

**CALIFORNIA COASTAL COMMISSION**

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# Th11a

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-02-031-A6

**Permittee:** Orange County Public Works

**Agent:** Kim Garvey, Moffatt & Nichol

**Location:** Ocean outlets at Talbert Channel (City of Huntington Beach), Santa Ana River (City of Huntington Beach, City of Newport Beach), Salt Creek (City of Dana Point), Estrella Storm Channel (City of Dana Point), Segunda Deschecha Cañada (City of San Clemente), Orange County (APNs: 114-160-64, 114-200-07, 114-200-12, 670-151-55, 691-151-32, 058-240-02)

**Description of Original Project Approved 7/9/2003:** Implementation of an ocean outlet maintenance program at ocean outlet locations throughout Orange County.

**Description of Proposed Amendment:** Request of Orange County Public Works to amend the Commission-approved Orange County Ocean Outlet Maintenance Manual including removal of North Doheny Creek from the program and modification of sediment excavation and deposition areas, volumes, and timing at Talbert Channel, Santa Ana River, Salt Creek, Estrella Storm Channel, and Segunda Deschecha Cañada ocean outlets in Orange County.

**Staff Recommendation:** Approval with conditions

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## **SUMMARY OF STAFF RECOMMENDATION**

Orange County Public Works is proposing to amend Coastal Development Permit (CDP) No. 5-02-031, approved by the Commission on July 9, 2003 to allow for the maintenance of ocean outlets within Orange County per the permit's conditions and the Orange County Ocean Outlet Maintenance Program Manual. The permitted maintenance work includes the replacement of dislodged rock, floating trash removal, excavation of accumulated sediment at the seaward end of the outlets, water quality monitoring, and deposition of the sandy materials on the adjacent beaches. The Commission-approved permit only applied to the Commission's retained permit jurisdiction areas which included the maintenance work at Segunda Deschecha Cañada (City of San Clemente), sediment deposit sites in areas that do not have a local coastal plan (LCP), and below the mean high tide line in certified local jurisdictions (areas with LCPs). The main goals of the maintenance program are flood control, prevention of water stagnation, restoration of surface flow, and beach nourishment. The subject permit amendment, CDP Amendment No. 5-02-031-A6, includes a proposal to remove the North Doheny Creek channel maintenance site from the program, modify the areal extent of sediment excavation and deposition areas (in most cases increase), sediment volumes (in all cases increase), and timing of work at other maintenance sites, and extend the Commission's permit approval another five to ten years.

The City of Huntington Beach, the City of Newport Beach, and the City of Dana Point all have certified Local Coastal Plans (LCPs). When the original permit was approved, the City of Newport Beach did not yet have an LCP. The City of San Clemente has a certified Land Use Plan (LUP), but is not yet fully certified. As such, the Commission retains permit issuance jurisdiction over development occurring in San Clemente's coastal zone. In addition, the Commission retains permit issuance jurisdiction in the portions of the City of Newport Beach subject to this permit amendment because they are located on filled public tidelands. Consequently, for the purposes of this permit amendment (5-02-031-A6), the Commission has jurisdiction over all work occurring on public tidelands, including the proposed maintenance areas in Newport Beach, and all work at the Segunda Deschecha Cañada outlet in the City of San Clemente. For the developments proposed in these two cities, the certified LUP (San Clemente) and the certified LCP (Newport Beach) may provide guidance for the proposed amendment; however the standard of review is the Chapter 3 policies of the Coastal Act.

For work occurring above the mean high tide line in the certified areas of Huntington Beach and Dana Point, the applicable local government has permit issuance jurisdiction. The local approval is appealable to the Commission. Work occurring on public tidelands in these cities (below the mean high tide line) falls within the Commission's original jurisdiction. The mean high tide line changes seasonally and depending on the maintenance work to be carried out, activities may extend into the Commission's jurisdiction. The applicant, the County of Orange, included in their permit amendment application development that is outside the Commission's retained jurisdiction area. This development will not be considered in the subject permit amendment. With permission from the cities of Huntington Beach and Dana Point, the applicant could pursue a consolidated permit for all the proposed work to be approved by the Coastal Commission. Alternatively, the proposed work not approved by this permit amendment (outside of the Commission's retained jurisdiction) would require a coastal development permit from the local jurisdictions in which the development would occur.

The most significant changes to the maintenance program are proposed at the Santa Ana River location and include a proposal to excavate up to 70,000 cubic yards of sediment (where approximately 7,500 cubic yards of sediment was originally approved) and place the excavated sediments along the length of Newport Beach extending seaward to the mean lower low water (MLLW) line. The County also proposes to change the semi-annual maintenance timing at all locations with additional modifications at Salt Creek and Santa Ana River. The County's proposal includes the extension of the period for maintenance activities to include the period between April 15 and September 15, which includes California least tern and western snowy plover nesting and California grunion spawning seasons and peak beach use. The County has proposed protective measures for the avoidance of these sensitive habitats and species, such as having a biological monitor on-site during excavation and deposition activities.

Due to the sensitive coastal resources within and adjacent to the areas subject to the Ocean Outlet Maintenance Program, including dune habitat, wrack piles, state and federal listed threatened and endangered species and populations and their respective sensitive and protected habitat areas, and popular beaches and surf breaks, special conditions are imposed. **Special Conditions 2** (existing condition), **5** (existing condition), **8, 9, and 12** are imposed to protect sensitive habitat and species through incorporating County-proposed protection measures and adding measures to protect wrack, limit sand discharge near sensitive habitat, restrict the routes and speed at which maintenance vehicles can drive along the beach, and avoid running maintenance operations during California least tern and western snowy plover nesting and California grunion spawning seasons. In addition, **Special Conditions 6** (existing condition), **7, and 9** protect public access to these popular beach areas by monitoring the impacts of sand dispersal on surf breaks including the Newport Jetties, Salt Creek, and The Wedge, restricting sand discharge where it may adversely impact iconic surf (The Wedge), and preventing regular maintenance from occurring during peak beach use. Furthermore, **Special Conditions 2, 3, and 4** of the underlying permit continue to apply and require the implementation of Best Management Practices (BMPs), a Water Quality Monitoring Plan, and the permit requirements and mitigation measures imposed on the project by other resource agencies to further protect coastal resources. **Special Condition 11** also requires the County to coordinate beach maintenance efforts with public and private entities that manage programs or projects with duplicative development to minimize cumulative impacts of development near the five ocean outlets.

Staff is recommending **approval** of the coastal development permit with **twelve (12)** special conditions. The special conditions include: **1) Expiration of Permit; 2) Conformance with the Requirements of the Resource Agencies; 3) Conformance with Best Management Practices; 4) Conformance with the Water Quality Monitoring Plan; 5) Timing – Biological Resources; 6) Timing – Public Access; 7) Coastal Recreation Protection Plan; 8) Habitat Protection Plan; 9) Submittal of Revised Final Plans; 10) California Grunion Monitoring and Avoidance Plan; 11) Coordination with Other Beach Maintenance Efforts; and 12) California Least Tern and Western Snowy Plover Monitoring and Avoidance Plan.**

The motion to carry out the staff recommendation is on page six.

**Due to Permit Streamlining Act requirements, the Commission must act upon this permit amendment application at the November 2018 Commission meeting.**

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. (14 Cal. Code of Regulations Section 13166.)

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and has the potential to negatively impact coastal resources or coastal access.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Ocean Outlet Site Plans

Exhibit 3 – Proposed Staging Areas

Exhibit 4 – Water Quality Monitoring Plan (2014)

Exhibit 5 – California Grunion Memorandum (Dr. Kelly Martin)

Exhibit 6 – U.S. Fish & Wildlife Conservation Measures

Exhibit 7 – Snowy Plover Best Management Practices

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission adopt the staff recommendation to **approve** Coastal Development Permit Amendment Request No. 5-02-031-A6, pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit amendment 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** the coastal development permit amendment for the proposed development and adopts the findings set forth below on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. 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

This permit is granted subject to the following 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 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 of 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.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following conditions:

**NOTE: Special Conditions 1 through 6**, approved by the Commission in its prior action on Coastal Development Permit No. 5-02-031, continue to apply. Special Conditions 2, 3, 4, and 5 are modified to update agency titles, reference the exhibits of the subject staff report, incorporate an updated water quality monitoring plan and require revisions to that plan, and clarify that maintenance activities shall not occur during the grunion spawning season, respectively. Deletions are shown in ~~strike-through~~. Additions are shown in underline.

