilization plan has been developed that would protect the sensitive area over the long term.

**MM TCR-MM-1: Tribal Cultural Resource Monitoring.** Prior to Project related ground-disturbing activities, the National Park Service shall:

- Retain a monitor from the Tribe and Band during all ground disturbing activities.
- Provide a minimum 5-day notice to the tribal monitor(s) prior to all scheduled ground disturbing activities.
- Provide the Tribal monitor(s) safe and reasonable access to the Project site.
- Develop procedures for Tribal monitoring of the offshore work, including pile-driving, and availability of resources and information to monitor those activities.
- Develop guidance, in coordination with the Tribe and Band, on identification of potential tribal resources that may be encountered.
- Ensure opportunity for the Tribal monitor(s) to provide construction personnel with an orientation on the requirements of the Plan of Action (as described in the Programmatic Agreement), including the probability of exposing Tribal resources, guidance on recognizing such resources, and direction on procedures if a find is encountered.
- Prepare of a Treatment Plan (see MM TCR-2 below) if Tribal resources are discovered during excavation activities.

**MM TCR-MM-2: Tribal Resources Treatment Plan.** Should intact Tribal cultural deposits be uncovered during Project implementation, the National Park Service shall contact Commission staff and the Tribal monitor immediately (within 24 hours). The Tribal monitor shall have the authority to temporarily halt all work within 100 feet of the find. The location of any such finds must be kept confidential and measures should be taken to ensure that the area is secured to minimize site disturbance and potential vandalism. Additional measures to meet these requirements include assessment of the nature and extent of the deposit, and subsequent recordation and notification of relevant parties based upon the results of the assessment. Impacts to previously unknown significant tribal cultural resources shall be avoided through preservation in place if feasible. A Treatment Plan developed in consultation with the tribal monitor shall be submitted to Commission staff for review and approval.

**MM TCR-MM-3: Abandoned Road Inspections.** The National Park Service (NPS) shall complete an assessment of the feasibility of archeological site stabilization above the “abandoned” roadway as quickly as possible prior to the start of construction. This assessment will address the long-term issue of the eroding cliff face and the interim issue of the abandonment of the roadway. The NPS shall continue to consult with official representatives of the Santa Ynez Band and Barbareno/Ventureno Band and the State Historic Preservation Office per the Programmatic Agreement, and also with the State Lands Commission, to evaluate recommendations in the assessment and identify the desired site treatment. If stabilization is feasible and desirable, the NPS shall pursue non-project related funding to implement stabilization.

## 1.2 APPROVAL CONSIDERATION AND REGULATORY REQUIREMENTS

The Commission is considering approval of an amended lease that would include the replacement of Scorpion Pier. The Commission must comply with CEQA when it undertakes an activity defined by CEQA as a "project" that must receive some discretionary approval (i.e., the Commission has the authority to approve or deny the requested action, here, the replacement of Scorpion Pier), which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. CEQA requires the Commission to identify the significant environmental impacts of its actions and to avoid or mitigate those impacts, if feasible.

Pursuant to section 15221 of the State CEQA Guidelines, when a project requires compliance with both NEPA and CEQA, the CEQA lead agency “...should use the EIS...rather than preparing an EIR...” if (1) the EIS has been prepared prior to a CEQA document, and (2) the EIS complies with the provisions of CEQA. If needed, the EIS may be supplemented to include CEQA-required topics so it can be used in the place of an EIR. The NPS’s EIS was completed prior to preparation of a CEQA document, and, the Commission believes the requirements of CEQA are met. (State CEQA Guidelines, §§

15221, subd. (b); 15225, subd. (a).) The final EIS was circulated in accordance with the requirements of CEQA. (State Clearinghouse [SCH] No. 2015101041). The EIS, therefore, would be used by the Commission in place of a separate EIR.

Per the EIS and Applicant-provided information, the NPS has consulted or coordinated with other agencies who may have jurisdiction over aspects of the proposed action including:

- Advisory Council on Historic Preservation
- California Coastal Commission
- California Department of Fish and Wildlife
- California State Historic Preservation Office
- California State Lands Commission
- National Marine Fisheries Service

The NPS has also conducted government-to-government consultation with potentially affected Native American Indian Tribes and Nations, as described in section 1.1.3.

In addition, comments received on the Scorpion Pier Replacement Project's Notice of Intent and Draft EIS included the Channel Islands Outfitters, Inc. and the following agencies:

- California Coastal Commission
- California State Historic Preservation Office
- California State Lands Commission
- Channel Islands National Marine Sanctuary
- National Oceanic Atmospheric Administration
- Santa Barbara County Air Pollution Control District
- U.S. Environmental Protection Agency

Commission staff believes the EIS together with the CCC's Consistency Determination noted above, meets the requirements of CEQA as mandated by State CEQA Guidelines section 15225, subdivision (a).<sup>1</sup> Accordingly, Commission staff has prepared a Mitigation and Monitoring Program and Statement of Findings (Exhibit D and Exhibit E) providing written, specific reasons supporting the Commission's decision under CEQA to approve the Project.

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<sup>1</sup> Accordingly, the Commission, should it decide to approve the Project, does not need to make the certifications listed in section 15090 of the State CEQA Guidelines (*Practice Under the California Environmental Quality Act* (2d ed Cal CEB, section 22.8, p. 22-11).

**EXHIBIT D**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**SCORPION PIER REPLACEMENT PROJECT**  
(PRC 8390 State Clearinghouse No. 2015101041)

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Under the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) was prepared for the Scorpion Pier Replacement Project (Project) by the National Park Service (NPS or Applicant). The EIS and a Record of Decision were certified on August 14, 2018. The NPS circulated the EIS for public review under State Clearinghouse No. 2015101041, as broadly as state and local law may require and notice was given meeting the standards in California Code of Regulations, title 14, section 15072, subdivision (a). The California State Lands Commission (Commission or CSLC) is considered the lead agency for the Project under the California Environmental Quality Act (CEQA). Therefore, pursuant to California Code of Regulations, title 14, sections 15221 and 15225, Commission staff is using the federal EIS as a CEQA-equivalent document in place of an Environmental Impact Report. The Project authorizes NPS to replace the Scorpion Pier in accordance with the terms and conditions of its existing CSLC Lease No. PRC 8390.

**PURPOSE**

It is important that significant impacts from the Project are mitigated to the maximum extent feasible. The purpose of a MMP is to ensure compliance and implementation of MMs; this MMP shall be used as a working guide for implementation, monitoring, and reporting for the Project's MMs.

**ENFORCEMENT AND COMPLIANCE**

NPS, as the NEPA lead agency, certified the EIS and remains responsible for ensuring that the mitigation measures presented in that document are implemented (see Table D-1). In addition, NPS, in compliance with the California Coastal Commission's Conditional Concurrence for the Project (CD-0004-17), is responsible for the successful implementation of and compliance with the conditions presented in the Conditional Concurrence, which includes all field personnel and contractors working for the Applicant.

The Commission is considered the CEQA lead agency and is responsible for enforcing the Mitigation and Monitoring Plan presented in Table D-1, which includes an augmented set of mitigation measures.<sup>1</sup>

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<sup>1</sup> Conditions from the California Coastal Commission's Conditional Concurrence for the Project (CD-0004-17), dated December 13, 2017, were used to augment the existing measures contained in the Scorpion Pier Replacement Project EIS.

State CEQA Guidelines section 15097, subdivision (a), states in part:<sup>2</sup>

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

## **MONITORING**

Commission staff may delegate duties and responsibilities for monitoring to other environmental monitors or consultants as necessary. Some monitoring responsibilities may be assumed by other agencies, such as affected jurisdictions, cities, and/or the California Department of Fish and Wildlife (CDFW). Commission staff will be working with the NPS and the CCC to ensure that qualified environmental monitors are assigned to the Project.

Environmental Monitors. To ensure implementation and success of the MMs, an environmental monitor must be on site during all Project activities that have the potential to create significant environmental impacts or impacts for which mitigation is required. The environmental monitor(s) are responsible for:

- Ensuring that the Applicant has obtained all applicable agency reviews and approvals
- Coordinating with the Applicant to integrate the mitigation monitoring procedures during Project implementation (for this Project, many of the monitoring procedures shall be conducted during the deconstruction phase)
- Ensuring that the MMP is followed

The environmental monitor shall immediately report any deviation from the procedures identified in this MMP to the Commission staff or its designee. The Commission staff or its designee shall approve any deviation and its correction.

Workforce Personnel. Implementation of the MMP requires the full cooperation of Project personnel and supervisors. Many of the MMs require action from site supervisors and their crews. The following actions shall be taken to ensure successful implementation.

- Relevant mitigation procedures shall be written into contracts between the Applicant and any contractors.

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<sup>2</sup> The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

General Reporting Procedures. A monitoring record form shall be submitted to the Applicant, and once the Project is complete, a compilation of all the logs shall be submitted to the Commission staff. The Commission staff or its designated environmental monitor shall develop a checklist to track all procedures required for each MM and shall ensure that the timing specified for the procedures is followed. The environmental monitor shall note any issues that may occur and take appropriate action to resolve them.

Public Access to Records. Records and reports are open to the public and would be provided upon request.

