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# W17a

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Staff: Brian O'Neill - SC  
Staff Report: 11/21/2018  
Hearing Date: 12/12/2018

## STAFF REPORT: CDP HEARING

**Application Number:** 3-16-0325

**Applicant:** Moss Landing Harbor District

**Project Location:** Moss Landing Harbor, Moss Landing, Monterey County.

**Project Description:** Dredge up to 550,000 cubic yards over the next ten years to restore navigable depths in berths and channels in Moss Landing Harbor. Uncontaminated dredged materials to be disposed of at two designated offshore unconfined aquatic discharge sites in the Monterey Bay and at three beach replenishment sites located north and south of the harbor entrance.

**Staff Recommendation:** Approval with Conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The Moss Landing Harbor District (MLHD) has requested approval of a ten-year coastal development permit (CDP) to dredge and dispose of sediments to restore navigable depths in berths in the Moss Landing Harbor and the North Harbor channel. Moss Landing Harbor is one of only six harbors located along the Central Coast area, and is the largest fishing port between San Francisco and Los Angeles. The Harbor is highly valued for the commercial fishing, recreational boating, and educational opportunities this location provides. The Harbor receives a majority of its sediment deposits from upland areas of the Salinas Valley and Elkhorn Slough watersheds. Dredging is therefore required to maintain depths necessary for navigation, and has been ongoing in some form since the harbor was created in 1947. MLHD is now seeking

approval for a ten-year dredging program for the berthing areas of the southern harbor and northern harbor, as well as the north harbor channel.

This permit would authorize dredging and disposal of up to 550,000 cubic yards of material over the ten-year life of the permit, with no more than 80,000 cubic yards in any given year. Disposal of fine-grained material would occur at either of two unconfined discharge sites, SF-12 and SF-14, located approximately 1,100 feet and 1.3 miles offshore, respectively. Sandy material that is suitable for beneficial reuse would be disposed of at one or more of three beach replenishment sites located directly adjacent to the harbor. This approval would require materials proposed for dredging to be tested according to the requirements of the Army Corps of Engineers (ACOE) and U.S. Environmental Protection Agency (EPA) and analyzed to ensure the material is suitable for aquatic disposal or beneficial reuse. Dredging within areas that are found to contain materials that are not suitable for aquatic disposal or beneficial reuse would be prohibited until an upland disposal facility is identified that will accept the unsuitable material.

The Coastal Act allows for the dredging of harbor waters in order to maintain depths necessary for navigation where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. Due to the significant sediment that is deposited within the harbor from upland watersheds, MLHD has found no other feasible options for maintaining the present uses within the Harbor without requiring dredging. However, a variety of conditions have been identified to ensure that the environmental impacts of dredging are less than significant. The conditions of approval require the submission of a dredging operations plan prior to each dredging episode that includes prohibitions of dredging outside of the proposed areas, requires pre-dredging biological surveys and biological monitors, provides buffers to avoid impacts to sensitive species, and protects public access. Moreover, the proposed dredging activities will support coastal-dependent boating uses and will return dredge material back into the littoral system or to be used for beach replenishment, which are high-priority outcomes under the Coastal Act. The conditions further require MLHD to submit verification of all necessary approvals from other regulatory agencies including ACOE, EPA, Monterey Bay National Marine Sanctuary (Sanctuary), and the Regional Water Quality Control Board (RWQCB).

Therefore, as conditioned, the project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion is found on page 4 below.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>4</b>
<b>II. STANDARD CONDITIONS.....</b>	<b>4</b>
<b>III.SPECIAL CONDITIONS .....</b>	<b>5</b>
<b>IV.FINDINGS AND DECLARATIONS .....</b>	<b>8</b>
A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION .....	8
B. STANDARD OF REVIEW .....	11
C. LAND USE PRIORITIES.....	11
D. MARINE AND BIOLOGICAL RESOURCES .....	13
E. PUBLIC ACCESS .....	19
F. OTHER .....	21
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) .....	21

### APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contact with Agencies and Groups

### EXHIBITS

Exhibit 1 – Project Location Maps

Exhibit 2 – Dredging Area Map

Exhibit 3 – Disposal Area Map

Exhibit 4 – Harbor Depth Surveys

Exhibit 5 – Biological Opinion for Moss Landing Harbor District Maintenance Dredging Project