#### Prior Conditions (5-02-031)

1. **Expiration of Permit.** By acceptance of this permit, the applicant agrees that this coastal development permit (5-02-031) shall expire five (5) years from the date of permit approval. Except as provided in Public Resources Code Section 30610 and applicable regulations, and as specifically provided in this condition, any future development as defined in PRC section 30106, including but not limited to specifically, maintenance activities beyond the expiration date of this permit, shall require an amendment to 5-02-031 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission. Coastal Development Permit No. 5-02-031-A6 shall expire five (5) years from the date of Commission action on the permit amendment.
2. **Conformance with the Requirements of the Resource Agencies.** The permittee shall comply with all permit requirements and mitigation measures of the California Department of Fish and Wildlife Game, California State Water Quality Control Board, Regional Water Quality Control Boards (Santa Ana and San Diego), 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, which is required by the above-stated agencies, shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. Portions of the proposed project outside the Commission's permit jurisdiction area require a coastal development permit from the appropriate certified local government.
3. **Conformance with Best Management Practices.** By acceptance of this permit, the applicant agrees to undertake development in conformance with the Best Management Practices (Appendix H), approved as part of Coastal Development Permit No. 5-02-031 and attached to the original staff report as Exhibit 5 (Appendix A). Additionally, the applicant shall comply with the following construction-related requirements:
  - (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion;
  - (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
  - (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to

contain sediment or contaminants associated with construction activities shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: solid waste management, off-site vehicle and equipment cleaning, off-site vehicle and equipment maintenance, and a employee/subcontractor training. BMPs shall be maintained in a functional condition throughout the duration of the project.

- 4. Conformance with Water Quality Monitoring Plan.** By acceptance of this permit, the applicant agrees to monitor the effects of the proposed maintenance activities in accordance with the Water Quality Monitoring Plan prepared by P & D Consultants Orange County Monitoring Programs Unit dated ~~January 2003~~ March 2014, attached as Exhibit 64, and revised as follows:

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a revised Water Quality Monitoring Plan that includes daily water quality monitoring requirements for maintenance events with durations exceeding seven (7) days.

~~The applicant shall submit the annual report for Commission review by February 1 of each year. If it is determined that the maintenance activities are contributing to a discharge resulting in adverse impacts to the adjacent receiving coastal waters, per 1 through 6 below, the applicant shall be required to submit a revised, or supplemental, revise the program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.~~

1. Projects shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life, or that produce detrimental physiological responses.
  2. Trash shall not be present in sediments to be placed on the beach.
  3. Projects shall comply with all applicable NPDES permits and Waste Discharge Requirements.
  4. Projects shall not discharge waste classified as 'hazardous' as defined in CCR title 22, section 66261 and Water Code section 13173.
  5. Petroleum products and other pollutants to surface waters that may result in violation of water quality standards is prohibited.
  6. Activities shall not cause visible oil, grease, or foam in the work areas or downstream or in the Pacific Ocean.
- 5. Timing – Biological Resources.** By acceptance of this permit amendment, the applicant agrees that, to avoid adverse impacts on California grunion and California least tern, routine maintenance activities shall not occur during the least tern nesting season (April 15-September 15) or the grunion run-spawning season (March through September). By February 25 of each year, the applicant shall obtain the seasonally predicted run schedule for the grunion, as identified by the California Department of Fish and ~~Game~~ Wildlife.



In the event that emergency maintenance activities must occur during the least tern nesting season or the seasonally predicted grunion ~~run period~~ spawning season, the permittee may proceed upon obtaining a written statement from the Executive Director authorizing construction on specified dates. To obtain such a determination, the permittee must submit a declaration from the Department of Fish and ~~Game~~ Wildlife stating that construction on the specific dates proposed will not cause adverse impacts to any sensitive or endangered species. The declaration must contain an assessment of the behavior of the grunion and California least tern found in the area and a statement that the construction activity on the specific dates proposed will not adversely impact the grunion and/or the least tern.

6. **Timing – Public Access.** By acceptance of this permit, the applicant agrees to avoid adverse impacts on public access and recreational use of the beach, all project operations associated with routine maintenance activities shall be prohibited during the "peak use" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

#### **Added Conditions (5-02-031-A6)**

7. **Coastal Recreation Protection Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Surf Break Monitoring Plan, to be implemented if deposition occurs at any of the identified ocean beach deposition locations. The Monitoring Plan shall include at a minimum:
  - A. Document the surf conditions a minimum of three times per week for at least one month prior to deposition. Required documentation shall include, but not necessarily be limited to, swell direction, timing of the wave sets, size of the waves, wave type (mushy or hollow), wind conditions, length of peel, distance of the breaking wave from the shore, existence of backwash, whether or not a change is observed where waves tend to close-out over the observation period rather than peak, or whether or not a change is observed indicating a perpetual shorebreak at the beach rather than a nearshore bar for waves to break over; and the presence or absence of surfers off shore of the deposition site;
  - B. Document the same surf conditions (described above) and presence or absence of surfers off shore of the deposition site at least three times per week for a minimum of eight weeks beginning within one week of the completion of deposition;
  - C. Conduct standardized interviews with surfers using a questionnaire;
  - D. A Surf Break Monitoring Plan, including the documentation and reporting for 11 A-C shall be developed to provide monitoring for all beach deposition locations where deposition occurs under this coastal development permit. In addition, a Surf Break Monitoring Plan shall be developed to provide monitoring for The Wedge. The Surf Break Monitoring Plan shall establish the qualification for the surf break monitors, and establish protocols that assure consistency in monitoring over time, or due to different qualified personnel serving as monitors.

- E. A final report that includes the monitoring results and an analysis of any change in surfing conditions, which shall be submitted to the Executive Director annually within 90 days of the final survey. The report, which shall be submitted to the Executive Director, shall draw conclusions and make recommendations to improve future deposition events' impacts on surf breaks.
- F. If a monitoring report shows a significant change in conditions, then the applicant shall submit the monitoring report to the Executive Director within 30 days of the final survey. The applicant shall apply for a permit amendment within 90 days of the final survey unless the Executive Director provides a written determination that no amendment is legally required.

**8. Habitat Protection Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Habitat Protection Plan, to be implemented during all maintenance operations. The Habitat Protection Plan shall demonstrate:

- A. Staging areas, maintenance areas, and access routes should be limited to areas of the beach that are regularly groomed and shall not cross or disturb sand dunes. The applicant shall maintain a fifty (50) foot buffer between sand dunes and staging areas, maintenance areas, and access routes.
- B. Staging areas, maintenance areas, and access routes shall not cross or disturb sensitive habitat areas as designated by the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and City of Newport Beach. The applicant shall maintain a one hundred (100) foot buffer between designated California least tern and western snowy plover habitat areas and staging areas, maintenance areas, and access routes.
- C. Staging areas, maintenance areas, and access routes shall minimize crossings or disturbance of the wrack zone. Wrack shall be separated and retained, to the maximum extent feasible, in areas where discharge operations will result in the loss or disturbance of wrack. Wrack shall be moved to the side during excavation and discharge operations and other project activities, and replaced in its original location/configuration, to the maximum extent feasible, at the completion of project operations where possible.
- D. Discharged material and discharge operations shall not extend seaward onto wet sand or into marine waters.
- E. Vehicles associated with the transport of sediment along the beach shall not exceed a speed of ten (10) miles per hour in potential sensitive habitat areas and fifteen (15) miles per hour in all other beach areas. A qualified biological monitor shall be onboard any vehicle that may cross through potential sensitive habitat area.

**9. Submittal of Revised Final Plans.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, two full-sized sets of the following revised final plans, modified as required below.
  - 1. Revised site plans that conform with the plans submitted to the Commission on March 9, 2018 and attached as Exhibit 2, except that they shall be modified to:

(a) include a linear representation of the mean high tide line (MHTL). The MHTL depicted shall represent the seasonal line appropriate for the time of year between October and February. Work proposed seaward of the MHTL is within the Commission's retained jurisdiction. To determine the elevation of Mean High Tide Line on the shore, the applicant shall use either the published Mean High Water elevation from a National Oceanic and Atmospheric Agency published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics.

(b) Eliminate the beach area downcoast of the eastern end of the B Street public parking lot in the City of Newport Beach (Exhibit 2, Figure 4d) from the sediment discharge area; and

(c) Comply with the special conditions imposed through this permit amendment.

2. Revised staging plans that conform with the plans submitted to the Commission on October 10, 2018 and attached as Exhibit 3, except that they shall be modified to:

(a) Conform with the revised site plans modified as required under item one (above); and

(b) Include an Access Route and Sediment Discharge plan for the transportation and deposition of excavated and cleaned (via screen plant) sediments from the Santa Ana River outlet to discharge areas within the City of Newport Beach. At a minimum, this Plan shall include:

- i. A map of proposed vehicle route(s) and discharge areas(s) that minimize impacts environmental impacts, especially in areas outside regularly groomed beaches and, as a second priority, vehicle miles travelled;
- ii. A description of the proposed methods of sediment transport, discharge, and final placement; and

B. Additionally, the applicant shall submit for the review and written approval of the Executive Director, an Access Route and Sediment Discharge plan **PRIOR TO EACH MAINTENANCE EVENT** at the Santa Ana River maintenance site. No excavated sediment shall be placed on the beach until approval from the Executive Director is received by the applicant.