## **MITIGATION MONITORING TABLE**

This section presents the mitigation monitoring table for the following environmental disciplines:

- Noise and Vibration
- Aquatic Biological Resources
- Terrestrial Biological Resources
- Cultural and Historic Resources

All other environmental disciplines were found to have less than significant or no impacts and are therefore not included below. The table lists the following information, by column:

- Impact (impact number, and title)
- Mitigation [or Applicant-proposed] measure (full text of the measure)
- Location (where impact occurs, and mitigation measure should be applied)
- Monitoring/reporting action (action to be taken by monitor or Lead Agency)
- Timing (before, during, or after construction; during operation, etc.)
- Responsible party
- Effectiveness criteria (how the agency can know if the measure is effective)

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
<b>Noise and Vibration</b>						
<b>Noise-1: Construction Noise and Vibration</b>	<p><b>Noise-MM-1:</b> The National Park Service shall ensure that the contractor does the following, to the extent feasible:</p> <ul style="list-style-type: none"> <li>• When feasible, install noise mufflers to stationary equipment and impact tools that are no less effective than those provided by the manufacturer.</li> <li>• Install barriers around particularly loud activities at the construction site to eliminate the line of sight between the source of noise and nearby sensitive receptors.</li> <li>• Surround the air compressors powering the “down the hole” hammer with a noise wall or shroud on three sides to help shield visitors, staff, and biota from any noise from the compressors.</li> <li>• When feasible, use construction equipment with low noise emission ratings.</li> <li>• Locate equipment, materials, and staging areas as far as practicable from sensitive receptors.</li> <li>• Prohibit unnecessary idling of vehicles or equipment.</li> <li>• Require applicable construction-related vehicles or equipment to use designated truck routes to access the Project site.</li> <li>• Restrict construction activities between 7:00 a.m. to 7:00 p.m. Monday through Saturday.</li> </ul>	On-site	Compliance	During construction	NPS	Noise is minimized
<b>Aquatic Biological Resources</b>						
<b>Aquatic-1: Impacts to Invertebrates and Marine Vegetation.</b>	<p><b>Aquatic-MM-1: Regulatory Compliance.</b> The National Park Service would obtain and comply with all required resource agency permit conditions, including any required work windows.</p>	On-site	Compliance	Prior and during construction	NPS	Reduced impacts to marine species



**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p><b>Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.</b> The National Park Service would ensure that sensitive wetland habitats and biota (i.e., marine, intertidal, rocky shore, estuarine, intertidal, emergent, and riverine, lower perennial, rock bottom wetlands) would be mapped prior to the initiation of construction and mitigation/replacement. This includes preconstruction surveys for black abalone and eelgrass. Plans would be developed and approved by resource agencies, as required through the permitting process completed in Aquatic-MM-1, to mitigate for impacts. Survey results would be submitted to the California State Lands Commission, California Coastal Commission, National Marine Fisheries Service, Channel Islands National Marine Sanctuary, and other agencies as appropriate. If habitat improvement or replacement is required, every attempt would be made to construct those habitats in the Scorpion Anchorage area. Likewise, transplant/translocation of sensitive species would be completed prior to the initiation of construction in the specified area and in accordance with agency-approved plans.</p>	On-site	Compliance and obtain survey results	Prior and during construction	NPS	Reduced impacts to marine species
	<p><b>Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.</b> Following construction, the National Park Service (NPS) shall relocate all existing mooring buoys and associated tackle to locations on sandy bottom, in order to minimize contact of the existing tackle with sensitive marine habitat. In addition, the NPS shall replace the existing tackle with tackle that minimizes contact with the seafloor as part of regularly scheduled maintenance. These improvements would occur as funds are available.</p>	On-site	Compliance	During construction	NPS	Reduced impacts to marine species

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
Impact Aquatic-2: Impacts to fish due to pile installation.	<b>Aquatic-MM-1: Regulatory Compliance.</b> <b>Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.</b>					
	<b>Aquatic-MM-4: Aquatic Avoidance and Minimization Measures.</b> The National Park Service (NPS) shall ensure the following: <ul style="list-style-type: none"> <li>Contractor shall maintain a 500-meter (1,640-foot) safety zone (as is typically required by the National Marine Fisheries Service (NMFS) for Incidental Harassment Authorizations) around sound sources in the event that the sound level is unknown or cannot be adequately predicted.</li> <li>Contractor shall bring loud mechanical equipment online slowly.</li> <li>NPS shall employ a qualified marine mammal observer approved by the California Coastal Commission and NMFS to conduct marine mammal monitoring during in-water construction.</li> <li>The protected species observer shall halt work activities when a marine mammal enters the 500-meter (1,640-foot) safety zone.</li> </ul>	On-site	Compliance	During construction	NPS/ Contractor	Reduced impacts to marine species
Impact Aquatic-3. Impacts to federally endangered black abalone.	<b>See Aquatic-MM-1: Regulatory Compliance.</b> <b>See Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.</b>					
Impact Aquatic-4. Impacts to Essential Fish Habitat (EFH).	<b>See Aquatic-MM-1: Regulatory Compliance.</b> <b>See Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.</b> <b>See Aquatic-MM-4: Avoidance and Minimization Measures.</b>					

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
<b>Impact Aquatic-5. Impacts to Eelgrass due to Pier Construction.</b>	<b>Aquatic-MM-5: Pre- and Post-Construction Surveys.</b> The National Park Service shall ensure that pre-construction (within 60 days prior to construction) and post-construction (within 30 days following construction) surveys are conducted for eelgrass as required by California Eelgrass Mitigation Policy (CEMP). If eelgrass is observed in the impact area, monitoring and mapping would be required to identify potential impacts from construction. Monitoring and mapping would include pre- and post-project transects to map the extent of eelgrass. Any decrease in eelgrass (i.e., pre-project versus post-project) would constitute an impact and would be mitigated for pursuant to CEMP. Survey results would be submitted to Channel Islands National Marine Sanctuary and other agencies as appropriate.	On-site	Compliance, obtain survey results	Prior and post construction	NPS	Reduced impacts to marine species
<b>Impact Aquatic-6. Impacts to Wetlands.</b>	<b>See Aquatic-MM-1: Regulatory Compliance.</b> <b>See Aquatic-MM-4: Avoidance and Minimization Measures.</b>					
<b>Impact Aquatic-7. Impacts to marine mammals due to increased underwater sound pressure levels resulting from pile installation or displacement.</b>	<b>See Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.</b>					

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
<p><b>Impact Aquatic-8. Impacts to Water Quality.</b></p>	<p><b>Aquatic-MM-8: Water Quality Protection.</b> To avoid impacts to water quality, the National Park Service (NPS) shall adhere to the following:</p> <ol style="list-style-type: none"> <li>1. No preservative-treated wood shall be used in construction of the pier, with the exception that ACZA (Ammoniacal Copper Zinc Arsenate)-treated lumber may be used to construct the pier decking if that lumber is completely and effectively coated with a durable sealant that will minimize leaching and surface dislodgment of the preservative chemicals. The sealant shall be proposed by the NPS and approved by the California Coastal Commission (CCC). If no such sealant is available, or approval is not granted by the CCC, the pier decking shall be constructed from an alternative material instead of treated wood, such as untreated wood, concrete, metal, fiberglass, plastic, wood-plastic composite, or other alternatives that pose a minimal risk of leaching toxic chemicals into the marine environment.</li> <li>2. NPS shall exercise due diligence in periodically inspecting High-density polyethylene wrapped piles on the Scorpion Anchorage Pier and shall immediately undertake any repairs necessary to maintain the wrapping in an intact condition that would not result in the release or discharge of plastic material into the marine environment.</li> <li>3. An onsite water quality monitor shall be present during all rock drilling and pile installation operations. If the water quality monitor observes any persistent turbidity plumes or uncontrolled discharge of drilling wastes into the marine environment (not including filtered and treated seawater), NPS shall cease drilling operations and repair, correct or modify the drilling operations or drilling waste containment</li> </ol>	<p>On-site</p>	<p>Compliance</p>	<p>Prior and during construction</p>	<p>NPS</p>	<p>Reduced impacts to marine water quality</p>

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>system to prevent the occurrence of additional uncontrolled discharges or turbidity plumes.</p> <p>4. The discharge of pollutants (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into creeks, runoff or coastal waters resulting from construction activities shall be minimized through the use of appropriate best management practices (BMPs), including:</p> <ul style="list-style-type: none"> <li>• Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.</li> <li>• Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.</li> <li>• Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.</li> <li>• Prompt removal of all construction debris from the beach.</li> <li>• Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.</li> <li>• Fueling and maintenance of construction equipment and vehicles shall be conducted off site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, creeks or drainage courses, if feasible. The fueling and maintenance area shall be</li> </ul>					

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.</p> <ul style="list-style-type: none"> <li>• Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional best management practices, including:               <ul style="list-style-type: none"> <li>○ Other than pile installation and installation and use of floating devices to aid in the construction effort or deployed to intercept construction debris for entering the water, construction activity shall not be conducted below the mean high tide line unless tidal waters have receded and the area is part of the authorized work area.</li> <li>○ Use of anchors and temporary moorings for construction vessels and barges shall be avoided to the extent feasible. Any moorings or anchors that are used shall not be placed within sensitive habitat areas such as eelgrass or kelp beds or areas of rocky reef.</li> <li>○ All work shall take place during daylight hours, and lighting of the beach and ocean area is prohibited.</li> <li>○ All construction equipment and materials placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction equipment and materials shall be removed in their entirety from the beach area by sunset each day that work occurs. The only</li> </ul> </li> </ul>					

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>exceptions shall be for erosion and sediment controls and/or construction area boundary fencing, where such controls and/or fencing are placed as close to the base of the road revetment/bluff as possible, and are minimized in their extent.</p> <ul style="list-style-type: none"> <li>○ Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.</li> <li>○ All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading of the access road is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the ocean, waterways, and natural drainage swales or being deposited on the beach.</li> <li>○ Only rubber-tired construction vehicles shall be allowed on the beach; the only exception shall be that tracked vehicles may be used if the CCC agrees that they are required to safely carry out construction. When transiting on the beach, all construction vehicles shall remain as high on the upper beach as possible, and shall avoid contact with ocean waters and intertidal areas.</li> <li>○ All debris resulting from construction activities shall be immediately removed from the beach.</li> </ul>					

