CALIFORNIA COASTAL COMMISSION
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W13c

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STAFF REPORT: REGULAR CALENDAR

Application No.: **5-19-0971**

Applicant: **Dana Point Harbor Partners, LLC**

Agent: Sherman L. Stacey

Project Location: 24650 Dana Point Harbor Drive (Dana Point Harbor)

Project Description: Large-scale remodel of Dana Point Harbor over a period of 5 years, involving replacement of a 2,409 recreational boat slip marina with a 2,254 recreational boat slip marina, replacement of 16 commercial fishing slips, replacement of 11 yacht club slips with 13 yacht club slips in the Dana Point Yacht Club in the Inner Basin; replacement of 16 sportfishing charter slips and 1 dock-and-dine guest dock adjacent to the Catalina ferry, relocation and reconfiguration of the fuel dock and emergency dock, slight relocation of the bait dock, installation of a new drive-in boat wash in the Outer Basin; relocation and expansion of transient guest docks to the Outer Basin; replacement of 11 existing boater service buildings with 10 boater service buildings; repair to 9,964 linear feet of seawalls/revetment; replacement of 1,644 designated boater parking spaces with 1,410 spaces, and relocation and expansion of parkscape and public access areas closer to the water.

Staff Recommendation: Approval with conditions.

Staff Note: Under the Permit Streamlining Act, the timeframe for Commission action on this coastal development permit application is **August 6, 2020,** 180 days after filing of the CDP application. However, on April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling timeframes for action on permit applications in the Permit Streamlining Act for 60 days. Accordingly, the Commission must act on this CDP application on or before **October 5, 2020.**

SUMMARY OF STAFF RECOMMENDATION

Dana Point Harbor Partners, LLC requests a permit to replace and reconfigure the Dana Point Harbor, including replacement of 2,409 recreational boat slips with 2,254 recreational boat slips, replacement of 16 commercial fishing slips, replacement of 11 yacht club slips with 13 yacht club slips in the Dana Point Yacht Club in the Inner Basin; replacement of 16 sportfishing charter slips and 1 dock-and-dine guest dock adjacent to the Catalina ferry, relocation and reconfiguration of the fuel dock and emergency dock, slight relocation of the bait dock, installation of a new drive-in boat wash in the Outer Basin; relocation and expansion of transient guest docks to the Outer Basin; replacement of 11 existing boater service buildings with 10 boater service buildings; repair to 9,964 linear feet of seawalls/revetment; replacement of 1,644 designated boater parking spaces with 1,410 designated boater parking spaces, and relocation and expansion of parkscape and public access areas closer to the water. The proposed development will take place over a period of 5 years. The proposed project is situated in the Dana Point Harbor landside and waterside areas **(Exhibits 1 and 3).**

The main issues raised in the application are construction-phase and post-construction water quality protection and enhancement, construction-related impacts to land and marine biological resources, reduction in marina slips, increase in water coverage by marina structures, and maximization of public access and recreation that addresses environmental justice considerations.

Construction underwater and overwater associated with the proposed development, including the removal and replacement of piles, has the potential to adversely impact water quality and biological resources. To address potential water quality impacts, recommended Special Conditions 10-13 would require the applicant to submit a final Construction Pollution Prevention Plan that specifies the use of Best Management Practices (BMPs) for the installation and removal of piles; BMPs for the use of treated wood in overwater and in-water structures; and required documentation of the type and amount of all materials proposed to be used to construct or repair all overwater and in-water structures. Special Conditions 14 would require the applicant to submit a final post-construction water quality protection plan that specifies the use of BMPs to infiltrate and/or treat stormwater runoff, and Special Condition 15 would require the applicant to adhere to the marina management requirements for water quality protection in the applicant's Clean Water Act Section 401 Water Quality Certification, including the Marina at Dana Point Clean Marina Plan.

Construction-related noise and turbidity has the potential to adversely affect nesting and foraging birds and marine mammals nearby. To reduce adverse impacts on marine and coastal resources, Special Conditions 2-9 require the applicant to conduct pre-construction invasive algae surveys, conduct pre- and post-construction eelgrass surveys, restrict construction pile-driving noise levels and turbidity, minimize light pollution, conduct bird, ocean mapping and marine mammal surveys, adhere to tree trimming and removal policies, and submit acoustic monitoring and marine mammal wildlife protection plans.

The proposed development will reduce the number of slips available, which has the potential to adversely affect public access and recreational opportunities in the harbor, and increase overwater coverage, which casts shade on underwater resources. The applicant indicates that the net reduction in slips is primarily a result of boater demand change since 1971, which has shifted from the use of smaller boats to larger boats, requiring longer and wider berthing spaces, as well as compliance with the Americans with Disabilities Act requirements. Additionally, the applicant has demonstrated that the proposed slip mix, within the redeveloped portion of the harbor complies with the certified LCP Policy 4.2.2-6 that the net loss of slips harbor-wide shall be minimized, net loss of slips shall not be greater than 155 (or about 6.5% of the current number), and the average slip length should not exceed 32 feet. To address these impacts, Special Conditions 19-20 would require the applicant to submit a Slip Transition and Implementation Plan and maintain a vacancy of 5% of dry boat storage spaces available for rent for small-sized boat owners (30 feet and under). Additionally, an increase in overwater coverage may adversely impact marine resources and water quality. To mitigate for these impacts, Special Condition 27 would require the applicant to participate in a marine debris reduction program. Several of the harbor improvements will provide coastal access and recreation opportunities that are not currently accessible for low-income and other underserved communities. To increase the equitable distribution of coastal benefits, Special Conditions 17 and 18 require the applicant to maintain all public spaces, including the expanded promenade area, public docks and parkscape areas, open 24 hours and 7 days a week, and to maintain 435 free public parking spaces. In addition, Special Condition 25 requires the applicant to implement public access signage in English and Spanish throughout several locations in the harbor. Special Condition 26 requires the applicant to submit a detailed plan for a sailing program for youth from underserved communities which will increase access and education for those who cannot afford to live near the coast or afford such recreational opportunities.

Additional Special Conditions:

Staff is also recommending a variety of other conditions to address the impacts of the proposed development. Special Condition 1 requires the applicant to fully comply with the terms of this permit. Special Condition 16 requires the applicant to exercise due diligence in periodically inspecting (at least once a year) the marina facilities that are subject to this coastal development permit. Special Condition 21 requires the applicant to repair and remove any development subject to this coastal development permit (CDP) that is threatened. Special Condition 22 requires the applicant to comply with all

requirements, requests and mitigation measures of other resource agencies. Special Condition 23 requires the applicant to acknowledge and agree that the subject site is in a hazardous location, to assume any risks related to the project, and to waive any claims of liability against the Commission. Special Condition 24 maintains that the Commission's approval of this permit does not constitute a waiver of any public rights that exist or may exist on the property. Special Condition 28 requires the applicant to submit final plans.

Standard of Review:

The proposed development on the landside of the harbor is in the City of Dana Point's jurisdiction. The portions of the proposed project that are seaward of the mean high tide line are in the Commission's permit jurisdiction **(Exhibit 2). ** In order to streamline efforts and avoid inconsistent conditions of approval, the City of Dana Point (local government) and Dana Point Harbor, LLC (applicant) support the consolidation of the permitting process. Therefore, the standard of review for the proposed development is Chapter 3 policies of the Coastal Act. Dana Point Harbor has a Certified Local Coastal Program (LCP) entitled the Dana Point Harbor Revitalization Plan and District Regulations, which may be used as guidance for the proposed development.

Commission staff recommends **approval** of coastal development permit **application 5-19-0971**, as conditioned.

Table of Contents

EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-19-0971 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the local government's implementation of its Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Permit Compliance. Coastal Development Permit 5-19-0971 permits only the development expressly described and conditioned herein. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required pursuant to the requirements of the certified LCP, the Coastal Act and the California Code of Regulations. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

2. Invasive Algae Pre-Construction Survey.

A. By acceptance of this permit, the applicant agrees that no earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of invasive algae, including Undaria Pinnatifida and Caulerpa Taxifolia. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid Undaria Pinnatifida and Caulerpa Taxifolia surveys expires, a new survey is required prior to commencement of work in that area.

B. The survey protocols shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval by the Executive Director; and

(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through Loni Adams, California Department of Fish & Wildlife (858/627-3985) or Bryant Chesney, National Marine Fisheries Service (562/980 4037), or their successors.

D. If Undaria Pinnatifida and/or Caulerpa Taxifolia is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant

provides evidence to the Executive Director that all Undaria Pinnatifida and/or Caulerpa Taxifolia discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with Undaria Pinnatifida and/or Caulerpa Taxifolia. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Pre-and Post-Construction Eelgrass Survey(s)

A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (Zostera marina) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area that would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is required.

B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (see https://www.fisheries.noaa.gov/west-coast/habitat-conservation/seagrass-west-coast) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, if suitable habitat is available, or at another pre-approved location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within the

California Eelgrass Mitigation Policy shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

4. Construction and Pile-Driving Noise Level and Turbidity Restrictions. BY ACCEPTANCE OF THIS PERMIT, the applicant agrees to retain the services of a qualified independent biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director, to conduct a biological survey of the trees within 500 feet of project site prior to (within seven days of) the commencement or re-commencement of demolition and construction activities, and once a week upon commencement or re-commencement of demolition and construction activities that include use of heavy equipment that can cause excessive noise, odors, or vibrations (e.g., pile driving). The environmental resource specialist shall be directed to conduct the survey in order to determine the presence of the California gnatcatcher, black-crowned night herons, great blue herons, snowy egrets, raptor species, or any other sensitive species within 500 feet of the work site and immediately report the findings of the survey to the permittee and the Executive Director of the Coastal Commission.

In the event that the environmental specialist reports any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species listed pursuant to the federal or California Endangered Species Act, or any California bird species of special concern that exhibit reproductive or nesting behavior within 500 feet of the work site, the following restrictions shall apply:

A. Construction noise reduction measures such as sound shields made from plywood or sound-board or molded sound shields shall be used and measures shall be taken to minimize noise generation to the maximum feasible extent during construction.
B. Construction employees shall not bring pets (e.g., dogs and cats) to the construction site.
C. If an active nest of any bird species listed pursuant to the federal or California Endangered Species Act, California bird species of special concern or a wading bird (herons or egrets), or raptors are found, construction activities within 300 feet (500 feet for raptors) shall not exceed noise levels of 65 dB peak until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting, unless ambient noise in the absence of construction-related activities is found to exceed 65 dB, in which case a threshold should be set at no more than ambient sound levels plus 5 dB. Surveys for the above bird species during their breeding season shall be conducted by a qualified biologist prior to commencement or re-commencement of construction.
D. If construction noise exceeds 65 dB, then alternative methods of pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to, sound shielding, use of wood blocks to mute sound, and noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. If these sound mitigation measures do not reduce

noise levels, construction within 500 feet of the nesting trees shall cease and shall not recommence until either new sound mitigation can be employed or young of the year have fledged.

E. The applicant shall use the least damaging alternative methods for the construction of pilings and any other activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

5. **Project Lighting.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Lighting Plan which specifies that
   A. All permanent lighting associated with the harbor and the parking complex shall be shielded and directed downward. No light shall be directed onto the water. Bright upward shining lights shall not be used during construction.
   B. Specifications for all lighting, including those used for the operation of construction equipment, if performed at night, shall be included, with light temperatures maintained at 2,700 Kelvin (in no case shall exceed 3,000 Kelvin) and a foot candle value of no higher than 0.01 fc (lm.ft-2) incident along the property edge.
   C. Wherever possible, the applicant shall use cover material composed of dark, non-reflective material demonstrated to minimize the contribution to sky glow
   D. All existing parking lot lighting shall be redesigned to include a motion detector system that dims the parking lot lighting to 10% of standard light output during times the lighting is not actively in use.
   E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

6. **Additional Biological Surveys** – PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, the following biological surveys:
   A. Bird Surveys to be conducted by a qualified biologist.
      i. Inclusive of bird survey results for the gnatcatcher and its habitat within 500 feet of the proposed project area.
   B. Ocean Floor Resource Surveys to be conducted by a qualified marine biologist specialist.
      i. Pre- and post-construction surveys of sea floor resources encompassing all areas within the breakwater shall be mapped and evaluated for resident species by an appropriate marine biological specialist. Surveys should be sufficiently comprehensive as to identify all macrofaunal and macrofloral communities and substrate present, and to establish a pre-construction baseline that may be used to assess whether detectable changes occurred in post-construction benthic habitat associated with the harbor revitalization project.

Benthic surveys should follow accepted protocols for characterizing the benthic environment, and should produce, at a minimum, documentation of the diversity of benthic resources present, a list of all species encountered, including fish species, at a scale appropriate for a comprehensive assessment of project impacts, if any.

In anticipation that impacts to benthic habitats may result, the applicant must identify locations where mitigation of benthic impacts will occur at a ratio of 1.5:1, or greater, with the exception of eelgrass (see **Special Condition 3**)

Benthic surveys shall be repeated a month after the onset of construction activities with a significant chance of imparting harm to benthic habitats, (e.g. pile or dock removal) to ascertain that appropriate BMPs and impact minimization measures have not led to significant impacts. This second survey may follow rapid assessment methods and need not catalogue physical and biological resources. However, it must be sufficiently comprehensive as to determine that no, or only very minor, impacts to benthic resources have resulted, and to instigate a revision of protective measures if significant impacts are detected. A report documenting such shall be submitted to the Executive Director upon completion, as a condition for resumption of potentially impactful activities.

Comprehensive post-construction benthic surveys, using the same pre-construction protocol must be conducted immediately following project completion, and final reports submitted to the Executive Director.

7. **Tree Trimming or Tree Removal.**
   A. Tree trimming or tree removal when necessary, either during the project development phase and/or for the life of the proposed development, shall be conducted only during the non-breeding and non-nesting season (October through December) of the bird species listed pursuant to the Fish and Game Code, the Migratory Bird Treaty Act, Federal or California Endangered Species Acts, California bird species of special concern and wading birds as well as raptors which have an especially valuable role in the overall coastal ecosystem, unless the County of Orange in consultation with a qualified arborist and with review and comment from the Audubon Society determines that a tree causes danger to public health and safety. A health and safety danger shall be considered to exist if a qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The applicant shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season. If tree trimming or removal activities cannot feasibly avoid the breeding and nesting season because a health and safety danger exists, the following guidelines shall be followed:

a) A qualified biologist or ornithologist shall conduct surveys and submit a report at least one (1) week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/or removal plan shall be prepared by an arborist in consultation with the qualified biologist or ornithologist. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the County of Orange, the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The applicant shall maintain the plans on file as public information and to be used for future tree trimming and removal decisions. The plan shall incorporate the following information:

(1) A description of how work will occur.

(2) Work must be performed using non-mechanized hand tools to the maximum extent feasible.

(3) Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.

(4) Steps shall be taken to ensure that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding and nesting birds and their habitat.

b) Prior to commencement of tree trimming and/or removal, the applicant shall notify in writing the Executive Director of the Coastal Commission, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.

All tree trimming and tree removal shall be conducted in strict compliance with these provisions. All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location. Any proposed change or deviation from these requirements must be submitted to the Executive Director of the California Coastal Commission to determine whether an amendment to this coastal development permit is required.

B. Prior to conducting regular tree maintenance activities during the non-breeding and non-nesting season, a qualified biologist or ornithologist shall conduct a survey of the trees to be trimmed or removed to detect nests of bird species identified by these provisions to identify specific trees with nests and submit the survey report(s) to the Executive Director and the County of Orange. The applicant shall maintain a database of survey reports that includes a record of nesting trees that is available as public information and to be used for future tree trimming and removal decisions. Tree trimming and/or removal, if necessary may proceed if a nest is present but no courtship or nesting behavior or evidence of that behavior is observed.

C. Any trimming of trees during the non-breeding and non-nesting season containing a nest(s) of the species contained in these provisions shall be supervised by a qualified biologist or ornithologist and a qualified arborist to ensure that adequate nest support and foliage coverage is maintained in the tree, to the maximum extent feasible, in order to preserve the nesting habitat. Trimming of any nesting trees shall occur in such a way that the support structure of existing nests will not be trimmed and existing nests will be preserved, unless the County of Orange, in consultation with a qualified arborist, determines that such trimming is necessary to protect the health and safety of the public. The amount of trimming at any one time shall be limited to preserve the suitability of the nesting tree for breeding and/or nesting habitat.

D. In the event that any protected birds continue to occupy trees during the non-breeding and non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased and given approval to proceed with maintenance operations.

E. Trees or branches with a nest of a state or federal listed species, a California bird species of special concern or a wading bird (heron or egret) as well as raptors that has been active anytime within the last five (5) years shall not be removed or disturbed unless a health and safety danger exists and then shall be replaced with a mitigation ratio of 2:1. The removal of any other tree shall require mitigation at a 1:1 ratio.

F. A tree replacement planting plan for each tree replacement shall be developed to specify the amount of trees to be replaced, tree location, tree type, tree size (no less than 36-inch box size), planting specifications and a five (5) year monitoring program with specific performance standards.

G. Further, these provisions shall be undertaken in compliance with all applicable codes and regulations of the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the Migratory Bird Treaty Act.

