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STAFF REPORT: REGUALR CALENDAR COMBINED COASTAL DEVELOPMENT PERMIT AND CONSISTENCY CERTIFICATION

Application No.: 5-14-0606

Federal Consistency No.: CC-0005-14

Applicant: OC Dana Point Harbor (County of Orange)

Agent: Chambers Group, Inc., Attn: Noel Davis

Locations: Dredging and Beach Placement: Dana Point Harbor and Capistrano Beach, City of Dana Point (County of Orange)

Offshore Disposal: EPA approved disposal site known as LA-3 located approximately 14 miles from the entrance of Dana Point Harbor.

Project Description: Coastal Development Permit No. 5-14-0606: Dredging of 136,000 cu. yds. of material from Dana Point Harbor. 99,000 cubic yards of the dredged material will be placed on Baby Beach located in Dana Point Harbor and Capistrano County Beach. The project includes the temporary placement of a dredge disposal pipeline from Dana Point Harbor to Baby Beach and Capistrano Beach. Additionally, temporary fill dikes will be constructed on Capistrano Beach. Approximately 3,000 cubic yards of material not suitable for ocean disposal will be disposed at an upland landfill.

Consistency Certification No. CC-0005-14: Off-shore disposal (LA-3) of up to 34,000 cubic yards of dredge material at LA-3.

SUMMARY OF STAFF RECOMMENDATION

The proposed development is taking place in the City of Dana Point, which has a certified Local Coastal Program (LCP). However, the dredging in the waters of the harbor, and the placement of dredged material at Baby Beach and Capistrano Beach, is occurring partially or wholly within the Commission's area of original jurisdiction. Section 30601.5 of the Coastal Act allows the Commission to take action on development proposals where there is both local and Commission jurisdiction. Pursuant to Section 30601.5, The Commission and City have agreed that the Commission can take action on the entire Coastal Development Permit, including those areas within the City's jurisdiction. Therefore, the Commission's action will authorize the entire project, which must be evaluated for consistency with the Chapter 3 policies of the Coastal Act.

Coastal Development Permit Application: Commission staff is recommending **approval** of coastal development permit application 5-14-0606, as conditioned. Commission staff is recommending **eleven (11) Special Conditions** requiring: **1)** submittal of temporary dike plans and placement of sediment material on Baby Beach and Capistrano Beach shall be completed as discussed in submitted reports; **2)** timing construction to avoid adverse impacts upon California grunion; **3)** staging area; **4)** turbidity control; **5)** construction responsibilities; **6)** pre- and post-construction eelgrass surveys; **7)** pre-construction *Caulerpa Taxifolia* survey; **8)** Regional Water Quality Control Board (RWQCB) 401 Permit approval; **9)** post completion report; **10)** beach profile monitoring at disposal sites; and **11)** the applicant to re-open beach areas closed during sand placement as quickly as possible following completion of the work. The primary issues associated with this development are recreation, water quality and protection of sensitive biological resources.

Consistency Certification: The project includes a consistency certification for the disposal of 34,000 cubic yards of dredge material at LA-3, an EPA designated ocean disposal site located approximately 14 miles from the entrance of Dana Point Harbor. This consistency certification is needed to authorize the disposal of the dredged material beyond the three-mile limit of State Waters.

The dredging is proposed in order to restore previously dredged depths in existing navigational channels. The proposed project will be carried-out in one episode lasting between ten to fourteen weeks. Disposal of dredged material will take place both on-shore and off-shore. The Commission has previously authorized dredging and dredge disposal at the same locations as currently proposed. The proposed project, as conditioned, is the least environmentally damaging alternative and will not have significant impacts to marine resources. Any impacts to sensitive habitat and species will be temporary. The dredge materials proposed for on-shore and off-shore disposal as indicated in the applicant's sampling and analysis plan has been reviewed by the Southern California Dredged Material Management Team (SC-DMMT) and approved at their March 2014 meeting. The Coastal Commission is a member of the SC-DMMT and has participated in the review of the proposed project. Material to be placed on the beaches is deemed suitable for beach replenishment. Material to be disposed off-shore at the LA-3 disposal site is not suitable for beach replenishment because it consists of fine sediment. Potentially toxic material will be trucked to an inland disposal site. The dredge material that is considered suitable for ocean disposal will not adversely impact water quality or marine resources. Therefore, the project is consistent with the dredging, water quality, marine resources and sand supply policies of the Coastal Act (Sections 30230, 30231 and 30233). As

conditioned, the project will have no negative effects on commercial or recreational boating or fishing in the area. The proposed dredging project will aid in helping to continue to protect and provide commercial fishing and recreational boating industries in Dana Point Harbor by improving navigation and safety within the bay. Therefore, the project is consistent with the recreational and boating policies of the Coastal Act (Sections 30234, 30234.5, 30220 and 30224).

STAFF NOTE

A coastal development permit is required for the project pursuant to Section 13252(a) (2) because it is in the Commission's original area of jurisdiction and involves more than one hundred thousand (100,000) cubic yards of dredging within a twelve month period, as well as other development that is not exempt. A consistency certification is required for disposal of dredge materials at the LA-3 site because it is a federally permitted activity located outside the coastal zone that has effects on the coastal zone.

To facilitate Commission review of these items, both the coastal development permit application and the consistency certification will be heard at the same time. Commission staff recommends approval of the coastal development permit application and concurrence with the consistency certification.

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EXHIBITS

Exhibit #1 – Vicinity Map

Exhibit #2 – Dana Point Harbor Map/Dredge Location Plan

Exhibit #3 – Dredge Location Plan/Nourishment Location Plan

I. MOTION AND RESOLUTION FOR APPROVAL OF COASTAL DEVELOPMENT PERMIT

Motion:

I move that the Commission approve Coastal Development Permit No. 5-14-0606 pursuant to the staff recommendation.

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 ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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 will substantially lessen any significant adverse impacts of the development on the environment.

II. MOTION AND RESOLUTION FOR CONCURRENCE WITH CONSISTENCY CERTIFICATION

Motion

I move that the Commission concur with consistency certification CC-0005-14 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to concur in consistency certification:

The Commission hereby concurs in the consistency certification by the County of Orange in CC-0005-14, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

III. STANDARD CONDITIONS (COASTAL DEVELOPMENT PERMIT)

- 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 permittee 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

IV. SPECIAL CONDITIONS (COASTAL DEVELOPMENT PERMIT)

- 1. Placement of Sediment on Baby Beach and Capistrano Beach - Temporary Dike Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of temporary dike plans. These temporary dikes will be constructed with beach sand on Capistrano Beach and shall be inland of the mean high tide line (MHTL). The dikes will contain the beach nourishment material before being moved to its final location elsewhere on the beach. The plan shall also identify the specific areal limits of the temporary dikes and the plan for removal of the temporary dikes at the completion of the project.