**Terrestrial Biological Resources**

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
Impact Terrestrial-1. Protected bird species, pallid bats, western mastiff bats, and common wildlife species, may be temporarily disturbed by construction-related noise.	See Noise-MM-1: Construction Noise Procedures.					
Impact Terrestrial-2. The Santa Cruz Island Fox may be Impacted by Additional Vehicle Trips Associated with Construction.	<p><b>MM Terrestrial-MM-1: Avoidance Measures for Santa Cruz Island Fox.</b> To avoid impacts to the Santa Cruz Island Fox, the National Park Service (NPS) would ensure that:</p> <ul style="list-style-type: none"> <li>• Construction traffic, parking, and laydown areas would occur within previously disturbed lands to the extent feasible.</li> <li>• Wildlife exclusion fencing would be installed and maintained around the perimeter of construction corridors and staging areas.</li> <li>• To the extent feasible, roadside vegetation in the construction area would be maintained at short height to increase visibility of foxes if present.</li> <li>• Equipment and vehicle travel would be limited to existing roads or construction corridors during construction and vehicular speed would be limited to 15 miles per hour.</li> <li>• Best management practices would be used by the construction contractor to minimize impacts on wildlife including no pets, containment of garbage, and no</li> </ul>	On-site	Compliance	Prior and during construction	NPS	Reduced impacts to marine species



**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>feeding of wildlife by construction crews that may be housed on the island.</p> <ul style="list-style-type: none"> <li>• On-site open water sources that serve as wildlife attractants would not be created or maintained.</li> <li>• Project construction would occur only during daylight hours.</li> <li>• All employees and contractors working in the field would be required to complete environmental awareness training prior to working on site. Training would include information regarding sensitive biological resources, restrictions, protection measures, individual responsibilities associated with the Project, and the consequences of noncompliance.</li> </ul> <p>If the Santa Cruz Island fox is observed within the immediate vicinity of the pier NPS staff would:</p> <ul style="list-style-type: none"> <li>• Stop pier construction and operation activities. NPS biologists would then be notified immediately to determine the potential impacts that could result from the attendant human activity. Measures would then be developed to best avoid or minimize impacts to the Santa Cruz Island fox. The measures could include, but would not be limited to, restricting park operations or visitor use within the active den area or relocating individual foxes to more remote areas of the island.</li> <li>• Thoroughly inspect staging areas to ensure no foxes have taken refuge within stockpiled materials or equipment. If a fox is found and does not leave on its own accord, NPS biologists would be informed and the fox would be removed in a manner determined by the</li> </ul>					

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	biologist to cause the least amount of harm and stress to the animal.					
<b>Cultural Resources</b>						
<b>Impact Cultural-1. Impacts to Archeological Sites.</b>	<b>Cultural-MM-1: Programmatic Agreement.</b> The process for identifying and implementing mitigation for impacts to cultural resources is described in Section 106 of the Programmatic Agreement (PA). The PA will be implemented. (see Attachment 1).	On-site	Compliance	Prior and during construction	NPS	Reduced impacts to archeological sites
<b>Tribal Cultural Resources</b>						
<b>Impacts to Tribal Cultural Resources</b>	<b>MM TCR-MM-1: Tribal Cultural Resource Monitoring.</b> Prior to Project related ground-disturbing activities, the National Park Service shall: <ul style="list-style-type: none"> <li>• Retain a monitor from the Tribe and Band during all ground disturbing activities.</li> <li>• Provide a minimum 5-day notice to the tribal monitor(s) prior to all scheduled ground disturbing activities.</li> <li>• Provide the Tribal monitor(s) safe and reasonable access to the Project site.</li> <li>• Develop procedures for Tribal monitoring of the offshore work, including pile-driving, and availability of resources and information to monitor those activities.</li> <li>• Develop guidance, in coordination with the Tribe and Band, on identification of potential tribal resources that may be encountered.</li> <li>• Ensure opportunity for the Tribal monitor(s) to provide construction personnel with an orientation on the</li> </ul>	On-site	Compliance	Prior and during construction	NPS	Reduced impacts to Tribal resources

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>requirements of the Plan of Action (as described in the Programmatic Agreement), including the probability of exposing Tribal resources, guidance on recognizing such resources, and direction on procedures if a find is encountered.</p> <ul style="list-style-type: none"> <li>• Prepare of a Treatment Plan (see MM TCR-2 below) if Tribal resources are discovered during excavation activities.</li> </ul>					
	<p><b>MM TCR-MM-2: Tribal Resources Treatment Plan.</b> Should intact Tribal cultural deposits be uncovered during Project implementation, the National Park Service shall contact Commission staff and the Tribal monitor immediately (within 24 hours). The Tribal monitor shall have the authority to temporarily halt all work within 100 feet of the find. The location of any such finds must be kept confidential and measures should be taken to ensure that the area is secured to minimize site disturbance and potential vandalism. Additional measures to meet these requirements include assessment of the nature and extent of the deposit, and subsequent recordation and notification of relevant parties based upon the results of the assessment. Impacts to previously unknown significant tribal cultural resources shall be avoided through preservation in place if feasible. A Treatment Plan developed in consultation with the tribal monitor shall be submitted to Commission staff for review and approval.</p>	On-site	Review and approval of treatment plan	Prior and during construction	NPS	Reduced impacts to Tribal resources
	<p><b>MM TCR-MM-3: Abandoned Road Inspections.</b> The National Park Service (NPS) shall complete an assessment of the feasibility of archeological site stabilization above the “abandoned” roadway as quickly as possible prior to the</p>	On-site	Compliance	During construction	NPS	Reduced impacts to Tribal resources

**Table D-1. Scorpion Pier Replacement Project  
Mitigation Monitoring Program**

Potential Impact	Mitigation Measure (MM)	Location	Monitoring / Reporting Action	Timing	Responsible Party	Effectiveness Criteria
	<p>start of construction. This assessment will address the long-term issue of the eroding cliff face and the interim issue of the abandonment of the roadway. The NPS shall continue to consult with official representatives of the Santa Ynez Band and Barbareno/Ventureno Band and the State Historic Preservation Office per the Programmatic Agreement, and also with the State Lands Commission, to evaluate recommendations in the assessment and identify the desired site treatment. If stabilization is feasible and desirable, the NPS shall pursue non-project related funding to implement stabilization.</p>					

## **ATTACHMENT 1. PROGRAMMATIC AGREEMENT**

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**PROGRAMMATIC AGREEMENT  
BETWEEN THE NATIONAL PARK SERVICE AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE SCORPION PIER REPLACEMENT, SANTA CRUZ ISLAND, CHANNEL  
ISLANDS NATIONAL PARK,  
SANTA BARBARA COUNTY, CALIFORNIA**

**WHEREAS**, the National Park Service (NPS) has determined that the existing pier and associated access road at Scorpion Anchorage is inadequate to support safe access, quality visitor experience, and park operations on Santa Cruz Island; and

**WHEREAS**, the NPS is planning to relocate and replace the existing pier and associated infrastructure (see detailed description in Appendix A), and this action constitutes an undertaking as defined by 36 CFR 800, the regulations implementing Section 106 of the National Historic Preservation Act (56 USC 306108); and

**WHEREAS**, the NPS has defined the undertaking's area of potential effects (APE) as Santa Cruz Island in its entirety and an adjacent sea floor area at Scorpion Harbor in the immediate vicinity of the project, and has included a map of the APE as Appendix B and

**WHEREAS**, the NPS has consulted with the US Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries (ONMS) regarding a Sanctuary Permit for this undertaking, and in accordance with 36 CFR 800.2(a)(2), ONMS has designated the NPS as the lead agency for Section 106 consultations in a letter dated October 31, 2016; and

**WHEREAS**, the NPS has consulted with the US Army Corps of Engineers (ACE) regarding a 404 permit for this undertaking, and in accordance with 36 CFR 800.2(a)(2), the ACE has designated the NPS as the lead agency for Section 106 consultations in an electronic mail communication dated October 31, 2016; and

**WHEREAS**, the Santa Cruz Island Archeological District is located within the APE and is listed in the National Register of Historic Places (NRHP), significant under Criteria A, B and D, and archeological sites CA-SCrI-423 and CA-SCrI-507 at Scorpion Harbor are contributing elements of this district and are also considered potentially eligible as individual historic properties under Criteria A, B and D; and

**WHEREAS**, the Santa Cruz Island Ranching Historic District is located within the APE, and the California State Historic Preservation Officer (SHPO) has concurred that the district is eligible for listing in the NRHP, and the historic Scorpion Ranch development is part of this historic district and therefore contains contributing elements of this district; and

**WHEREAS**, the SHPO has concurred that the existing NPS Pier at Scorpion Harbor does not contribute to the Santa Cruz Island Ranching Historic District and is not eligible for listing in the NRHP; and

**WHEREAS**, the NPS cannot determine effects to the Santa Cruz Island Archeological District and Archeological Sites CA-SCrI-423 and CA-SCrI-507 due to lack of site-specific subsurface archeological information at this time and therefore intends to phase the assessment of effects; and

**WHEREAS**, the NPS has determined that the undertaking will not have an adverse effect to the Scorpion Ranch developed area of the Santa Cruz Island Ranching Historic District and SHPO has concurred with this determination in a letter dated October 25, 2016; and

**WHEREAS**, in accordance with 36 CFR 800.6(a)(1), the NPS notified the Advisory Council on Historic Preservation (Council) of its potential adverse effect determination with specified documentation, and the ACHP has notified the NPS by letter dated December 9, 2015 of their decision not to participate in the consultation pursuant to 35 CFR Part 800.6(a)(a)(iii); and

**WHEREAS**, the NPS has consulted with the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation (Tribe) and the traditionally associated, federally non-recognized Barbareno/Venturano Band of Chumash Mission Indians (Band) and invited them to sign this Programmatic Agreement (PA) as concurring parties; and

**WHEREAS**, the NPS has involved the public through the National Environmental Policy Act process and associated environmental impact statement.