All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., biologist, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**10. Grunion Monitoring and Avoidance Plan.** By acceptance of this permit, the applicant agrees to abide by the following Grunion Monitoring and Avoidance plan if the Executive Director issues a written statement to the applicant authorizing construction on specified

dates during a seasonally predicted grunion run. The Plan shall implement the following grunion protection measures:

- (a) The applicant shall obtain the seasonally-predicted grunion run schedule from the California Department of Fish and Wildlife website and schedule maintenance to avoid grunion spawning seasons.
- (b) The applicant shall obtain California Department of Fish and Wildlife and Coastal Commission Executive Director approval, as defined in the Coastal Development Permit conditions.
- (c) Assessment by trained personnel (i.e., qualified biological monitor) of the potential of the beach to support grunion spawning at each outlet where work will occur. Grunion monitoring will be required only at sites that have been identified as those supporting grunion spawning.
- (d) A monitoring schedule. If maintenance needs to be performed during the grunion spawning season at an outlet that may support spawning, the predicted grunion run prior to the maintenance work will be monitored. The predicted grunion run will be monitored for three nights: the night after the full or new moon phase and the two following nights. The monitoring would occur from the time of the high tide for two hours following the tide or until the grunion stop running if they are still running two hours after the high tide.
- (e) Results of grunion locations. If grunion are observed to run in the vicinity of an outlet, the area where they ran will be marked physically and/or by Global Positioning System (GPS) locations. The density of the grunion throughout the area will be noted.
- (f) The applicant will ensure that maintenance workers will avoid the spawning area during all work activities.
- (g) If spawning occurred within portions of a maintenance area, work in those areas will be avoided or rescheduled until after the grunion eggs have hatched. This occurs during the two weeks between grunion runs, i.e., the two or three days before every full or new moon or when it has been otherwise determined that the eggs from the run have washed out to hatch.

## **11. Coordination with Other Beach Maintenance Efforts**

- A. By acceptance of this permit, the applicant agrees to coordinate with the permittee of Coastal Development Permit No. 5-14-1604 regarding wrack protection and mechanical alteration of the sand within and surrounding Salt Creek to minimize air quality and water quality impacts and impacts to public access and recreation and biological resources.
- B. By acceptance of this permit, the applicant agrees to inform, in writing, the Executive Director of other known ongoing beach maintenance efforts in the vicinity of the subject maintenance activities and agrees to apply for a permit amendment if requested by the Executive Director. The Executive Director shall determine whether a permit amendment or a new coastal development permit is required to the subject permit amendment in order to avoid cumulative impacts on sensitive coastal resources. The applicant shall coordinate with the Cities of Huntington Beach, Newport Beach, Dana Point, and San Clemente and any other relevant parties as appropriate regarding beach maintenance operations and

projects located at or near the Orange County Ocean Outlet Maintenance Program sites to avoid cumulative impacts on coastal resources.

**12. California Least Tern and Western Snowy Plover Monitoring and Avoidance.** The applicant shall undertake the development in accordance with the special conditions of this permit, U.S. Fish and Wildlife Service conservation measures attached as Exhibit 6, Recommended Best Management Practices for Construction and Maintenance Activities within Special Protection Zones or near Roosting Plovers, and California least tern and western snowy plover impact avoidance measures proposed by the County and summarized below:

- (a) A qualified biological monitor will be provided by OC Public Works during excavation in the Santa Ana River channel, transport of excavated material along the beach, and any sand discharge adjacent to the least tern preserve and near the plover roosting area. The monitor will observe the maintenance operations to ensure that protected wildlife is not threatened or disturbed and, in general, will observe the behavior of California least terns and western snowy plovers if present during the sediment removal operations. This will include monitoring both excavation in the Santa Ana River and Talbert Channels and any sand discharge adjacent to the least tern preserve. The monitor will note whether either species exhibits nesting behavior within 500 feet of heavy equipment and will immediately notify the USFWS if so (refer to Special Condition 3 of the USACE permit and Conservation Measures 2, 3, and 4 of the project's Informal Section 7 Consultation/letter of concurrence [FWS-OR-12B0178-12I0599] from the USFWS, issued 10/16/2012).
- (b) Foraging areas for western snowy plovers will be identified in the field by proper signage.
- (c) The onsite biological monitor will provide education opportunities about the operations and the species protection measures if engaged by the public.
- (d) From spring to mid-summer, volunteer docents monitor least tern nests within the Least Tern Natural Preserve daily on behalf of the local Sea and Sage Audubon Society; it is recommended that the biological monitor share observations and sightings with the on-site volunteer(s) as necessary to adequately ensure protection of least terns and snowy plovers that may be in the vicinity.
- (e) Upon the completion of each maintenance activity, the monitor will submit a final report documenting the length of time of the maintenance activities, the general nature of the activities, the number and location of least terns and/or snowy plovers that were present within the monitoring area, and any observed maintenance-related effects on the birds; this report will be forwarded to USFWS with the annual report.
- (f) If the final report indicates that adverse impacts to California least terns or western snowy plovers as a result of the maintenance activities approved under this permit, then the applicant shall immediately submit a request to amend Coastal Development Permit No. 5-02-031-A6 with a proposal to avoid all impacts to sensitive biological species and populations.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

Orange County Public Works is proposing to amend Coastal Development Permit (CDP) No. 5-02-031 which allows for the maintenance of ocean outlets within the County of Orange per the permit's conditions and the Orange County Ocean Outlet Maintenance Program Manual. The previously permitted maintenance includes the replacement of dislodged rock, floatable trash and debris removal, excavation of accumulated sediment at the seaward end of the outlet, and deposition of the sandy materials on the adjacent beaches. The Commission-approved permit only applies to the Commission's retained permit jurisdiction areas which included the maintenance work at Segunda Deschecha Cañada and below the mean high tide line in certified local jurisdictions. The main functions of the maintenance program are flood control, prevention of water stagnation, and continued beach access. There have been three Commission-approved amendments to this permit to remove outlets from the program and extend the term of the permit. The subject permit amendment, CDP Amendment No. 5-02-031-A6, similarly includes a proposal to remove one outlet site from the program and to postpone the permit expiration date another five to ten years. There were originally seven outlets in the program; the applicant now proposes five outlets remain in the program. In addition, the proposed amendment would increase, in most cases, allowable sediment excavation and deposition volumes and areas, and expand the number of allowed maintenance events per year and the portion of the year in which maintenance operations could be carried out.

The County requests that North Doheny Creek be removed from the program because it is managed by California State Parks. The remaining five sites—Talbert Channel, Santa Ana River, Salt Creek, Estrella Storm Channel, and Segunda Deschecha Cañada—are shown in **Exhibits 1 and 2**. Orange County also proposes to extend the permit expiration until at least July 2026 (five years from the current expiration date of July 2021) or, if possible, until July 2031 (ten years from the current expiration date). Unique to this amendment is the request to modify the permitted sediment excavation and deposition areas, volumes, and timing. The proposed changes to the excavation and discharge volumes and areas per maintenance event at each of the five outlets remaining in the program, as proposed, are shown in the following table. The most significant changes are at the Santa Ana River location and include a proposal to place the excavated sediments along the length of Newport Beach extending seaward to the mean lower low water (MLLW) line (**Exhibit 2**), if there is insufficient space above the high tide line. Currently, the applicant is approved to place approximately 7,300 cubic yards of sediment in an approximately four acre area Adjacent to the Santa Ana River outlet. The proposed excavation volume would be approximately ten times the approved amount and the proposed discharge area would increase by approximately seven acres.

Outlet	Existing Excavation Area (acres)	Proposed Excavation Area (acres)	Existing Excavation Volume (cubic yards)	Proposed Excavation Volume (cubic yards)	Existing Discharge Area (acres)	Proposed Discharge Area (acres)
<b>Talbert Channel</b>	2.99	3.64	7,300 +/- 730	15,000	9.256	3.12
<b>Santa Ana</b>	8.783	6.36	7,300 +/- 730	70,000*	4.2526	11.22

River						
<b>Salt Creek</b>	0.421	0.23	111 +/- 10	1,000 +/-	0.297	0.2
<b>Estrella Storm Channel</b>	0.076	0.06	370 +/- 40	500 +/-	0.243	0.12
<b>Segunda Deschecha Cañada</b>	0.05	0.08	26 +/- 4	1,000 +/-	0.021	0.2

*\*No more than 200,000 cubic yards per year.*

There are sensitive land and marine resources within and adjacent to the areas subject to the Ocean Outlet Maintenance Program. These include dune habitat, habitat preserves for California least terns and western snowy plovers, grunion, and intertidal organisms. The County has proposed protective measures for the avoidance of these sensitive species and habitats, such as having a biological monitor on-site during excavation and deposition activities.