Placement of dredged sand on Baby Beach and Capistrano Beach shall be done by placing the material directly on the beach, along with proposed biological monitoring and impact avoidance measures described to address California grunion and western snowy plover, as described in the following documents: *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated February 2014.; and *Preconstruction Biological Survey of the Pipeline Route Between Dana Point Harbor and Capistrano County Beach* prepared by the Chambers Group dated February 2014.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. **Construction Timing (Biological Resources).** To avoid adverse impacts on California grunion, neither pipe placement nor beach nourishment at Capistrano Beach shall occur between February 15th to September 15th without a written statement from the Executive Director authorizing said development on specified dates. To obtain such a written statement, the permittee must submit a declaration from the California Department of Fish and Wildlife (CDF&W) stating that implementing the development described in this condition on the specific dates proposed will not cause adverse impacts to any California grunion or their eggs. The declaration must contain an assessment of the spawning of the California grunion found in the area and a statement that the development activity on the specific dates proposed and in the specified locations will not interfere with the spawning of the California grunion.

3. **Construction Staging Plans.**

- A. **Prior to Issuance of the Coastal Development Permit,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of construction staging plans which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts beach areas or to sensitive habitat areas.

- (1) The plan shall demonstrate that:

- (a) Construction equipment or activity shall not occur outside the staging area;
- (b) Public parking areas are allowed to be used for staging or storage of equipment, but shall be the minimal sized area and shall minimize temporary impacts to public access;
- (c) Sandy beach or habitat (vegetated) areas shall not be used as staging areas; and
- (d) The staging area for construction of the project shall not obstruct vertical or lateral access to the beach, marina or other recreational facilities

- (2) The plan shall include, at a minimum, the following components:

- (a) A site plan that depicts:
 1. limits of the staging area(s);
 2. construction corridor(s);
 3. construction site;

4. location of construction fencing and temporary job trailers with respect to existing beaches.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
4. **Turbidity Control.** As required by the Regional Water Quality Control Board (RWQCB), the applicant shall ensure that the project does not result in:
 - A. Increases of water turbidity by more than twenty percent (20%) of the natural turbidity during non-storm conditions, nor
 - B. Dissolved oxygen in the receiving waters being depressed below 5.0 mg/l.
5. **Construction Responsibilities.** Dredging activities authorized under this CDP shall comply with the following construction-related requirements:
 - A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow;
 - B. Silt curtains shall be utilized to minimize and control turbidity to the maximum extent practicable;
 - C. The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited;
 - D. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
 - E. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
6. **Regional Water Quality Control Board (RWQCB) 401 Permit.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of the 401 permit issued by the Regional Water Quality Control Board (RWQCB) regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

- 7. 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 prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the “*Southern California Eelgrass Mitigation Policy*” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service (NMFS) and shall be prepared in consultation with the California Department of Fish and Wildlife (CDF&W). The applicant shall submit the eelgrass survey for the review and approval by 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, which 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.

Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required by this special condition, within one month after the conclusion of construction, 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 “*Southern California Eelgrass Mitigation Policy*” Revision 8 (SCEMP) (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 Game. The applicant 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 applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP 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 legally required.

- 8. Pre-Construction *Caulerpa Taxifolia* 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 (the “*project*”), 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 the invasive alga *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 *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol 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. 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 William Paznokas, California Department of Fish & Wildlife (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

If *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 *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 *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.

9. Post Completion Report. The Permittee shall submit a post-dredging completion report to the Executive Director of the Commission within 30 calendar days after completion of the dredging project to document compliance with all general and special conditions imposed by this permit. The report shall include all information collected by the Permittee, the biological monitor, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:

- A. Permit and project number.
- B. Start date and completion date of dredging and disposal operations.
- C. Total cubic yards dredged.
- D. Total cubic yards disposed at the authorized disposal site(s).
- E. Mode of dredging.
- F. Mode of transportation.
- G. Form of dredged material.
- H. Frequency of disposal and plots of all trips to the authorized disposal site(s).
- I. Tug boat or other disposal vessel logs documenting contact with the United States Coast Guard (USCG) before each trip to the authorized ocean disposal site.

- J.** A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
 - K.** Pre-dredging hydrographic survey.
 - L.** A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredged depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the predredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the predredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate.
- 10. Beach Profile Monitoring.** Prior to the placement of any material at Baby Beach or Capistrano Beach, the applicant shall prepare a total of ten (10) profiles of the beach and off-shore area (to closure or wading depth, consistent with the survey requirements of the United States Army Corp of Engineers (USACOE) permit) showing the pre-disposal conditions. Profiles shall be taken at the same locations after completion of the disposal, one month after disposal, and annually thereafter until the area either returns to its pre-disposal condition or is further modified by additional nourishment. Reports shall be provided to the Executive Director following the one-month after disposal profiles and after each annual survey, which provide information on site conditions and an analysis of the long-term changes in sediment supply.
- 11. Beach Closures.** Beach area closures shall be minimized and limited to areas immediately adjacent to the project area (within 200-feet of the pipeline and deposition area). Beach areas closed for sand placement shall be re-opened for public use as soon as feasible upon completion of sand placement. All beach areas and recreation facilities outside of the 200-foot radius shall remain open and available for public use during the normal operating hours.

V. FINDINGS AND DECLARATIONS

A. BACKGROUND, PROJECT LOCATION AND DESCRIPTION

1. Background and Project Location

Historically, the County of Orange has carried out maintenance dredging in navigational channels and areas under docks within Dana Point Harbor that have become shoaled due to sediment build up. The previous dredging cycle occurred in 2008/2009 (Coastal Development Permit No. 5-06-458/Consistency Certification No. CC-071-07 approved by the Coastal Commission in December 2007), and approximately 78,300 cubic yards (a total of 113,900 cubic yards of dredging was allowed by the Commission approval) of sandy sediment were dredged. Of this volume, approximately 48,400 cubic yards of sandy material was placed on Capistrano Beach (48,400 cubic yards of material was approved to be placed on Capistrano Beach), 5,700 cubic yards of sandy material was placed on Baby Beach In Dana Point Harbor (9,500 cubic yards of material was approved to be placed on Baby Beach), and the remaining 24,200 cubic yards of fine silty and clayey material were deposited at LA-3 (56,000 cubic yards of material was approved to be deposited at LA-3), the EPA approved offshore disposal site.