**NOW, THEREFORE**, the NPS and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties (including those with religious and cultural significance).

## **STIPULATIONS**

The NPS shall ensure the following measures are carried out:

### **I. Tribal consultation**

- A.** During design development, the NPS invited the Elders Council of the Tribe and designated representatives of the Band to discuss the undertaking and historic properties within the APE. These consultations will include one or more NPS-sponsored site visits if tribal representatives so desire. The number of and schedule for these visits will be developed by the NPS in consultation with the Tribe and Band; it is expected that a minimum of two meetings and one site visit will occur.

The goal of these consultations is to understand the Tribe's and Band's perspective on investigation, preservation, and protection of the archeological sites, and issues or concerns with the proposed project design.

- B.** The NPS will prepare, in consultation with the Tribe and Band, a Plan of Action pursuant to NAGPRA to address any discoveries of Native American human remains and/or cultural items encountered as a result of the archeological investigations and any other construction-related ground disturbance associated with the undertaking.
- C.** If, as a result of these consultations, any ideas are generated that could lead to avoidance of or a reduction in the potential for adverse effects of the undertaking on historic properties, the NPS will share these with all signatories to this agreement, and consider these ideas further as part of the design development process and consultation.
- D.** The NPS will document the date, location, and topics discussed during these consultations in such a

manner as to protect any sensitive information from disclosure, will provide records of these consultations to SHPO as they occur, and will retain the records in the park's permanent archive.

## **II. Treatment of Historic Properties**

### **A. Archeological Investigations**

1. The NPS will distribute a draft report of findings from the archeological investigations to the Tribe and Band for a 30-day review and comment period. This report will conform to State of California reporting recommendations, and will articulate the nature, extent, integrity, and proposed significance of the resources using the National Register Criteria for Evaluation. The assessment of integrity and significance will incorporate tribal perspectives and any non-confidential traditional cultural information shared during consultation. The discussion of site significance will address the sites as potential individually-eligible historic properties as well as contributing elements of the Santa Cruz Island Archeological District. The NPS will consider all comments on the draft report, document how comments have been addressed, and provide a final report of findings to SHPO, the Tribe, and Band.
2. Within 30 days of receipt of adequately documented NRHP-eligibility determinations in the final report and consistent with 36 CFR 800.11, the SHPO will review and provide their assessment of the findings (i.e., concur vs. object). Upon receipt of SHPO comments, NPS will work with the SHPO to address any objections for no more than 15 days. If after 15 days the SHPO and NPS do not agree, NPS shall either consider the property NRHP eligible, agree to continue the timeframe, or obtain a determination of eligibility from the Keeper of the NRHP per 36 C.F.R. Part 63. If no comments are received within this period, NPS may assume concurrence and proceed with the Undertaking, or portion thereof. All unresolved NRHP-eligibility issues will be forwarded to the Keeper of the NRHP for review.

## **III. Design Review**

- A. Through initial feasibility studies, site planning, and analysis (considering physical, biological, cultural, and visitor use factors), the NPS has developed a preliminary concept design for the project. During this process, the NPS identified several project constraints that have essentially dictated the size and location of the proposed pier and associated facilities.
- B. The NPS will share project documents that show proposed pier pilings and roadway features with SHPO, the Tribe, and the Band via hard copy transmittal, and when requested, in-person meeting(s). Because the undertaking will not adversely affect the Ranching Historic District, the focus of the review will be the location and extent of ground disturbance. This documentation will be subject to a 30-day review period. If comments are received, the NPS will take the comments into account and respond within two weeks of receipt. At the close of the comment and response period, the NPS will move to the next step in the design process. If the parties are unable to come to agreement, NPS shall comply with Stipulation IX.
- C. The NPS will ensure that cultural resource specialists with appropriate professional qualifications are involved in design development and review. It is anticipated that this will include an archeologist and a historical landscape architect. These specialists will ensure that information regarding the



historic properties and tribal concerns are represented and addressed during the design development process.

#### **IV. Determination of No Adverse Effect**

- A.** If NPS determines that, based on final design and consultation pursuant to Stipulations I, II and III that the undertaking, including any protection measures required, will not result in an adverse effect to historic properties, the NPS will submit this determination to SHPO, the Tribe, and Band. The SHPO, Tribe, and Band shall have 30 days from receipt to review and comment on this determination. Upon receipt of comments from SHPO, Tribe and Band, NPS will distribute comments to all consulting parties. If all parties concur with the findings, the NPS will include in this submittal the information specified in 36 CFR 800.11(e), subject to the confidentiality provisions of 800.11(c).
1. The NPS may proceed with the undertaking after the close of the 30-day review period and after any comments received by the NPS have been distributed to all consulting parties, if no party has objected to the finding.
  2. The NPS shall maintain a record of the finding and provide information to the public on request, consistent with the confidentiality provisions of the regulations at 800.11(c).
  3. If the NPS determines that substantive design changes are necessary, and that these design changes will not adversely affect historic properties, the NPS will notify the SHPO, Tribe, and Band and provide documentation for review. The SHPO, Tribe, and Band will be afforded 30 working days from receipt of this notification to respond with objections, requests for additional information or further consultation. If after 30 working days no responses are received by the NPS, the Undertaking may proceed. The NPS will ensure that any measures necessary to avoid adverse effects are implemented.
- B.** If within the 30-day review period the SHPO, Tribe or Band notifies the NPS in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the NPS shall consult with the party to resolve the disagreement. NPS will also notify the other consulting parties and offer to include them in the disagreement resolution.
- C.** If the NPS is unable to resolve the disagreement, it may do one of the following:
1. Request the Council to review the finding pursuant to 36 CFR 800.5(c)(3) and provide the Council with the documentation specified in 36 CFR 800.11(e), or
  2. Revise its determination of adverse effect and proceed under Stipulation V of this Agreement.

#### **V. Determination of Adverse Effect**

- A.** If the NPS determines that, based on final design, the undertaking will result in an adverse effect to historic properties, the NPS will submit this determination to SHPO, the Tribe, and Band, and request concurrence with this finding within 30 days of receipt. The NPS will include in this submittal the information specified in 36 CFR 800.11(e), subject to the confidentiality provisions of 800.11(c).

**B.** Upon concurrence with the determination of adverse effect, or in the event SHPO does not respond within 30 days of the notification of this determination, the NPS will propose one or more of the mitigation measures listed below to resolve the adverse effects. The NPS will notify the SHPO, Tribe, and Band of this proposal, and provide scopes of work or detailed plans for the mitigation measures.

**1. Archeological Data Recovery:** If the adverse effect is to one or more archeological resources, the NPS will provide a draft data recovery plan to the Tribe and Band for a 45-day review period. This data recovery plan will address any post-review archeological discoveries. Upon close of this review period, NPS will revise the data recovery plan to address comments received, and present a final data recovery plan to SHPO for a 30-day review period. At the close of the 30-day review period, NPS will take into account any SHPO comments received, finalize the data recovery plan, and distribute it to all consulting parties

**2. Other Measures:** If the adverse effect cannot be otherwise resolved through archeological data recovery, the NPS will develop measures to resolve the adverse effect in consultation with the Tribe and the Band. These measures could include, but may not be limited to; enhanced interpretation of tribal history and ongoing cultural connections to Santa Cruz Island and the Scorpion Valley; preparing new or revising existing National Register documentation for historic properties with religious and cultural significance; creating opportunities for tribal youth engagement; and incorporating tribal cultural monitoring during construction. The NPS will transmit these as a proposal to the Tribe and Band for a 30-day review period. Upon close of this review period, NPS will revise the proposal to address comments received, and present a final proposal to SHPO for a 30-day review period. At the close of the 30-day review period, NPS will take into account any SHPO comments received, finalize the proposal, and distribute it to all consulting parties.

**C.** If, during the consultation process to resolve adverse effects, the SHPO, Tribe, or Band notifies the NPS in writing that it disagrees with the proposed mitigation measures and specifies the reasons for the disagreement in the notification, the NPS will consult with the party to resolve the disagreement. NPS will also notify the other consulting parties and offer to include them in the disagreement resolution. If the parties are unable to come to agreement, NPS shall comply with Stipulation IX.

## **VI. Construction Monitoring**

**A.** Actions involving ground disturbance within or adjacent to the boundaries of known archeological sites will be conducted with a professionally qualified archeologist present to monitor and ensure that restoration or construction actions do not result in unanticipated damage to archeological resources, and where feasible, to document anticipated discoveries of archeological materials.

**B.** Native American monitoring will be conducted pursuant to results of consultations undertaken in Stipulation I, and if applicable, Stipulation III.C.3.

## **VII. Assessment of Archeological Site Stability**

**A.** Archeological site stability and protection during construction

**1.** Construction of the new pier and associated road transition will include protection of the

archeological site slope in the immediate project vicinity. This protection will include covering the toe of the slope with geotechnical fabric and fill. This measure does not have the potential to adversely affect the historic property.

**B. Archeological site stability along abandoned roadway**

1. Removal of the existing pier and abandonment of the associated roadway are expected to lead indirectly to increased erosion at site CA-SCrI-423. Strong winter storms will eventually break down the riprap at the shoreline and expose the site to further erosion. The NPS will provide for an engineering and/or geologic assessment of the affected area to determine the feasibility of site stabilization.
2. If stabilization is feasible, the NPS will develop a proposal for stabilization, including any potential for adverse effects, in consultation with the SHPO, Tribe, and Band. Final implementation of any stabilization measures would be contingent upon future funding, and is not a component of the undertaking that is the subject of this Programmatic Agreement.
3. If stabilization is not feasible, the NPS will develop a plan, in consultation with SHPO, the Tribe, and Band, for long-term site treatment.