The County also proposes to change the semi-annual maintenance timing at all locations, and include additional maintenance events at Salt Creek and Santa Ana River. The County's proposal includes the extension of the period for maintenance activities to include the period between April 15 and September 15 for all locations. The proposed extended times could negatively impact California least tern and western snowy plover nesting and grunion spawning seasons, and peak beach use; however, the County proposes additional protective measures to avoid these impacts. In addition, the County proposes to add to the two maintenance events per year, as approved, one fall maintenance event per year at Salt Creek and up to five maintenance events per year at the Santa Ana River location. Construction of new improvements include replacing the deteriorating flap gate at Estrella Storm Channel and adding a screen plant to filter out non-compatible beach material at the Santa Ana River location.

These five ocean outlets are located on popular sandy beaches within the County of Orange in Huntington Beach, Dana Point, and San Clemente. The northernmost outlets are Talbert Channel and Santa Ana River and are located near Huntington Beach. Immediately upcoast of Talbert Channel is Huntington State Beach with public access ways, shaded picnic tables, and fire pits. In between the Talbert Channel and Santa Ana River outlets is a California Least Tern Natural Preserve, which is fenced off from the public beach. Inland of these sites are various wetlands including the Brookhurst Marsh and those located in and around Talbert Regional Park. The area seaward of the Santa Ana River (when substantial sand has accumulated at the outlet mouth) has been used as an unofficial public dog park. Downcoast of the Santa Ana River outlet is Newport Beach where some of the excavated sediment is proposed to be deposited. No maintenance work including deposition of sandy materials would occur in established sand dune habitat and would be limited to areas of the beach that would be regularly groomed. A recent sand management project was conducted by the County in the Lower Santa Ana River, CDP No. 5-15-0234, which included dredging of the Lower Santa Ana River and placement of approximately 600,000 cubic yards of dredged materials on Newport Beach.

Salt Creek in Dana Point is the next downcoast outlet included in the maintenance program. This outlet is located adjacent to a private beach club (Monarch Bay Club) and golf course. CDP No. 5-14-1604 (approved by the Commission in April 2015) permitted the Monarch Bay Club to perform sand excavation and deposition work if the discharged waters from this creek meander northward. The Estrella Storm Channel, also called Capistrano Beach #2, is another outlet in Dana Point that is part of the Orange County Ocean Outlet Maintenance Program. This outlet is

located adjacent to a single family residence and an open sandy area between the channel and another residence. Similarly, Segunda Deschecha Cañada in the City of San Clemente is located seaward of a Metrolink station adjacent to a row of residences and North Beach.

The City of Huntington Beach, the City of Newport Beach, and the City of Dana Point all have certified Local Coastal Plans (LCPs). The City of San Clemente has a certified Land Use Plan (LUP), but is not yet fully certified. As such, the Commission retains permit issuance jurisdiction over development occurring in San Clemente's coastal zone. In addition, the Commission retains permit issuance jurisdiction in the portions of the City of Newport Beach subject to this permit amendment because they are located on filled public tidelands. Consequently, for the purposes of this permit amendment (5-02-031-A6), the Commission has jurisdiction over all work occurring on public tidelands, including the proposed maintenance areas in Newport Beach, and all work at the Segunda Deschecha Cañada outlet. For the developments proposed in these two cities, the certified LUP (San Clemente) and the certified LCP (Newport Beach) may provide guidance for the proposed amendment; however the standard of review is the Chapter 3 policies of the Coastal Act.

For work occurring above the mean high tide line in the certified areas of Huntington Beach and Dana Point, the applicable local government has permit issuance jurisdiction. The local approval is appealable to the Commission. Work occurring on public tidelands in these cities (below the mean high tide line) falls within the Commission's original jurisdiction. The mean high tide line changes seasonally and depending on the maintenance work to be carried out, activities may extend into the Commission's jurisdiction. The applicant, the County of Orange, included in its permit amendment application development that is outside the Commission's retained jurisdiction area. This development will not be considered in the subject permit amendment. With permission from the cities of Huntington Beach and Dana Point, the applicant could pursue a consolidated permit for all the proposed work to be approved by the Coastal Commission. Alternatively, the proposed work not approved by this permit amendment would require a coastal development permit from the local jurisdictions in which the development would be occurring.

## **B. PROJECT HISTORY**

On July 9, 2003, the Commission approved Coastal Development Permit (CDP) No. 5-02-031 authorizing the implementation of portions of an ongoing ocean outlet maintenance program at seven ocean outlet locations in Orange County, including Segunda Deschecha (San Clemente), Poche Beach, Capistrano Beach 1 and 2, North Doheny, and Salt Creek (Dana Point), and Santa Ana and Talbert Channel (Huntington Beach). The Commission-approved permit only applies to the Commission's retained permit jurisdiction areas which included the maintenance work at Segunda Deschecha Cañada and below the mean high tide line in certified local jurisdictions. An "Ocean Outlet Maintenance Manual" was prepared to serve as a guide for maintenance activities and to provide baseline data for the permits required to perform the maintenance activities included in the original proposal. The maintenance activities included, as needed, semi-annual (once in late summer or fall and once in early spring) removal of sand deposits at the seaward end of the outlet structures, distribution of the sand on the beach above the mean high tide line (MHTL) and outfall discharge water quality monitoring. Additionally, the Commission approved retrieval of rip rap at the Salt Creek and Santa Ana River locations and low flow diversion at North Doheny Creek. The maintenance program was approved pursuant to six special conditions which required: 1) expiration of the permit five years from issuance; 2) conformance with the



requirements of the Resource Agencies; 3) conformance with proposed Best Management Practices (BMPs); 4) conformance with Water Quality Monitoring Plan and submittal of an annual monitoring report; 5) timing of maintenance activities to avoid biological resources; and 6) timing of maintenance activities to avoid public access impacts. These special conditions continue to apply.

On March 17, 2006, the County applied for an amendment to CDP No. 5-02-031 (A1) to: add a Grunion Protection Plan, add trigger mechanisms for additional maintenance events at Talbert Channel and Santa Ana River (outside approved timing), and add an on-site biological monitor requirement during maintenance operations and a five-year time extension. This application was withdrawn by the County on October 25, 2006 in order to allow more time for the review of comments raised by the State Water Resources Control Board. The application was resubmitted with slight modifications on November 29, 2006, CDP No. 5-02-031-A2.

A third amendment application, CDP No. 5-02-031-A3 was submitted and approved by the Executive Director on October 23, 2008 as an immaterial amendment, authorizing an extension of the permit term by two years (through August 2010) to allow maintenance at the original seven outlet locations. No changes to the maintenance activities were proposed or approved. Another permit amendment (CDP Amendment No. 5-02-031-A4), also immaterial, was issued on March 17, 2011 and included a five year time extension until July 2016 and the removal of the Poche Beach (also known as Prima Deschecha) and Capistrano Beach #1 outlets from the maintenance program. Capistrano Beach #2, also known as Estrella Storm Channel, remained in the program. CDP Amendment No. 5-02-031-A5, issued on July 20, 2016, extended the permit term another five years through July 2021 and did not include any changes to the maintenance program.

The subject proposed amendment request was received in the South Coast District offices on March 9, 2018 (within the permit term approved through CDP Amendment No. 5-02-031-A5) and agreement between Orange County Public Works and Commission staff was signed on June 28, 2018 to extend the period of time for the Commission to decide on the subject permit amendment to December 4, 2018. Therefore, due to Permit Streamlining Act requirements, the Commission must act upon this permit amendment application at the November 2018 Commission meeting.

Presently, the applicant is requesting to amend the Orange County Ocean Outlet Maintenance Manual authorized by CDP No. 5-02-031. However, the proposed permit amendment is not consistent with the underlying permit conditions and has the potential to adversely impact coastal resources. Thus, the Executive Director determined that the proposed permit amendment is not immaterial.