The construction of Dana Point Harbor began in the late 1960s and the harbor was officially dedicated on July 31, 1971. The harbor is located in Capistrano Bay on the southern Orange County coastline, which is approximately half way between Los Angeles and San Diego (**Exhibit #1**). Dana Point Harbor is a County Park located within the City of Dana Point, and serves recreational boaters and County residents alike with numerous recreational and leisure activities, and is a vital commercial and community center.

Facilities within the harbor immediately adjacent to the water include the East and West marinas containing approximately 2,400 slips and 50 guest slips, a fuel dock, bait barge, boat launch ramps, commercial fishing docks, a boatyard, guest docks, boat rental docks, yacht clubs, the youth and group facility, an interior swim beach known as “Baby Beach,” a fishing pier, and the Ocean Institute docks for tall ships and research vessels. There is a lifeguard station on Baby Beach and lifeguard stations on Capistrano County Beach.

The project area is located within State tidelands which were granted to the County of Orange (Statutes of 1919, chapter 526, page 1138). The County of Orange is the applicant. The proposal does not include submerged lands that are privately owned. The tidelands grant to the County does not authorize the County to dredge within the grant area without prior approval from the California State Lands Commission (CSLC). Approval may be granted through a tidelands lease from CSLC. The applicant is coordinating with the CSLC for this approval.

2. Project Description

The County of Orange proposes to carry out maintenance dredging to remove shoaled areas from navigable channels in Dana Point Harbor. Accumulation of sediment in the harbor occurs from littoral sediment transport which enters the harbor through the entrance channel

and the permeable breakwater and from storm drain discharges. To maintain the harbor, the County of Orange needs to periodically remove this accumulated sediment. The County of Orange has carried out previous Dana Point Harbor maintenance dredging in the navigation channels, anchorages, and areas under docks that have become shoaled due to sediment buildup. A total of 136,000 cubic yards of accumulated sediment is proposed to be dredged from the harbor with this application. The main elements of the project are the maintenance dredging of the harbor, reuse of suitable dredge material to provide nourishment for Capistrano County Beach and Baby Beach, and disposal of dredge material at LA-3, which is located approximately 14 miles from the entrance of Dana Point Harbor. Additionally, material not suited for ocean disposal will be disposed of inland. Maintenance dredging will provide for safe navigation in Dana Point Harbor, a public marina that is widely used by the public for recreation. The placement of sand on Capistrano County Beach will widen the beach for recreational use. The placement of beach quality sand on Baby Beach will enhance the recreational experience and promote public health by covering finer sand that may contain bacteria (**Exhibits #2-3**).

The specific locations where dredging will take place are: 1) Main Channel adjacent to Entrance; 2) Main Channel adjacent to the West Breakwater; 3) West Anchorage; 4) Pilgrim Moorage / Cove Pier; 5) Sailing Center Docks; 6) East Basin - Adjacent to 60" Outfall; 7) East Basin – Northeast Corner; and 8) Boat Launch Ramp Basin (divided into north and south based on design depths) (**Exhibit #2**). Originally, dredging was also proposed for the East Anchorage area; however, dredging at this location has now been removed from the proposed project.

The design depths range from -8 feet MLLW (Mean Lower Low Water) at the Sailing Center Docks to -15 feet MLLW in the Main Channel. The bid documents will allow for one foot of paid material removal beyond the design depth and a maximum of two feet beyond the design depth. The total maximum quantity of dredge material includes an allowance for two feet of possible overdredge depth beyond the design depth and a 25% contingency to account for additional sediment deposition that will likely occur between the 2013 condition survey and dredging, as well as for incidental sloughing of dredge cut side slopes. This total amount is estimated to be 136,000 cubic yards.

Channel deepening in the Pilgrim Moorage area (just south of the Fishing Pier) is proposed to accommodate larger Ocean Institute or other visiting historic / tall ship vessels. The proposed change is to deepen the area from -10 ft. MLLW to -14 ft. MLLW (i.e., for a new authorized design depth of -14 ft. MLLW). This design depth is consistent with the currently authorized -14 ft. MLLW depth for the adjacent area alongside the current Pilgrim moorage docks (i.e., the proposed change is to expand the -14 ft. MLLW design depth for the entire Pilgrim / Historic Vessels Moorage area south of the Fishing Pier).

The material from the Main Channel adjacent to the West Breakwater and West Anchorage areas is sandy material and approximately 99,000 cubic yards can be used for beach nourishment at Capistrano County Beach and Baby Beach. The material from the Pilgrim Moorage/Cove Pier, Sailing Center Docks, Boat Launch Ramp Basin, and East Basin areas are finer silty, clayey material. With the exception of the material immediately adjacent to the 60-

inch storm drain outfall, 34,000 cubic yards of this finer material is proposed for disposal at the LA-3 open ocean site. The material immediately adjacent to the 60-inch outfall is not suitable for open ocean disposal, and approximately 3,000 cubic yards of this material will require disposal at an upland permitted landfill.

Chemical composition, grain size and bioassay testing as outlined in the documents entitled *Sampling and Analysis Report [SAP], Dredge Material Evaluation Dana Point Harbor Maintenance Dredging prepared by Kinnetic Laboratories, Inc. and Moffatt & Nichol dated March 2014*, were conducted. It was determined that the proposed material to be deposited on Baby Beach and Capistrano Beach was allowable, and confirmed that some dredged material should be deposited at LA-3, and the remaining be deposited at an upland permitted landfill.

The SAP was extensively reviewed and approved by the Southern California Dredged Material Management Team (SC-DMMT) at their March 2014 meeting. The SC-DMMT is an interagency team managed by USACE for the coordinated review of dredging projects and dredging policy issues within the Southern California area, specifically the counties of San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and parts of San Luis Obispo County. Coordinated review of dredging projects and policy issues reduces redundancy and unnecessary delays in permit processing (and ultimately in the management of coastal sediments), promotes consistency in dredging project reviews, and facilitates development of consensus recommendations among regulatory staff. The Coastal Commission is a member of the SC-DMMT and has participated in the review of the proposed project.