8. **Acoustic Monitoring Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall prepare an Acoustic Monitoring Plan (AMP) for review and approval by the Executive Director. The AMP shall include the following elements:

A. To prevent adverse impacts to marine mammals and fish from elevated levels of underwater sound associated with pile driving, the AMP shall outline an underwater hydro-acoustic monitoring program to be implemented during the installation of an initial subset of representative piles in order to establish the limits of the exclusion zone, or the distance between the work site and the locations at which the maximum recorded peak sound pressure level (SPL) or cumulative sound exposure level (SEL) falls below the temporary and permanent threshold shift levels for marine mammals. The maximum SPL or SEL thresholds utilized to determine the exclusion zone shall be based on the best available science on temporary and permanent threshold shift (TTS and

PTS) levels for NOAA's most up-to-date Marine Mammal Acoustic Technical Guidance, and shall indicate the location at which pile driving, or other noise-generating construction-related activities should cease upon the entrance of a marine mammal into the zone where temporary or permanent hearing damage may result.

B. The AMP represents the acoustic monitoring plan that the contractor will be responsible for implementing during pile driving activities. The AMP shall fully describe the testing program, monitoring equipment, the number of proposed hydro-acoustic monitoring sessions, the hydrophone locations along the Dana Point Harbor and in the ocean waters around the harbor, the distance of hydrophones from the active pile driving site, and shall describe the rationale for how the program will capture a representative amount of readings that address changes in bathymetry and substrate (e.g. rocky versus sandy) in the waters surrounding the harbor. In addition, the AMP shall identify protocols for communicating hydro-acoustic monitoring results, including any changes in the boundaries of the exclusion zone, to the approved marine mammal observer (see **Special Condition 9**).

C. Underwater acoustic monitoring devices (capable of recording both SPL and SEL at the frequencies corresponding with the hearing capabilities of special status fish species and marine mammals anticipated to be present in the project area) shall be placed at an array of increasing distances from the site of active pile driving to fully monitor the project area and allow for multiple readings below the SPL and SEL levels associated with temporary and permanent threshold shifts (TTS and PTS).

D. Hydro-acoustic testing locations shall occur, at a minimum, at the far oceanside corners of the harbor dock infrastructure on both the east and west sides to determine the maximum exclusion zone appropriate during pile driving activities taking place at any location within the harbor. Prior to initiation of the hydro-acoustic testing for exclusion zone establishment, background underwater noise shall be measured for a minimum of one full 24- hour cycle (i.e. 6am to 6am) in the absence of construction activities, to determine background sound levels. Sound data collected by the underwater hydro-acoustic testing devices shall be monitored throughout implementation of all pile driving activities, and this directive will be included in the AMP.

E. Using a preliminary exclusion zone of 500 feet from the harbor terminus during the testing phase, the exclusion zone should be adjusted if during hydro-acoustic testing the SPL or SEL threshold is exceeded at a distance beyond the 500-foot exclusion zone and/or if the marine mammal monitor observes dead or injured fish in the vicinity of active pile driving operations. If either of these occur, the exclusion zone shall be expanded or the applicant shall implement additional feasible power reduction and/or sound dampening measures to ensure that the SPL and SEL thresholds are not exceeded.

F. No more than 30 days after the completion of the required hydroacoustic testing activities, the applicant shall submit a final hydroacoustic testing report to the Executive Director for review. The final report shall include a description of all pile driving activities, a description of the acoustic monitoring equipment and protocols that were used during the pile driving activities, the results of the hydroacoustic monitoring, a determination of the necessary marine mammal exclusion zone(s) to be implemented during future pile driving activities, and a description of any observable fish and marine mammal behavior that took place during hydroacoustic testing activities.

G. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

9. **Marine Wildlife Protection Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall prepare a Marine Wildlife Protection Plan (MWPP) for review and approval by the Executive Director. The MWPP shall incorporate the following parameters:

A. Avoidance of pile-driving activities during the breeding season for seals and sea lions if pregnant and/or nursing individuals are present within the exclusion zone.

B. An initial ramp-up period or “soft start” procedure at the commencement or re-commencement of pile-driving activities shall be implemented to avoid potential impacts to marine mammals and fish that may be present, but undetected, in the exclusion zone. The pile driver operator shall commence pile driving operations at the lowest possible power setting with no less than a one-minute interval between each initial strike for a five-minute period. In addition, the pile driver shall employ sound dampening techniques and/or devices (such as wooden blocks, pile cushions, and/or caps) during all pile driving activities.

C. One qualified marine mammal observer (MMO), or more if required to effectively observe the entire exclusion zone, approved by the Executive Director, shall be present to conduct observations during all pile driving activities. The MMO shall be a qualified marine biologist and shall have experience in marine science or marine operations that includes experience observing marine mammals and differentiating normal behavior from signs of injury or distress. The MMO’s duties shall be dedicated to observing marine wildlife only and shall not be assigned other pile driving-related duties. The MMO shall have the appropriate safety and monitoring equipment (e.g. binoculars) adequate to conduct his or her activities and be located at an effective vantage point in order to observe the entire exclusion zone without obstruction (e.g., from the rooftop of existing buildings).

D. To carefully evaluate the effects of pile driving on pinnipeds in the project

area, the first piles to be driven will be located as far as possible from known pinniped haul-out locations in the harbor so that the reaction of the pinnipeds to pile driving activities can be evaluated. The MMO will monitor pinniped reactions during the initial pile driving strikes and then report his/her observations and related information to the Executive Director in the required Hydroacoustic Testing Report (see **Special Condition 8**).

E. It is anticipated that pinnipeds accustomed to living on or hauling out within the Dana Point Harbor, the breakwater and adjacent areas will tolerate some amount of commotion and disturbance associated with the project's pile driving activities.

   i. If the normal commotion of preparing the work site for the day's pile driving does not cause the resident pinnipeds to disperse beyond the exclusion zone, the MMO will record this in the required logs (see subsection (F) below) and take photos of any lingering pinnipeds in the Dana Point Harbor vicinity.

   ii. If pinnipeds remain within the exclusion zone upon completion of soft-start pile driving activities, regular pile driving activities may proceed as long as the pinnipeds do not exhibit any observable signs of injury or distress. If one or more pinnipeds appear injured or distressed, the MMO shall direct pile driving activities to cease and shall immediately notify the Executive Director for further assistance and guidance.

F. The MMO shall maintain a daily log of observed marine mammals and their behavior that shall be of sufficient detail to determine whether the project causes observable effects to marine mammals. A copy of the MMO's logs shall be submitted to the Executive Director within a week of completion of any pile driving event that takes place daily without interruption. At a minimum, the daily log observations shall include:

   i. The date and time that monitored pile driving activity begins and ends

   ii. Piling driving activities (e.g., number of piles being driven and their location on the pier) occurring during each observation period

   iii. Weather parameters (e.g., wind speed and direction, percent sky cover, visibility, precipitation)

   iv. Ocean conditions (e.g., water level fluctuation, tide, etc.)

   v. A map showing species, numbers, location, and, if possible, sex and age class of all observed marine mammals

   vi. A description of any observable marine mammal behavior patterns, including those in response to piling driving activities, including their location and distance relative to the work site, direction of travel, and if possible, the correlation of behavior to sound pressure levels (SPLs)

vii. A description of implementation of any required mitigation measures (e.g., shutdown or delay of piling driving activities)

viii. Other human activities in the area.

G. During hydroacoustic monitoring in accordance with the AMP (**Special Condition 8**), the MMO shall establish a marine mammal exclusion zone from the work site. If the MMO observes any marine mammals within this exclusion zone (except for pinnipeds– see subsections (D) and (E) above), the MMO shall notify the applicant and/or pile driving contractor staff as appropriate and require an immediate shut down of pile driving activities. Such activities may restart once the mammal(s) is observed to leave the exclusion zone or is not observed within the exclusion zone for at least 30 minutes.

H. Once hydroacoustic monitoring is complete, for all subsequent days of pile driving, the outer edge of the exclusion zone shall be determined by the results of the Acoustic Monitoring Plan (**Special Condition 8**).

I. If the exclusion zone is not entirely visible (e.g., due to darkness, fog, etc.), pile driving shall not commence or continue to proceed (if it is underway) until visual conditions have improved.

J. An annual report summarizing the results of monitoring activities shall be submitted to the Executive Director no later than January 30th, for the preceding calendar year throughout the entirety of the project construction period. The report shall include marine mammal observations (see subsection (e) above), descriptions of any project delays or cessation of operations due to the presence in the project area of marine mammal species subject to protection, and an evaluation of monitoring protocol effectiveness.

K. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

The requirements of the approved MWPP are to be implemented during all pile driving and other construction-related activities requiring high decibel noise generation that are part of the scope of the proposed development of this CDP, including during hydro-acoustic testing activities authorized pursuant to **Special Condition 8.**

10. **Construction Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a final Construction Pollution Prevention Plan that identifies (in site plan view) the specific location of all construction areas, staging areas, storage areas, equipment fueling and maintenance areas, and access corridors to these areas. The Construction Pollution Prevention Plan shall, at a minimum, include the following required criteria, specified via written notes within the plan:

A. The location of all water quality BMPs to be implemented during construction and demolition shall be specified, including the proposed repairs to the seawalls and revetments.

B. The footprint of areas within which construction activities and/or staging are to take place shall be minimized to the extent technically feasible, to minimize impacts on public access and the marine environment.

C. Construction activities (including materials and equipment storage, and equipment fueling and maintenance) shall be prohibited outside of the designated construction, staging, storage, and maintenance areas.

D. Construction work and equipment operations below the mean high water line shall be minimized to the extent technically feasible, and, where possible, shall be limited to times when tidal waters have receded from the authorized work areas.

E. All work shall be performed during favorable tidal, ocean, wind, and weather conditions that will enhance the ability to contain and remove, to the maximum extent feasible, construction and demolition debris.

F. All construction methods to be used shall be specified, including methods to keep the construction areas separated from the beach and other public recreational use areas, and a final construction schedule shall be included.

G. Silt fences or equivalent measures shall be installed at the site perimeter to prevent sediment in runoff from construction-related activities from entering coastal waters.

H. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, in order to minimize wildlife entanglement and plastic debris pollution.

I. Turbidity curtains shall be used to contain sediment during in-water construction or demolition, where coastal resources such as benthic communities or eelgrass, may be at risk.

J. Floating booms shall be used to contain any debris discharged into coastal waters; the debris shall be removed as soon as possible, but no later than the end of each day.

K. Tarps or other devices shall be used to capture debris, sawdust, particulates, oil, grease, rust, dirt, and spills from overwater construction and demolition, to protect the quality of coastal waters.

L. All construction materials shall be properly stored and contained so that these products will not spill or otherwise enter the coastal environment.

M. Erosion and sediment control BMPs shall be used to prevent sedimentation impacts to coastal waters during project staging and demolition. BMPs shall include a pre-construction meeting to review procedural and BMP guidelines.

N. Spills of fluids from construction equipment, or other hazardous materials, shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as possible. Disposal within the coastal zone shall require a coastal development permit.

P. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction vehicles shall be serviced immediately. Equipment and machinery shall be serviced, maintained, and washed only in confined areas specifically designed to control runoff and prevent discharges into Dana Point Harbor or the ocean. Thinners, oils, and solvents shall not be discharged into sanitary sewer or storm drain systems.

Q. Equipment washing, refueling, and/or maintenance shall not take place on the tidelands or on over-water structures, to eliminate the possibility that pollutants from these activities may enter coastal waters.

R. 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 take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be 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.

i. An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project site to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials.

S. Vegetable oil-based hydraulic fluids shall be used in heavy equipment used for construction overwater or adjacent to coastal waters, if feasible, particularly for construction lasting 30 days or longer. Standard hydraulic fluids are based on petroleum products, and due to their high aquatic toxicity they pose a risk if leaked or spilled in or near sensitive aquatic habitats. Vegetable oil-based hydraulic fluids are formulated for rapid biodegradability and low aquatic toxicity, and do not bioaccumulate in aquatic organisms.

T. Biodiesel fuel shall be used in heavy equipment used for construction overwater and adjacent to coastal waters, if feasible, particularly for construction lasting 30 days or longer. Diesel fuel may leak or spill from heavy equipment and vehicles used in construction, and where construction takes place in or adjacent to the ocean, diesel poses a risk of aquatic toxicity. Biodiesel is a non-petroleum alternative fuel that is less toxic than diesel fuel, and can be used in construction equipment and vehicles operating in or near sensitive aquatic habitats.

U. The construction site shall maintain good site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and debris; dispose of all wastes properly, using trash receptacles placed on site for that purpose; cover open trash receptacles during wet weather; and remove all construction debris from the tidelands).

V. A construction coordinator shall be designated who is available should questions arise regarding the construction, for both routine inquiries and emergencies. The coordinator's contact information (including a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site in a location that is readily visible from public viewing areas. The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

W. A copy of the approved Construction Pollution Prevention Plan shall be kept at the construction job site at all times, and all persons involved with the construction shall be briefed on its content and meaning prior to commencement of construction.

X. The Coastal Commission's District Office shall be notified at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Y. All construction shall be undertaken in accordance with the approved Construction Pollution Prevention Plan. Any proposed changes to the approved Construction Pollution Prevention Plan shall be reported to the Executive Director. No changes to the approved Construction Pollution Prevention Plan shall occur without a coastal development permit amendment or waiver, unless the Executive Director determines that no coastal development permit amendment or waiver is necessary.

11. **Best Management Practices for Installation and Removal of Piles.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a report documenting the BMPs to be used for installation and removal of piles. The applicant shall comply with the following requirements:

A. Installation of piles shall prioritize driven or hammered methods, if feasible, in order to minimize water quality impacts. Vibratory hammer method shall be prioritized over impact hammer methods. However, if an impact hammer is used, pile driving shall use a soft-start/ramping up BMP with hammer strikes that begin at approximately 40 to 60 percent energy levels with no less than a one-minute interval between each strike for a five-minute period. If a water-jetting method is utilized, silt curtains shall be installed in the work area to contain turbidity where coastal resources, such as benthic communities or eelgrass, may be at risk.

B. Removal of existing piles shall comply with the following requirements, where applicable:

i. Work shall occur during favorable tidal, ocean, and weather conditions that will enhance the ability to remove, to the maximum extent, the full length of the pile and any associated debris generated during demolition.

ii. Removed piles and debris shall be placed directly into a vessel or container suitable for transport off-site.

iii. Degraded pile sections that cannot be recovered from the substrate shall be cut at the deepest feasible elevation to maximize partial-retrieval.

iv. All removed piles and debris shall be moved to an off-site, authorized disposal site. Sediment adhered to the removed piles shall be removed from coastal waters.

v. Piles shall be removed slowly and handled carefully to minimize turbidity. Vibratory extraction shall be prioritized over direct-pull methods, where feasible, in order to limit disturbance.

C. The High Density Polyethylene (HDPE) sleeves proposed to be applied to steel piles shall be periodically monitored during the life of the structure, to ensure that the plastic material maintains its structural integrity, and shall be repaired or replaced if the material begins to deteriorate. A monitoring and maintenance plan for the HDPE sleeves shall be submitted.

12. Materials to Construct or Repair Overwater and In-Water Structures. Prior to issuance of the coastal development permit, the applicant shall submit, for the written approval of the Executive Director, a plan documenting the amount and type of materials proposed to be used to construct or repair all overwater and in-water structures. The applicant shall comply with the following requirements:

A. Specify the proposed type and amount of materials to be used to construct or repair each component of overwater and in-water structures. List the amount of each material (e.g., the surface area of dock decking). Specify the type of building material (e.g., preservative type and preservative retention level for treated wood), including any coating, wrapping, adhesive, sealant, or grout.

B. For dock decking and other above-water dock components, prioritize the use of alternative materials instead of treated wood, such as concrete, fiberglass, metal, plastic (e.g., polyethylene, polypropylene, or PVC), fiberglass-plastic composites (e.g., fiber-reinforced polymer), wood-plastic composites, or naturally decay-resistant untreated wood (e.g., redwood, red cedar, ipe, greenheart, and in some cases Douglas fir), where feasible. An alternatives analysis shall be submitted if treated wood is proposed to be used for any component of the overwater or in-water structures.