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission **approve** Coastal Development Permit Number 3-16-0325 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-16-0325 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. 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 special conditions:

- 1. Maximum Dredge Parameters.** This coastal development permit shall be valid for ten years, i.e. from January 1, 2019 through December 31, 2028. Dredging and disposal events shall occur during daylight hours, between October 1<sup>st</sup> and March 31<sup>st</sup>, Monday through Friday only. Dredging shall not exceed 550,000 cubic yards of materials over the life of the permit with no more than 80,000 cubic yards of materials in any one year. Sandy clean dredge material suitable for beach replenishment use shall be placed at one or more of the three identified beach replenishment sites (see **Exhibit 3** and **Special Condition 3(b)**). All dredge materials suitable for unconfined aquatic disposal shall be deposited in the two offshore or three beach replenishment locations identified by the Harbor District (see **Exhibit 3**). Unless the Executive Director determines an amendment is legally required, minor adjustments to the above parameters may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.
- 2. Sediment Sampling Plan, Dredged Material Analysis, and Testing Requirements.** PRIOR TO THE COMMENCEMENT OF ANY DREDGING EPISODES WITHIN ANY DREDGING SEASON, the Permittee shall submit to the Executive Director for review and approval two copies of each of the following before the commencement of any such dredging:

  - (a) A Sampling Analysis Plan (SAP) that clearly describes and delineates sediment sampling locations and applicable testing protocols. The SAP must be approved by the Executive Director prior to sediment sampling. The SAP shall ensure that representative sample locations applicable to authorized dredging areas are tested and that they were tested within 180 days of the commencement of dredging and any beach replenishment event.
  - (b) Dredged material analysis (chemical, physical, biological) as required by ACOE, EPA, and the RWQCB, as well as sampling and testing information. All dredged materials shall be tested according to the requirements of the ACOE, EPA, and RWQCB using the most current ACOE, EPA, and RWQCB testing methods and/or procedures. All dredged materials proposed for unconfined aquatic disposal shall meet RWQCB and EPA Clean Water Act disposal standards.
- 3. Dredge Operations Plan (DOP).** PRIOR TO THE COMMENCEMENT OF ANY DREDGING EPISODES WITHIN ANY DREDGING SEASON, the Permittee shall submit, for Executive Director review and approval, two copies of a detailed DOP that clearly identifies all dredge operations (including, at a minimum, identification of areas to be dredged, dredging depths, over-dredge depths, quantity of materials to be dredged, specific location of dredge spoils disposal, all timing (including dredge start and stop days, hours of operation, etc.), all pipeline locations, all measures to be taken to define and delineate dredge activity areas, equipment to be used, etc.). Dredging operations shall not occur outside of the identified and approved dredge and disposal locations as shown in **Exhibit 2**. All such DOPs shall, at a minimum, incorporate the following provisions:

**(a) Biological Monitoring.** Prior to the commencement of dredging activities each work day and continuing during all dredging activities, a qualified biological monitor shall be present to inspect the work area for southern sea otters and/or marine mammal pupping areas. The biologist shall stop work or prohibit the start of work if sea otters or marine mammal pupping areas occur within 50 meters of the dredging operations until the animals leave the area of their own accord. Prior to proceeding with dredging operations, all areas that must be avoided (i.e. areas within 50 meters of southern sea otters or marine mammal pupping areas, or areas with sediment that does not meet dredge disposal standards (see **Special Condition 3(c)**), shall be clearly demarcated with floatable buoys, or other devices that are clearly visible on surface waters, so as to allow dredge equipment operators to easily identify dredge prohibition areas.