**VIII. Post-Review Discoveries**

- A.** In the event that either previously undocumented cultural resources are discovered or historic properties are inadvertently affected during implementation of the undertaking, the NPS will submit written notification describing the circumstances of the discovery to the SHPO, the Tribe, and the Band within two working days (e.g., letter or email notification).
1. If unanticipated buried archeological resources, human remains, and/or items subject to NAGPRA are inadvertently discovered during ground-disturbing activities, work will stop in that area and within a 100-foot radius on the landform of the find until a qualified archeologist can assess the significance of the find.
  2. The NAGPRA Plan of Action developed pursuant to Stipulation I.B. of this Agreement will be followed in the event of any discoveries of any human remains and/or cultural items subject to NAGPRA.
  3. Any newly discovered archeological resource will be assumed eligible for listing in the NRHP per 36 CFR 800.13(c).
- B.** If NPS determines that the undertaking will not result in an adverse effect to historic properties, the NPS will submit this determination to SHPO, the Tribe, and Band. The SHPO, Tribe, and Band shall have two (2) days from receipt to review, comment, and for SHPO to concur with the finding via electronic mail.
- C.** If a non-archeological historic property will be adversely affected, the NPS will comply with 36 CFR 800.13(b)(3).

**IX. Annual Report and Meeting**

A. Annually upon the anniversary of the execution of this Agreement until it expires or is terminated, the NPS shall provide signatories to this PA a written report detailing the work undertaken pursuant to its terms. The report shall include, but is not limited to, any scheduling changes proposed, any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA.

B. NPS shall schedule a meeting among the signatory parties annually to discuss the terms and implementation no later than two months after the annual report is sent to the parties. If the signatory parties agree in writing, the meeting may be canceled for that year.

## **X. Standards**

**A. Definitions.** All terms used herein are defined in 36 CFR 800.16.

**B. Professional qualification standards.** All historic preservation activities implemented pursuant to this Agreement will be carried out by or under the direct supervision of individuals meeting the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-39) for the discipline appropriate to the activity.

**C. Standards for inventory, evaluation, registration, and documentation.** Any inventory, evaluation, registration, or documentation of historic properties completed pursuant to this Agreement will conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) and to applicable guidelines and conventions established by NPS and SHPO.

**D. Curation standards.** Curation of materials and records resulting from actions stipulated by this Agreement will be in accordance with 36 CFR 79.

**E. Confidentiality of archeological site information.** The signatories to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of section 304 of the National Historic Preservation Act, as amended, and section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archeological site information. All actions and documentation prescribed by this Agreement must be consistent with these sections.

## **XI. Dispute Resolution**

Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the NPS shall notify the other parties and consult with such party for not more than 30 days to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS will:

**A.** Forward all documentation relevant to the dispute, including the NPS proposed resolution, to the Council. The Council shall provide the NPS with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The NPS will then proceed according to its final decision.

- B. If the Council does not provide its advice regarding the dispute within the 30 day time period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the Council with a copy of such written response.
- C. The NPS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **XII. Amendments**

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council.

## **XIII. Termination**

A. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI above. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

B. Once the PA is terminated, and prior to work continuing on the undertaking, the NPS must either (a) execute a new agreement pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR 800.7. The NPS shall notify the signatories as to the course of action it will pursue.

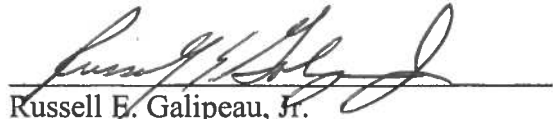
## **XIV. Duration of this Agreement**

Unless terminated pursuant to Stipulation III.B, the duration of this Agreement is five (5) years from the date of its execution or until the Undertaking is complete, whichever is shorter.

**EXECUTION** of this Agreement by NPS and SHPO and implementation of its terms evidence that the NPS has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

**SIGNATORIES:**

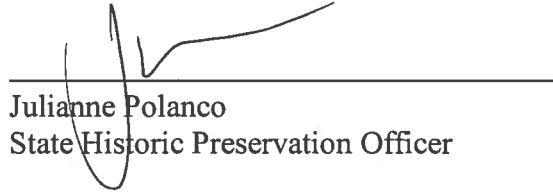
**National Park Service**



Russell E. Galipeau, Jr.  
Superintendent, Channel Islands National Park

November 29, 2016  
Date

**California State Historic Preservation Officer**



Julianne Polanco  
State Historic Preservation Officer

15 December 2016  
Date

**CONCURRING PARTIES**

**For the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation:**

 \_\_\_\_\_ 1/11/17  
Kenneth Kahn Chairman Date

**For the Santa Ynez Band of Chumash Mission Indians Elders Council**

 \_\_\_\_\_ 1-9 2017  
Antonia Flores Chairwoman Date

**CONCURRING PARTIES, CONTINUED**

**For the Barbareno/Venturano Band of Chumash Mission Indians**

Julie Tumamait-Stenslie \_\_\_\_\_ 1/18/17  
Julie Tumamait-Stenslie Chairwoman Date



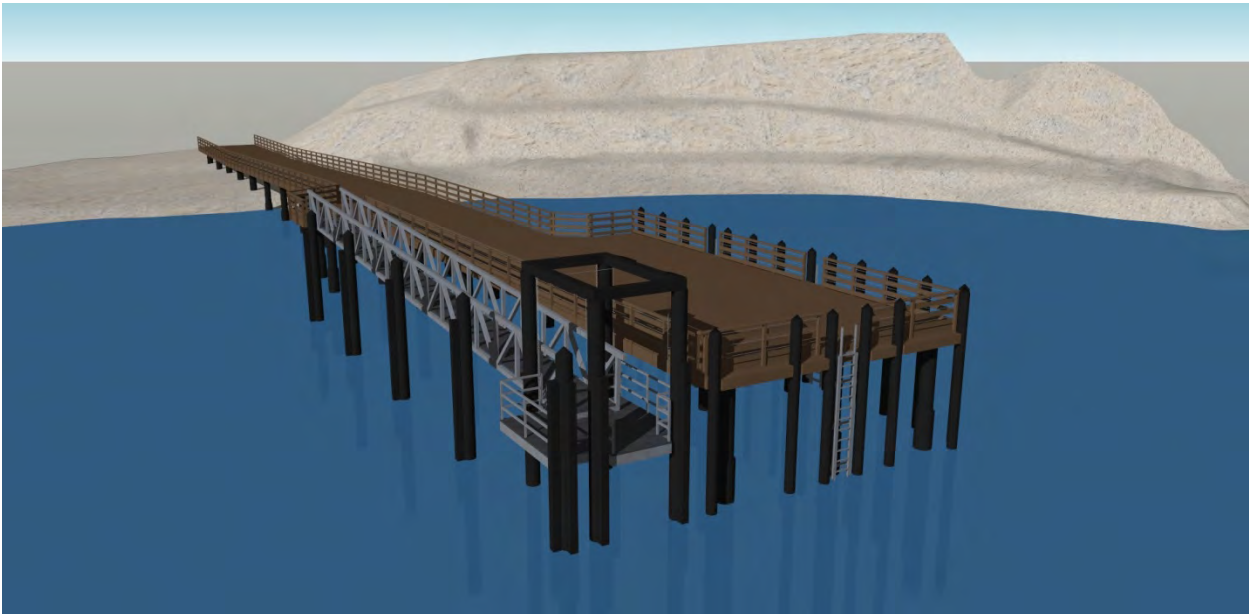
## **APPENDIX A: DETAILED DESCRIPTION OF THE UNDERTAKING**

### **Description:**

Replace the existing Scorpion Pier at Santa Cruz Island so that it provides safe and easy access for the public and NPS staff, provides adequate water depth for Concession and NPS vessels, and meets basic administrative functional requirements. The existing Scorpion Pier is a flatbed railcar installed as a temporary access in 2000. The pier has deteriorated due to wave action and salt water. A Structural Analysis was performed following the winter storm of 2015. The Pier is now closed based on the structural engineer's analysis, and currently there is a skiffing operation to transport visitors from the ferry to shore and back. Prior to closure, the existing pier could not be used at times by park or concession boats because it was not safe for boats to approach or dock when tides were low or when wave heights were greater than 1 or 2 feet. The boats were not moored or tied up to the dock because wave action generally makes the boat unsteady; instead, boat operators thrust into contact with the dock during loading and unloading of passengers and cargo. Disembarkation required visitors and NPS staff to use ladders attached to the side of the pier head. After disembarking, visitors had to traverse across an access road consisting of a rocky surface that could be difficult to negotiate while carrying gear. The access road had to be repaired and re-graded several times per year due to impacts from storms, wave erosion, and the flooding of Scorpion Creek.