C. If treated wood is used for dock decking or other above-water dock components, a type of treated wood shall be selected that minimizes the risk of aquatic and sediment toxicity.

   i. For treated wood decking and other above-water components of overwater structures, the preservative Ammoniacal Copper Zinc Arsenate (ACZA) shall be used to treat components where frequent contact with humans or marine mammals is not expected. Wood treated with the arsenic-free preservatives Alkaline Copper Quaternary (ACQ) or Copper Azole Type C (CA-C) shall only be used for components where frequent human or marine mammal contact will occur, as these preservatives leach substantially more copper (and thus have a higher risk of aquatic toxicity) than does ACZA.

   ii. Specify the preservative retention level of any treated wood that will be used. Treated wood shall be selected that has been treated to the standards of the lowest appropriate Use Category for each component, to ensure that the treated wood does not exceed the minimum preservative retention level. This will help minimize the amount of preservatives that may leach into coastal waters. Use Categories, as specified by the American Wood Protection Association, are based on factors such as whether the wood is subject to saltwater splash vs. immersion, and whether the component is critical and difficult to replace.

   iii. Where available, only treated wood that has been certified as produced for use in aquatic environments shall be used (as indicated by a BMP Quality Mark or Certificate of Compliance), in accordance with industry standards such as the Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments by the Western Wood Preservers Institute, et al.

   iv. The use of wood preservatives containing chemicals that may contribute to any listed water quality impairment of the waterway by that chemical shall be avoided. Copper pollution is often an issue for marinas and harbors, due to

copper leaching into the water from copper-based antifouling paints commonly used on boat hulls. Dana Point Harbor is listed on the Clean Water Act section 303(d) list of impaired waters as impaired by several pollutants, including copper and zinc, which are chemicals contained in the wood preservative ACZA. Copper is also found in the other common water-based wood preservatives approved for use in marine waters. Therefore, the use of preservative-treated wood for overwater and waterfront structures in Dana Point Harbor shall be avoided, unless there is a valid engineering reason to use treated wood.

v. The use of treated wood shall be avoided in locations with a low water circulation or flow rate (typically 0.3 ft./sec. or less, measured at slack tide or low flow conditions). Treated wood shall only be used where water circulation is strong and will provide dilution of any leached chemicals, such as in the surf zone or where tidal flushing occurs.

vi. The use of treated wood shall be avoided in locations where especially copper-sensitive aquatic organisms (such as salmon, trout, herring, Dungeness crab, blue mussels, abalone, oysters, sea urchins, and certain zooplankton) may be present. Dissolved copper is highly toxic to a broad range of aquatic species, and juvenile and larval stages of fish and invertebrates are especially sensitive to copper.

D. Any fill, coating, wrapping, sealant, adhesive, grout, or other materials used in construction or repair of overwater and in-water structures shall be composed of materials that are inert when fully dried and cured, and will not leach chemicals that could contribute to aquatic toxicity.

13. Best Management Practices for Use of Treated Wood in Overwater and In-Water Structures. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a plan documenting the construction-phase and post-construction BMPs to be used for all overwater and in-water structures that are constructed using preservative-treated wood. The applicant shall comply with the following requirements:

A. Employ all appropriate construction-phase BMPs to minimize the discharge of treated wood sawdust and debris to coastal waters. Construction-phase BMPs shall specifically address the use of treated wood in aquatic environments, including materials selection, materials storage, cutting or drilling treated wood,

preservative field-treatment, and coating application. BMPs shall include, but are not limited to:

i. Keep treated wood sawdust and debris out of the water. Because of their large surface to volume area, small treated wood particles (such as sawdust) entering the water contribute a disproportionately large amount to the leaching of preservatives from the structure.

ii. Apply field-treatment of Copper Naphthenate preservative sparingly to cut ends and drilled holes in treated wood, because it does not bond as strongly to wood compared to pressure-treatments. Also avoid drips or spills of Copper Naphthenate into the water.

iii. Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets. The treated wood and treated wood debris shall be stored on impervious pavement or an impervious tarp, and covered during rain events.

iv. If treated wood is sanded or sawcut during demolition, installation, or maintenance, all sawdust and debris generated shall be contained and removed.

B. Employ all appropriate post-construction BMPs addressing long-term use, repair, monitoring, and maintenance of the structure. Post-construction BMPs shall specifically address the use of treated wood in aquatic environments. BMPs shall include, but are not limited to:

i. Install design features (such as bumpers or a protective wearing surface) to protect treated wood components, where appropriate, to minimize the release of treated wood particles through abrasion by vessels or vehicle traffic.

ii. Avoid sanding, scraping, or pressure-washing treated wood decking, to the extent feasible, as this may increase the leaching of wood preservatives and the discharge of treated wood particles into the water.

iii. Deck cleaners and brighteners, especially those containing acid-based or highly oxidizing chemicals (such as bleach, sodium hydroxide, sodium percarbonate, oxalic acid, and citric acid) should not be used on treated wood, as they may increase the leaching of wood preservatives, and contain ingredients that may directly harm aquatic life.

iv. Consider applying a coating (such as a semitransparent penetrating stain or a durable epoxy sealer) to treated wood decking used in overwater structures, to reduce leaching and surface dislodgment of the preservative chemicals. Maintenance and reapplication of the coating shall follow BMPs to minimize the release of treated wood particles and leaching of preservatives into coastal waters.

14. Treatment of Stormwater Runoff. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a final plan documenting that the proposed Treatment Control BMPs shall be sized and designed to adequately infiltrate and/or treat the stormwater runoff from the project's inland areas, in order to protect coastal water resources. The applicant shall comply with the following requirements:

A. Provide a summary of the total surface area of existing impervious surfaces; the impervious surfaces proposed to be replaced; and the proposed new impervious surfaces. If the area of new and/or replaced impervious surfaces is greater than or equal to 50% of the area of the existing impervious surfaces, runoff from the entire developed area (including the existing impervious surfaces) shall be treated by Treatment Control BMPs.

B. Provide calculations documenting that the project will retain on-site (by means of infiltration, uptake by plants, evaporation, or harvesting for later on-site use) the runoff produced by the 85th percentile 24-hour design storm, to the extent technically feasible. If the runoff from the 85th percentile 24-hour storm will not be retained on-site, the applicant shall conduct an alternatives analysis to demonstrate that there are no technically feasible alternative project designs that would substantially improve runoff retention. This may entail converting selected parking areas or landscaped areas to runoff retention BMPs.

C. For each type of surface (e.g., parking lots, roadways, walkways, buildings, and landscaping) provide a summary of the existing, new, or replaced impervious and pervious surface area, and the pollutants of concern expected to be found in runoff from each of these types of surfaces. Provide documentation that the proposed Treatment Control BMPs will be designed to effectively remove the pollutants of concern expected to be found in runoff from the type(s) of surfaces that are tributary to that BMP.

D. Provide calculations documenting that all Treatment Control BMPs shall be sized to treat the runoff flow produced by the 85th percentile 1-hour design storm event, multiplied by a safety factor of 2, from the Drainage Management Area tributary to each Treatment Control BMP. List all values used in the runoff calculations (e.g., the 85th percentile 1-hour storm rainfall depth, the runoff coefficient, and the area of the Drainage Management Area), and state where the rainfall depth value was obtained and how the runoff coefficient values were calculated.

15. **Marina Water Quality Management Plan.** The applicant shall adhere to the marina water quality management requirements of the California Clean Marine Certification (https://cleanmarina.org/) and/or the 401 Certification by the California Regional Water Quality Control Board, San Diego Region, whichever is most protective. In addition, the applicant shall adhere to:

A. Boat Cleaning Management Measures

i. Wherever possible, boaters shall select non-toxic, phosphate-free cleaning products that do not harm humans or aquatic life. Boaters and marina operators shall implement protective practices to prevent cleaning products from entering the water.

ii. The marina shall prohibit in- water hull scraping, or any other process that occurs under water that results in the removal of paint from boat hulls.

B. Solid Waste Management Measures

Implementation of a solid waste reduction and recycling program, including the following Solid Waste Management Measures:

i. Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e., close to the dock).

ii. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e., close to the dock).

iii. All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities.

C. Liquid Waste Management Measures

Implementation of a liquid material control program that provides and maintains appropriate storage, transfer, containment, and disposal facilities for liquid materials commonly used in boat maintenance, including the following Liquid Waste Management Measures:

i. The marina shall provide a secure location to store hazardous wastes, including petroleum products, old gasoline or gasoline mixed with water, absorbent materials, and oily rags.

ii. Containers shall be provided by the marina for anti-freeze, lead acid batteries, used oil, and used oil filters that will be collected separately for recycling.

iii. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers' signage shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.

D. Petroleum Control Management Measures
The marina shall make available to boaters a service that reduces oily discharges from in-board engines. The marina's environmental policies shall encourage boaters to regularly inspect and maintain engines, lines and hoses in order to prevent oil and fuel spills. These policies shall encourage boaters to use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. The use of soaps that could be discharged by bilge pumps shall be discouraged.

E. Public Education Measures

F. The BMPs shall also include enforcement, which may include eviction from the marina. The marina shall provide information about all of the measures in the BMP program, through a combination of signage, tenant bill inserts, and distribution of the BMP program information to new tenants, and each year to repeat tenants. The program information shall be posted at the Harbormaster's Office/Administration Building and at all dock entrances, and shall be included and attached to all slip lease agreements.

16. **Marina Inspection and Maintenance Program.** Throughout the life of the development approved by this permit, the permittee shall exercise due diligence in periodically inspecting (at least once a year) the marina facilities that are subject to this coastal development permit. The permittee shall immediately undertake any repairs necessary to maintain the structural integrity of the docks, pilings, over-water sewer lines, and other utility connections; shall prevent leaks; and shall ensure that pieces of unattached plastic or other debris do not enter the environment. Overwater sewer lines, including all pipes from sewage pump-out facilities and any other pipe that leads to a sanitary sewer, shall be visually inspected at least once per month, and dye- or pressure-tested at least twice every year. The inspections shall be undertaken by boat during periods of extreme low tides. All leaks shall be repaired immediately upon discovery. If the inspections confirm that the use of the plastic or other materials used in the marina is harming marine resources, the use of such materials shall be stopped, and less harmful materials shall be used instead.

17. **Public Access To and Along the Waterway.** Public areas shall remain open for public access, 7 days a week, 24 hours a day. The permittee and the development shall not interfere with public access and use of the public walkways,

the proposed expanded promenade landside of the harbor, the sidewalks along Island Way, and the walking paths in and along the Inner Basin of the harbor (except for the temporary disruptions that may occur during the construction of the permitted development). No gates are permitted, except at the entrance to the gangways or on the docks.

18. **Parking.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a detailed parking plan, for review and approval by the Executive Director, showing the following current and proposed parking components subject to this coastal development permit:

A. Designated Boater Parking. The number of vehicle parking spaces provided and maintained for designated boater parking shall be a minimum of 1,410 parking spaces for the project area of the subject CDP Application No. 5-19-0971 **(Exhibit 9). ** Any future change to the number of boater parking spaces will require an amendment to this permit.

B. Public Parking – The applicant shall maintain a minimum of 466 parking spaces for the public. Any future change to the number or designation (free or metered) of public parking spaces will require an amendment to this permit.

C. Clean Air Vehicles.
   i. Install infrastructure and EV charging stations to provide capacity for a minimum of 24 EV charging spaces prior to completion of the marina construction;
   ii. Designate clean air only parking spaces for a minimum of 32 clean air vehicles with required marked stalls which state: CLEAN AIR/VANPOOL/EV;

D. Maintain a minimum of 168 existing bicycle parking spaces in the project area.

E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

19. **Transition Process for Displaced Boats During and After Dock Reconstruction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a “Slip Transition and Implementation Plan” to assist small-sized boat (30 feet and under) owners to locate a temporary slip for lease during reconstruction. The applicant shall use its best efforts to alert marina tenants displaced by reconstruction of a temporary slip for the displacement of boats sized 30 feet and under by identifying vacant slips throughout Dana Point Harbor. Priority shall be given to provision of slips that accommodate boats less than 25 feet in length.

Immediately following the final phase of reconstruction, the applicant shall extend to previous slip renters of boats 30 feet and under a 30-day right of first refusal for available slips of the same previously leased size. The Slip Transition and Implementation Plan shall include, but not be limited to, the following mitigation measures:

A. Utilize successive reconstruction phases within Dana Point Harbor to secure slips for boats temporarily displaced during the previous phase;
B. Identify an appropriately-sized slip within the harbor; and/or;
C. Until a slip of the previously leased size is identified in the harbor, lease to the displaced boat owner a larger slip (may include end-ties/side-ties) at a rate equal to the currently-posted slip rate of the size previously rented to the displaced boat.
D. If neither an appropriate-sized slip nor larger slip is available to the boater with a boat 30 feet and under in a private lease hold anchorage, the applicant shall make accommodation for a displaced boater in the guest docks.
E. The marina operator will not be required to honor special requests for the specific location of the slip. These procedures shall only apply to:
    i. accommodate the specific vessel that occupied the previously leased slip;
    ii. slip renters in good standing at the start of the reconstruction project; and
    iii. seaworthy vessels (no houseboats, floating homes or inoperable boats).

F. After the above actions have been implemented to accommodate smaller boat slip renters, the applicant may adhere to the Transition Plan between the applicant and the County of Orange.
G. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

20. Dry Boat Storage Requirements During Construction. The applicant shall provide to the Executive Director, an annual monitoring report documenting the reconstruction of the harbor approved pursuant to this coastal development permit and the availability of dry boat storage during construction of the marina. The monitoring report shall include the following information:

a. The number of slips and docks reconstructed within the last year, including a breakdown of the boat slip sizes.
b. The number of slips and docks projected to be constructed within the next 12-month period.
c. The number of boat slips 30 feet and under that will be permanently eliminated and the number of slips 30 feet and under out of commission during the next 12-month period due to reconstruction of the harbor.

d. The number of boat slips under 25 feet that will be permanently eliminated and the number of slips under 25 feet and under commission during the next 12-month period due to reconstruction of the harbor.
e. The current number of dry spaces available for dry storage in Dana Point Harbor.

If, at the time of the annual report, fewer than 5% of the total number of dry boat storage spaces are available for rent to boats 30 feet and under that have been displaced during construction, the applicant shall establish sufficient boat dry storage space so as not to fall below a 5% dry boat storage availability threshold. If the annual report demonstrates that there is less than 5% of dry boat storage spaces available in the marina for boats 30 feet and under that have been displaced during construction, then no marina reconstruction may occur until there is a minimum 5% of the total dry boat storage spaces available for rent to boats 30 feet and under that have been displaced during construction. The report shall be provided annually to the Executive Director, no later than January 30th of each year.

21. **Repair and Removal of the Development**. By acceptance of this Permit, the applicant agrees, on behalf of itself and all other successors and assigns, that should any development approved under this Permit, including but not limited to the gangway, piers, docks, pump-out stations, and associated infrastructure, become threatened due to structural failure, wave action, or other manmade or natural processes, and prior to taking any maintenance or repair actions on any of the development approved in this Permit, the applicant shall conduct a study of the structural stability of the approved development and an analysis of alternatives for correcting any structural deficiencies. This study shall be submitted to the Executive Director in order to determine if the proposed correction requires a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the permittee is required to remove any development authorized by this permit for which any of the following criteria applies: (1) the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to natural hazards, including but not limited to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for use; (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

At the end of the useful life of the development, the applicant or its successors and assigns shall conduct an analysis to determine the least environmentally damaging alternative for decommissioning the development. Removal of the development shall be one of the alternatives considered in any analysis required by this condition. No removal/decommissioning of the approved development shall take place until the applicant submits the required analyses, as stated above, to the Executive Director in order to determine if the removal/decommission of the development requires a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

22. **Resource Agencies.** The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine whether the proposed change shall require a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

23. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement Applicable to the Applicant-Lessee.** By acceptance of this permit, the applicant, Dana Point Harbor Partners, LLC, on behalf of (1) itself; (2) its successors and assigns; and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storms, flooding, sea level rise, earth movement, landslide, and erosion; (ii) to assume the risks to the applicant-lessee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent sublease or assignment of the lease covering the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, agreeing to the application of parts (i) through (v) of this condition to it.

24. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

25. **Final Design Plans for Signage.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, and then implement the approved version of, a Public Access Signage Plan that includes:

A. The installation of adequate informational and directional signage related to the parking areas, walking paths and all boardwalks/sidewalks in the project area.
B. All signs shall be sited and designed to provide clear information without adversely affecting public views and site character. Any existing signs in the project area not meeting such criteria shall be removed.
C. The plans shall include signage details such as the location, materials, design and text for all signs, including all existing signs proposed to be retained.
D. All signage in the proposed project area subject to this coastal development permit shall be, at a minimum, printed in English and Spanish. This includes, but is not limited to, wayfinding signage, harbor and/or marina map signage.
E. The California Coastal Trail (CCT) logo shall be incorporated along the portion of the CCT that traverses the harbor. The applicant shall work with Commission staff to identify the CCT and appropriate locations to place the logo. Commission staff will provide the logo to the applicant.
F. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

26. **Education and Sailing Program for Underserved Youth.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed plan for an education and sailing program in Dana Point Harbor for underserved youth that would include providing the fees necessary to host a minimum of 1,000 youths per year from low-income and other underserved communities that lack equitable access to coastal resources in Orange County for the lifetime of the proposed development.

A. The plan shall include or address the following:
    i. **Program Design.** The program shall either: (1) coordinate the youth sailing program by providing the fees necessary to pay for 1,000 scholarships per year for underserved youth to participate in an established youth education and sailing program or (2) provide the fees necessary to an organization that has an established youth education and sailing program or that will develop such a program that meets the criteria set forth in this special condition for a minimum of 1,000 underserved youths per year. Payment of

fees will commence when the proposed development authorized by this CDP begins and will continue annually, throughout the life of the development approved by this permit.

ii. **Program Eligibility.** The program should include a process for determining eligibility of youth for the program. “Underserved youth” may include youth from low-income households, youth who attend Title 1 schools, foster youth, youth with disabilities, youth of color, and indigenous youth.

iii. **Programmatic Elements.** The submittal shall describe programmatic elements and staffing. Educational topics may include but are not limited to plastic pollution, ocean and marine science, and water quality. Preference will be given to programs that emphasize educational topics and include outdoor component that enable youths to participate in a hands-on sailing or boating experience. Preference will also be given to programs that provide transportation to and from the site, provide an opportunity for multiple experiences for continuing education, and/or work with local community-based organizations to provide culturally sensitive programming.

iv. **Marketing and Outreach Strategy**. In order to increase the number of free opportunities to coastal resources for underserved youth groups from Orange County and substantially increase the awareness of harbor facilities and activities to underserved communities, prior to commencement of the education and sailing program, the applicant shall provide Commission staff with a proposed marketing plan for public outreach to reach underserved youth eligible for the program in Orange County. This can include, but is not limited to, outreach to Orange County school districts with Title 1 schools, afterschool programs and organizations serving youth in underserved communities, online advertisement, e-mail and digital marketing campaigns.