**(b) Sandy Sediment Material Disposal.** If any sediment testing results, as required by Special Condition 2(b) above, consist of suitable sandy sediment that meets standards for beneficial reuse (i.e., >80% sand), then sandy sediment materials from the sampled areas shall be disposed of at one or more of the three beach replenishment sites identified by MLHD (see **Exhibit 3**). The Permittee shall submit a beach replenishment plan to the Executive Director for review and approval prior to disposal. At a minimum, the beach replenishment plan shall include the following:

- i. Sand Placement Parameters.** The plan shall describe the volume of sandy material, its origin within the harbor, and its general properties (grain size and toxicity test results); the beach location(s) where the sand will be placed, including the expected footprint of its placement (i.e., depth and extent); methods for sand delivery and distribution, and a timeline for all associated beach replenishment activities. The plan shall demonstrate that sand placement activities shall: avoid sediment compaction; time operations to minimize biotic impacts; include interspersions of replenished beach sections with unaffected areas, and; create beach profiles that match the original beach conditions as closely as possible.
- ii. Snowy Plover Protections.** Beach replenishment activities shall not take place during plover nesting season (March 1 through September 30). Outside of nesting season, pre-construction surveys for wintering plovers by a qualified biologist are required. If wintering plovers are identified, replenishment activities shall be delayed or relocated to avoid impacts to individual wintering plovers and shall require consultation with the U.S. Fish and Wildlife Service (USFWS) and the Executive Director to determine whether the work can continue without adverse impacts to plovers. Following completion of the consultation and upon subsequent approval from the Executive Director, beach replenishment activities may resume.
- iii. Monterey Spineflower Protections.** Pre-construction surveys for Monterey spineflower by a qualified biologist are required. Existing records of the species shall be combined with any new observations to delineate the maximum convex polygon of occurrence and estimate the seed bank to be avoided, and a buffer of 100 feet shall be applied except where reaching beyond the dune strand and onto the upper beach.

- iv. Dune Habitat Protections.** Beach replenishment activities shall be limited to areas of sandy beach and shall be prohibited in all vegetated dune areas. Prior to replenishment activities, a qualified biologist shall install temporary exclusionary fencing to clearly demarcate all dune areas.
  - v. Public Access Protections.** Beach replenishment activities shall be conducted in such a manner to avoid, to the greatest extent possible, interference with public recreational access, and all measures to be implemented to avoid public recreational access shall be identified. Such measures may include, but are not limited to, uncoupling segments to allow unimpaired pedestrian movement, small-scale sand ramps over pipelines, avoiding times of peak beach use, etc. Any beach areas and all beach access points impacted by beach replenishment activities shall be restored to their pre-replenishment condition or better within three days of completion of beach replenishment activities.
  - vi. Property Owner Authorization.** The Permittee shall submit written evidence from MBARI and/or State Parks (as applicable) that beach replenishment activities are authorized on MBARI and/or State Parks' property.
- (c) Unsuitable Material Dredging and Disposal.** If any sediment testing results, as required by **Special Condition 2(b)** above, indicate that the materials do not meet ACOE, EPA, and RWQCB dredge disposal standards, then materials from the sampled area shall not be dredged until a unsuitable material disposal plan is submitted to the Executive Director for review and approval. The disposal plan shall identify an inland location outside of the coastal zone (i.e., landfill or equivalent) for disposal and no unsuitable materials shall be deposited offshore or on beaches. If unsuitable materials must be temporarily stockpiled for dewatering prior to disposal at an identified inland location, stockpiling shall not take place on any beach or vegetated area, materials shall be stored beyond the reach of tidal waters, and the materials shall be stored in a way that minimizes impacts to public access and recreation areas. Erosion and sediment controls (e.g. tarps, fiber rolls, sediment basins, etc.) shall be installed as necessary to contain runoff and/or sediments at the stockpile site and prevent runoff from entering beach or vegetated areas or state waters.
- (d) Fine-Grained Material Disposal.** If any sediment testing results, as required by **Special Condition 2(b)** above, consist of suitable fine-grained sediment that does not meet standards for beneficial reuse (i.e., if the sediment consists of less than 80% sand), then the suitable fine-grained sediment materials from the sampled areas must be disposed of at one or both of the two designated offshore unconfined disposal sites (SF-12 or SF-14) identified by the Moss Landing Harbor District (see **Exhibit 3**).
- (e) Equipment Maintenance, Use, and Storage.** All dredging equipment (e.g. the dredge itself and associated pipelines, pumps, etc.) shall be maintained and inspected by Harbor District staff on a regular schedule to ensure proper operation and to eliminate any potential for spills. The dredging equipment shall be stored and use in a manner that limits waterway or beach access conflicts.