The proposed dredge and nourishment project was evaluated to determine if there were any potential biological impacts in a document entitled: *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated February 2014. The report states that benthic invertebrates will be adversely impacted, but that they will recolonize rapidly and that dredging would not be expected to result in a long-term change in the diversity, density, or species composition of soft bottom benthic communities in Dana Point Harbor.

Harbor dredging will occur via clamshell dredge or cutter/suction head dredge or a combination of both. The sandy material will be removed using a cutter/suction head dredge and hydraulically pumped via a temporary pipeline from Dana Point Harbor to Capistrano Beach, using the same pipeline corridor as from the previously approved project (Coastal Development Permit No. 5-06-458/Consistency Certification No. CC-071-07). A booster pump along the length of pipeline may be needed. The sandy slurried material will be placed into temporary fill dikes constructed on Capistrano Beach and final beach grading will be performed using bulldozers. A small amount of coarse sandy material will be placed on Baby Beach to maintain a +9 MLLW beach berm elevation. If the clamshell dredge is used for the sand removal, then the sand will be loaded onto scows, transported to an unloading dock, and then taken via truck to Baby Beach. If the cutter/suction head method is used, the sand will be pumped through a pipe directly onto Baby Beach from the dredge barge. While the applicant has indicated that a temporary fill dike will be used at Capistrano Beach, no plans have been submitted for this project feature. Thus, the Commission

imposes **Special Condition No. 1**, which requires the applicant to submit plans for these temporary dikes located above the mean high tide line (MHTL) prior to the issuance the coastal development permit.

The proposed temporary discharge pipeline would have surface connection within Dana Point Harbor. It would then submerge and lie on the ocean bottom to Capistrano Beach, emerging above the high tide line onto Capistrano Beach. From this end-of-pipeline point on Capistrano Beach, the construction crew would hook up 200- to 300-foot sections of shoreline-parallel pipeline that would go to the specific placement locations (temporary constructed dikes) along the beach. The pipeline would be a 30-inch outer-diameter steel-walled or High Density Poly-Ethylene (HDPE) pipeline. If a HDPE pipeline is used, it would have to be sufficiently anchored to the ocean bottom and beach using collars and weights (Anchoring devices are not needed if a steel-walled pipeline is used).

The pipeline would be installed by filling it with compressed air, floating it into place using a barge and tender boats, and then submerging it by removing the compressed air. The pipeline removal process is to connect a compressor at the dredge end of the pipeline and then pump compressed air into the pipeline, which pushes water out of the pipeline and causes the pipeline to float to the surface of the ocean. Then the pipeline is picked up by barge and tender boats. The pipeline is anticipated to be in place for no more than a maximum of 14 weeks.

Pipeline placement and movement has the potential to crush or scrape encrusting organisms on reefs in the project area. MBC Applied Environmental Sciences in 2008 and 2009 surveyed the pipeline route before and after the last dredging event (Coastal Development Permit No. 5-06-458/Consistency Certification No. CC-071-07) and observed no damage to any organism. The same pipeline route and methods are proposed for the currently proposed maintenance dredging. A pre-dredge survey of the pipeline was performed entitled: *Preconstruction Biological Survey of the Pipeline Route Between Dana Point Harbor and Capistrano County Beach prepared by the Chambers Group dated February 2014*. A post-dredge survey of the pipeline route also will be performed to ascertain any adverse impacts.

The material within the harbor channels designated for disposal at LA-3 will be removed using clamshell dredge equipment, loaded onto bottom-dump scows, and transported to the LA-3 ocean disposal site. For any upland disposal, this material will be removed using clamshell dredge equipment, transported to an unloading dock, loaded onto trucks, and then taken to an appropriate upland permitted landfill disposal site (such as the Prima Deshecha or Olinda Alpha Landfills, which are outside of the Coastal Zone).

The applicant states that several measures will be taken to reduce water quality impacts during dredging and material placement at the beach sites. The project will comply with Regional Water Quality Control Board (RWQCB) waste discharge requirements. These and any additional requirements will be addressed in the plan specifications

Dredging is anticipated to begin in fall of 2014 or early winter of 2015. The anticipated timeframe for the proposed project is as follows: 1) two to four weeks for mobilization of

construction equipment; 2) six to eight weeks for dredging and disposal, assuming that both the fine and coarse sediment dredging operations occur simultaneously; and 3) two weeks for demobilization of construction equipment. A few boat slips will be closed during dredging and the boats will be moved to temporary slips. The County will only relocate boats and will not install any new docks. If the County intends to install new docks, they would need to submit an amendment to this permit to accomplish this.

Although the placement of sand at Capistrano Beach is referred to as beach nourishment in the application package, the applicant states that it actually is an opportunistic benefit for disposal of littoral sediment dredged from Dana Point Harbor. The placement of sand at Capistrano Beach is driven by the need to dispose of the dredge material and not vice-versa. Accordingly, there are no plans to do post-construction monitoring of this specific project as might have been done for an intended nourishment project where placement of sand is needed to maintain a specified beach width.

B. STATUS OF LOCAL COASTAL PROGRAM (LCP)

The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not any Local Coastal Program (LCP) of the affected area. If the Commission has certified an LCP and incorporated it into the California Coastal Management Program (CCMP), the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated an LCP into the CCMP, the LCP cannot guide the Commission's decision, but it can provide background information. There is presently a certified LCP for the City of Dana Point. Therefore, the Commission has incorporated the LCP for the City of Dana Point into the CCMP.

C. APPLICANT'S CONSISTENCY CERTIFICATION

The County of Orange has certified that the proposed project is consistent with the California Coastal Management Program.

D. CHAPTER 3 POLICY ANALYSIS OF COASTAL DEVELOPMENT PERMIT AND CONSISTENCY CERTIFICATION

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:

(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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(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.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30221 of the Coastal Act 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 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 of the Coastal Act states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30220 of the Coastal Act states:

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

Section 30224 of the Coastal Act 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.

1. Sensitive Habitats and Resources

In this case, the proposed dredging and off-shore disposal would occur in order to restore previously dredged depths in existing navigational channels. Sediment grain size analysis concluded that some of the sediment was suitable for beach replenishment, while the remaining sediment was suitable for disposal at LA-3 or disposal at an upland permitted landfill.

Without dredging, boat slips within the marina would become silted and unusable and use of navigational channels would be impeded, thereby decreasing the usefulness of the site for recreation oriented boating. Accordingly, the no project alternative would have an adverse impact upon boating related uses of coastal waters.