## **C. PUBLIC ACCESS & RECREATION**

### **Relevant Coastal Act Policies**

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*

5-02-031-A6 (Orange County Public Works)

*public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act 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 of the Coastal Act states, in part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

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.*

**Relevant San Clemente Land Use Plan Policies**

Policy PUB-36 of the LUP states, in part:

*Establish, protect, maintain, and, where feasible, expand and enhance a system of public coastal access to the shoreline, beaches, tidelands, and recreational facilities in a manner that achieves the following:*

- a. Maximizes public access to and along the shoreline;...*
- j. Minimizes alterations to natural landforms;*
- k. Protects environmentally sensitive habitat areas (ESHAs);...*
- m. Is managed to be permanently available;...*
- p. Is developed in cooperation with the following: State Department of Parks and Recreation, State Department of Fish and Wildlife, State Coastal Conservancy, State Lands, Orange County, and private organizations*

Policy PUB-40 of the LUP states, in part:

*New developments proposed on property lying between the first public roadway and the shoreline shall provide both physical and visual public access to the shoreline and along the coast in proportion to the public access impact resulting from new development.*

Policy PUB-63 of the LUP states, in part:

*The impacts of development on sandy beaches, including impacts to public recreation should be fully mitigated.*

Policy PUB-64 of the LUP states, in part:

*Protect and, where feasible, expand and enhance recreational opportunities in the Coastal Zone.*

**Relevant Newport Beach Local Coastal Plan Policies**

Policy 2.3.2-1 of the LUP states:

*Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.*

Policy 3.1.1-1 of the LUP states:

*Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

Policy 3.2.1-1 of the LUP states:

*Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.*

Policy 3.1.1-1 of the LUP states:

*Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, and Orange County to protect, expand and enhance opportunities for recreational activities at County and State beaches and parks.*

The Orange County Ocean Outlet Maintenance Program (Maintenance Program) consists of ocean outlet maintenance that provides essential public services for the benefit of residents and visitors, including flood control and beach nourishment. To encourage public access to the beaches and protect public and environmental health, the outlets will be cleared of floatable trash (which comprises the majority of debris in the discharged waters) prior to excavation and placement of the excavated sand on the sandy beaches used for coastal recreation. As proposed in this amendment, the maintenance program will include installation of a screen plant to filter excavated sediments from the Santa Ana River outlet to remove non-beach compatible materials, including cobble, from the sand, which would then be deposited along the Newport beaches. Also proposed as part of this amendment, the County proposes to repair the degraded flap gate (visually unpleasing and potentially unsafe) at the Estrella Storm Channel outlet which will improve the visual and recreational quality of the site. The concern regarding these proposed improvements requiring construction on the beach is that the construction may have impacts, such as obstruction of lateral or vertical access to the shoreline with trucks and/or equipment, can temporarily affect the public's ability to access the beach and recreate on it.

**Impacts of Maintenance Activities**

Construction related impacts to public access and recreation can be partially alleviated by limiting construction work to the off-peak beach use season (fall to early spring) when beach use by the public is typically low. For this reason, the original permit for the maintenance program included **Special Condition 6**, which prohibits routine maintenance activities to be carried out between Memorial Day and Labor Day. This condition has remained unchanged in subsequent amendments. The County's proposal to amend this condition to allow maintenance activities to be carried out between April 15 and September 15, if deemed necessary, is inconsistent with the public access policies of the Coastal Act to provide and protect maximum access to the beach. Thus, staff recommends that **Special Condition 6** of CDP No. 5-02-031 and subsequent amendments remain unchanged. The current timing allowed by the condition also provides protection for ecological resources, as explained later.

### **Impacts of Staging in Public Areas**

The County's proposed staging areas, shown in **Exhibit 3**, have been located to avoid dune habitat and minimize adverse impacts on public access. The staging area and access point for the Talbert Channel is located at the far end of the Huntington State Beach parking lot seaward of the Huntington Beach Santa Ana River Trail and Huntington Beach Bike Trail. According to the applicant, maintenance operations will not impede access along these pedestrian and bike trails. This staging area is outside the Commission's retained permit jurisdiction area. At the Santa Ana River outlet, staging and access is proposed from the end of Seashore Drive (off of public roadways). The County proposes to access Salt Creek from the private resort and golf course. This staging area is outside the Commission's retained permit jurisdiction area. If necessary, maintenance equipment would be stored in the parking lot or above the mean high tide line just south east of the outlet (not on the main stretch of beach). Access and staging at Estrella Storm Channel is proposed to be located at the Capistrano Beach County Park parking lot. This staging area is outside the Commission's retained permit jurisdiction area. No overnight storage of maintenance equipment is proposed at Segunda Deschecha Cañada (within the Commission's jurisdiction). The site is accessed by a gate adjacent to the outlet. As currently conditioned, the outlet maintenance is temporary—with duration of work ranging from one day to approximately nine weeks—and will not significantly impact public beach parking availability because maintenance shall occur outside peak beach use periods (**Special Condition 6**). Thus, as currently conditioned, the proposed equipment storage and staging areas will not significantly impact public access.

### **Impacts to Coastal Recreation**

Southern California is well known for its sandy beaches and surf. The cities affected by this maintenance program contain a number of popular surf breaks that are frequently visited by the public including recreational and competitive surfers, body boarders, and skim boarders, and spectators. Some of the ocean outlets in the maintenance program are associated with surf breaks like River Jetties (Santa Ana River outlet) and Salt Creek. The subject CDP Amendment No. 5-02-031-A6 includes a proposal to increase the volume of sand excavated and deposited near the five ocean outlets. Most of the proposed sediment discharge areas do not extend seaward of the high tide line or the mean high water line and, thus, newly placed sands at these locations would not likely be moved into the surf zone by normal tides. However, at the Santa Ana River location, an approximately ten-fold increase in the proposed allowable excavation volume per maintenance event, a proposed increase in the number of allowed maintenance events per year (with a maximum excavation volume of 200,000 cubic yards per year) from two to five, and an option to place the fill seaward of the mean lower low water line, may have a significant impact

on the amount of sand that would be transported downcoast and deposited in the surf zone and along the shore.

Newport Beach, which is proposed to receive the excavated material from the Santa Ana River, has a number of popular surf breaks including Blackies and the Newport Jetties. In addition, Newport Beach is home to the iconic surf spot, The Wedge, which is known worldwide for its unique wave that is influenced by wave reflection off the jetty and sand bars. An input of large amounts of sand along Newport Beach may impact these surf breaks by impacting the surf zone and could adversely impact recreation opportunities. Therefore, **Special Condition 7** requires the County to monitor surf conditions at each of the discharge areas and at The Wedge before and after maintenance events and to prepare annual monitoring reports to be submitted to the Executive Director. **Special Condition 1**, as modified, would limit the term of the 5-02-031-A6 to five years from the Commission's approval of the permit amendment that allows for evaluation of public access and recreation impacts upon the submittal of a subsequent permit amendment application. However, if monitoring reports per **Special Condition 7** indicate that there are public access or recreation impacts within the 5 year time period, adjustments to the program may be necessary. The Executive Director would determine if a new amendment or a new permit is necessary to adjust the program to avoid impacts. In addition, due to the special status of The Wedge and uncertainty surrounding the impacts of the placement of large amounts of sediment below the mean high tide line, **Special Condition 9** is imposed to limit the discharge area for deposition of the Santa Ana River sediments to the area upcoast of B Street in Newport Beach.

Currently, the shoals at the Santa Ana River outlet are used as an unofficial dog beach. This use can result in adverse impacts to coastal resources including the adjacent California least tern preserve and shorebirds, and thus has never been endorsed by the Commission. Regardless of the unofficial use, the proposed modifications to the Maintenance Program would not significantly impact visitor-serving uses because, while more frequent excavation of larger volumes of sediment at the mouth of the Santa Ana River may prevent shallow sand bars from reforming in this location and, thus, may adversely impact lateral access along the shoreline, the continued imposition of **Special Condition 6**, which limits maintenance activities to periods outside peak beach use, serves to prevent frequent excavation of large volumes of sediment. Thus, impacts to lateral access will remain temporary.

Some of the long-term public access benefits of the Maintenance Program include flood control and beach nourishment. Recent studies from the area have indicated that as sea levels rise, Orange County beaches will become narrower and would adversely impact public access by restricting the area on which the public can recreate and potentially inhibiting lateral access. One strategy to adapt to sea level rise is to move sand from other locations (such as the sediment from nearby channels) to narrowing beaches in order to maintain sufficient beach width for public use. The proposed permit amendment would increase the amount of local sand used to nourish the beaches, which is consistent with the Commission's adopted Sea Level Rise guidance, as discussed in more detail later in the findings regarding Coastal Hazards.

Therefore, as conditioned, the proposed CDP amendment would be consistent with the public access and recreation policies of the Coastal Act and Newport Beach's certified LCP. The City of San Clemente's certified Land Use Plan contains a policy (PUB-63) requires full mitigation of impacts of development on sandy beaches including impacts to public recreation. In addition, the

San Clemente certified LUP can be used as guidance, but is not the standard of review. As conditioned, impacts of the proposed development on public access and coastal recreation are minimized.