The Permittee shall undertake development in accordance with each approved DOP.

- 4. Tidewater Goby Monitoring and Survey.** A qualified biological monitor must be present during dredging activities to monitor for the presence of gobies. Any live gobies found must be captured and relocated to suitable upstream habitat outside of the dredging area. The Permittee shall also coordinate with ACOE, USFWS, and Dynegy Moss Landing LLC to survey upstream tidewater goby populations consistent with USFWS’s “Biological Opinion for Moss Landing Harbor District Maintenance Dredging Project” (see **Exhibit 5**). The Permittee shall submit to the Executive Director for review and approval the results of the surveys or annual progress reports. Pending the results of the surveys, the Executive Director may require additional surveys, habitat restoration, and/or (re)introduction of tidewater gobies into suitable but unoccupied habitat, for which the Executive Director may determine a CDP amendment or a new CDP is required.
- 5. Other Agency Approvals.** PRIOR TO THE COMMENCEMENT OF DREDGING AND DISPOSAL OPERATIONS, the Permittee shall submit to the Executive Director for review a copy of a valid permit, letter of permission, or evidence that no permit is necessary for the project authorized by this CDP from the following agencies: Army Corps of Engineers (ACOE), U.S. Environmental Protection Agency (EPA), Monterey Bay National Marine Sanctuary (Sanctuary), and the Regional Water Quality Control Board (RWQCB).
- 6. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION**

#### **Project Location**

Moss Landing is a coastal community located within unincorporated northern Monterey County and situated near the middle of Monterey Bay between two river systems: the Pajaro River (approximately 1.5 miles to the north) and the Salinas River (approximately 4 miles to the south). Moss Landing Harbor lies just west of Highway 1 between the mouth of Elkhorn Slough and the Monterey Bay. Lands to the west of the Harbor are made up of sand flats and sand dunes that are perched atop the sand spits of the Old Salinas River. See **Exhibit 1** for project location maps.

Moss Landing Harbor was created in 1947 when the U.S. Army Corps of Engineers (ACOE) first dredged the mouth of Elkhorn Slough near the northern extent of the Old Salinas River mouth. The harbor occupies a portion of the Old Salinas River channel that parallels the coast and is separated from the ocean by sand spits and dunes. Permanent jetties placed along the north

and south sides of the harbor's entrance provide year-round access to the Pacific Ocean. Tide gates along the north and south ends of the harbor allow for muted tidal activity within Bennett Slough to the north, as well as in the Moro Cojo Slough and the Old Salinas River channel to the south. The 4,000-acre Elkhorn Slough watershed lies east of Highway One and is hydrologically linked with the harbor, through which daily tides flow.

As a result of its proximity to both deep-water marine environments immediately offshore and estuarine environments and tidal sloughs inland, the harbor is highly valued for the commercial fishing, recreational boating, and educational opportunities this location provides. Moss Landing Harbor is one of only six harbors located along the Central Coast area, and is the largest fishing port between San Francisco and Los Angeles.

The harbor entrance divides the Moss Landing Harbor into two parts, referred to as the North Harbor and the South Harbor. The North Harbor is home to approximately 155 recreational motor and sail boats, the Elkhorn Yacht Club, and a commercial kayaking center. The South Harbor is home to approximately 455 commercial and recreational boats, including most of the commercial fishing and oceanographic research vessels. The area has also become a day-trip destination for small boating enthusiasts and kayakers, with put-ins both in Moss Landing Harbor and Elkhorn Slough.

Because of its location at the bottom of two major watersheds, Moss Landing Harbor is a depositional sink for fine-grained sediments, especially following major storms that carry large volumes of sediment from the Salinas Valley watershed. Similarly, fine-grained sediments eroded from the Elkhorn Slough watershed ultimately end up in the harbor. Sand-sized material transported by longshore currents also gets trapped in the entrance channel, forming shoals, and onshore winds transport beach and dune sands into the North Harbor, forming sand bars that extend east into the North Harbor navigation channel. Excessive sediment deposition in the harbor can impede navigation in berthing areas, navigation channels, turning basins, and boat ramp areas, which in turn restricts movement of commercial fishing, recreational, and marine research vessels and the activities they support.