The dredging is only proposed to occur in previously dredged areas to restore previously dredged depths. There are no feasible alternatives to the proposed dredging which would restore the berthing areas at the subject site and be less environmentally damaging. The soft bottom areas of Dana Point Harbor are largely unvegetated and are not known to support

large meadows of eelgrass. However, patches of eelgrass have been found recently within the harbor near Baby Beach. While eelgrass has been found near Baby Beach and there is a potential to impact it by the dredging activity and nourishment activity, the applicant has stated that they will avoid any impacts to eelgrass (to be discussed further in the staff report).

Section 30230 of the Coastal Act requires that marine resources be protected and that the use of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The proposed dredging may impact sensitive habitats and resources. Therefore, mitigation measures are necessary to protect the biological productivity of coastal waters.

Section 30233 of the Coastal Act allows dredging and filling of coastal waters or wetlands only for the seven uses listed in Section 30233 of the Coastal Act, as stated above, and where such dredging/fill is the least environmentally damaging feasible alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In this case, the proposed dredging would occur in order to maintain existing and/or restore vessel berthing and mooring areas. Fill would result from the placement of dredged sand on Capistrano Beach and Baby Beach and from disposal of sediment at the ocean disposal site at LA-3. This proposed dredging and fill is allowable pursuant to Sections 30233(a)(2), 30233(a)(6) and 30233(b) of the Coastal Act. However, in order to verify that the project implements the least environmentally damaging alternative, mitigation measures are necessary.

A sediment grain analysis was conducted by the applicant in a document entitled *Sampling and Analysis Report [SAP], Dredge Material Evaluation Dana Point Harbor Maintenance Dredging prepared by Kinnetic Laboratories, Inc. and Moffatt & Nichol dated March 2014*. The analysis concluded the following: the material from the Main Channel adjacent to the West Breakwater and West Anchorage areas is sandy material and approximately 99,000 cubic yards can be used for beach nourishment at Capistrano County Beach and Baby Beach; 2) the material from the Pilgrim Moorage/Cove Pier, Sailing Center Docks, Boat Launch Ramp Basin, and East Basin areas are finer silty, clayey material; 3) with the exception of the material immediately adjacent to the 60-inch storm drain outfall, 34,000 cubic yards of this finer material is proposed for disposal at the LA-3 open ocean site; and 4) the material immediately adjacent to the 60-inch outfall is not suitable for open ocean disposal, and 3,000 cubic yards of this material will require disposal at an upland permitted landfill. The grain size of the material to be deposited on Capistrano Beach and Baby Beach range from 0.175 to 0.20 mm. The size of the existing material at Capistrano Beach is 0.2mm, while the size of the material at Baby Beach range from 0.125 to 0.250mm. The materials are all similar in grain size and therefore, nourishment activities were found to be allowable.

In order to evaluate the potential biological impacts associated with the proposed project, the applicant submitted the following document: *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated February 2014. The report states that all of the benthic invertebrates (opportunistic species) that live in or on the sediments that will be dredged in Dana Point Harbor will be displaced or destroyed. The disturbed areas are expected to be recolonized rapidly by opportunistic

organisms similar to those that occur in the harbor prior to dredging. However, the report also states that soft bottom invertebrates that live adjacent to the dredging area may suffer lethal or sublethal effects from burial and turbidity of sediments disturbed by the dredge. Nonetheless, the dredging would not be expected to result in a long-term change in the diversity, density, or species composition of soft bottom benthic communities in Dana Point Harbor due to the anticipated rapid recolonization by opportunistic organisms and, thus, would have an adverse but insignificant impact.

The same biological report analyzed the potential impacts associated with the nourishment activities at Capistrano Beach and Baby Beach. In regards to Capistrano Beach, the report states that discharge of sand directly onto Capistrano Beach would bury intertidal invertebrates living in the sand or mixed sand/cobble areas. However, most studies have found that diversity, biomass, and abundance of sandy intertidal invertebrates declines following beach nourishment but that the community recovers within a few months. Therefore, the effects of beach nourishment on sandy intertidal invertebrates by direct placement of sand on Capistrano Beach would not be expected to be significantly adverse. The report also states that while impacts to sandy intertidal invertebrates may not be significantly adverse, there may be adverse impacts during the *California grunion* spawning season. Thus, the report states that if sediment placement occurs during the *grunion* spawning season, a qualified biologist should monitor all predicted *California grunion* runs. Additionally, the report states that *Western snowy plovers* use Capistrano Beach for foraging and resting. Through observations on site and other study areas, the report states that disturbance to *Western snowy plovers* during beach placement at Capistrano Beach will be limited to avoidance of the immediate area where activities are occurring and possibly occasional brief disturbance by equipment and personnel accessing the discharge site. However, because Capistrano Beach is not near a *Western snowy plover* nesting area, these impacts would be adverse but insignificant. Nonetheless, if sand is placed directly on Capistrano Beach it is recommended that a monitor be present to ensure that *Western snowy plovers* are not adversely impacted by this placement. In regards to Baby Beach, the report states that the potential impacts are the same as those for Capistrano Beach, but fewer biological resources are present in the Baby Beach area. At this location though, eelgrass patches have been found and could be impacted from the dredge and nourishment activities taking place here. However, the applicant has stated that they will avoid impacts to eelgrass. Nonetheless, it is recommended that a pre-dredge and post dredge eelgrass survey be conducted. Thus, the Commission imposes **Special Condition No. 1**, which requires that the placement of sediment on Baby Beach and Capistrano Beach must incorporate the reports proposals with regard to the protection of the western snowy plover and monitoring for California grunion.

The potential biological impacts associated with the proposed temporary pipeline that would be used for the beach placement option from Dana Point Harbor to Capistrano Beach were evaluated in the Chambers group report dated February 2014. MBC Applied Environmental Sciences in 2008 and 2009 surveyed the pipeline route before and after the last dredging event (Coastal Development Permit No. 5-06-458/Consistency Certification No. CC-071-07) and observed no damage to any organism. The same pipeline route and methods are proposed for the upcoming maintenance dredging. A pre-dredge survey of the pipeline was

performed entitled: *Preconstruction Biological Survey of the Pipeline Route Between Dana Point Harbor and Capistrano County Beach prepared by the Chambers Group dated February 2014*. A post-dredge survey of the pipeline route also will be performed to ascertain if any habitat was impacted.