B. The applicant (or the appropriate organization) shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission, detailing the in-lieu fees that have been collected, the education and sailing programs developed and operated, and the number and demographics of youths participating in such programs. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

C. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

27. Marine Debris Reduction Program. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a robust and comprehensive plan to reduce waste and single-use plastics within the project area. The plan shall include commitments consistent with all of the following, and the applicant shall implement the approved version of the plan.

A. The applicant shall install and maintain smoke-free signage along the public areas of the harbor. This includes, but is not limited to, the promenade, parkscape areas, public guest docks, private docks, parking lots, streets, alleys, sidewalks and public access areas around the Marina.
B. The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items) along the waterfront.
C. Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the project area of the proposed development and weekend maximum usage statistics to ensure that adequate bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
D. Participate in the ReThink Disposable Program (RTDP). Within 6 months of the completion of the proposed development, the applicant shall participate in the Clean Water Fund/Clean Water Action ReThink Disposable program in partnership with The Bay Foundation (or a substantially similar program) and maintain it for 5 years. The applicant shall be responsible for the fees needed to participate in the program.
E. The applicant shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission, program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.
F. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

28. **Final Plans**. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit two sets of final project plans to the Executive Director for review and written approval. The final plans shall be in substantial conformance with the preliminary plans submitted with this application, except as they are required to be modified by the special conditions of this coastal development permit. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

The proposed project is located on land and in the water at 24650 Dana Point Harbor Drive in Dana Point in Orange County (**Exhibit 1**). The project site is bordered by the Pacific Ocean to the south, Dana Point Headlands and Old Cove Marine Preserve to the west, Doheny State Beach to the east, and a variety of residential, public park and

visiting-serving commercial developments to the north. The harbor is surrounded by steep bluffs on the north and west sides and Doheny State Beach adjoins the harbor on the southeast side. Interstate-5 is located approximately 2 miles to the east.

The County of Orange is the owner in trust of the tidelands and submerged land areas of the harbor. In 2018, the County entered a 66-year lease with the applicant of this coastal development permit, Dana Point Harbor Partners, LLC (DPHP), for the rental of a substantial portion of the harbor, which expires in 2084. The project area is within the portions of DPHP's lease, with the exception of some riprap and seawall repairs in a portion of the harbor (near the Ocean Institute) that is not within DPHP's lease area. The proposed project area **(Exhibit 2)** includes the Inner Basin, which is divided into the West and East Basins (Planning Area 8, 9 and 10), the Outer Basin (Planning Area 11), and landside areas (Planning Areas 2, 3, 4 and 5).

DPHP requests a permit to replace and reconfigure the Inner and the Outer Basin of the harbor, repair existing seawalls and revetments, replace and reconfigure boater service buildings, replace 1,644 designated boater parking spaces with 1,410 designated boater parking spaces, and relocate and expand the parkscape and public access areas closer to the water at Dana Point Harbor **(Exhibit 3).** DPHP will design, fund, build, and operate the harbor.

Inner Basin Replacement and Reconfiguration

The proposed project includes the replacement of a 2,409 recreational boat slip marina with a 2,254 recreational boat slip marina in the Inner Basin of the harbor. The marina has exceeded the end of its intended life and poses safety and security problems for marina users. According to the applicant's 2005 "Dana Point Harbor Marina Condition Evaluation Report," the design of the Inner Basin docks is what is typically known as the "Huntington" dock system and this type of dock construction historically has a serviceable lifespan of up to 30 years, with a maximum of approximately 38 years. The average age of the current dock facilities in the Inner Basin is just under 50 years. The docks and the pilings in the Inner Basin are deteriorating, require frequent maintenance, and pre-date the American with Disabilities Act of 1990 (ADA) and implementation of ADA requirements. Currently, the Inner Basin dock systems are anchored with both concrete and concrete-filled steel pipe piles that are approximately 12-14 inches in diameter. The report also indicates that all of the steel piles exhibit some level of corrosion, ranging from minor to very extensive, within the region of the piles subjected to repeated tidal inundations. The proposed development would include the removal of chemically treated wood walers from the Inner Basin docks and replacement with a fiber reinforced polymer waler system to be used to connect individual float modules, significantly enhancing the properties of the docks **(Exhibit 4)**. The proposed development includes the installation of pump-out equipment in all individual slips in excess of 30 feet. Boats that are 30 feet in length and under will have access to free pump-out equipment in the Outer Basin at the fuel dock.

Currently, the Inner Basin contains 2,409 recreational boat slips and the average slip length is 30 feet. The applicant has indicated that there is existing harbor boater need

for slightly larger slips. The proposed development will decrease the number of recreational boat slips by 155 slips to 2,254 slips with an average slip size of 32 feet, consistent with the slip count and allocation in the certified LCP for the harbor. Slip mix numbers do not include the slips in the new guest docks, Dana Point Yacht Club docks, O.C. Sailing and Events Center docks, Dolphin Safari docks, Orange County Harbor Patrol docks, commercial fishing slips and sports fishing docks.

The existing and proposed recreational boat slip distributions are as follows:

Boat Slip Length (Feet)	Number of Existing Boat Slips	% of Existing Design	Total Proposed Boat Slips	% of Proposed Design
15	0	0%	37	1.64%
20	36	1.49%	9	0.40%
21	6	0.25%	47	2.09%
22	107	4.44%	0	0%
24	100	4.15%	15	0.67%
25	800	33.21%	699	31.01%
26	234	9.71%	51	2.26%
28	123	5.11%	146	6.48%
30	389	16.15%	476	21.12%
31	1	0.04%	18	0.80%
32	0	0.00%	8	0.35%
33	0	0.00%	2	0.09%
34	2	0.08%	2	0.09%
35	266	11.04%	248	11.00%
36	4	0.17%	4	0.18%
38	0	0.00%	1	0.04%
40	129	5.35%	138	6.12%
41	0	0.00%	3	0.13%
42	0	0.00%	27	1.20%
44	0	0.00%	9	0.40%
45	107	4.44%	141	6.26%
48	0	0.00%	25	1.11%
50	44	1.83%	45	2%
53	13	0.54%	0	0%
55	33	1.37%	0	0%
56	0	0.00%	21	0.93%
58	0	0.00%	51	2.26%
60	15	0.62%	8	0.35%
65	0	0.00%	23	1.02%
Total:	**2409**	100%	**2254**	100%

Additionally, the proposed development also includes replacement in-kind of 16 commercial fishing slips in the Inner Basin and the replacement of 11 Dana Point Yacht Club slips with 13 yacht club slips in the Dana Point Yacht Club in the Inner Basin. At present, there are 11 slips at the Dana Point Yacht Club consisting of six 25-foot slips, two 35-foot slips, two 45-foot slips, and one 80-foot slip. The proposed development will result in 13 slips consisting of seven 15-foot slips, six 25-foot slips, five 42-foot slips, and one 80-foot slip and a boat hoist for smaller vessels.

The proposed development also includes the installation of two public access areas **(Exhibit 5)** that would provide public access to the marina docks. Currently, there is no mechanism for the public to walk on the marina docks, however, the proposed public access areas would enable members of the public to access the harbor waters and, among other recreational opportunities, launch a kayak or stand up paddle board.

Outer Basin Replacement and Reconfiguration

The proposed project includes the replacement of 16 sportfishing charter slips in the Outer Basin **(Exhibit 6).** Similar to the Inner Basin replacement and reconfiguration, the sportfishing charter slips have exceeded their useful life. Currently, the dock space is approximately 1,350 linear feet (lf), which will remain the same with the proposed docks, as the docks will be renovated in their existing location. Operations would remain the same because there is no planned increase in capacity.

In addition, the proposed project includes the replacement of the dock-and-dine guest dock adjacent to the Catalina ferry. The Catalina Express Dock is made of two components: the Catalina Express Dock itself and the adjoining public guest dock. The Catalina Express Dock itself does not need to be replaced as it has not reached the end of its useful life; however, the adjoining public guest dock is proposed to be replaced in its current configuration and will not be expanded.

The applicant proposes the relocation and reconfiguration of the fuel dock and emergency dock. The fuel dock will be renovated and relocated slightly westward of its current location and reconfigured to extend north to south (instead of east to west). The western side of the relocated dock would function as a fuel dock and convenience store, which will serve visiting boaters. The eastern side of this relocated dock includes the installation of a new emergency dock. The emergency dock is proposed to be available for temporary moorage of vessels in distress or those that have been towed into the harbor by the Orange County Harbor Patrol or other private, third party vessel-assist organizations. In addition, the emergency dock will also have public pump-out stations. The proposed development will also include relocation of the bait dock slightly southwest of the current location in the Outer Basin.

At present, the guest docks are located in the western portion of the project area in the Inner Basin. The proposed development will remove the guest docks in the Inner Basin and install 3 new guest docks in the Outer Basin **(Exhibit 6).** The proposed guest docks will be configured to accommodate 43 to 72 boats, depending on the size of the boats, which are comprised of a wide range of vessels that transit the Pacific Coast. The new

docks would be approximately 2,321 lf, representing a 55% increase in capacity from the current guest docks in the Inner Basin. The new location would be significantly more accessible to visiting boaters.

The proposed development includes the installation of a new drive-in boat wash immediately north of the proposed emergency dock in the Outer Basin. The proposed drive-in boat wash would operate by isolating boats within the drive-in boat wash and then cleaning the boat with rotating brushes. Debris from boat wash would be isolated in the boat wash basin, collected and disposed of off-site at an approved upland landfill site outside of the Coastal Zone.

Landside Area

The proposed development includes the replacement of 11 boater service buildings with 10 boater service buildings. Currently, the 11 buildings total 38,000 square feet. The West Cove area currently has four buildings, Island West area has three buildings, and Island East has four buildings. The buildings presently provide office space, yacht brokerage, marina operations, yacht and sailing clubs, boater restrooms, showers, and clothes washers and dryers. The proposed development would replace and reconfigure the boater service buildings, providing a total of 10 boater service buildings for a total of 61,500 square feet. Six would be constructed adjacent to the West Basin, equally distributed on Island West and Cove West, three would be located on Island East, and one would be in the Outer Basin replacing and enhancing the current restroom building. Within the West Cove, the existing four buildings and one small restroom building will be replaced with two 4,500 square foot buildings and one 6,000 square foot building. One of the 4,500 square foot buildings will also offer public restrooms, in addition to each having private restrooms. Island West will preserve the same number of buildings, with two 6,000 square foot buildings and one 4,500 square foot building. Island East will have two 6,000 square foot buildings and one 12,000 square foot building. Finally, a new 6,000 square foot guest boater building will serve guest docks in the Outer Basin replacing and enhancing the current restroom building **(Exhibit 7).**

The proposed development includes the widening of the promenade area, landside of the Inner Basin. The applicant asserts that the proposed development will widen the promenade by three times its current width. In addition, the applicant proposes new and enhanced parkscape and landscape areas along the marina, providing additional useable landscape area along and adjacent to the public promenade along the portion of the marina subject to the proposed development and improving access for disabled members of the public according to ADA requirements **(Exhibit 8)**. In addition, there will be enhanced public park space located near the 6,000 square foot Boater Service Building located next to the Guest Docks in the Outer Basin **(Exhibit 8).** The enhanced park space will provide for a 40-foot wide circular lawn terrace with walkways and steps down to the boardwalk. This will provide an informal gathering space, and passive use space, creating a new place for the public to view and enjoy the harbor.

The applicant proposes the replacement of 1,644 designated boater parking spaces with 1,410 designated boater parking spaces within the project area. The current boater

parking spaces are free to marina tenants, and no fee for the replaced boater parking spaces is currently proposed. There are 466 public parking spaces that will be maintained **(Exhibit 9).** Of the 466 public parking spaces on site today, 435 are free and 31 are metered spaces. Additionally, the applicant proposes to maintain a minimum of 493 spaces for dry boat surface storage adjacent to the project area throughout project construction and following completion of the project.

Seawall/Revetment Repairs Throughout the Marina

The proposed project includes repair of 9,964 lf of seawalls/revetment throughout the Inner and Outer Basins of the harbor **(Exhibit 10)**. Currently, the approximate total length of the seawalls/revetment is 13,711 lf. Most of the seawall consists of two pre-cast concrete components: an upper, vertical concrete seawall and a lower, sloping concrete panel revetment. The remainder of the seawall is composed of a vertical pre-cast seawall, but the lower, sloping panels are not present. In some areas without the sloping concrete panel revetment, a rock armor (riprap) revetment is present. The jetty and the breakwater that surround the harbor are not within the project area and no work is proposed for either of those features at this time.

The applicant is proposing three different types of repairs for the seawalls/revetments, including: Bulkhead Damage Repair (Repair Type 1), Concrete Revetment Repair (Repair Type 2) and Riprap Revetment Repair (Repair Type 3) **(Exhibit 10)**. Repair Type 1 is proposed to address damage including face erosion, spalling/cracking, corrosion staining, or exposed rebar. Type 1 repairs generally include chipping of concrete, cleaning, coating and replacement of rebar, and repair mortar patching over 7,876 lf. For Repair Type 2, the concrete slabs are slipping away, and the applicant proposes to install pressure relief openings similar to existing repairs, resetting displaced panels, grouting to fill voids, and replacing cracked or damaged panels to return them to their original condition. Repair Type 2 involves 6,215 square feet and 1,243 lf of concrete revetment repair length. Repair Type 3 involves repairs to the riprap revetment by pulling the rip rap back up to its as-built condition. Repair to 631 lf of riprap is proposed. In total, the seawall and revetment repair activities would result in temporary impacts over a total length of 9,964 lf and area of 32,367 square feet.

Dana Point Background and History

Dana Point covers approximately 6.75 square miles of land and water in the County of Orange, between the coastal communities of Laguna Beach to the north and San Clemente to the south. Dana Point Harbor is located in the City of Dana Point. The harbor was originally owned by the State of California. However, in 1961, the County of Orange was granted ownership of the harbor through a Tidelands Grant.[1] Today, the harbor is owned by the County of Orange. In 2018, the County entered a 66-year lease with the Dana Point Harbor Partners, LLC (applicant) for a substantial portion of the

[1] Tidelands Grant. Chapter 321 of the Statues of 1961 was an Act of the State legislature

harbor and the applicant is responsible for the proposed development of the subject coastal development permit (CDP).

The harbor was originally an open coast, mixed sand and rocky beach located between the Dana Point Headlands and the San Juan Creek. The area provided habitat for fish and invertebrates, and the sand beach served as roosting and nesting habitat for shorebirds. The natural cove, Dana Cove, was known for a popular surfing wave called "Killer Dana." In the summer of 1966, the County of Orange, in cooperation with the U.S Army Corps of Engineers (USACE) began construction of the harbor. In 1971, USACE constructed a breakwater that would enclose Dana Cove and, subsequently, keeping the swells at bay and destroying the surf wave, "Killer Dana." In addition, a jetty was constructed to the east of the harbor. Both the jetty and the harbor remain today.

On July 31, 1971, the harbor was officially opened and has since been known as a harbor that offers diverse recreational and commercial amenities. Construction on the harbor continued well into the 1970s. In 1997, a Task Force was created by the Orange County Board of Supervisors (OCBS) to modernize the harbor via the development of a complete plan for the harbor's future. In 2014, a local CDP (CDP 13-0018) was approved with conditions for the Commercial Core revitalization that focused primarily on revitalizing upland components of the project, including demolition and construction of upland structures, landscaping, parking, and day-use boater launch, among many other project features.

Dana Point Harbor continues to serve as a marina for recreational boating, a visitor serving commercial location with restaurants and shops, provides a launchpad for fishing and whale watching excursions, provides a home to the Ocean Institute, and offers other aquatic recreational opportunities such as stand up paddle boarding and kayaking.

Standard of Review

The Dana Point Harbor Revitalization Plan and District Regulations was effectively certified by the California Coastal Commission (CCC) on October 6, 2011. The Dana Point Harbor Revitalization Plan and District Regulations is the applicable Local Coastal Program (LCP) addressing land use and projects in the Dana Point Harbor.

Coastal Act Section 30601.3 authorizes the Commission to act upon a consolidated permit for proposed projects that require a coastal development permit from both a local government with a certified LCP and the Commission. This authority is triggered if the applicant, local government, and Executive Director (or Commission) consent to consolidate the permit. The standard of review for such permits is Chapter 3 of the Coastal Act.