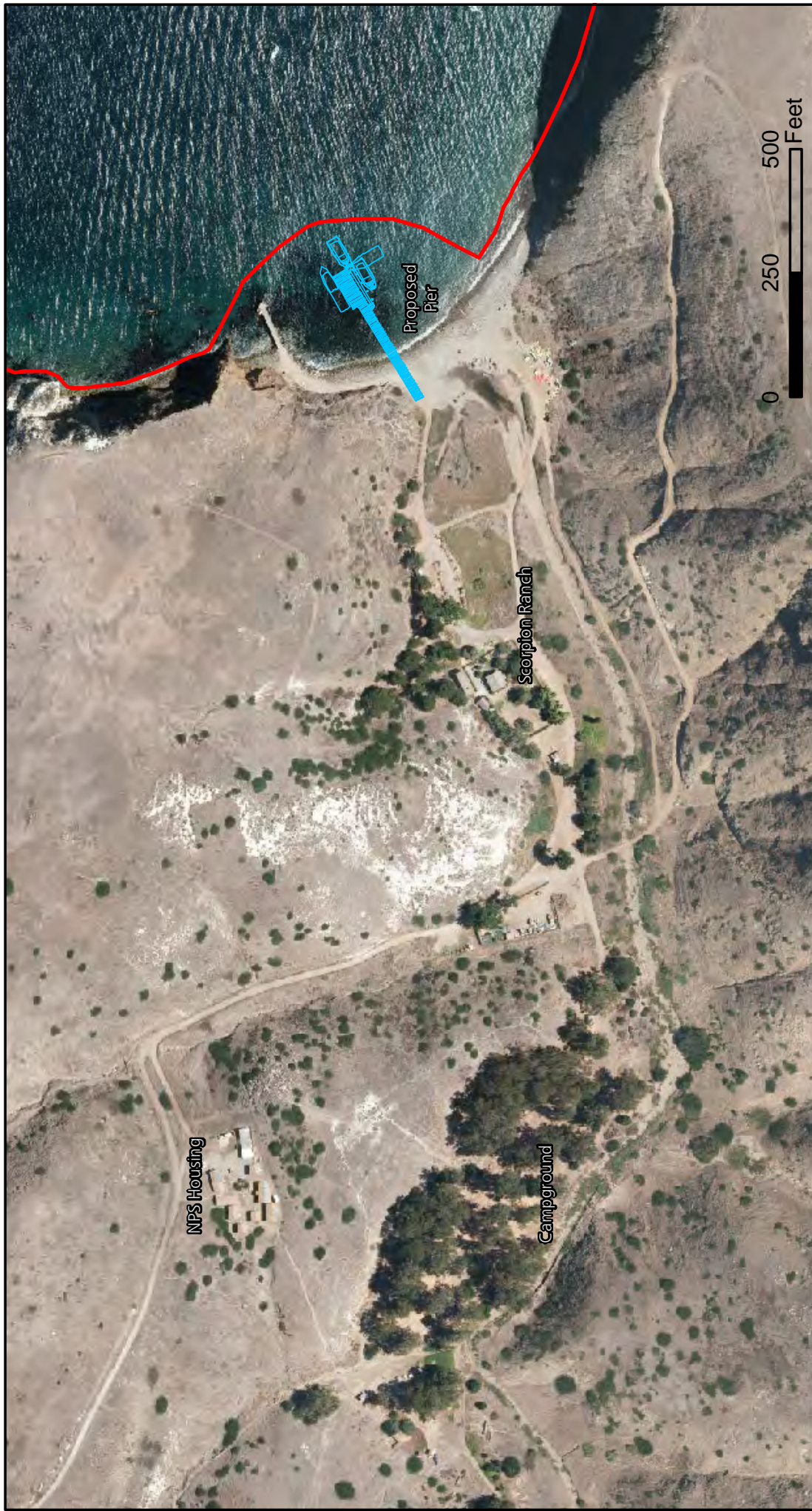
### **Justification:**

Santa Cruz Island, Scorpion Anchorage, is the most visited destination within Channel Islands National Park. Scorpion is highly sought by visitors because of the beach access and it is an excellent location for sea kayaking activities. Scorpion also supports a 250 person campground, a historic district and several easy to moderate hiking opportunities. The park concession vessels dock daily during the summer months and several times a week during the winter season. Up to 150 passengers disembark from each of the three concessionaire vessels, allowing up to 500 visitors per day including campers and an unlimited number of private boaters. The existing pier needs to be replaced in order to improve safety and accessibility, allowing all visitors to move safely from vessels to the dock, and providing easy access to the adjacent shoreline, the historic Scorpion Ranch and visitor center, restrooms, campground, and hiking trails. A new pier will accommodate the current range of NPS boats and concessionaire ferry vessels, increase efficiency of loading and offloading cargo, and improve circulation of visitors, cargo and NPS operations.




**APPENDIX B:  
MAP OF AREA OF POTENTIAL EFFECTS**

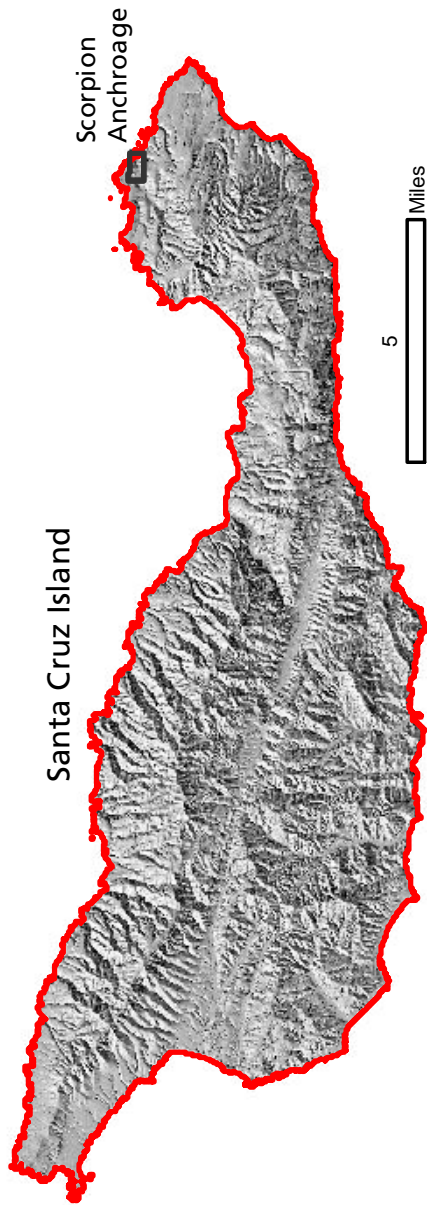




## Area of Potential Effects Scorpion Pier Project

### Legend

 Area of Potential Effects



Date: 5/13/2015





# EXHIBIT E – SCORPION PIER REPLACEMENT

## CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS

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### 1.0 INTRODUCTION

The California State Lands Commission (Commission or CSLC), acting as a lead agency under the California Environmental Quality Act (CEQA), makes these Findings to comply with CEQA as part of its discretionary approval to authorize Scorpion Pier Replacement (Project). The CSLC is making these Findings pursuant to Public Resources Code section 21081 and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091, subd. (a)),<sup>1</sup> which states in part:

*No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale of each finding.*

The CSLC is the lead agency under CEQA for the Project because the CSLC is the first state agency taking action on the Project. The National Parks Service (NPS) prepared a draft Environmental Impact Statement (EIS) titled *Scorpion Pier Replacement Final Environmental Impact Statement Channel Islands National Park, California*, which analyzed the overall environmental impacts associated with its proposed action. The NPS then prepared a final EIS, pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The NPS approved the proposed action, which includes the replacement of the Scorpion Pier, in its Record of Decision (ROD) dated August 14, 2018.

Pursuant to section 15221 of the State CEQA Guidelines, when a project requires compliance with both NEPA and CEQA, the CEQA lead agency "...should use the EIS...rather than preparing an EIR [Environmental Impact Report]..." if (1) the EIS has been prepared prior to a CEQA document, and (2) the EIS complies with the provisions of CEQA. If needed, the EIS may be supplemented to include CEQA-required topics so it can be used in the place of an EIR. The NPS's EIS was completed prior to preparation of a CEQA document, and, the CSLC believes the requirements of CEQA are met. (State CEQA Guidelines, §§ 15221, subd. (b); 15225, subd. (a).) The final EIS was circulated in accordance with the requirements of CEQA. (State Clearinghouse No. 2015101041).

Although NEPA and CEQA are similar in many respects, NEPA does not require a discussion of several key issues under CEQA. Because of these differences, section 15221, subdivision (b) of the State CEQA Guidelines indicates these sections should be added by the State lead agency when it uses an EIS in place of an EIR. In accordance

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<sup>1</sup> CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

with the above requirement, supplemental information (see Exhibit C) has been prepared to address the following key issues not included in the EIS:

- Mandatory Findings of Significance (State CEQA Guidelines, § 15065)
- Environmentally Superior Alternative (State CEQA Guidelines, § 15126.6)
- A section on Tribal consultation. Assembly Bill AB 52 (effective July 1, 2015) adds sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to CEQA, relating to consultation with California Native American tribes, consideration of tribal cultural resources, and confidentiality.

With the inclusion of the supplemental information, the EIS is being used by the CSLC in place of a separate EIR and is the document on which these Findings are based.

The NPS proposes to replace and relocate Scorpion Pier, as well as make improvements to the access road. The existing pier needs to be replaced and reconfigured in order to improve safety and accessibility, allowing all visitors to move safely from vessels to the pier deck, and to provide easy access to the adjacent shoreline, the historic Scorpion Ranch and visitor center, restrooms, orientation displays, campground, and hiking trails. A new pier constructed in deeper water (either in the same location or in an adjacent area) needs to accommodate the current range of NPS boats and concessioner ferry vessels, increase efficiency of loading and offloading cargo, and improve circulation of visitors, cargo, and NPS operations.

## **2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS**

These Findings are based on the information contained in the EIS for the Project, as well as information provided by the Applicant and gathered through the public involvement process, all of which is contained in the administrative record. References cited in these Findings can be found in the Final EIS. The administrative record is located in the Sacramento office of the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

## **3.0 FINDINGS**

Findings are required by each “public agency” that approves a project for which an EIR has been certified that identifies one or more significant environmental impacts. (Pub. Resources Code, § 21081; State CEQA Guidelines, § 15091.) These Findings, as a result, are intended to comply with the above-described mandate that for each significant effect identified in the EIS, the Commission adopt one or more of the following, as appropriate.