### **Project Background**

The ACOE and the Moss Landing Harbor District (MLHD) have conducted maintenance dredging of Moss Landing Harbor since 1947, when the harbor was first constructed. The ACOE, in accordance with its mandate for maintaining navigable harbors and inland waterways, has authority over the Federal Channel, which provides an entrance to the main harbor areas. MLHD is responsible for dredging all berthing areas within the harbor and the North Harbor Channel. MLHD can also seek authorization to dredge within the Federal channel on an as-needed basis (to dredge areas left un-dredged or deferred by the ACOE), which would require the MLHD to obtain separate ACOE and CDP approval.

MLHD has historically dealt with shoaling<sup>1</sup> through both maintenance dredging programs and emergency dredging events. Past dredging activities authorized by the Commission include CDP 3-96-020 (dredging and disposal of 31,000 cubic yards (cy) of material from the South Harbor channel and dock areas); CDP 3-98-032-G (emergency dredging and disposal of approximately

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<sup>1</sup> Shoaling occurs when the bottom of the harbor's channels and/or berthing areas become shallow due to the deposition of sediment, which creates a hazard to navigation.

22,000 cy of material from South Harbor locations); CDP 3-99-011 (dredging and disposal of up to 30,000 cy of material from in front of the Dynegy Moss Landing LLC Power Plant intakes), and; CDP 3-01-049 (annual dredging of up to 100,000 cy of material throughout the entire harbor for a period of five years).

Dredge materials suitable for unconfined aquatic disposal have been disposed of at either of two designated unconfined discharge sites, i.e. SF-12 and SF-14, located approximately 1,100 feet and 1.3 miles offshore, respectively, or at any one of three beach replenishment sites located directly adjacent to the harbor. Most dredge materials removed from within the berthing areas have consisted of fine-grain sediment that has been disposed of offshore at SF-12 through an existing permanent transport pipe. Coarse sand dredged from within the Federal Channel has been disposed of at any one of three beach replenishment sites located directly adjacent to the channel.

In the 1990s, some dredge materials were found to be unsuitable for aquatic disposal due to contamination from DDT and other heavy metals. The North Harbor Interim Re-handling Site was used for processing unsuitable dredge material (CDP 3-99-011). However, this site has been closed and restored as required by Monterey County and no alternate upland re-handling and disposal facility has yet been identified or approved for contaminated dredge materials. DDT concentrations have continued to decline over the past 25 years and no contaminated materials were found in sediment samples taken prior to dredging episodes conducted between 2002 and 2007 under CDP 3-01-049.

#### *Biological Opinion*

In 2016, MLHD applied to the ACOE for dredging permits under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. Based upon potential impacts of dredging to species that are federally protected under the Endangered Species Act (ESA), the ACOE requested a consultation with the U.S. Fish and Wildlife Service (USFWS) to seek its biological opinion on whether the proposed dredging project would adversely affect any species listed under the ESA or any designated critical habitat for listed species. Specifically, the ACOE requested USFWS's opinion with regard to project impacts on southern sea otters, western snowy plovers, Monterey spineflower, tidewater goby, and associated critical habitat. On October 5, 2018, USFWS finalized the biological opinion with regard to these species (see **Exhibit 5**).

In the biological opinion, USFWS determined that the project would not adversely affect southern sea otters, western snowy plovers, Monterey spineflower, or associated critical habitat as long as certain protective measures are implemented. These measures, explained in more detail below, included a 50-meter setback from otters, avoidance of snowy plover nesting season and wintering snowy plover individuals, and avoidance of all spineflower dune habitat areas. USFWS determined that the project may have an adverse effect on tidewater goby and recommended several mitigation measures to minimize potential impacts. These mitigation measures include the use biological monitors to capture and relocate any goby individuals, and implementation of an upstream tidewater goby habitat study.

#### **Project Description**

The harbor has recently experienced shoaling and sand accumulation, resulting in reduced water depths and unsafe navigational conditions (see **Exhibit 4** for depth survey results). To maintain

safe conditions, MLHD proposes to maintain depths of 12 to 14 feet below mean lower low water (MLLW) in the South Harbor docks and channel; 10 feet below MLLW in the North Harbor docks and channel; and 22 feet below MLLW at the power plant intake area. Dredging outside of the proposed dredge areas, including within the federal channel, would require separate CDP approval.