The marina reconfiguration and revetment repairs are in the Coastal Commission's retained permit jurisdiction, and the upland boater service improvements, inclusive of the parking, is in the City of Dana Point's jurisdiction **(Exhibit 2)**. The City of Dana Point has a certified Local Coastal Program. On November 19, 2019, the City of Dana Point

submitted a letter to confirm that the City consents to consolidate the permit action. On November 26, 2019, the applicant confirmed its willingness to pursue a consolidated coastal development permit.

In order to avoid potential confusion, inconsistent conditions of approval, and a lengthy timeline due to dual application processes, the City of Dana Point and the applicant support the consolidation of the coastal development permit process in this instance. Therefore, the standard of review for the proposed project is Chapter 3 of the Coastal Act. The certified Dana Point Harbor Revitalization Plan and District Regulations is the Local Coastal Program that may be used as guidance.

Other Agency Approvals

Special Condition 22 requires the applicant to comply with all requirements, requests and mitigation measures of other resource agencies, including the following:

County of Orange

As part of the negotiation of the Orange County lease to the Dana Point Harbor Partners, the County issued an approval-in-concept for the project plans in October 2018. On April 26, 2019, a new set of plans was provided to the County for review and approval-in-concept. The County approved the updated plans and will continue to be involved as the project moves through all of the necessary approvals.

U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 1344) and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates structures or work in navigable waters of the United States. Section 404 of the Clean Water Act regulates fill or discharge of materials into waters and ocean waters.

The applicant submitted the necessary permits from USACE on September 4, 2019 and asserts that the USACE Section 10 Letter of Permission is imminent. The applicant also applied for a Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project (USACE File No. SPL-2019-00326).

Regional Water Quality Certification Board

The applicant received the Clean Water Act Section 401 Water Quality Certification No. R9-2020-0052 (Certification) issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) on April 21, 2020 **(Exhibit 11).**

State Lands Commission

The State Lands Commission confirmed with Commission staff that no formal approval was needed to proceed with the proposed project; however, State Lands was contacted and is in support of the project.

Accordingly, this approval is conditioned to ensure that the project has received all necessary authorizations (or evidence that none are necessary) from other agencies.

B. Public Access and Recreation

The Coastal Act requires that high priority be given to public access to and recreational uses and activities along the coast. In addition, the Coastal Act requires that oceanfront land suitable for recreational use be protected for recreational use and development. Coastal Act Sections 30210-30224 protect public access and recreation. In particular:

Section 30210 states:

> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states:

> Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states:

> Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected....

Section 30213 states:

> Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220 states:

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

Section 30221 states:

> Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future

> demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 states:

> Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 states:

> Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Additionally, Coastal Act section 30604(h) allows the Commission to consider environmental justice when acting on a coastal development permit:

Section 30604(h) states:

> When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

The Certified Dana Point Harbor Revitalization Plan and District Regulations, which is used as guidance for determining consistency with the Coastal Act, includes recreational boating policies that mirror the recreational boating policies of the Coastal Act and provide additional protective policies to ensure the protection of harbor support facilities. The certified LCP policies related to public access, recreational boating and the protection of harbor support facilities state:

> **4.2.2-1** Provide a variety of berthing opportunities reflecting state and regional demand for slip size throughout Dana Point Harbor.
>
> **4.2.2-5** Protect and where feasible expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest slips, club guest slips, pump-out stations and other facilities. A minimum of 42 guest slips shall be maintained in the Harbor.
>
> **4.2.2-6** Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips harbor-wide. However, if conformance with current engineering and Americans with Disabilities Act (ADA) design requirements and/or the provision of larger slips to meet demands requires

a reduction in the quantity of slips in existing berthing areas, those slips should be replaced if feasible in new berthing areas elsewhere in the Harbor (e.g., within a portion of the 'safe harbor' area near the east breakwater). Priority shall be given to provision of slips that accommodate boats less than 25 feet in length. The average slip length shall not exceed 32 feet. If new berthing areas are not available or are limited in size, the net loss of slips harbor-wide shall be minimized and shall not exceed 155 slips.

4.2.2-10 Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:

…

- Maintain space for at least 493 boats to be stored on dry land in Planning Area 1; 400 of these spaces may be provided in a dry stack storage facility. Maintain a minimum of 93 surface boat storage spaces that can accommodate vessels that can not be stored in a dry stack storage building within the Harbor at all times; additional spaces shall be provided where feasible;

…

- Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

4.3.1-1 Protect public coastal access recreational opportunities through the provision of adequate support facilities and services.

4.4.1-5 Public access parking shall not be reduced as a result of new development.

6.1.1-3 Preserve, maintain and enhance existing public accessways and existing areas open to the public. Create new public access opportunities where feasible. (Coastal Act Sections 30210, 30212)

6.1.1-4 Existing, new or improved public access shall be well posted. A comprehensive signage plan shall be implemented in conjunction with new development to inform the public of the availability of and provide direction to coastal accessways, on-site recreational amenities and public parking areas. The County shall coordinate an access signing system to facilitate regional access from Interstate 5 and Pacific Coast Highway.

6.2.1-2 The City of Dana Point and OC Dana Point Harbor shall cooperate to the maximum extent feasible to provide a convenient shuttle service to link Dana Point Harbor with the Town Center and reduce energy consumption and vehicle miles traveled wherever feasible. (Coastal Act Sections 30252, 30253)

6.2.1-5 Bike racks shall be incorporated into the design of the Harbor wherever feasible.

6.2.2-4 Ensure accessibility of public transportation for elderly and disabled persons.

6.2.3-10 Maximize public access to and along the waterfront and bulkhead. As a goal, maintain and where necessary establish continuous, uninterrupted public access along the waterfront and bulkhead, except along those segments of the bulkhead in the Marine Service Commercial area where provision of such access would interfere with boat launch and repair operations (in which case connecting detours shall be provided around those areas). Remove existing obstructions to public access along the waterfront and bulkhead and establish new public accessways through those areas.

6.2.3-11 Pedestrian walkways and trails shall provide connection points to off-site, existing or proposed walkways/trails, including integration with the California Coastal Trail.

6.2.4-1 All parking facilities shall be designed to include safe and secure parking for bicycles.

6.3.1-1 Encourage the provision of a range of recreational facilities and programs to meet the needs of Harbor visitors.

6.3.1-6 Maintain, enhance and where feasible, expand places to hand launch small nonmotorized watercraft and provide necessary parking, as well as opportunities to rent and store such watercraft. Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.

Recreational Boating

The project includes the replacement and reconfiguration of a recreational boating marina and reconstruction of a new marina in a similar configuration but with a net loss of 155 slips (or about 6.5% of the current number), and a modification in the slip size distribution. The marina is located in public waters, but is a privately operated facility with berthing slips available to the general public on a month-to-month fee basis. Upon completion of the proposed development, the marina slip leases will remain available to the general public. The proposed project does not include any proposed change to the method of leasing.

The slip size distribution in Dana Point is important in terms of recreational boater access since pricing is based on the size of the slip. Current slip rates in the marina at

Dana Point Harbor range from an average of approximately $236 to $1362 per month depending on the length of the slip.[2] The following are the current slip rates:

Space Size	Max Vessel LOA	Base Rent Length of Dock	Add'l Cost Per Foot
Inside Tie	22' - 28'	22' = $236.06	$10.73
21'	23'	21' = $286.02	$13.62
22'	24'	22' = $317.02	$14.41
24'	26'6"	24' = $355.92	$14.83
25'	27'6"	25' = $372.00	$14.88
26'	28'6"	26' = $399.10	$15.35
28'	30'6"	28' = $474.88	$16.96
30'	33'	30' = $546.00	$18.20
35'	38'6"	35' = $673.05	$19.23
40'	44'	40' = $787.20	$19.68
45'	49'6"	45' = $903.15	$20.07
50'	55'	50' = $1,040.00	$20.80
52'	57'	52' = $1,071.20	$20.60
55'	60'6"	55' = $1,124.75	$20.45
60'	66'	60' = $1,362.00	$22.70
End Tie	Dock Ft + 10%	Varies	$22.90

The existing slip configuration within the proposed redevelopment marina area contains a total of 2,409 recreational boat slips in the Inner Basin. Of this total, 1795 slips (approximately 75% of the existing total) are 30 feet in length or less. The proposed project will reduce the total number of recreational boat slips to 2,254 slips, with 1,480 slips (approximately 66% of the new total) 30 feet in length or less. There are currently no slips less than 20 feet in length in the marina; 37 new slips of 15 feet in length will be included in the new marina. Large boat slips (greater than 30 feet) will increase from the current total of 614 to a proposed total of 774. According to the applicant the individual slip distribution (current and proposed) for the Inner Basin is as follows:

[2] The Marina at Dana Point: Boat Slips and Leasing. https://themarinaatdanapoint.com/boat-slips-and-leasing

Boat Slip Length (Feet)	Number of Existing Boat Slips	% of Existing Design	Total Proposed Boat Slips	% of Proposed Design
15	0	0%	37	1.64%
20	36	1.49%	9	0.40%
21	6	0.25%	47	2.09%
22	107	4.44%	0	0%
24	100	4.15%	15	0.67%
25	800	33.21%	699	31.01%
26	234	9.71%	51	2.26%
28	123	5.11%	146	6.48%
30	389	16.15%	476	21.12%
31	1	0.04%	18	0.80%
32	0	0.00%	8	0.35%
33	0	0.00%	2	0.09%
34	2	0.08%	2	0.09%
35	266	11.04%	248	11.00%
36	4	0.17%	4	0.18%
38	0	0.00%	1	0.04%
40	129	5.35%	138	6.12%
41	0	0.00%	3	0.13%
42	0	0.00%	27	1.20%
44	0	0.00%	9	0.40%
45	107	4.44%	141	6.26%
48	0	0.00%	25	1.11%
50	44	1.83%	45	2%
53	13	0.54%	0	0%
55	33	1.37%	0	0%
56	0	0.00%	21	0.93%
58	0	0.00%	51	2.26%
60	15	0.62%	8	0.35%
65	0	0.00%	23	1.02%
Total:	**2409**	100%	**2254**	100%

According to the applicant, the proposed modification of slip size distribution is due to several factors. The current marina was constructed almost 50 years ago and new or reconstructed marinas are required to comply with the current Layout and Design Guidelines for Marina Berthing Facilities of the California Department of Boating and Waterways (DBW)[3] to improve accessibility and safety. Incorporation of the current design requirements, which require wider slip or berth sizes, wider docks and fairways (interior channels between docks), will result in fewer slips being redeveloped in any given water space. Furthermore, marinas have been increasing berth sizes to accommodate the wider power boat widths in order to provide the greater flexibility for berthing of recreational boats (sailboats and power boats). Another factor is the design requirements imposed under the Americans with Disabilities Act (ADA), which requires wider fingers, docks, and longer access ramps to accommodate wheelchair access. For instance, finger piers that lead to accessible slips that are currently 36 inches wide must be at least 60 inches wide. Additionally, ADA accessible gangways must be at least 80 feet long. Therefore, compliance with ADA access requirements require wider gangways, platforms, and finger piers, resulting in less area for slips and thus the loss of slips.

The current DBW guidelines and ADA requirements partially explain the rationale for the slip reduction from 2,409 to 2,254. However, although the above-mentioned factors influence the slip size distribution to a certain degree, another factor that influences the proposed slip reconfigurations is local market demand. Due to changes in the harbor-specific needs of the public (such as ADA-compliant access), and based on harbor waitlists, showing current harbor boaters' needs for slightly larger slips, the proposed marina replacement and reconfiguration includes adjustments to the number and location of slips throughout the harbor. To meet sustained market demand for a larger range of slips across all slip sizes, the applicant is proposing to reduce the number of smaller slips (30 feet and under) and increase the larger size slips (greater than 30 feet).

Regionally, since the early 1990s, marinas have been renovating their aging facilities and reconfiguring their slip size distribution to favor larger boats—boats 36 feet and larger– because of the decrease in demand for small boat slips and the increase in demand for larger slips. This trend has been reflected in a number of local marina renovation developments. For instance, in the early 1990s, Ventura Isle Marina, in the City of Ventura, reduced their total number of slips from 597 slips to 467, and reduced the slips 25 foot and under from 26% to 9% of the total. The average slip size increased from 31.9 to 38.2 feet (Coastal Development Permit No. 4-91-55). In 1999, Sunset Harbor Marina (i.e. Sunset Aquatic Park) in Seal Beach, reduced the total number of slips from 255 to 240. Slips that were 25 feet and under, which constituted approximately 30% (78) of the total, was reduced to 16% (40) of the total. Slips 35 feet and larger were increased with the overall slip length increasing from 30.5 to 32.8 feet

[3] Layout and Design Guidelines for Marina Berthing Facilities of the California Department of Boating and Waterways. http://dbw.ca.gov/pages/28702/files/guide05.pdf

(Coastal Development Permit No. 5-99-244). Under a Port of Los Angeles coastal permit, Cabrillo Way Marina was reconfigured reducing the number of slips from 625 to 614. Slips that were 25 feet and under, that originally constituted 18% of the total, were eliminated. Cabrillo Marina provides no slips 25 feet or under and the average slip size increased from approximately 34.5 to 42 feet. More recently, Coastal Development Permit 5-15-1426 for the removal and construction of boat slips in Marina del Rey Basin D and Basin E, Lease Parcel 28 was approved in 2016 for a reduction of 6% of boat slips 30 feet and under (from 50% to 44% of the total slips). Although there is demand for larger slips, the continued loss of small boat slips could have an adverse impact on boating opportunities within the harbor by reducing the number of slips and smaller slips available to the public.

Overall, the recreational boat marina in Dana Point Harbor will serve boats 30 feet or less with 66% of its total recreational slips, which is a decrease of approximately 9%. While the certified LCP does not prohibit the loss of an exact amount of small boat slips, it does state that the average slip length shall not exceed 32 feet and that the net loss of slips harbor-wide shall be minimized and shall not exceed 155 slips. The proposed development will result in an average slip length of 32 feet and a net loss of 155 slips, from 2409 to 2254 slips, which is consistent with the certified LCP Policy 4.2.2-6.

By upgrading the older marina with new ADA compliant docks, providing new pump-out stations, and providing a wide range of slip sizes, the project will enhance the anchorage and improve and encourage recreational boating in the Dana Point Harbor as a whole. However, the proposed project could have the effect of reducing public recreational boating opportunities and lower cost visitor and recreational opportunities within Dana Point due to the net loss of total slips and net loss of smaller slips. To encourage lower cost boating opportunities and the introduction of boating to recreational boaters it is necessary to protect the provision of small slips within the water as well as provide greater dry storage opportunities out of the water. The Commission does not regulate the rates at which marinas rent their slips to the public, however, the Commission can regulate the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing the correct balance between the size of slips and the boaters' demand for slips in order to encourage increased recreational boating and protect existing boating opportunities including the provision of smaller slips. It is important to ensure that anchorages continue to provide a mix of slip lengths to provide a full range of boating opportunities for all boaters, consistent with certified LCP Policy 4.2.2-1 to provide a variety of berthing opportunities reflecting state and regional demand.

Section 30224 of the Coastal Act encourages increased recreational boating use of coastal waters, and Section 30213 of the Coastal Act encourages developments with lower cost visitor and recreational facilities providing public recreational opportunities. As a result of market demand and ADA requirements as discussed above, the proposed slip reduction is consistent with certified LCP Policy 4.2.2-6, which states that net loss of slips shall not be greater than 155, and Policy 4.2.2-1 to provide berthing opportunities to reflect market demand. However, to mitigate for the impacts affiliated with loss of total number of recreational marina slips and loss of smaller slips, **Special Condition 26**

requires the applicant to provide funding for 1,000 youths a year to participate in an education and boating program for underserved youth and is further discussed in the environmental justice subsection below.

In addition, the proposed project would also install three guest docks in the Outer Basin, which will greatly enhance public and transient boater access, consistent with certified LCP Policy 4.2.2-5. The proposed guest docks will be configured to accommodate 43 to 72 boats, comprised of a wide range of vessels that transit the Pacific Coast. The new docks are approximately 2,321 lf, which represents a 55% increase in capacity from the current guest docks in the Inner Basin and improved access flexibility from fixed-length slips. The applicant asserts that the new docks will temporarily accommodate mooring of vessels during the construction phases of the proposed project. Following construction, the Outer Basin guest docks would be a permanent feature and include pump-out facilities. The docks would provide transient boaters access to the harbor and surrounding coastal amenities such as restaurants, hotels, and other services on land.

Pedestrian Access Along the Marina

In addition to the guest docks in the Outer Basin, which will enhance public and transient boater access, the proposed development also includes the installation of two public access areas in the Inner Basin that would provide public access to the marina docks. At present, the public cannot walk onto the marina docks. From these two public access areas, members of the public may access the harbor waters and, participate in recreational activities, such as walking, birdwatching, observing harbor traffic and moored vessels, and launching a kayak or a stand up paddle board. Currently, the only place in the harbor where the public can launch kayaks or stand up paddle boards is at Baby Beach **(Exhibit 5).** This will greatly enhance and improve public access to the harbor waters, consistent with Coastal Act Section 30220 and certified LCP Policies 4.3.1.-1 and 6.3.1-6.