## **D. MARINE RESOURCES AND WATER QUALITY**

### **Relevant Coastal Act policies**

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 stream.*

Section 30232 of the Coastal Act states, in part:

*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.*

Section 30233 of the Coastal Act states, in 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:*

- (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 longshore current systems.*
- (c) *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. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

*For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.*

- (d) *Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

**Relevant San Clemente Land Use Plan Policies**

Policy RES-3 of the LUP states, in part:

*A 100 foot setback or buffer separating all permitted development from ESHA should be required.*

Policy RES-17 of the LUP states:

*The City shall provide a litter-free and enjoyable beach and marine environment.*

Policy RES-21 of the LUP states:

*Nearshore shallow fish habitat and shore fishing shall be provided, and where appropriate and feasible, restored or enhanced.*

Policy RES-25 of the LUP states, in part:

*Kelp has an important role in the ecological and structural condition of the beach, provides habitat and nutrients for coastal marine animal and vegetative species, and provides direct and indirect support for sand retention. The City places value on the habitat value of kelp wrack as well as the recreational use of the beaches...*

Policy RES-60 of the LUP states, in part:

*Development shall minimize the land disturbance activities of construction (e.g., clearing, grading, cut-and-fill, and soil compaction)...to avoid detrimental water quality impacts caused by increased erosion or sedimentation. Development shall minimize pollution of runoff by construction chemicals and materials.*

Policy RES-64 of the LUP states, in part:

*Require that public agencies use the most effective BMPs to protect natural resources at project sites and maintenance yards, when the maintenance and modification of public infrastructure involves the removal of vegetation and/or earth.*

### **Relevant Newport Beach Local Coastal Plan Policies**

Policy 4.1.2-1 of the LUP states:

*Maintain, enhance, and, where feasible, restore marine resources.*

Policy 4.1.2-2 of the LUP states:

*Provide special protection to marine resource areas and species of special biological or economic significance.*

Policy 4.1.2-3 of the LUP states:

*Require that uses of the marine environment 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.*

Policy 4.3.1-4 of the LUP states:

*Preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface flow, and groundwater recharge function near natural equilibrium states.*

Policy 4.3.1-8 of the LUP states:



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

Policy 4.3.1-4 of the LUP states:

*Require that development not result in the degradation of coastal waters (including the ocean, estuaries and lakes) caused by changes to the hydrologic landscape.*

Sections 30233 of the Coastal Act provides that dredging and filling of coastal waters is allowed under the Coastal Act only in specific cases where feasible and appropriate mitigation measures are provided. Section 30233(d) of the Coastal Act applies to erosion control and flood control projects that can impede the movement of sediment and nutrients from watercourses that would otherwise be carried by storm runoff into coastal waters. Section 30233(d) allows the removal of sediment from watercourses and its deposition at appropriate points along the shoreline, where “feasible mitigation measures” have been provided to minimize adverse environmental effects.

Here, Section 30233(d) applies to the Maintenance Program, as it is primarily for flood control purposes to prevent the accumulation of sediment at various stream outlets in Orange County that contributes to water stagnation and related environmental problems. The proposed permit amendment will increase the amount of sediment that is excavated at the outlets, as well as the amount of sediment deposited along the coast. The project has been designed to include mitigation measures to minimize the impacts of sediment deposition on the shoreline. Specifically, and as described more fully below, the additional excavation work provides water quality and public access and recreation benefits that mitigate impacts the development may have on coastal resources which are minimized through the imposition of special conditions. Accordingly, as conditioned herein, the proposed amendment complies with Section 30233(d).

### **Impacts to Water Quality**

Another function of the Maintenance Program is to improve water quality by clearing out sediment that may be preventing the discharge of fresh waters to the sea. When an outlet is blocked, the inland waters stagnate, collect trash and debris, and become anoxic and warm. These conditions support bacterial growth that can lead to fishkills and adversely affect coastal resources and public health. Thus, through the excavation of sediment and removal of trash from the outlets, the proposed development mitigates water quality impacts by restoring proper flow and tidal influence thereby reducing the adverse impacts caused by the blockage of the outlets.

The proposed project would involve some use of heavy machinery on sandy beaches or in tidal inlets. Machinery may have oils, greases, heavy metals, and other vehicular fluids on the body of the machine. Section 30232 requires protection of the coast from spillage of hazardous substances. In association with the underlying permit approval, the County proposed Best Management Practices (BMPs) in the Maintenance Manual which includes measures designed to minimize the release of vehicular or other contaminants to coastal waters (**Appendix A**). The list

includes BMPs such as off-site cleaning and maintenance of equipment, as well as trash collection and employee education. No changes to these water quality measures are proposed.

In addition, the current permit condition **Special Condition 2**, requires conformance with other resource agency requirements, including State and Regional (Santa Ana and San Diego) Water Quality Control Boards. The County has informed these agencies of the proposed change to the Maintenance Program and has engaged in processes to receive all necessary permits and approvals. These permits contain details regarding the thresholds for adequate water quality and procedures to implement if water quality thresholds are surpassed. The California Beach Water Quality Standards (AB411) govern the thresholds for bacteria-related constituents; thresholds for other monitored constituents' are set per the Regional Water Quality Control Board Basin Plan Water Quality Objectives.

The current permit condition, **Special Condition 3**, requires conformance with the County's proposed best management practices (BMPs) and additional construction BMPs to prevent the storage of materials where they may enter water bodies, remove debris within 24 hours of completion of construction, and implement BMPs and Good Housekeeping Practices. Furthermore, the current permit condition (**Special Condition 4**) which required annual water quality monitoring reports to be sent to the Executive Director by February 1 of each year, has been updated pursuant to this permit amendment to reference the 2014 Water Quality Monitoring Plan (**Exhibit 4**). The updated plan no longer includes sediment sampling requirements because the sand grains are coarse (contaminants do not adhere well) and largely deposited at the outlet sites by the ocean. However, a modification to **Special Condition 4** is added in response to the County's proposal to extend the allowable duration of maintenance work at the Talbert and Santa Ana River outlets from approximately one week to a maximum of two and nine weeks, respectively. This modification is imposed to protect the quality of the receiving waters by conducting daily water quality monitoring in case thresholds are exceeded during the maintenance event thereby minimizing the amount of time that water quality could be adversely impacted without County knowledge. As conditioned, the County's proposal to extend the term of the maintenance program and amend the underlying permit is consistent with Sections 30230, 30231, 30232, and 30233 of the Coastal Act.

### **Impacts to Marine Resources**

The deposition of excavated materials above the mean high tide line (MHTL) is not expected to adversely impact water quality or biological productivity in the project sites within the City of Newport Beach and San Clemente. The areas above the MHTL in the cities of Huntington Beach and Dana Point are not within the Commission's retained permit jurisdiction and are, therefore, not considered as part of this analysis. The tidal lines used by the County in drawing the proposed sand excavation and deposition areas were sourced from 2016 survey data from the National Oceanic and Atmospheric Administration (NOAA), represent the applicant's prediction for the purposes of placing sand, and do not relate to the Commission's jurisdiction.

The County of Orange proposes that materials excavated from the Santa Ana River outlet, which may be placed below the MHTL (where the sediment will be exposed to tidal action), and would be deposited during low tides to avoid increased levels of turbidity. As proposed, the sediment deposition sites (with the exception of a segment of Newport Beach as described in Findings, Section E, below) are located to avoid adverse impacts to water quality, and accordingly biological productivity. In addition, **Special Condition 8** is imposed to protect marine habitat by

avoiding impacts to beach wrack and prohibiting work on wet sand or in coastal waters. **Special Condition 9**, in part, requires revised plans that include updated depictions of the tidal lines to ensure protection of these areas.

The County proposes to deposit sand using mechanical excavators, including bulldozers to place and move the excavated sand. At the Santa Ana River location, trucks are proposed to be used to transport the dry excavated materials to discharge sites along Newport Beach. The proposed methods of sediment deposition have the potential to adversely impact infauna (organisms living in the sand) through compaction of the sand. The County, through the subject permit amendment, proposes to expand the area where these methods are used including below the MHTL downcoast of the Santa Ana River outlet (where infauna like sand crabs, are more densely distributed). Section 30233(d) allows sand to be placed at appropriate sites where feasible mitigation measures have been implemented. Therefore, **Special Condition 9** is imposed to require an Access Route and Sand Discharge plan for the Santa Ana River maintenance site be submitted to the Executive Director prior to each maintenance event that includes mapped routes and discharge locations to avoid, to the maximum extent feasible, impacts to areas outside groomed beaches from driving and discharging large volumes of sand on the beach. In addition, **Special Condition 8** is imposed which requires the County to implement procedures to avoid impacts to beach wrack which supports communities of marine organisms. As conditioned, any impacts to marine organisms that exist in the sandy intertidal zone, such as sand crabs and beach hoppers, are minimized. **Special Condition 1**, as modified, would limit the term of the 5-02-031-A6 to five years from the Commission's approval of the permit amendment which allows for evaluation of marine resource impacts upon the submittal of a subsequent permit amendment application. As, conditioned, the proposed maintenance activities will minimize impacts to biological productivity and resources, consistent with Sections 30230 and 30231 of the Coastal Act and implement mitigation measures to minimize environmental impacts of sand deposition techniques consistent with Section 30233 of the Coastal Act.

Orange County beaches are prime areas for California grunion spawning. This marine fish species is a restricted resource, as determined by the California Department of Fish and Wildlife, and a recreational fishery due to its unique spawning events known as grunion runs. The proposed Talbert Channel, Santa Ana River, Salt Creek, and Segunda Deschecha Cañada all have beach habitat suitable for grunion spawning (**Exhibit 5**).