In order to avoid adverse impacts to the *California grunion*, the Commission imposes **Special Condition No. 2**, which requires the applicant to avoid work during grunion run season unless they obtain clearance from the California Department of Fish and Wildlife and the Executive Director of the Commission to proceed based upon an assessment of the spawning of the California grunion found in the area and a statement that the development activity on the specific dates proposed and in the specified locations will not interfere with the spawning of the California grunion.

The applicant has not identified a staging area for the proposed project. Thus, in order to ensure that no adverse impacts upon sensitive habitats and species occur due to construction staging, the Commission imposes **Special Condition No. 3**, which requires the applicant to submit a construction staging area plan prior to the issuance of the permit.

The increase in suspended sediments caused by dredging could also decrease light penetration, deter small fish from using the protective habitat, and interfere with bird foraging. The increase in turbidity can interfere with this sight-based feeding. However, wildlife foraging for food in the water column would not need to go a significant distance to avoid areas that are affected by turbidity. Furthermore, the Regional Water Quality Control Board (RWQCB), as one state agency that regulates discharges into coastal waters, sets turbidity standards. The RWQCB standards for acceptable levels of turbidity include a maximum increase of 20% of naturally occurring turbidity and dissolved oxygen levels of not less than five milligrams per liter. The Commission finds that it is necessary to ensure that these turbidity standards are not exceeded and to assure that acceptable levels of turbidity are maintained, the Commission imposes **Special Condition No. 4**.

As conditioned, the proposed project will not impact sensitive resources; however, in order to verify this, the Commission imposes **Special Condition No. 9**, which requires the applicant to document compliance with all general and special conditions defined in this permit to ensure protection of sensitive habitat in proximity to the project area. The Commission finds that the proposed dredging is an allowable use and the least environmentally-damaging feasible alternative (with feasible mitigation measures).

Conclusion

Therefore, as conditioned, the Commission finds the proposed project is consistent with Sections 30230 and 30233 of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

2. Water Quality

One of the potential adverse effects from dredging and ocean disposal activities is the re-suspension and relocation of contaminants. Dredge material can contain elevated levels of

heavy metals, pesticides, organics, and other pollutants. These contaminants usually are bound to finer grain material such as clay and silt. Pursuant to the requirements of the Corps and under the direction of the U.S. Environmental Protection Agency (EPA), the applicant conducted physical, chemical, and biological tests on the sediments within the proposed dredging areas of Dana Point Harbor proposed for aquatic disposal at Baby Beach, Capistrano Beach, at the federally-approved ocean disposal LA-3 site, and at the upland permitted landfill.

As stated previously, an analysis of the chemical composition, grain size and bioassay testing were completed and discussed in the *Sampling and Analysis Report, Dredge Material Evaluation Dana Point Harbor Maintenance Dredging prepared by Kinnetic Laboratories, Inc. and Moffatt & Nichol dated March 2014*. This analysis determined that the proposed material to be deposited on Baby Beach and Capistrano Beach was allowable and confirmed that some dredged material should be deposited at LA-3 and the remaining be deposited at an upland permitted landfill. This SAP was reviewed and approved by the Southern California Dredged Material Management Team (SC-DMMT) at their March 2014 meeting.

In order to further protect water quality, the Commission imposes **Special Condition No. 5**, which requires the applicant comply with other water quality best management practices for the duration of the dredging period.

In addition, while the RWQCB has reviewed the sediment analyses, the 401 permit is still pending. Thus, the Commission imposes **Special Condition No. 6**, which requires applicant to the submit a copy of the 401 permit issued by the RWQCB regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required prior to the issuance of permit

Conclusion

Therefore, as conditioned, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not affect water quality resources of the coastal zone, and therefore, the project is consistent with the Water Quality policy of the CCMP.

3. Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fish – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that pursue fish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

The soft bottom areas of Dana Point Harbor are largely unvegetated and are not known to support large meadows of eelgrass, but small patches of eelgrass have been found recently within the harbor near Baby Beach, as shown in MBC Applied Environmental Sciences surveys (2008, 2009) and a Coastal Resources Management survey (2010). While eelgrass has been found near Baby Beach and there is a potential to impact it from the proposed project by the dredging activity and nourishment activity, the applicant has stated that they avoid any impacts to eelgrass. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the November 2014 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **Special Condition No. 7**, which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

4. *Caulerpa Taxifolia*

In the late 1990s, a non native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies similar habitat. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

¹ References : Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchionetti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In August 2000, an infestation of *C. taxifolia* was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures as low as 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted. In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the bay bottom could cause its spread by dispersing viable tissue fragments. The proposed project would disturb the harbor bottom by dredging and *C. taxifolia* could be distributed to other parts of the bay or to the open ocean through transport of the dredge spoils for ocean disposal. The site has not been surveyed for *C. taxifolia*. Therefore, the Commission imposes **Special Condition No. 8**, which identifies the *C. taxifolia* survey procedures necessary to be completed prior to beginning any construction.

Conclusion

Therefore, as conditioned, the Commission finds the proposed project is consistent with Sections 30230 and 30233(b) of the Coastal Act. In addition, the Commission finds that the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

5. Recreation and Public Access

The proposed project will allow for continued long-term use of coastal waters for recreational boating. Temporary impacts to the use of the recreational facility and marina during dredging is expected. A few boat slips will be closed during dredging, but the boats will be moved to temporary slips. The County will only relocate boats and will not install any new docks. If the County intends to install new docks, they would need to submit an amendment to this permit to accomplish this. Thus, access will constantly be maintained on-site.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

The proposed project includes the placement of sediment at Baby Beach and Capistrano Beach and public access to these placement areas on the beach would be temporarily prohibited during the active construction period for safety reasons. A condition of the permit (**Special Condition No. 11**) requires the applicant to minimize beach area closures by limiting closed beach areas to an area not to exceed two hundred feet from the pipeline and deposition area. Furthermore, as discussed previously, during the period when the sediment placement pipes are present on the beach, sand would be pushed up and around and over the pipes to create a “walkover” ramp for people to be able to safely go over the pipes. Therefore, access to and along those portions of the beach which are not temporarily closed will be maintained. The long-term benefits of beach nourishment offset the temporary reduction in beach use by providing a larger, more stable beach for public recreation.

Access at the beach deposit locations may be impacted by the proposed deposit of materials. In order to analyze the potential impacts, deposition profile reports are necessary in order to provide a record of how existing and proposed beach profiles have changed and will be used to place sand in areas where it will be retained the longest to ensure that the beach deposition project provides maximum access and recreation opportunities along the coast for the public. Therefore, the Commission imposes **Special Conditions No. 10**, which requires the applicant to submit and pre- and post- deposition profiles at the approved beach deposition locations.