The proposed development will relocate the parkscape areas closer to the water to provide a more integrated and activated waterfront experience for the public in the Inner Basin and near the guest docks in the Outer Basin. In the Inner Basin, the designated boater parking spaces will be reconfigured and moved landward to allow for useable landscape area to be installed near the docks and introduce large open lawn areas for flexible uses, consistent with certified LCP Policy 6.2.3-10 to maximize public access to and along the waterfront. The lawn is bordered by a continuous 18” high seat wall along the promenade. The applicant asserts that the current promenade will be expanded to three times its present width to improve public access, including access for members of the public with limited physical abilities according to ADA standards, consistent with certified LCP Policy 6.2.2-4. In the Outer Basin, slightly north of the proposed guest docks, the applicant will incorporate landscape improvements, including a new circular lawn to provide passive seating and a gathering area for the public. Installation of the proposed landscape and parkscape areas are consistent with Coastal Act Section 30221 to protect oceanfront land suitable for recreational use and Coastal Act Section 30223 to reserve upland areas to support coastal recreational uses. The public promenade and open space areas are proposed to be open 24 hours per day. To

ensure that public access along the promenade adjacent to the marina is maximized, **Special Condition 17** requires that the public promenade and walkways shall remain open 24 hours per day 7 days per week for public access, consistent with certified LCP Policy 6.1.1-3. The development shall not interfere with public access and use of the public walkways, the proposed expanded promenade landside of the harbor, the sidewalks along Island Way, and the walking paths in and along the Inner Basin of the harbor (except for the temporary disruptions that may occur during the construction of the permitted development). In addition, no gates are proposed, except at the entrance to the gangways or on the docks where private boats will be located.

As discussed above, the proposed project will expand and maintain walkways in the harbor. In addition, the California Coastal Trail (CCT) traverses the harbor. The CCT is a trail that makes the coast more accessible, encourages non-motorized transportation, and fosters appreciation and stewardship of the scenic and natural resources of the coast. In particular, the CCT runs along Island Way, the island areas of the Inner Basin and along the current public promenade adjacent to the Inner Basin. To enable broader access and participation in the harbor to a broader community, signage indicating public access in the harbor should be in more than just one language. The two languages most-commonly spoken in Orange County are English and Spanish. To ensure that the public is informed of public access and the CCT, **Special Condition 25** requires all public access signage to be installed at several locations in the harbor where it is not already displayed, to be printed in, at a minimum, English and Spanish, and to include the CCT logo where appropriate, consistent with certified LCP Policy 6.2.3-11.

In addition, to preserve and maintain access to the public tidelands, **Special Condition 24** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property. The public must be allowed to access public property at all times, despite any built improvements, consistent with Coastal Act Section 30210.

Vehicle Parking

At present, there are 1,644 designated boater parking spaces within the landside area of this subject CDP. The proposed development will reconfigure the designated boater parking and will result in 1,410 designated boater parking spaces in the project area of this subject CDP, plus an additional 93 parking spaces approved by local CDP 13-0018 for a total of 1,503 designated boater parking spaces. This reduction in designated boater parking spaces is proportional to the net reduction in boat slips and meets the LCP requirement of 0.6 vehicle parking spaces per boat slip, 2 designated parking spots per commercial fishing slip, and one parking spot per 250 square feet of boater service building space. While not part of the proposed project, local CDP 13-0018 includes the reconfiguration of all current surface parking areas in the adjacent Commercial Core area and will provide additional parking. As proposed, the parking reconfigurations for Designated Boater Parking will be consistent with certified LCP Policy 4.2.2-10 required parking for the harbor.

Currently, there are also 466 public parking spaces in the project area. Of the 466 parking spaces, 435 are free and 31 are metered parking spaces. The applicant has not proposed any changes to these public parking spaces, and the parking spaces will be maintained in the current configuration, consistent with certified LCP Policy 4.4.1-5 to maintain public access parking.

Bicycle Parking

In Dana Point Harbor, Dana Point Harbor Drive is identified on both the Orange County and City of Dana Point Master Plan of Bikeways as a Class II Bikeway (on-street bike lane). The Class II Bikeway provides a restricted right-of-way in the established paved area of highways designated for the exclusive or semi-exclusive use of bicycles. Dana Point Harbor Drive has designated bicycle paths on both sides of the street, continuing from Pacific Coast Highway to the traffic circle, adjacent to OC Sailing and Events Center. While the proposed promenade expansion does not include allocated biking path lanes, the harbor should be able to accommodate bicycle parking for harbor users who commute by bicycle. The applicant asserts that there are currently 14 bicycle racks throughout the project area, which can accommodate approximately 12 bicycles per rack, for a total of 168 bicycles in the project area, consistent with certified LCP Policies 6.2.1-5 and 6.2.4-1. If 1,410 designate boater parking spaces is used as a baseline for necessary bicycle parking spaces within the project area, then the Guide to the 2019 California Green Building Standards Code for Nonresidential[4] bicycle parking standards suggest that the project area should have at least 71 bicycle parking spaces in the project area. As such, the applicant meets the requirement of this guidance.

Free Trolley

In addition, there is a free trolley that usually runs from late May/early June through Labor Day and also connects the harbor to other free city shuttles.[5] The free trolley service provides a way to access the harbor without a personal vehicle, which is consistent with certified LCP 6.2.1-2 to reduce energy consumption and vehicle miles traveled. However, based on the State of California's Public Transit COVID-19 Guidance, the Summer 2020 Dana Point Trolley Program was canceled, and it is unknown when the trolley service will begin again.

Dry Boat Storage

Currently, dry boat storage is available outside of the project area, in the adjacent Embarcadero area of the harbor. The applicant asserts that the current dry boat storage

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[4] Guide to the 2019 California Green Building Standards Code for Nonresidential. https://codes.iccsafe.org/content/GCGBSCNR2019/guide-to-the-2019-california-green-building-standards-code-includes-verification-guidelines-nonresidential

[5]2020 Proposed Summer Trolley Service. https://www.danapoint.org/department/public-works-engineering/2020

can accommodate approximately 500 boats and that they would enter a lease prior to commencing construction with the neighbor that operates the dry boat storage area. Although not a part of the project area for this CDP, dry boat storage will affect boat users who are affected by the development of this CDP. As such, the applicant has proposed to configure the Embarcadero dry boat storage area for the surface storage of at least 493 boats, consistent with certified LCP Policy 4.2.2-10. They assert that at no time during the Embarcadero lease will there be less than 493 surface storage spots available within the harbor, thereby reducing negative impacts to small boat owners. Additionally, the applicant has stated that they may temporarily use the surplus 81 parking spaces on the West Island (west side of Island Way) for additional dry boat storage spaces if necessary.

In addition to the 493 surface storage spot policy requirements of the LCP, the policy also says that 400 of these spaces may be provided in a dry stack storage facility. One of the special conditions in local CDP 13-0018 requires that a CDP be submitted for the Dry Boat Storage Building in Planning Area 1 to the Coastal Commission within 6 months of the issuance of building permits for the construction of the Commercial Core podium structures, including Commercial Core buildings 7, 8 and 9 adjacent to the East Basin. The applicant asserts that the building permits for the Commercial Core podium structures have not been issued yet.

In order to ensure that boaters who rely on small slips to store their vessels within the public marina are provided an opportunity to do so during and following construction, the Commission imposes **Special Condition 19,** requiring the applicant to submit for the review and approval of the Executive Director, a “Slip Transition and Implementation Plan” to assist small-sized boat (30 feet and under) owners to locate a temporary slip for lease during reconstruction. Per the certified LCP, priority shall be given to boats under 25 feet. The applicant shall use its best efforts to alert marina tenants displaced by reconstruction of a temporary slip for the displacement of boats sized 30 feet and under by identifying vacant slips throughout Dana Point Harbor if a slip is not available in the tenant’s basin under reconstruction. Immediately following the final phase of reconstruction, the applicant shall extend available slips of the same previously leased size to previous slip renters of boats 30 feet and under, with a 30-day right of first refusal. After the actions of the condition have been implemented to accommodate smaller boat slip renters, the applicant may adhere to the Transition Plan between the applicant and the County of Orange which the applicant states gives prioritization of future slip space based firstly on the order and longevity of current licensees under existing Slip Licenses and secondly to individuals identified on existing waitlists without discrimination. **Special Condition 20** will ensure the continued opportunity for lower cost recreational opportunities during and following construction for boaters who may be displaced spatially or economically from the existing wet slips. The condition matches a special condition imposed under Coastal Development Permit 5-15-1426 for the removal and construction of boat slips in Marina del Rey and requires the applicant to provide an annual monitoring report documenting the reconstruction of the marina approved pursuant to this coastal development permit and the availability of dry boat storage during construction of the marina. If at the time of the annual report, there is

less than 5% of the total number of dry boat storage spaces available for rent, to owners of boats 30 feet and under who have been displaced during construction, the applicant shall establish sufficient boat dry storage space so as not to fall below a 5% dry boat storage availability threshold. If the annual report demonstrates that there is less than 5% of dry boat storage spaces available in the marina, then no marina reconstruction may occur until there is a minimum 5% of the total dry boat storage spaces available for rent to owners of boats 30 feet and under who have been displaced during construction. The report shall be provided annually to the Executive Director, no later than January 30th of each year.

Environmental Justice

The proposed project raises environmental justice concerns related to the inequitable distribution of public access and recreation benefits in California broadly and Dana Point Harbor specifically. Throughout California's history, low-income communities, communities of color, and other marginalized populations, generally referred to here as "underserved communities," have faced disproportionate social and physical barriers that disconnect them from coastal access and recreational opportunities. Equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices.[6] Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.[7] Ensuring maximum and equitable public access to the California coastline (as required by Coastal Act Sections 30210 and 30213) is consistent with the environmental justice principles reflected in the Coastal Act. Section 30604(h) states: "when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state."[8] The Commission adopted an environmental justice policy in March 2019, committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal benefits are accessible to everyone. In approving the policy, the Commission recognizes that equitable coastal access is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how.

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[6] Robert Garcia & Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, Stanford Journal of Civil Rights and Civil Liberties. Pages 143 (2005)

[7] 39 Reineman, et al., Coastal Access Equity and the Implementation of the California Coastal Act , Stanford Environmental Law Review Journal, v. 36. Pages 96-98. (2016)

[8] Government Code Section 65040.12(e) defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

Historic inequalities, as well as California's growing population, changing demographics, socio-economic forces, judicial decisions, and policy choices continue to shape development patterns and population shifts that widen the disparity gap. Not only is equitable access to the coast for all Californians essential, so is protecting coastal natural resources for future generations. People become engaged in the protection of the coast when they have a connection with the coast. Robust public access and environmental justice policies thus bolster the Coastal Commission's mission to protect and enhance the coast for present and future generations.

The proposed project improves visitor serving and recreational facilities that would increase coastal recreation and access benefits available primarily to higher income households, particularly in terms of recreational boating and sailing. Boat slip rentals average approximately $236 to $1362 per month, depending on the length of the dock and require access to a private vessel.

To increase coastal recreation and access benefits to underserved communities who cannot afford or have limited access to the recreation amenities at the harbor, **Special Condition 18** requires the applicant to maintain a minimum of 466 parking spaces for the public. Any future change to the number or designation (free or metered) of public parking spaces will require an amendment to this permit. Consistent with certified LCP Policy 6.1.1-4 to ensure public access is well posted, and additionally, to enhance and highlight coastal access to a broader community, the applicant shall submit a Public Access Signage Plan, inclusive of signage in English and Spanish in several locations in the harbor and with the California Coastal Trail (CCT) logo where the CCT traverses the harbor, as required in **Special Condition 25**. To further increase access benefits to underserved communities, the applicant will provide for an education and sailing program for 1,000 underserved youths each year for the lifetime of the proposed development, consistent with certified LCP Policy 6.3.1-1 which encourages the provision of a range of recreational programs to meet the needs of harbor visitors. **Special Condition 26** requires the applicant to contribute annual fees for 1,000 youths from underserved communities to participate in an education and sailing program. In collaboration with an organization, which is designed to educate youth, with targeted outreach to recruit students from Title I schools. The program will include educational content on marine/ocean science, ocean recreation, marine debris, coastal access issues, and other ocean-related environmental issues targeted to either elementary, middle-school, or high school ages from underserved communities in Orange County. The program must also include indoor and outdoor components to provide an experiential ocean education and sailing experience for the participants, requiring that at least 10% of students gain a hands-on sailing experience.

The reconstruction of the marina presents an opportunity to provide an educational and recreational program to benefit youth from underserved communities in the harbor by providing mitigation for the loss of slips and reduction in recreational boating opportunities. Additionally, the program will provide an opportunity to increase coastal access benefits for underserved communities that have been historically excluded from the coast. The proposed education and boating program for youth will increase

recreational boating use and provides lower cost and free recreational opportunities consistent with Sections 30213, 30220 and 30604(h) of the Coastal Act.

As conditioned, the project is consistent with the Coastal Act public access and recreation policies sited above.

C. Marine and Coastal Resources

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states, in relevant part:

> (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
>
> …
>
> *(3)* In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities
>
> …
>
> (b) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary…

The Coastal Act defines fill as follows:

> **Section 30108.2** "Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

The Certified Dana Point Harbor Revitalization Plan and District Regulations, which is used as guidance for determining consistency with the Coastal Act, includes nesting and foraging policies and provide additional protective policies to ensure species and habitat protection. The certified LCP policies related to nesting and foraging habitat state:

7.1.2-2 While evaluations of the trees located throughout Dana Point Harbor do not rise to the level of ESHA, they do provide important habitat which should be protected. The purpose of these tree trimming policies is to ensure the long-term protection of bird breeding, nesting and roosting habitat for bird species listed pursuant to the Federal or California Endangered Species Acts, California bird species of special concern and wading birds (herons or egrets) as well as owls and raptors which have an especially valuable role in the overall coastal ecosystem.

Ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting and nesting habitat of bird species listed pursuant to the federal or California Endangered Species Acts, California bird species of special concern and wading birds (herons or egrets) as well as owls or raptors. The trimming and/or removal of any trees that have been used for breeding and nesting by the above identified species within the past five (5) years, as determined by a qualified biologist or ornithologist shall be undertaken in compliance with all applicable codes and regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service, the U.S. Migratory Bird Treaty Act and shall be conducted under the parameters described in the Dana Point Harbor Tree Maintenance Procedures as approved by the Coastal Commission as a part of the Implementation Plan.

7.1.2-3 OC Dana Point Harbor shall prepare Tree Maintenance Procedures for the trimming and/or removal of trees consistent with Policy 7.1.2-2 above. The procedures shall include, but not be limited to, the following provisions:

> • Tree trimming or tree removal when necessary, shall be conducted only during the non-breeding and non-nesting season (October through December) of the identified bird species unless the County of Orange in consultation with a qualified arborist and with review and comment from the Audubon Society determines that a tree causes danger to public health and safety. A health and safety danger shall be considered to exist if a qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The County shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season.

• Trees or branches with a nest of a state or federal listed species, a California bird species of special concern or a wading bird (heron or egret) as well as owls or raptors that has been active anytime within the last five (5) years shall not be removed or disturbed unless a health and safety danger exists.

• The removal of any tree shall require mitigation at a 1:1 ratio. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree location, tree type, tree size (no less than 36 inch box size), planting specifications and a five (5) year monitoring program with specific performance standards.

7.1.2-4 If an active nest of any bird species listed pursuant to the federal or California Endangered Species Act, California bird species of special concern or a wading bird (herons or egrets) as well as owls or raptors is found, construction activities within 300 feet (500 feet from any identified raptor nest) shall not exceed noise levels of 65 dB peak until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. Surveys for the above bird species during their breeding season shall be conducted by a qualified biologist prior to commencement of construction.

Marine Species Impact

Coastal Act Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Section 30231 requires that the biological productivity and quality of coastal waters be maintained to a level appropriate to maintain optimum populations of marine organisms and for the protection of human health.

In 2006, a Program Environmental Impact Report (FEIR 591) was prepared for the overall project (landside and waterside areas). In 2012, an addendum to the FEIR 591 and a Subsequent EIR (SEIR 613) were certified by the Orange County Board of Supervisors, stating that they provided an appropriate program level analysis of the Dana Point Harbor LCP as required by California Environmental Quality Act Guidelines.

The applicant conducted a Biological Resources Assessment, dated August 1, 2019 to supplement and update the previous biological resource reports by Coastal Resources Management Inc. (CRM) in 2007 and 2010. The 2019 report was based on side-scan sonar and visual SCUBA surveys of the harbor on November 27 and 28, 2018. A follow-up SCUBA survey was conducted to confirm portions of the sonar record on December 19, 2018. The survey team noted flora and fauna present within each survey location of the harbor, however the 2018 divers performed a survey of approximately one-third of the area previously surveyed by CRM. According to the 2019 report, the soft-bottom habitat throughout the marina and harbor basins ranged from fine sands to silt. The report indicates that the most frequently occurring species along the soft-bottom benthic habitat are predatory sea slugs and solitary tunicate. The soft-bottom epibenthic community exhibited low species richness throughout the harbor. In addition, there are

also intertidal and subtidal hard substrates including rock quarry stone, rip rap, pilings and docks, and exposed reef structures present in many areas of the harbor. Piling and docks, present throughout the marina, provide attachment surfaces for algae and invertebrates. The report indicates that many fish, mollusks, and other invertebrates were observed throughout the survey. On occasion marine mammals were observed within the harbor, such as adult male, female, and juvenile California sea lions and a pod of three common dolphins. The 2019 report concludes that the project is not believed to pose any significant threats to biological resources.