The County proposed measures in a past permit amendment (resubmitted as part of the subject permit amendment application) to protect California grunion, including obtaining grunion run schedules, maintaining a qualified resource specialist onsite if maintenance must be performed during spawning season, and avoiding or rescheduling work if spawning occurred within a maintenance area. Despite these protection measures, the County's current proposal to expand the period for potential maintenance to include grunion spawning seasons does not protect biological productivity or species of special biological significance and is, thus, inconsistent with Sections 30230 and 30231 of the Coastal Act and would be inconsistent with the conditions of the underlying permit. Therefore, **Special Condition 5** of the original permit is retained, thereby restricting maintenance activities to periods outside of grunion spawning season. This condition continues to allow flexibility if there is emergency maintenance required that can, subject to the Executive Director's approval, occur outside of the approved timing. If such an

emergency exists, **Special Condition 5** requires the County to notify and receive approval from the Executive Director. Additionally, **Special Condition 10** incorporates the County's proposed grunion avoidance measures into the subject permit amendment should emergency maintenance be required during the grunion spawning season.

As conditioned, the maintenance program is consistent with Sections 30230, 30231, 30232, and 30233 of the Coastal Act and the resource protection policies of the certified San Clemente LUP and Newport Beach LCP.

## **E. DEVELOPMENT**

### **Relevant Coastal Act Policies**

Coastal Act Section 30250 states, in part:

*New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Coastal Act section 30252 states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Coastal Act section 30253 states:

*New development shall do all of the following:*

- (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.*
- (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.*

Coastal Act section 30255 states, in part:

*Coastal-dependent developments shall have priority over other developments on or near the shoreline.*

**Relevant San Clemente Land Use Plan Policies**

Policy RES-28 of the LUP states, in part:

*Sand has a primary role in the use and enjoyment of San Clemente's beaches; as such, conduct sand and beach maintenance as follows...*

*b. Conduct sand pushing above the wet sand and high tide/ wrack line twice a year, or timing as directed by the City Manager. Sand pushing is the action of moving sand mechanically with the intention to...*

*3) Prevent loss of sandy beach into the ocean...*

Policy RES-29 of the LUP states, in part:

*Beach maintenance shall strike a balance between protection of habitat and maintaining the recreational value of the beach.*

*a. Mechanized equipment may be permitted for use on the dry sand areas of the beach above the high tide/wrack line, for the following activities:*

*1) Regular maintenance operations...*

*b. The use of mechanized equipment for beach grooming is subject to the following management provisions:*

*1) No equipment will be stored on the sandy beach.*

*2) No mechanized equipment will operate in the wet sand (below the ordinary high tide line), except in cases of emergency or when required for safety reasons.*

*3) Maintenance activities will be scheduled to prevent conflict with access and use of the beach by the public...*

Policy RES-74 of the LUP states:

*Development adjacent to streams or riparian corridors shall avoid removal of native vegetation; prevent erosion, sedimentation and runoff; provide for sufficient passage of native and anadromous fish; prevent wastewater discharges and entrapment; prevent groundwater depletion or substantial interference with surface and subsurface flows; and protect and re-establish natural vegetation buffers.*

**Relevant Newport Beach Local Coastal Plan Policies**

Policy 2.8.3-3 of the LUP states:

*Develop and implement shoreline management plans for shoreline areas subject to wave hazards and erosion. Shoreline management plans should provide for the protection of existing development, public improvements, coastal access, public opportunities for coastal recreation, and coastal resources. Plans must evaluate the feasibility of hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat.*

Policy 2.8.3-6 of the LUP states:

*Encourage the use of non-structural methods, such as dune restoration and sand nourishment, as alternatives to shoreline protective structures.*

Policy 2.8.6-3 of the LUP states:

*Develop and implement a comprehensive beach replenishment program to assist in maintaining beach width and elevations. Analyze monitoring data to determine nourishment priorities, and try to use nourishment as shore protection, in lieu of more permanent hard shoreline armoring options.*

Policy 3.1.1-6 of the LUP states:

*Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, the State Coastal Conservancy, Orange County, and private organizations to protect, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.*

### **Coastal Hazards**

Section 30253(a) of the Coastal Act requires new development to minimize risks in flood hazard areas. The primary objective of the Maintenance Program and the proposed permit amendment, to modify the volumes and areas of allowable sediment excavation and deposition, is flood control. If an outlet is blocked by shoals of sandy sediment, then the potential for flooding of facilities and communities is increased. Therefore, the proposed amendment's objective to minimize flood hazards is consistent with Section 30253(a) of the Coastal Act.

In addition, the maintenance program and proposed amendment serve the function of increasing the sand supply to the Orange County beaches identified in the proposal, thereby reducing flood hazards in low-lying areas, as identified in Federal Emergency Management Agency (FEMA) flood maps, and maintaining and enhancing public access. The Commission's adopted Sea level rise guidance recognizes the importance of sand placement (or beach nourishing) as an effective adaptation measure for reducing hazards associated with sea level rise. Beach nourishment is a "soft" shoreline protection technique that does not substantially alter landforms or contribute to erosion (like hard shoreline armoring would) and is thus, consistent with Section 30253 of the Coastal Act.

### **Energy Consumption**

The proposed amendment to CDP No. 5-02-031 involves an increase in energy use, vehicle miles travelled, and greenhouse gas emissions. Section 30253(e) of the Coastal Act requires new development, like the proposed increase in maintenance activities, to minimize energy consumption and vehicle miles travelled. While excavating and transporting larger volumes of

sediment will increase energy consumption, the continued imposition of **Special Conditions 5 and 6** of the original permit would limit the County's maintenance events to only the Commission-approved semi-annual events, and restrict the proposed fall maintenance event at Salt Creek and three additional maintenance events at Santa Ana River.

### **Cumulative Impacts**

The scope of the proposed amendment to the Maintenance Program has the potential to overlap with municipal beach maintenance efforts or other outlet or beach projects. For example, Coastal Development Permit No. 5-14-1604 was issued to the Monarch Bay Club to conduct as-needed relocation of beach sand at Salt Creek and for the protection and monitoring of wrack. The work permitted under CDP No. 5-14-1604 is triggered when the waters discharged from Salt Creek meander northward impacting public use of Monarch Beach. The City of San Clemente also implements sand grooming, construction of sand berms, and sand pushing operations according to the resource policies in the City's certified LUP (See policies RES-28 and RES-29 above). Similarly, Policy 2.8.6-3 of the City of Newport Beach's certified LCP specifically states that the City plans to develop and implement a beach replenishment program. Without proper coordination, there is potential to unnecessarily duplicate efforts that would result in cumulative impacts on air quality, water quality, public access and recreation, and biological resources. Thus, any future beach management plans proposed by cities of Orange County, as a permit or within the context of an LCP update, should be consistent with the maintenance activities proposed in the subject permit amendment. Section 30250 requires development to be located where it will not have significant adverse effects cumulatively on coastal resources. To prevent cumulative impacts of development on the beach, **Special Condition 11** is imposed which requires the County to coordinate with the Monarch Bay Club, the City of San Clemente, the City of Newport Beach, and other entities that manage the areas in which the County's maintenance work is proposed. In addition, **Special Condition 1**, as modified, would limit the term of the 5-02-031-A6 to five years from the Commission's approval of the permit amendment which allows for evaluation of cumulative impacts upon the submittal of a subsequent permit amendment application.

As conditioned, the maintenance program would be consistent with the Chapter 3 policies of the Coastal Act, the beach maintenance policies of the certified San Clemente LUP, and the storm surge policies of the certified Newport Beach LCP.

## **F. LAND RESOURCES**

### **Relevant Coastal Act Policies**

Coastal Act section 30230 states, in part:

*Special protection shall be given to areas and species of special biological or economic significance.*

Coastal Act section 30240 states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *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.*

Coastal Act section 30107.5 defines environmentally sensitive area:

*“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

### **Relevant San Clemente Land Use Plan Policies**

Policy RES-6 of the LUP states, in part:

*ESHA shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

Policy RES-76 of the LUP states, in part:

*Preserve the habitat of rare, including threatened and endangered species in place as the preferred conservation strategy.*

### **Relevant Newport Beach Local Coastal Plan Policies**

Policy 2.8.3-3 of the LUP states:

*Encourage the use of sand dunes with native vegetation as a protective device in beach areas.*

Policy 3.1.1-5 of the LUP states:

*Allow public access improvements in environmentally sensitive habitat areas (ESHA) when sited, designed, and maintained in a manner to avoid or minimize impacts to ESHA.*

Policy 4.1.1-4 of the LUP states:

*Protect ESHAs against any significant disruption of habitat values.*

Policy 4.1.1-6 of the LUP states:

*Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.*

Policy 4.1.1-7 of the LUP states:

*Limit uses within ESHAs to only those uses that are dependent on such resources.*

Policy 4.1.1-10 of the LUP states:

*Require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers*



*may be allowed only where it can be demonstrated that 1) a 50-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.*

Policy 4.1.1-14 of the LUP states, in part:

*Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives...Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.*

Policy 4.1.5-5 of the LUP states:

*Limit earthmoving of beach sand in dune habitat areas to projects necessary for the protection of coastal resources and existing development.*

The Coastal Act establishes a high standard for protection of areas that are identified as environmentally sensitive habitat areas (ESHA). Only resource-dependent uses, such as habitat restoration, are allowed within ESHA, and all development within or adjacent to an ESHA must be sited and designed to prevent significant disruption or degradation of the ESHA, respectively.