Conclusion

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30213 and 30221 of the Coastal Act. In addition, the Commission finds that the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

6. Commercial Boating/Recreational Boating/Fishing

The project will have no negative effects on commercial or recreational boating or fishing in the area. The dredging and placement of material at LA-3 will aid in helping to continue to protect and provide commercial fishing and recreational boating industries in Dana Point Harbor by improving navigation within the bay.

Conclusion

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30234, 30234.5, 30220 and 30224 of the Coastal Act. In addition, the Commission finds that the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

E. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the

proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The proposed development is taking place in the City of Dana Point, which has a certified Local Coastal Program (LCP). However, the dredging, which is located in the water of the harbor, and placement of dredged material is taking place on the beach at Baby Beach and Capistrano Beach, all of which is occurring partially or wholly within the Commission's area of original jurisdiction. Section 30601.5 of the Coastal Act allows the Commission to take action on development proposals where there is both local and Commission jurisdiction, and the City of Dana Point has agreed to let the Commission process a CDP for the portions of this project within the City's jurisdiction. Therefore, the development must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act and therefore will not prejudice the ability of the City to continue to administer its LCP.

The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act. However, since the certified LCP for the City of Dana Point and has been incorporated into the California Coastal Management Program (CCMP), the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of 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 which the activity may have on the environment.

The County of Orange is the lead agency for purposes of CEQA compliance. A Categorical Exemption (IP13-376) dated January 13, 2014 was prepared for this project pursuant to the provisions of CEQA.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area (i.e., docks, parking). The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the public access, water quality, and habitat protection policies of the Coastal Act. Mitigation measures to minimize adverse effects include special conditions related to **1)** submittal of temporary dike plans and placement of sediment material on Baby Beach and Capistrano Beach shall be completed as discussed in submitted reports; **2)** timing construction to avoid adverse impacts upon California grunion; **3)** staging area; **4)** turbidity control; **5)** construction responsibilities; **6)** pre- and post-construction eelgrass surveys; **7)** pre-construction *Caulerpa Taxifolia* survey; **8)** Regional Water Quality Control Board (RWQCB) 401 Permit approval; **9)** post completion report; **10)** beach profile monitoring at disposal sites; and **11)** the applicant to re-open beach areas closed during sand placement as quickly as possible following completion of the work. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse

effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

SUBSTANTIVE FILE DOCUMENTS: California Environmental Quality Act (CEQA) Categorical Exemption (IP13-376) prepared by the County of Orange dated January 13, 2014; Approval-in-Concept (Categorically Exempt, Class 1, Section 15301) from the City of Dana Point dated January 16, 2014; City of Dana Point Certified Local Coastal Program (LCP); Coastal Development Permit No. 5-06-458/Consistency Certification No. CC-071-07; Letter from Commission staff to Chambers Group, Inc. dated April 23, 2014; Letter from Chambers Group, Inc. to Commission staff dated May 20, 2014; *Sampling and Analysis Report, Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. and Moffatt & Nichol dated March 2014; *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated February 2014; and *Preconstruction Biological Survey of the Pipeline Route Between Dana Point Harbor and Capistrano County Beach* prepared by the Chambers Group dated February 2014.