To ensure that all biological surveys are up-to-date and the results are still valid, **Special Condition 6** requires the applicant to conduct an Ocean Floor Resources Survey that is sufficiently comprehensive as to identify all macrofaunal and macrofloral communities and substrate present, prior to issuance of the coastal development permit. Construction activity, such as pile-driving, may cause turbidity in the water and would generate noise in the water column, potentially disturbing marine species. The applicant proposes to conduct pre-construction marine biological surveys to reduce potential construction impacts to sensitive habitats and endangered species. In addition, in order to ensure that adverse impacts to the biological productivity and marine wildlife are avoided, **Special Condition 9** requires the applicant to provide a Marine Wildlife Protection Plan that includes avoiding pile-driving activities during the breeding season for seals and sea lions if pregnant and/or nursing individuals are present within the exclusion zone and using an initial ramp-up period or “soft start” procedure at the commencement of pile-driving. Additionally, **Special Condition 8** requires the applicant to submit an acoustic monitoring program to address elevated levels of underwater sound associated with pile driving.

The Commission has recently become increasingly concerned by the impact artificial night lighting can have on sensitive biological resources. Light pollution can take several forms including light trespass or spill, sky glow, and glare. Light trespass occurs when unwanted artificial light spills onto an adjacent property lighting an area that would otherwise be dark. Sky glow is the bright halo that appears over urban areas at night, a product of light being scattered by water droplets or particles in the air and from reflectance of lights on objects or the ground. Glare is created by light that shines horizontally. Recent research indicates that LED lighting can disrupt natural circadian rhythms in humans and wildlife, lead to disruption in sleep and wildlife behaviors and adversely impact migrating birds.[9] To address light pollution, **Special Condition 5** requires that all permanent lighting associated with the harbor and the parking complex be shielded, directed downward and away from the water. In addition, it also requires that the proposed lighting be maintained at 2,700 Kelvin (K). The condition does allow for occasional fluctuation in the lighting, but sets the maximum K temperature to 3,000 K.

[9] Chepesiuk, R. 2009. Missing the Dark: Health effects of light pollution. Environmental Health Perspectives. v. 117 (1): A20-A-27

Eelgrass and Invasive Algae

The applicant's 2018 surveys of the harbor determined that eelgrass is not present in the proposed work area; however, it was found elsewhere in the Dana Point Harbor **(Exhibit 12).** In addition, Caulerpa taxifolia, which is an invasive non-native algae, was not observed at any point during the 2018 diver survey. The 2018 diver survey did not mention the invasive algae Undaria pinnatifida. In order to ensure that Caulerpa taxifolia and Undaria pinnatifida are not present at the time of construction, which could spread to other areas of the marina during construction activities, **Special Condition 2** requires the applicant to conduct a survey not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit, at least 10 meters beyond the project area, to determine the presence of invasive algae, including Undaria pinnatifida and Caulerpa taxifolia. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid Undaria pinnatifida and Caulerpa taxifolia surveys expire, new surveys are required prior to commencement of work in that area. **Special Condition 3** will ensure that if eelgrass is present in the marina, its function as essential fish habitat will be preserved. The condition requires the applicant to conduct an additional pre-construction eelgrass survey, and if any eelgrass is identified in the project area, within one month after the conclusion of construction, the permittees shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The permittees shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the permittees shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy.

Fill of Coastal Waters and Loss of Marine Habitat

The current marina has approximately 1,234 square feet of total fill area and 709 cubic yards of fill. Originally, the applicant proposed to increase the total fill area to 1,821 square feet and 1,046 cubic yards of fill. However, the applicant revised the project such that the result of the project would be to reduce the total fill area by 136 square feet and 78 cubic yards of fill to 1,098 square feet and 631 cubic yards of fill. Thus, the proposed configuration of the piles will have a net reduction of 136 square feet of total fill area and a decrease of 78 cubic yards of fill. The proposed project includes the removal of 1,336 12 to 14-inch diameter concrete piles and concrete-filled steel pipe piles and the placement of 833 14-inch or 18-inch steel guide piles with high-density polyethylene (HDPE) sleeves. Thus, the proposed configuration will also reduce the overall pile count by 503 piles.

The proposed design will increase overwater coverage by 37,071 square feet. Approximately 85% of the increase in overwater coverage (31,596 of the 37,071 square feet) is due to the installation of the guest docks and the emergency dock in the Outer

Basin, which are coastal dependent uses necessary to support marina and boater operations in accordance with current harbor design codes and ADA standards. Fewer and/or smaller piles would not adequately secure the boat dock floats. However, an increase in overwater coverage may adversely impact marine resources, such as casting shade on underwater resources. In addition, an increase in overwater and in-water development may increase the possibilities of marina construction and boating debris entering marine waters, which can negatively affect marine wildlife and habitat. To mitigate for the increase in 37,071 square feet of overwater coverage, **Special Condition 27** requires the applicant to participate in a marine debris reduction to reduce waste and reliance on single-use plastics on-site. The applicant shall submit a service plan for recycling, trash bins, and compost, including the weekend maximum usage statistics to ensure that the trash and recycling management program is robust and avoids overfilled bins which might result in adverse impacts to nearby natural resources. The piles will support the proposed dock floats and, therefore as conditioned, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, as it is for a boating-related use.

Construction activity in and near the water's edge always has the potential to cause adverse impacts to marine and coastal environments. Therefore, **Special Condition 10** requires maintenance activities to be conducted in accordance with the construction methods typically required by the Commission to protect water quality and marine resources during armoring construction, including maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, a prohibition on equipment washing, refueling, or servicing on the beach, etc.

Coastal Habitat

Section 30240(b) of the Coastal Act states:

> Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Currently at the site, there is vegetation along the roadways, near the parking lots, adjacent to the promenade and surrounding recreation areas. According to a California Natural Diversity Database (CNDBB) by California Fish and Wildlife, there is coastal cactus wren and coastal California gnatcatcher habitat near the project area **(Exhibit 13).** According to the CNDBB, the coastal cactus wren is located more than 800 feet from the project area. Thus, it is unlikely that coastal cactus wren habitat will be impacted by the proposed development. However, the CNDBB shows that the coastal California gnatcatcher habitat is adjacent to the landside portions of the project area. FEIR 591 states that habitat present in the harbor is within Planning Area 7, which is designated for conservation purposes and concludes that no direct impacts on southern coastal bluff scrub would occur as a result of the project. The CNDBB shows the gnatcatcher habitat slightly east of Planning Area 7. To fully understand the presence of the gnatcatcher habitat and to ensure the protection of the species and its habitat,

Special Condition 6 requires the applicant to conduct additional biological surveys, including bird surveys clearly identifying the results of the surveying for gnatcatcher and gnatcatcher habitat, prior to issuance of a coastal development permit. In addition, indirect impacts on wildlife that inhabit this habitat may occur from noise associated with construction activities in the project area. To ensure that gnatcatchers and other sensitive species are protected from construction activity noise, such as pile-driving activities, **Special Condition 4** requires the applicant to retain the services of a qualified independent biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director, to conduct a biological survey of the trees within 500 feet of project site prior (within seven days) to the commencement of demolition and construction activities, and once a week upon commencement of demolition and construction activities that include use of heavy equipment that can cause excessive noise, odors, or vibrations (e.g., pile driving).

In addition, the FEIR document from 2006 indicated the presence of several sensitive bird areas in Dana Point Harbor. The FEIR reports that the Lesser Goldfinch, Yellow-Rumped Warbler, House Sparrow, Western Gull, Red-Tailed Hawk, Black-Crowned Night Heron, Snowy Egret, Double-Crested Cormorant, Common Loon, California Brown Pelican, California Gull were observed in the harbor. The Subsequent EIR document of 2011 stated that Great Blue Herons have been observed to nest in and near the harbor area. However, the results of these biological surveys are quite dated, thus it is necessary to require the applicant to conduct biological bird surveys prior to the issuance of the coastal development permit as required by **Special Condition 6.**

The applicant proposes to maintain trees at the site where possible; however, tree removal may be required as a result of the proposed development. The applicant has indicated that a maximum of 63 trees of the 1,350 trees at the site would be removed throughout the course of construction with the intent to replant as many trees as possible within the project area; however, the plans for tree removal have not been finalized or confirmed yet. Trees removed or trimmed shall be consistent with the Dana Point Harbor LCP Policies 7.1.2-2, 7.1.2-3, and 7.1.2-4 which protect coastal bird habitat, state that tree trimming or removal shall not be conducted during breeding and nesting season, and limit construction noise levels. Thus, **Special Condition 7** requires that the applicant avoid removing or trimming trees in the breeding and nesting season and to retain a qualified biologist or ornithologist to conduct biological tree surveys prior to any tree modifications. In addition, a tree replacement planting plan for each tree replacement will be developed to specify replacement tree location, tree type, tree size (no less than 36-inch box size), planting specifications and a 5-year monitoring program with specific performance standards. Additionally, trees or branches with a nest of a state or federal listed species, a California bird species of special concern or a wading bird (heron or egret), as well as owls or raptors that have been active anytime within the last 5 years, will not be removed or disturbed unless a health and safety danger exists and then shall be replaced with two trees for every one removed.

As conditioned, the project is consistent with Coastal Act Sections 30230, 30231, 30233 and 30240(b) and certified LCP Policies 7.1.2-2, 7.1.2-3, and 7.1.2-4 regarding protection of marine resources and offshore habitat.

D. Marine Resources – Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

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

Coastal Act Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Section 30231 requires that the biological productivity and quality of coastal waters be maintained to a level appropriate to maintain optimum populations of marine organisms and for the protection of human health. The proposed development will occur over, in, and near the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. Coastal Act Section 30232 requires protection against the spillage of crude oil, gas, petroleum products, and hazardous substances, and requires that effective containments and clean-up procedures be provided for accidental spills that do occur.

The proposed project includes the demolition of a marina and construction of a new marina and repairs to seawall and rock revetment all located in coastal waters. The use of construction equipment and materials in and around sensitive marine habitats could lead to habitat degradation and water quality impacts through the discharge of sediment and other pollutants resulting from construction activities (such as chemicals, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into

runoff or coastal waters. Allowing such pollutants to enter the waters of the harbor could adversely affect water quality and marine organisms, and therefore is inconsistent with Coastal Act Sections 30230, 30231, and 30232. Turbidity from construction can interfere with filter-feeding intertidal organisms, and contaminants introduced into the ocean could potentially affect intertidal organisms. The applicant proposes to minimize turbidity during in-water and overwater construction using Best Management Practices (BMPs) including turbidity screens or siltation curtains to isolate work areas during pile removal and installation, and the use of floating booms to contain debris or spills. The applicant proposes to adhere to the provided Stormwater Pollution Prevention Plan (SWPPP) for compliance with the State Water Resources Control Board's requirements in the Construction General Permit. In addition, **Special Condition 10** requires the applicant to implement a final Construction Pollution Prevention Plan addressing in-water and overwater construction, as well as construction on land, including demolition, staging, and construction BMPs.

The proposed extraction of marina piles using a non-diesel-powered drop hammer could cause increases in turbidity, as sediment sloughs off of piles removed from the mud floor of the marina. Installation of piles shall prioritize driven or hammered methods, if feasible, in order to minimize water quality impacts. Vibratory hammer method shall be prioritized over impact hammer methods; however, if an impact hammer is used, pile driving shall use a soft-start/ramping up BMP. **Special Condition 11** requires the applicant to provide a report documenting the BMPs to be used for installation and removal of piles.

The newly installed guide piles will be made of steel and/or pre-stressed concrete. The new steel piles will be wrapped with a High-Density Poly Ethylene (HDPE) sleeve to protect the piles from corrosion and abrasion. The HDPE pile sleeves should be periodically monitored during the life of the structure to ensure that the material maintains its structural integrity, and the HDPE sleeves should be repaired or replaced if the material begins to deteriorate. The steel piles, concrete piles, and HDPE pile sleeves are inert materials when fully dried and cured, and will not contribute to aquatic toxicity; therefore, these materials are consistent with Water Quality staff's recommendations for marine pilings and pile wrappings.

For most of this project's proposed replacement docks, the applicant has proposed to use expanded polystyrene foam encapsulated with lightweight concrete for the pontoon floats, and fiber-reinforced polymer (FRP) for the dock's waler system used to connect individual float modules. The gangways will be designed using aluminum trusses. However, the applicant has proposed the use of preservative-treated wood for dock decking and to frame the walkways for 13 proposed slips in the Dana Point Yacht Club reconfiguration. The applicant stated that these dock components will be "composed of timber due to water depth limitations in that area;" however, these limitations were not explained. A shallow water depth may perhaps hinder floating into place pre-constructed pontoon floats composed of expanded polystyrene foam encapsulated with concrete.

The use of preservative-treated wood in overwater and in-water structures has the potential to adversely impact water quality and aquatic species, especially in areas with a low water circulation rate (such as harbors and marinas). The pesticides in wood preservatives – commonly copper – can adversely impact aquatic species, especially fish and invertebrates, and may accumulate in the underlying sediment. Copper pollution is often an issue for marinas and harbors, due to leaching from copper-based antifouling paints commonly used on boat hulls, and discharges during boat hull maintenance.

The Commission, therefore, typically recommends the use of alternative materials instead of treated wood for dock decking and other above-water components of overwater structures, where feasible. Examples of alternative materials include concrete, fiberglass, metal, plastic (e.g., polyethylene, polypropylene, or PVC), fiberglass-plastic composites (e.g., fiber-reinforced polymer), wood-plastic composites, or naturally decay-resistant untreated wood (e.g., redwood, red cedar, ipe, greenheart, and in some cases Douglas fir). Some of these alternative materials (e.g., wood-plastic composites) are suitable for dock decking, but do not provide suitable strength for the structural framework of a dock or gangway.

The applicant stated that the preservative-treated wood used for the 13 proposed slips in the Dana Point Yacht Club will be treated with either Ammoniacal Copper Zinc Arsenate (ACZA), Copper Azole Type C (CA-C), or Alkaline Copper Quaternary (ACQ); however, how the specific preservative will be selected was not stated. If treated wood is used overwater or in-water, a type of wood preservative should be selected that minimizes the risk of aquatic and sediment toxicity.

For dock decking and other above-water components of structures over saltwater, the preservatives Ammoniacal Copper Zinc Arsenate (ACZA) and Chromated Copper Arsenate (CCA, if available and approved for the particular use) leach the least amount of copper and thus have the lowest aquatic toxicity. ACZA and CCA are therefore the best choices of wood preservatives approved for these uses, but only for components of the structure where frequent contact with humans or marine mammals is not expected.

For above-water components of the structure where frequent human or marine mammal contact will occur, the use of wood preservatives containing chemicals that pose mammalian health concerns (e.g., arsenic in ACZA and CCA) should be avoided. The arsenic-free preservatives Alkaline Copper Quaternary (ACQ), Copper Azole (CA), and Copper Naphthenate (CuN) are acceptable choices for treating above-water components of structures over saltwater. However, these arsenic-free preservatives leach substantially more copper, and thus have a higher risk of aquatic toxicity, than do the metal-arsenate preservatives ACZA and CCA; therefore, they should only be used where frequent contact with humans or marine mammals is expected.

Furthermore, Water Quality staff recommends that the use of wood preservatives containing chemicals that may contribute to any listed water quality impairment of the waterway by that chemical should be avoided. Section 303(d) of the federal Clean

Water Act[10] requires states to make a list of impaired waters that are not attaining water quality standards, and to develop a Total Maximum Daily Load (TMDL) or similar approach to account for all sources of the pollutants that caused the water to be listed as impaired. Dana Point Harbor is listed on the current 2014/2016 Clean Water Act section 303(d) list of impaired waters as impaired by several pollutants, including copper (in both sediment and the water column) and zinc. The State Water Resources Control Board (Water Board) requires a TMDL for the listed pollutants in Dana Point Harbor, but a TMDL has not yet been developed, and therefore the Water Board does not require water quality monitoring.

However, there is a Regional Harbor Monitoring Program (RHMP) that monitors the concentration of several pollutants in the water column and sediment in Dana Point Harbor every 5 years. The latest available data (published in 2013) shows three sampling stations and strata within the project area (**Exhibit 14**); the 2018 data has not yet been published. Two of these stations were categorized as marina (one in the Inner Basin close to the public promenade near the West Basin, and one in the Inner Basin near East Island), and one station is in the shallow strata in the channel region outside of the marinas (in the Inner Basin, between the West Island and West Basin). Copper, zinc, and several other trace metals are sampled by the RHMP, as reported in the water chemistry summary results of the 2013 data.[11]

Copper is a chemical in all of the wood preservative choices the applicant listed for the 13 proposed slips in the Dana Point Yacht Club, including the preservative ACZA, which also contains zinc. Copper can adversely impact a broad range of aquatic species, even at very low concentrations. Additionally, if shallow waters are the "water depth limitations" the applicant referred to as a justification for using treated wood for the 13 proposed slips in the Dana Point Yacht Club, this would conversely be another reason to avoid the use of treated wood in this location, as copper concentrations may be higher in shallow waters where there is less dilution.