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIS.

- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIS.

These Findings are also intended to comply with the requirement that each finding by the Commission be supported by substantial evidence in the administrative record of proceedings, as well as accompanied by a brief explanation of the rationale for each finding. (State CEQA Guidelines, § 15091, subds. (a), (b).) To that end, these Findings provide the written, specific reasons supporting the Commission's decision under CEQA to approve the Project.

A discussion of supporting facts follows each Finding.

- (1) Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- (2) Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.
- (3) Wherever Finding (3) is made, the Commission has determined that, even after implementation of all feasible mitigation measures and consideration of feasible alternatives, the identified impact will exceed the significance criteria set forth in the EIS. Finding (3) does not apply to this Project.

## **SUMMARY OF FINDINGS**

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Land Use
- Energy Requirements and Conservation
- Natural or Depletable Resource Requirements and Conservation
- Urban Quality and Design of the Built Environment
- Environmental Justice
- Prime and Unique Agricultural Lands
- Public Services and Utilities
- Wild and Scenic Rivers
- Sacred Sites
- Indian Trust Lands

The EIS identified the following impacts as Less Than Significant:

- Transportation and Circulation
- Air Quality



- Geology, Soils, and Seismicity
- Water Quality and Hydrology
- Visual Resources
- Recreation and Visitor Use
- Public Health and Safety

**A. POTENTIALLY SIGNIFICANT IMPACTS**

In its ROD on the EIS and approval of the preferred alternative for the overall proposed action, the NPS imposed various mitigation measures for significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures. Impacts determined to be Less Than Significant with Mitigation (LTSM) are shown in Table 1. For the full text of each mitigation measure (MM), please refer to Exhibit D.

**Table 1 – Significant Impacts by Issue Area**

Environmental Issue Area	Impact Nos. (LTSM)
Noise and Vibration	Noise-1
Aquatic Biological Resources	Aquatic-1, -2, -3, -4, -5, -6, -7, -8
Terrestrial Biological Resources	Terrestrial-1, -2
Cultural and Historic Resources	Cultural-1
Tribal Cultural Resources	TCR-1

**B. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION**

The impacts identified below were determined in the final EIS to be potentially significant absent mitigation; after application of mitigation, however, the impacts were determined to be less than significant.

**1. NOISE AND VIBRATION**

**CEQA FINDING NO. NOISE-1**

Impact: **Impact NOISE-1. Impacts Associated with Construction Equipment.**  
The use of construction equipment during different phases of construction could increase noise and vibration levels at the four sensitive receptors in the Project vicinity.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.  
  
(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Four sensitive receptors are located within the Project vicinity: visitors seeking solitude, lower campground overnight campers, scorpion ranch historic buildings, and ranger residences. Noise-MM-1 would include best management practices such as the use of noise mufflers and sound barriers, restricted times for construction activities, and measures requiring distance protocols. Following the implementation of Noise-MM-1, the Project would result in negligible construction impacts to off-site receptors and potential short-term, moderate, adverse impacts to visitors located directly adjacent to the Project site during construction.

Implementation of Noise-MM-1 has been incorporated into the Project to reduce this impact to a less than significant level.

**Noise-MM-1: Construction Noise Procedures.**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

## 2. AQUATIC BIOLOGICAL RESOURCES

### CEQA FINDING NO. AQUATIC-1

Impact: **Impact Aquatic-1. Impacts to Invertebrates and Marine Vegetation.**  
Specific construction activities that could affect aquatic biological resources

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

#### FACTS SUPPORTING THE FINDING(S)

Removal of existing piles and in-water structures, installation new pilings and pier, and excavation below the mean high tide line could temporarily impact nearshore invertebrate and marine plant communities through removal of existing flora and fauna. The permanent fill of intertidal waters would be addressed through Aquatic-MM-1 and Aquatic-MM-2, which entail obtaining permits and constructing any required mitigation for these impacts. In addition, the Park Service would implement Aquatic-MM-3, which entails enhancement of sanctuary waters.

Marine vegetation may be also be affected by decreased light transmission as a result of shading from larger overwater structures and from increased turbidity during pile installation. Aquatic-MM-3 would provide habitat enhancement that would help offset impacts from increased shading.

Implementation of Aquatic-MM-1, Aquatic-MM-2, and Aquatic-MM-3 has been incorporated into the Project to reduce this impact to a less than significant level.

#### **Aquatic-MM-1: Regulatory Compliance.**

#### **Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.**

#### **Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-2**

**Impact:** **Impact Aquatic-2. Impacts to Fish During Project Construction.** Fish may be temporarily disturbed during in-water work for pier deconstruction and construction.

**Finding(s):** (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Suspended sediment levels and underwater sound pressure or noise generated by construction operations, and overwater shading from pier structures that may affect fish behavior associated with light, may temporarily affect fish behavior. Aquatic-MM-1 would be implemented to reduce impacts through regulatory compliance. Aquatic-MM-3 would provide habitat enhancement that would help offset impacts from increased shading. Aquatic-MM-4 would include measures that require monitoring and sound requirements, and Aquatic-MM-8 would reduce impacts associated with sedimentation and water quality.

Implementation of Aquatic-MM-1, Aquatic-MM-3, Aquatic-MM-4, and Aquatic-MM-8 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-1: Regulatory Compliance.**

**Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.**

**Aquatic-MM-4: Aquatic Avoidance and Minimization Measures.**

**Aquatic-MM-8: Water Quality Protection.**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-3**

**Impact:** **Impact Aquatic-3. Impacts to Federally Endangered Black Abalone.**  
Construction activities including removal of existing structures or excavation of rocky areas could result in take of black abalone, if present.

**Finding(s):** (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Although there are no recorded occurrences of the federally endangered black abalone within the study area, habitat in the Project area is suitable for this species. Construction activities including removal of existing structures or excavation of rocky areas could result in take of black abalone, if present. Aquatic-MM-1 and Aquatic-MM-2, which would ensure pre-construction surveys, mapping, and transplant/translocation of species if necessary, would assure that impacts to black abalone would be avoided.

Implementation of Aquatic-MM-1 and Aquatic-MM-2 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-1: Regulatory Compliance.****Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-4**

Impact: **Impact Aquatic-4. Impacts to Essential Fish Habitat (EFH).** EFH may be temporarily disturbed during in-water work for pier deconstruction and construction.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Potential construction impacts on EFH would include temporary minor increased suspended sediment levels and turbidity relative to background conditions, and the potential for temporary behavioral disturbance due to increased underwater sound pressure levels from pile installation. With the implementation of Aquatic-MM-1, Aquatic-MM-4, and Aquatic-MM-8 the Project would result in negligible impacts to EFH from construction. Furthermore, Aquatic-MM-3 would provide habitat enhancement that would help offset any impacts from shading.

Implementation of Aquatic-MM-1, Aquatic-MM-3, Aquatic-MM-4, and Aquatic-MM-8 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-1: Regulatory Compliance.**

**Aquatic-MM-3: Relocation of Existing Mooring Buoys and Associated Tackle.**

**Aquatic-MM-4: Aquatic Avoidance and Minimization Measures.**

**Aquatic-MM-8: Water Quality Protection.**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-5**

Impact: **Impact Aquatic-5. Impacts to Eelgrass due to Pier Construction.** Pier installation may impact eelgrass.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Eelgrass was not observed in the pier footprint; however, if eelgrass is observed in the impact area during pre-construction surveys, monitoring and mapping would be required to identify potential impacts. Any decrease in eelgrass (i.e., pre-project versus post-project) would constitute an impact and would be mitigated for pursuant to California Eelgrass Mitigation Policy (CEMP).

Implementation of Aquatic-MM-5 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-5: Pre- and Post-Construction Surveys.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-6**

Impact: **Impact Aquatic-6. Impacts to Wetlands.**

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Permanent loss of approximately 13,128 square feet (0.30 acre) of wetlands would occur resulting from construction of the retaining wall and rock armoring. Aquatic-MM-1 and Aquatic-MM-4, which entail obtaining permits and constructing any required mitigation for these impacts, would apply. Therefore, with mitigation, the Project is expected to result in only residual negligible impacts from the temporary loss of wetlands.

Implementation of Aquatic-MM-1 and Aquatic-MM-4 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-1: Regulatory Compliance.**

**Aquatic-MM-4: Avoidance and Minimization Measures.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQUATIC-7**

Impact: **Impact Aquatic-7. Impacts to Marine Mammals.** Increased underwater sound pressure levels resulting from pile installation may result in harassment or displacement of marine mammals.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.  
  
(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Pinnipeds, including California sea lion, northern elephant seal, and Pacific harbor seal, may haulout on Scorpion Beach, and other marine mammal species may be infrequent transient visitors to Scorpion Anchorage waters. Project-related disturbance would be expected to have no more than a minor effect on individual animals' range and no effect on migration, breathing, nursing, breeding, feeding, sheltering, or populations of these species; however, NPS would implement Aquatic-MM-2, which would require safety zones and monitors to assess potential impacts during construction.

Implementation of Aquatic-MM-2 has been incorporated into the Project to reduce this impact to a less than significant level.

**Aquatic-MM-2: Aquatic Species Mapping and Transplant/Translocation of Sensitive Species.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.



**CEQA FINDING NO. AQUATIC-8**

Impact: **Impact Aquatic-8. Impacts to Water Quality.** Pier removal and construction could create turbidity, sedimentation, and other water quality issues.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Wastes and untreated wastewater generated during pile driving have the potential to adversely affect water quality. All drilling operations would be conducted within a containment system, which would extract all rock debris and waste water from the system and filter and treat the wastewater prior to discharge into the ocean. However, the implementation of Aquatic-MM-8 has been incorporated into the Project to further reduce this impact to a less than significant level.