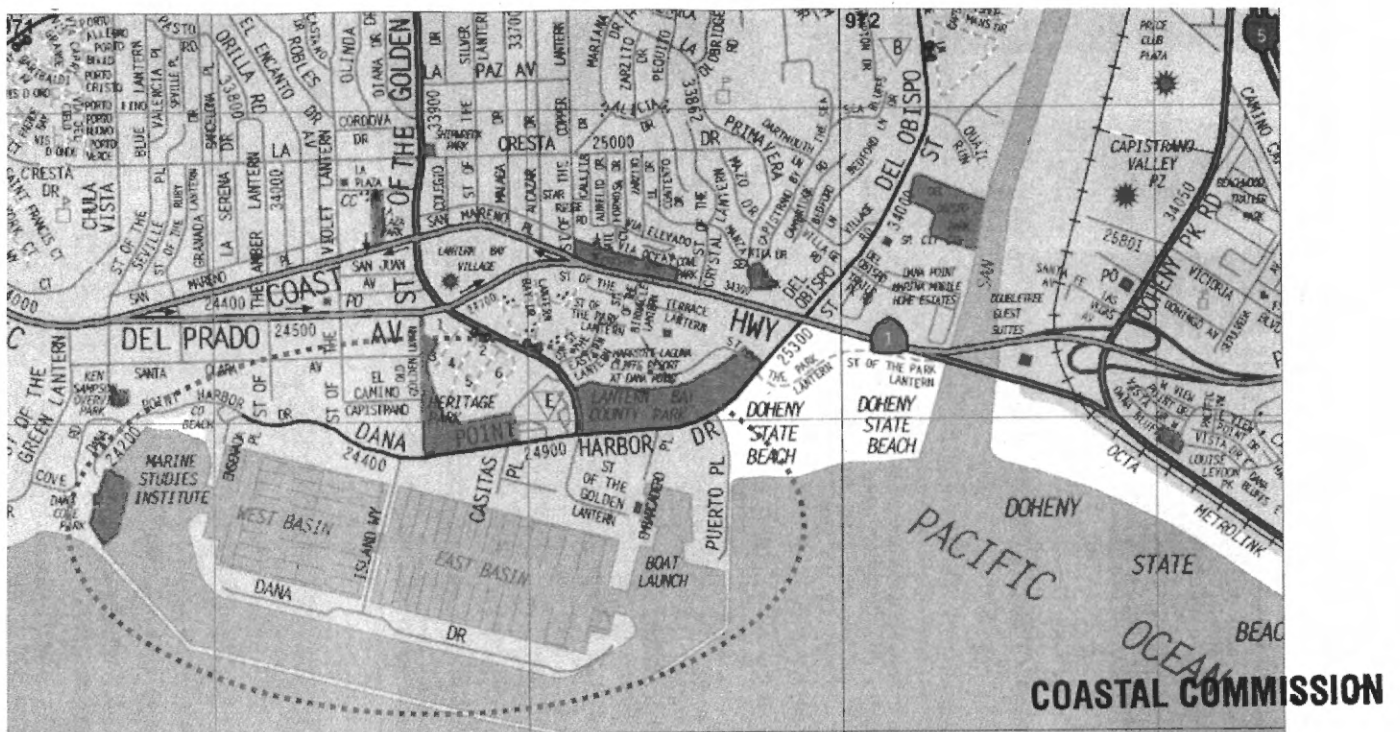
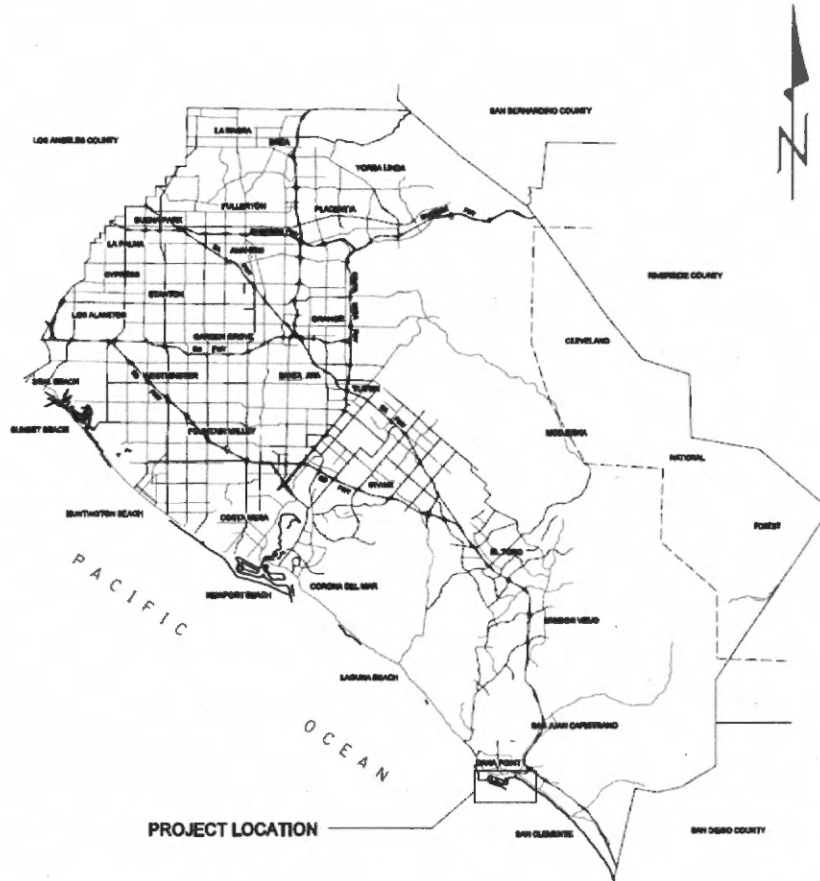
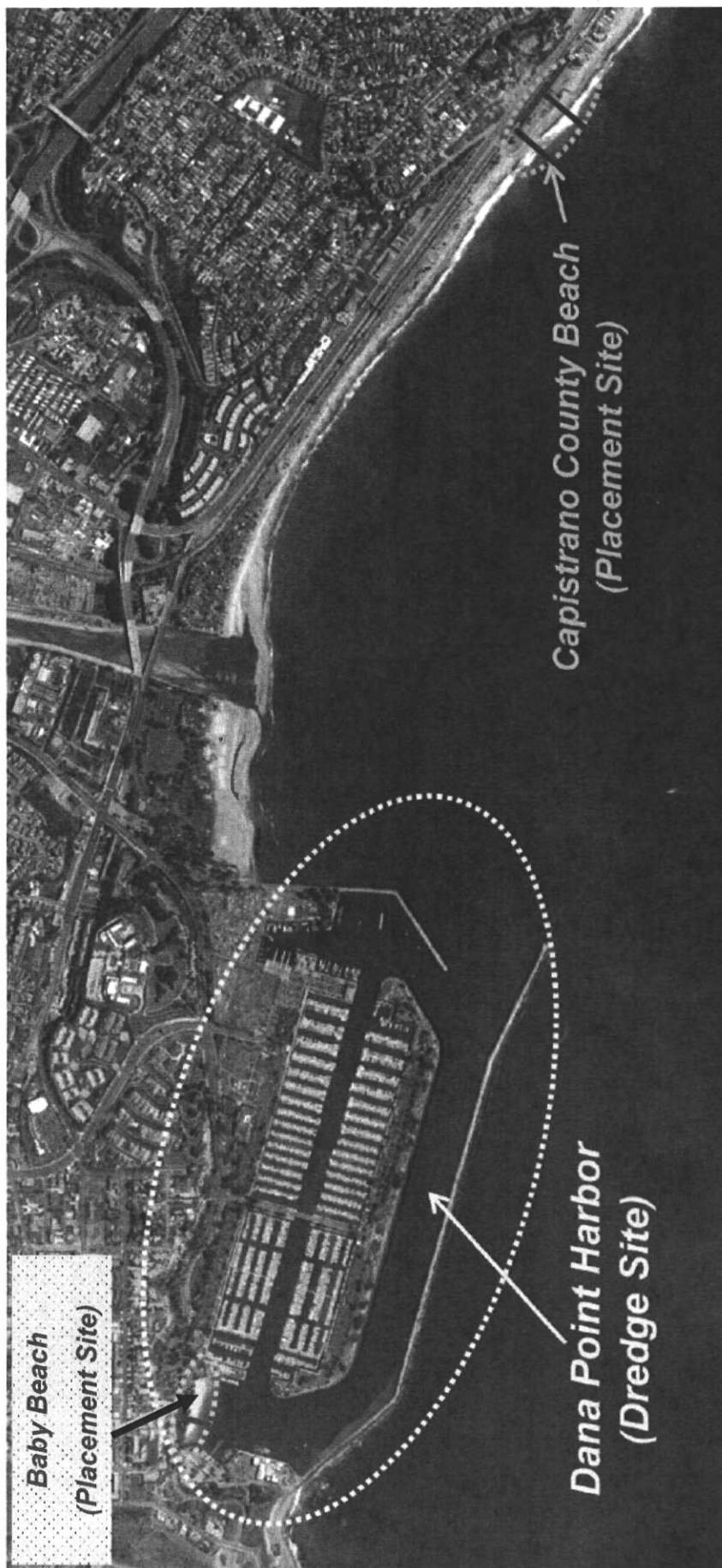


Figure 1. Dana Point Harbor Vicinity Maps.



Figure 3 - Dredging Areas

COASTAL COMMISSION



COASTAL COMMISSION

EXHIBIT # 3

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