For the majority of the marina, the applicant proposes to remove the preservative-treated wood dock decking and replace it with expanded polystyrene foam encapsulated with lightweight concrete for the pontoon floats, and a fiber-reinforced polymer for the dock's waler system (used to connect individual float modules). However, as mentioned above, the applicant proposes the installation of preservative-treated wood for dock decking for the 13 slips of the Dana Point Yacht Club. The applicant asserts that this is less than 1% of the total proposed dock reconfiguration for the harbor. While a 1% installation of preservative-treated wood is a small amount relative to the amount of preservative-treated wood that will be removed from the

[10] Impaired Waters and TMDLs. https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa

[11] Regional Harbor Monitoring Program. January 2016. https://pantheonstorage.blob.core.windows.net/environment/Regional-Harbor-Monitoring-Report-2013-Final.pdf

harbor, it is important to ensure that the applicant adheres to Best Management Practices for the use of treated wood in the aquatic environment, to maintain water quality consistent with Coastal Act Section 30231.

The applicant should avoid the use of preservative-treated wood to construct any overwater or in-water structures in Dana Point Harbor, unless there is a valid engineering reason to use treated wood. A summary of the reasons for this recommendation include that the project location 1) is in waters that are impaired by chemicals in the proposed wood preservatives (i.e., copper and zinc); 2) is in a partially-enclosed harbor, and thus likely to have a low water circulation rate, enabling copper to accumulate in the water column and sediment; 3) may have areas of shallow waters that do not provide much dilution of the preservative chemicals; and 4) has numerous docked boats that leach copper into the water from copper-based antifouling hull paints.

The preservative retention level should also be specified for any treated wood proposed for use in overwater or in-water structures, but the applicant did not do so for this project. Treated wood must be selected that has been treated to the standards of the lowest appropriate Use Category for each component, to ensure that the treated wood does not exceed the minimum preservative retention level. This will help minimize the amount of preservatives in the wood that may leach into coastal waters. Use Categories, as specified by the American Wood Protection Association, are based on factors such as whether the wood is subject to saltwater splash vs. immersion, and whether the component is critical and difficult to replace. In this project, the proposed treated wood components will not be fully submerged in water, but will be subject to saltwater splash.

Construction of the proposed project's overwater and in-water components requires the use of Best Management Practices (BMPs) to minimize impacts upon water quality. **Special Condition 12** therefore requires the applicant to submit a final plan documenting the type and amount of materials proposed to be used to construct or repair all overwater and in-water structures. Furthermore, **Special Condition 13** requires the applicant to submit a final plan documenting the construction-phase and post-construction BMPs to be used for all overwater and in-water structures that are constructed using preservative-treated wood.

Protection of coastal water resources requires not only minimizing pollutants in runoff, but also minimizing post-construction changes in runoff flows from the site. Water Quality staff recommends that the inland components of the project retain on-site (by means of infiltration, uptake by plants, evaporation, or harvesting for later on-site use) the runoff produced by the 85th percentile 24-hour design storm, to the extent technically feasible. Any portion of the design storm runoff that cannot be retained on-site should be adequately treated to remove pollutants of concern before being discharged. However, the project as proposed is not designed to retain any runoff on-site; the applicant stated that it is infeasible for the project to either infiltrate runoff or to harvest runoff for later on-site use. The applicant stated that infiltration is infeasible due to a seasonally high groundwater levels, low soil infiltration rates, and limited undeveloped area available for installation of infiltration BMPs. But based on the reported

groundwater levels, there appear to be locations on the site that have a suitable depth to groundwater to install infiltration BMPs. Also, the observed soil percolation rates are all within the 0.1 to 0.6 inch/hour range for which Orange County recommends that biotreatment BMPs with partial infiltration designs should be considered. Furthermore, there may be opportunities to install infiltration BMPs in some areas of the site that are now planned for landscape areas or parking areas. Therefore, **Special Condition 14** requires the applicant to submit a final plan documenting that the proposed Treatment Control BMPs shall be sized and designed to adequately infiltrate and/or treat the stormwater runoff from the project's inland areas, and also requires the applicant to conduct an alternatives analysis to demonstrate that there are no technically feasible alternative project designs that would substantially improve runoff retention.

In addition, the applicant has indicated that all slips over 30 feet will have their own individual pump-out stations. Sewer lines exposed to the marine environment have the potential to break or corrode more quickly than those more sheltered from the salty air and sunlight. Because the sewer lines will be directly above the water, they could leak raw sewage directly into the water, if there are any ruptures in the pipes. Visually inspecting the entire length of the lines on a monthly basis will provide the basic inspection necessary to ensure there is no leakage into coastal waters. Dye or pressure tests will allow inspectors to see less visible leaks in the sewer lines. These tests are expensive and labor-intensive. As required by **Special Condition 16**, biannual dye or pressure tests will be sufficient to protect water quality.

Additionally, the applicant has received its Clean Marine Certification and its Section 401 Certification from the Regional Water Quality Board. Section 401 requires the applicant to adhere to the "Clean Marina Plan," which is maintained by a third-party organization. The Clean Marina Plan is a pollution prevention and control plan for facility and maintenance for The Marina at Dana Point. Thus, **Special Condition 15** also requires the applicant to adhere to the Clean Marina Plan or the Section 401 requirements, whichever is most protective of marine and coastal resources.

The new development may bring more visitors to the area which may lead to an increase in potential pollution related to trash and marine debris. Thus, it is necessary to reduce marine debris not only in all areas of the harbor. To further mitigate for the increase in total overwater coverage and the potential adverse impacts on water quality, **Special Condition 27** requires the applicant to participate in a marine debris reduction program to reduce waste and reliance on single-use plastics on-site. The applicant shall submit a service plan for recycling, trash bins, and compost, including the weekend maximum usage statistics to ensure that the trash and recycling management program is robust and avoids overfilled bins which might result in adverse impacts to nearby natural resources. In addition, cigarettes and cigarette filters are the most commonly found item at coastal cleanups.[12] Even though Dana Point is a smoke-free city per

[12] California Coastal Cleanup Day History. https://www.coastal.ca.gov/publiced/ccd/history.html

Dana Point City Ordinance 18-02, there's a need to alert the public that smoking is prohibited.[13] The applicant shall install and maintain smoke-free signage along the public areas of the harbor. In addition, to reduce single-use items and waste, educational signs shall be installed and maintained that promote the use of reusable items (instead of single-use items) along the waterfront.

The proposed development includes three types of seawall and revetment repairs: bulkhead damage repair (Repair Type 1), concrete revetment repair (Repair Type 2) and riprap revetment repair (Repair Type 3). Repair Type 1 is proposed to address damage including face erosion, spalling/cracking, corrosion staining, or exposed rebar. The applicant proposes to chip out surrounding concrete to make the bulkhead smoother. Repair Type 2 proposes to lift concrete slabs that have fallen down and place them on the seawall again. Repair Type 3 proposes to pull existing rip rap back up to its as-built condition. Portions of Repair Types 1 and 3 are located outside of Dana Point Harbor Partners, LLC's lease area but the applicant asserts that they are still responsible for its ongoing maintenance on behalf of the County. The applicant shall adhere to the Construction Pollution Prevention Plan, as required by **Special Condition 10** for the maintenance and repair of all seawalls and revetments subject to this CDP.

As conditioned, the project is consistent with Coastal Act Sections 30230, 30231 and 30232 regarding the protection of water quality and biological productivity of coastal waters.

E. Coastal Hazards

Section 30101 of the Coastal Act defines coastal-dependent uses as follows:

> "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

Section 30253 of the Coastal Act states:

> New development shall:
>
> (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

[13] Smoke-Free Dana Point. Ordinance 18-02. https://www.danapoint.org/home/showdocument?id=24767

(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

(d) Minimize energy consumption and vehicle miles traveled

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30253 of the Coastal Act requires that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and to minimize energy consumption and vehicle miles traveled. The project constitutes new development because it involves the demolition and construction of a harbor, in, under and adjacent to the water and also landside facilities, including parking.

Regarding the minimization of energy consumption and vehicle miles traveled, the proposed project would modify onsite parking and requires a special condition for Coastal Act consistency. The applicant asserts that, of the 1,410 designated boater parking spaces, the majority of the 399 parking spaces in the West Cove parking lot will be demolished and replaced in order to accommodate the proposed project. While not a standard of review for CDP purposes, the Guide to the 2019 California Green Building Standards Code for Nonresidential[14] requires that 6% of the new parking (399 parking spaces) provide capabilities for electric vehicle charging stations (EVSE) by installing raceways for future vehicle supply equipment. In addition, the Code states that at least 8% of the total parking spaces shall be clearly striped as CLEAN AIR/VANPOOL/EV. Thus, in order to minimize energy consumption and adhere to Section 30253 of the Coastal Act, **Special Condition 18** requires that the applicant submit a detailed parking plan, including the installation of electric vehicle (EV) charging spaces for a minimum of 24 vehicles (6%) and a minimum of 32 clean air parking spaces (8%) prior to completion of construction of the marina.

Regarding other hazards at the site, the applicant commissioned a geotechnical investigation for the site of the boater service buildings on land that found that the site is subject to static and earthquake-induced seismic settlement and lateral spreading

[14] Guide to the 2019 California Green Building Standards Code for Nonresidential. https://codes.iccsafe.org/content/GCGBSCNR2019/guide-to-the-2019-california-green-building-standards-code-includes-verification-guidelines-nonresidential

related to liquefication. The geotechnical investigation provides recommendations for the design of boater service buildings such as the use of a block of high strength soil beneath the entire footprint of the buildings to mitigate for liquefaction settlements.

The applicant also conducted a coastal hazard and sea level rise analysis[15] to ensure that the proposed design components will not be damaged or rendered unusable due to the effects of sea level rise. The analysis assumed a project lifetime of 75 years for the coastal structures and identifies coastal hazards to include extreme astronomical tides, storm waves, and storm surge. For current coastal hazards, the analysis concluded that tidal events and a 75-year wave event will not impact the upland areas of the project site, as the seawall crests along the harbor are at an elevation of +9.8 feet NAVD88 and finished floor elevations range from 10.6 to 12.5 feet NAVD88 behind the protective seawall. However, a 100-year wave of 2.3 feet in the Outer Basin could potentially damage seawalls if the crest is not protected. As to future coastal hazards, the analysis uses the medium-high risk aversion scenario for 2100 which is +6.7 feet and uses a combination of current coastal hazards due to storm events and increases in water level due to projected sea level rise. It concludes that future sea level rise will cause the +9.8 NAVD88 seawall crest to be inundated by 2100, and as early as 2070. Therefore, future adaptive measures such as raising the buildings' finished floor elevations or extending the seawall must be considered.

No development in the ocean or near the shoreline can be guaranteed to be safe from hazards. All development located in or near the ocean has the potential for damage caused by wave energy, floods, seismic events, storms, and erosion. The proposed development is located in an area susceptible to tidal action and natural hazards. **Special Condition 21** requires that should any development approved under this Permit, including but not limited to the gangway, piers, docks, pump-out station, and associated infrastructure, become threatened due to structural failure, wave action, or other manmade or natural processes, the applicant shall conduct a study of the structural stability of the approved development and an analysis of alternatives for correcting any structural deficiencies. If, at any time, a government agency orders the development to be decommissioned, the applicant or its successors and assigns shall conduct an analysis to determine the least environmentally damaging alternative for decommissioning the development. At the end of the useful life of the development, the applicant or its successors and assigns shall conduct an analysis to determine the least environmentally damaging alternative for decommissioning the development. The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. **Special Condition 23** ensures that the applicant understands and assume the potential hazards associated with the development.

Section 30235 of the Coastal Act requires permitting of revetments and seawalls when required to serve coastal-dependent uses or to protect existing structures or public

[15] Alyssa Cannon and Adam Gale, Anchor QEA, LLC: Dana Point Harbor Revitalization – Coastal Hazards and Sea Level Rise Assessment. August 1, 2019.

beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The harbor clearly provides for coastal-dependent uses, such as recreational boating, and thus clearly meets the definition of "coastal dependent" in Section 30101 of the Coastal Act. Here, the applicant proposes to repair 9,964 lf of seawalls and revetments in the project area to address structural deficiencies in the structures that show signs of distress **(Exhibit 10).** The applicant asserts that no net fill will be added to repair the seawall and revetments and that there will be no seaward encroachment. The proposed repairs to the seawalls and revetments would serve the purpose of maintaining this section of the harbor and the various coastal-dependent uses it supports. As such, Commission staff agrees that the proposed maintenance and repair of the seawalls/revetments are the minimum necessary to protect and maintain existing, coastal-dependent structures. Thus, the proposed seawall and revetment repairs can be found consistent with Coastal Act Section 30235, which allows shoreline armoring for, among other things, coastal-dependent uses, provided certain other coastal resource protection criteria are also satisfied.

As conditioned, the proposed project is consistent with the coastal hazard policies of the Coastal Act.

F. Local Coastal Program (LCP)

In 1989, the Commission certified the City of Dana Point Local Coastal Program (LCP). Since then, parts of the LCP have been updated through LCP amendments.

In 2006, the City of Dana Point initially submitted Local Coastal Program (LCP) Amendment No. 3-06 for Commission certification pursuant to City Council Resolution No. 06-09-13-06 and also changes contained in City Council Ordinance No. 06-08. However, this amendment was withdrawn and resubmitted and the request was refiled as LCP Amendment No. 1-08. Local Coastal Program Amendment No. 1-08 proposed to amend the Local Coastal Program Land Use Plan (LUP) to incorporate the proposed Dana Point Harbor Revitalization Plan (replacing those sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP). The City's submittal of the Dana Point Harbor Revitalization Plan also included an Implementation Plan (IP) component. However, that component was not reviewed by the Commission at the October 8, 2009 meeting. It was determined that the IP component would be heard at a later date. Therefore, only the Land Use Plan (LUP) of the Dana Point Harbor Revitalization Plan went before the Commission at the October 8, 2009 hearing and was approved by the Commission with suggested modifications.

Subsequently, the IP component was withdrawn and resubmitted and the request was refilled as LCP Amendment No. 1-10, which proposed to amend the Local Coastal Program IP to implement the recently approved (October 8, 2009) LUP Amendment, replacing, in its entirety, the implementation sections in the Dana Point Specific Plan Local Coastal Program relevant to the Dana Point Harbor. Therefore, only the Implementation Plan (IP) of the Dana Point Harbor Revitalization Plan went before the

Commission at the January 12, 2011 hearing and on that date the Commission approved the amendment with suggested modifications.

At the April 13, 2011 Commission hearing, the Revised Findings for LCP Amendment 1-10 (to be consistent with the action taken by the Commission at the January 12, 2011 Commission hearing) were approved by the Commission. On June 13, 2011 (1st reading) and then on July 25, 2011 (2nd reading), the Dana Point City Council adopted Resolution No. 11-06-13-01, and Ordinance 11-03 amending the Dana Point Specific Plan and Zoning Code by incorporating the modifications suggested by the Commission and accepting and agreeing to Local Coastal Program Amendment No. 1-10 as modified. On October 6, 2011, the Commission concurred with the Executive Director's determination that the action of the City of Dana Point accepting certification of Local Coastal Program Land Use Plan Amendment No. 1-10 was legally adequate.

The City of Dana Point has a certified Local Coastal Program and therefore has the authority to approve coastal development permits for all landside development. However, pursuant to the Coastal Act, the California Coastal Commission retains permit authority for all waterside activities. As discussed in the standard of review section of this report, the City of Dana Point and the applicant support the consolidation of the coastal development permit process. Therefore, the standard of review for the proposed project is Chapter 3 policies of the Coastal Act. The certified Dana Point Harbor Revitalization Plan and District Regulations is the Local Coastal Program which may be used as guidance.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Local Coastal Program for the area.

G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

The County of Orange is the lead agency responsible for certifying that the proposed project conforms with CEQA.

A Program Environmental Impact Report (FEIR 591) was prepared for the overall project (landside and waterside areas) and certified by the Orange County Board of Supervisors on January 31, 2006. FEIR 591 evaluated the entire DPHRP at a programmatic or conceptual level of detail and provided specific project or construction level EIR analysis for the Commercial Core area of the harbor. Due to the certified LCP amendment, an addendum to the FEIR 591 was prepared by the County in 2011 to provide record of the changes. The addendum was concurrently processed with a

Subsequent EIR (SEIR 613) that addresses the proposal for the renovation of the waterside facilities located within the harbor. On December 11, 2012, the Orange County Board of Supervisors certified that Final SEIR No. 613 (resolution No. 12-176), together with the Addendum to FEIR No. 591, provided an appropriate program level analysis of the Dana Point Harbor LCP as required by California Environmental Quality Act Guidelines.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to any public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required that would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Dana Point Harbor Marina Condition Evaluation Report from 2005

Local CDP No. 13-0018

Coastal Resources Management Inc. in 2007 and 2010

5-15-1426, Mariner's Bay LLC and Los Angeles County Department of Beaches and Harbors

Clean Water Act Section 401 Water Quality Certification for Dana Point Harbor Revitalization Project

The Marina at Dana Point Clean Marina Plan