Under the Coastal Act, if an ESHA is identified, it cannot be relocated, and must instead be avoided, unless the proposed development is “a use dependent on the resource.” Environmentally Sensitive Habitat Areas are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

### **Sand Dune Habitat**

There are documented sand dunes near the proposed beach maintenance areas. This type of habitat is rare on sandy beaches in Southern California and supports sensitive plant and animal species, including snowy plovers (discussed in more detail below) and Sand Dune Habitat does rise to the level of ESHA. Per Section 30240 of the Coastal Act, any area that provides ESHA must be protected from disruption. The sediment excavation, sand disposal, and maintenance equipment storage areas were drawn by the County using aerial imagery to intentionally avoid any apparent dune hummocks. Additionally, the applicant states that dune habitat will be avoided. To ensure impacts to coastal sand dunes are avoided, **Special Condition 8** prohibits the County from crossing into or disturbing dune habitat. As conditioned, the Maintenance Program is consistent with Section 30240 of the Coastal Act.

### **California Least Terns**

The definition of environmentally sensitive area in Section 30107.5 of the Coastal Act shares a common focus with the Endangered Species Act definition of critical habitat for those species listed as threatened or endangered, where ESHA protects the habitat of rare, threatened, or endangered species and this habitat, as stated in the Coastal Act definition of ESHA, could be

“easily disturbed or degraded by human activities.” As such, any area that provides habitat for the California least terns would rise to the level of ESHA, and therefore, must be protected against disruption. Between the Talbert Channel and Santa Ana River outlets is the Least Tern Natural Preserve, an approximately 13-acre of fenced-in sandy beach designated for the protection of a colony of California least terns, which are a state and federal listed endangered bird species, and managed by California State Parks. The California least tern preserve is not currently located on public tidelands and therefore, is not within the Commission’s jurisdiction. However, there is other suitable California least tern habitat within the Commission’s jurisdiction area that is related to the subject permit amendment.

The County has proposed measures to protect least terns, including having a qualified biological monitor onsite during both excavation and sand discharge adjacent to the least tern preserve. The County’s proposed least tern protections are incorporated through **Special Condition 12**. The County’s proposal to expand the period for potential maintenance to include nesting season (April 15-September 15) is not consistent with the biological resource protection policies of the Coastal Act. **Special Condition 5**, as approved by the Commission in 2003, restricts maintenance work to periods outside the least tern nesting season and allows for flexibility if emergency maintenance is required. Therefore, the Commission does not approve any changes to **Special Condition 5** that would effect when maintenance activities may occur. Furthermore, **Special Condition 2** requires the County to comply with permit requirements and mitigation measures from agencies including the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS). The U.S. Fish and Wildlife Service Conservation Measures are attached as **Exhibit 6**.

### **Snowy Plovers**

The Pacific Coast population of western snowy plovers is federally listed as threatened, and as such, areas that provide habitat for snowy plovers are considered ESHA, and therefore, must be protected against disruption. These birds use sandy beaches, sand dunes, and piles of wrack for foraging, nesting, and roosting activities. There are areas within the proposed maintenance program footprint that contain CDFW-designated snowy plover “special protection zones” including upcoast of Talbert Channel, at Salt Creek, near Balboa Pier. In addition, USFWS designated the sandy beach between B and G Streets in the City of Newport as Critical Snowy Plover habitat. The City of Newport Beach also protects a segment of beach for snowy plover roosting between D and E Streets.

The County has proposed Best Management Practices (BMPs) for construction and maintenance activities within special protection zones or near roosting plovers (**Exhibit 7**) including identification of sensitive areas and daily biological monitoring in such locations. These proposed BMPs are incorporated into the subject permit through the imposition of **Special Condition 12**. However, the County’s proposal to expand the period for potential maintenance to include April 15 through September 15 could adversely impact this species, inconsistent with the Coastal Act and the Endangered Species Act. Given the special biological significance of this population of snowy plovers and the birds’ natural camouflage with the sand, additional special protections of this snowy plover population are required to be consistent with Section 30230 of the Coastal Act. Therefore, **Special Conditions 2, 8, and 9** are imposed to protect snowy plovers and plover nesting, roosting, and foraging grounds by restricting maintenance activities to areas outside special protection zones, critical snowy plover habitats, and dune habitat and restricting the speed at which maintenance trucks can drive on the beaches. The County has proposed that

trucks transporting excavated material from the Santa Ana River outlet to Newport beaches may drive along the beach at twenty-five miles per hour except for beach areas used by plovers where trucks could drive a maximum of ten miles per hour. By restricting the speed of trucks transporting sand along the beach to 10 miles per hour in snowy plover habitat areas and 15 miles per hour in all other sandy beach areas, the potential for trucks to strike plovers (and beach visitors) is reduced. Therefore, **Special Condition 8** is imposed. To protect plover habitat, **Special Conditions 8 and 9** are imposed. **Special Condition 8** requires the protection of piles of kelp that are washed up on the beach (wrack), which provides food and nesting potential for plovers. **Special Condition 8** also reflects the County's proposal to avoid impacts to sand dune habitat that also supports plover nesting and roosting behaviors. **Special Condition 9** protects western snowy plovers by restricting the placement of excavated materials from the Santa Ana River outlet to the area of Newport Beach upcoast of Balboa Pier thereby avoiding the municipal, state, and federal critical habitat areas identified for the sensitive western snowy plover population. **Special Condition 1**, as modified, would limit the term of the 5-02-031-A6 to five years from the Commission's approval of the permit amendment, which allows for evaluation of impacts to sensitive species and habitat upon the submittal of a subsequent permit amendment application.

In addition, the special conditions of the underlying permit continue to apply including **Special Condition 5**, which restricts maintenance work to periods largely outside the plover breeding season and allows for flexibility if there is emergency maintenance required, and **Special Condition 2** which requires the County to comply with permit requirements and mitigation measures from agencies including the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service Conservation Measures are attached as **Exhibit 6**.

Therefore, as conditioned, the proposed permit amendment is consistent with Sections 30230 and 30240 of the Coastal Act and Policy RES-76 of the certified San Clemente LUP.

## **G. UNPERMITTED DEVELOPMENT**

Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Review of this permit application does not constitute a waiver of any legal action with regard to any unpermitted development that may have occurred, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

## **H. LOCAL COASTAL PROGRAM (LCP)**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP), which conforms with Chapter 3 policies of the Coastal Act.

The ocean outlets that are the subject of this permit are located within multiple jurisdictions, including the cities of Huntington Beach, Newport Beach, Dana Point, and San Clemente. The Commission certified the LCP for the City of Huntington Beach in 1985, and significant

amendments in 1996 and 2001. The City of Newport Beach's LCP was certified by the Commission on January 13, 2017. The Commission retains permit jurisdiction over specified areas including the sandy beach areas that contain the proposed sand excavation and deposition sites. The Commission certified the LCP for the City of Dana Point in 1989. The Commission certified the Land Use Plan for the City of San Clemente in 1988, certified an amendment in 1995, and certified a comprehensive LUP update in 2018. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. Therefore, the Commission retains permit issuance authority for the City of San Clemente. The proposed development above the mean high tide line within the cities of Huntington Beach and Dana Point is not within the Commission's retained permit jurisdiction area and is therefore, not a part of the subject permit amendment.

The Commission finds the proposed developments within the Commission's retained permit jurisdiction areas within the cities of San Clemente and Newport are consistent with the policies in the certified Land Use Plan for San Clemente and the policies in the City of New Port Beach's certified Local Coastal Program, respectively. As discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the ability of the City of San Clemente to prepare a Local Coastal Program that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). The other cities already have certified Local Coastal Programs.

## **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application 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.

In August 2018, Moffatt & Nichol published an addendum to the County's May 2012 Mitigated Negative Declaration (MND) for the County of Orange in order to evaluate the impacts of the proposed permit amendment. The addendum indicated that no new significant impacts were identified. Addenda to MNDs are not required to be reviewed by the public. The County did, however, invite comments from the impacted municipalities. The County plans to adhere to the mitigation measures in the 2012 MND and associated addendum.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available 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 impacts, is the least environmentally damaging feasible alternative, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- *City of San Clemente certified Land Use Plan*
- *City of Newport Beach certified Local Coastal Program*
- *Orange County Ocean Outlet Maintenance Manual*
- *“Ocean Outlet Maintenance Program Addendum to Mitigated Negative Declaration IP 11-424” by Moffatt & Nichol for County of Orange dated August 2018*
- *Coastal Development Permit No. 5-02-031 and subsequent amendments*
- *Coastal Development Permit No. 5-15-0234*
- *Coastal Development Permit No. 5-14-1604*