

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.

Reference Guide for Locating Required EIR Contents in the EIS	
Required Content	EIS Location
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 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).¹ Accordingly, Commission staff will be preparing a Mitigation and Monitoring Program and Statement of Findings providing written, specific reasons supporting the Commission's decision under CEQA to approve the Project.

¹ 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).