**Aquatic-MM-8: Water Quality Protection.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**3. TERRESTRIAL BIOLOGICAL RESOURCES****CEQA FINDING NO. TERRESTRIAL-1**

Impact: **Impact Terrestrial-1. Impacts to Wildlife Species.** Protected bird species, pallid bats, western mastiff bats, and common wildlife species, may be temporarily disturbed by construction-related noise.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

There is limited building and tree habitat in the area that may be impacted by noise; however, protected bird species such as Scripps's murrelets and bald eagles may occur

within the Project area, as may pallid bats, western mastiff bats, and common wildlife species. Construction-related noise, particularly from pile installation activities, may temporarily disturb these species. The NPS would ensure that the contractor adheres to the measures presented in Noise-MM-1 to reduce impacts to these species.

Implementation of Noise-MM-1, which involves methods for reducing construction-related noise, would reduce the magnitude of this impact.

**Noise-MM-1: Construction Noise Procedures.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level

**CEQA FINDING NO. TERRESTRIAL-2**

Impact: **Impact Terrestrial-2. Impacts to the Santa Cruz Island Fox.** The Santa Cruz Island Fox may be Impacted by Additional Vehicle Trips Associated with Construction.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.  
 (2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

**FACTS SUPPORTING THE FINDING(S)**

Project construction would require additional vehicle trips, and vehicle collisions are a known cause of Santa Cruz Island fox mortality on the Channel Islands. Implementation of Terrestrial-MM-1, which includes methods for preventing vehicle collisions, staging area inspections, and other best management practices would reduce the magnitude of this impact.

Implementation of Terrestrial-MM-1 has been incorporated into the Project to reduce this impact to a less than significant level.

**Terrestrial-MM-1: Avoidance Measures for Santa Cruz Island Fox.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### 4. CULTURAL RESOURCES

##### CEQA FINDING NO. CULTURAL-1

Impact: **Impact Cultural-1. Impacts to Archeological Sites.** There is a high potential for archeological materials within the Project footprint that may be disturbed by Project implementation.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

##### FACTS SUPPORTING THE FINDING(S)

Most of the piles are subtidal and intertidal on a high energy beach, where little to no potential exists for intact archeological materials. However, Tribal representatives expressed concern about potential submerged resources. The piles nearer to shore would be in what historic photographs show to be fairly recent fill. This fill likely came from nearby beach and uplands, and may contain artifacts derived from site CA-SCrI-423. In addition, the approach road area and areas of staging and traffic are in a depositional environment that may have protected archeological deposits, or the potential to have intact site deposits near the surface. None of the impacts are likely to eliminate the significance of any archeological sites, because they generally involve small, disturbed areas of much larger sites. Therefore, the impacts are not considered major and would be minimized with the implementation of Cultural-MM-1.

Implementation of Cultural-MM-1 has been incorporated into the Project to reduce this impact to a less than significant level.

##### **Cultural-MM-1: Programmatic Agreement.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## 5. TRIBAL CULTURAL RESOURCES (TCR)

### CEQA FINDING NO. TCR-1

**Impact:** **Impact TCR-1. Impacts to Tribal Cultural Resources.** There is a high potential for Tribal cultural resources materials within the Project footprint that may be disturbed by Project implementation.

**Finding(s):** (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

### FACTS SUPPORTING THE FINDING(S)

As described in the EIS, the Project is located in an area that has been inhabited for over 12,000 years; the area is generally correlated historically and ethnographically with the Chumash peoples. It is estimated that Santa Cruz Island is the site of 10 to 12 historic Chumash villages, including sites near the Scorpion Pier. Today, Tribes asserting cultural affiliation or expressing interest in the Project area include the Santa Ynez Band of Mission Indians, Coastal Band of the Chumash Nations, and Barbareño/Ventureño Band of Mission Indians.

As the lead agency for compliance under CEQA, and in keeping with its Tribal coordination practices and the requirements of Assembly Bill (AB) 52 (Gatto; Stats. 2014, ch. 532), Commission staff reviewed the NPS EIS, along with the associated Section 106 Programmatic Agreement (PA) signed by NPS, the California State Historic Preservation Officer, and the Chairs of the Santa Ynez Band of Chumash Mission Indians, the Santa Ynez Band of Chumash Mission Indians Elders Council, and the Barbareño/Ventureño Band of Chumash Mission Indians. Commission staff also informally coordinated with Freddie Romero, Cultural Preservation Advisor to the Elders Council, on January 2, 2018, to ensure staff understood all concerns and prior federal Consultation. Mr. Romero encouraged Commission staff to consider the following concerns, consistent with the concerns raised during federal Consultation:

- The proximity of the new pier to the historic/prehistoric village site and potential impacts to terrestrial and submerged Tribal Cultural Resources
- The density of artifacts and potential for looting or damage to those artifacts by construction personnel and equipment
- The potential for unearthing of ancestral remains both during construction and as a result of erosion of the bluff after road abandonment

Staff has determined that the PA (Cultural-MM-1), and the addition of TCR-MM-1, TCR-MM-2, and TCR-MM-3, which include monitoring, inspections, and a treatment plan, would ensure the Project will not cause a significant impact on Tribal Cultural Resources.

Implementation of Cultural-MM-1, TCR-MM-1, TCR-MM-2, and TCR-MM-3 has been incorporated into the Project to reduce this impact to a less than significant level.

**Cultural-MM-1: Programmatic Agreement.**

**TCR-MM-1: Tribal Cultural Resource Monitoring.**

**TCR-MM-2: Tribal Resources Treatment Plan**

**TCR-MM-3: Abandoned Road Inspections.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**C. FINDINGS ON ALTERNATIVES**

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 1000:

*When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether [s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].*

The three alternatives analyzed in the EIS represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- No Project Alternative
- Alternative 1
- Alternative 2

As presented in the EIS, the alternatives were described and compared with each other and with the proposed Project. Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIS must also identify an environmentally superior alternative among the other alternatives.

The Park Service has selected Alternative 2 as the preferred alternative (environmentally superior alternative), to implement. Alternative 2 would construct a longer, wider pier approximately 300 feet south of the existing pier, which is significantly closer to the Scorpion Canyon North Road. Once the new pier is completed, the existing bridge span would be incorporated into the new pier as the passenger gangway and the abutments would be removed and disposed of on the mainland. The new pier would accommodate various water depths for safe embarkation, as well as a mobile crane. Visitors and NPS staff would use the gangway and landing aligned parallel to the pier to access the pier from NPS and concessioner boats.

The pier would consist of a tubular steel pier superstructure supported by steel cylindrical piles. This would include 18-inch steel structural piles, 16-inch steel berthing piles, and 12-inch fiberglass fender piles. The use of a steel superstructure allows the pier to be structurally raised in the future, if necessary, such that it will be adaptable to increasing sea level rise and climate change. The gangway would be constructed of aluminum, and be raised and lowered by a hoist. The relatively short access road that would connect the new pier terminus to the North Scorpion Valley Road would be supported by a steel sheetpile retaining wall protected from extreme waves and flood waters by rock armoring. The road would be surfaced with an even layer of crushed rock.

Alternative 2 requires substantially less shoreline armoring as compared to Alternative 1 (1,800 cubic yards [cy] of riprap for Alternative 2, compared to 4,400 cy of riprap for Alternative 1), and would not require fill below the mean high tide line. Alternative 2 would also require substantially less wetland fill (0.04 acre for Alternative 2, compared to 0.30 acre for Alternative 1). Due to these differences, Alternative 2 would result in decreased residual impacts as compared to Alternative 1.

The two other CEQA alternatives proposed and evaluated in the EIS were rejected for the following reasons:

### **No Action Alternative**

The No Action Alternative analyzed in the EIS represents no change from the NPS's current management direction, and provides a baseline for comparing the other alternatives' proposed changes and potential subsequent effects. It assumes a continuation of existing conditions at the existing location. If the No Action Alternative were selected, the existing unsafe conditions would continue to deteriorate over time, and taking no action would not meet the purpose and need or objectives of the Project. Therefore, the No Action Alternative was not selected.

### **Alternative 1**

Alternative 1 would remove and demolish the existing pier and abutments and replace it with a longer, wider pier, oriented over and parallel to the existing pier, but it would extend farther into deeper water. The new pier would accommodate a greater range of water depths for safe embarkation, as well as a mobile crane. Visitors would use the gangway and landing aligned parallel to the pier to access the pier from concessioner and NPS boats. The Alternative 1 pier width, pierhead dimensions, configuration (a

tubular steel pier superstructure supported by steel cylindrical piles), and gangway design would be identical to the Alternative 2 design. Significant improvements to the existing access road would also occur under Alternative 1; however, the amount of excavation required to construct the retaining wall, roadway, and rock armoring would be approximately 7,200 cy, and the amount of rock armoring required would be approximately 4,400 cy. Of this amount, there would be approximately 1,320 cy of permanent fill (rock riprap) below the mean high tide line. There would also be impacts to 0.30 acre of wetlands. This represents a substantial increase in fill compared to Alternative 2, and would result in increased impacts or potential impacts to biological and cultural resources. Once construction is complete, site access and arrival options under Alternative 1 would be consistent with those of the No Action Alternative, although improved in terms of safety and accessibility.

Compared to Alternative 2, Alternative 1 would have greater impacts related to recreation and visitor use, transportation and circulation during construction due to increased roadway construction and disruption to ongoing operations, aquatic biological resources, and visual resources. The potential for impacts to cultural resources is greater. For other resource topics, impacts would be comparable between Alternative 1 and Alternative 2.

Based upon the objectives identified in the Final EIS and the detailed mitigation measures imposed upon the Project, the CSLC has determined that the Project should be approved, subject to such mitigation measures (Exhibit D, Mitigation Monitoring Program).