MLHD estimates that a maximum of approximately 80,000 cubic yards of material may need to be removed in any given year to maintain the proposed harbor depths, although the maximum amount would likely not be reached every year. MLHD estimates that approximately 550,000 cubic yards would be removed over the life of the ten-year permit. MLHD therefore proposes to: (1) seasonally dredge a maximum of 80,000 cy of sediment primarily between October 1st and March 31st from within the Moss Landing Harbor; and (2) annually deposit a maximum of up to 80,000 cubic yards of suitable dredge material at one or both of two designated unconfined aquatic discharge sites in the Monterey Bay or at one or more of the three beach replenishment sites adjacent to the harbor (see **Exhibit 2** for a map of the proposed dredging areas and **Exhibit 3** for a map of the proposed disposal and beach replenishment sites). MLHD will utilize a hydraulic cutter dredge that will be inserted into the sandy substrate before activation to limit impacts to aquatic organisms and reduce turbidity. Fine-grain dredged materials will be transported to one of the two designated aquatic disposal sites through an existing permanent transport pipe. In the event that substantial coarse-grain sand is encountered, such dredged material will be deposited above the mean high tide line at one or more of the three beach replenishment sites.

## **B. STANDARD OF REVIEW**

The dredging area is located within State tidelands and thus is located within the Commission's retained CDP jurisdiction. The standard of review for development within the Commission's retained jurisdiction is the Coastal Act.

## **C. LAND USE PRIORITIES**

### **Applicable Policies**

Moss Landing Harbor accommodates a number of coastal-related and coastal-dependent activities including commercial fishing and recreational boating. The proposed project includes maintenance dredging to remove accumulated sediment from the boat berthing areas and navigational channels. Coastal-dependent and coastal-related developments are among the highest priority Coastal Act uses.

The Coastal Act defines coastal-dependent and coastal-related as follows:

*Section 30101: "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

*Section 30101.3: "Coastal-related development" means any use that is dependent on a coastal-dependent development or use.*

**Coastal Act Section 30001.5** states, in relevant part:

*The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:*

- (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources....*
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast...*

**Coastal Act Sections 30234 and 30234.5** also provide specific protections for boating harbors and commercial fishing, including:

***Section 30234:** Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

***Section 30234.5:** The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

### **Consistency Analysis**

Moss Landing Harbor is one of only six harbors located along the Central Coast, and is the primary commercial fishing port in Monterey Bay area. Moss Landing Harbor is used by commercial fishing, and recreational boaters, and is also home to the largest number of research vessels berthed within the Central Coast area, supporting the Monterey Bay Aquarium Research Institute (MBARI), the California State University Moss Landing Marine Laboratories, and the Elkhorn Slough National Estuarine Research Reserve.

Section 30001.5 of the Coastal Act prioritizes coastal-dependent development, which includes boating facilities and harbors, over other development along the coast. Section 30234 of the Coastal Act provides that facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Section 30234.5 states that the economic, commercial, and recreational importance of fishing activities shall be recognized and protected. Commercial and recreational boating and fishing are coastal-dependent priority uses that cannot function without sufficient harbor depths. Hence, the maintenance of adequate berthing and navigational depths in the harbor is essential, and must be considered a high priority under the Coastal Act.

The proposed dredging and discharge activities not only support coastal-dependent uses but are integral to such uses and therefore have a priority under the Coastal Act. Accordingly, the Commission finds that the proposed development is a high-priority coastal-dependent use that is consistent with the land use priorities of Coastal Act Sections 30001.5, 30234, and 30234.5.

## D. MARINE AND BIOLOGICAL RESOURCES

### Consistency Analysis

#### *Appropriateness of Dredging*

Coastal Act Section 30233(a) allows for the dredging of harbor waters in order to maintain depths necessary for navigation where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:

*30233(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: .... (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps ....*

Proposed dredging areas in the harbor include areas where maintenance dredging has commonly occurred over time. Sediment deposition in and around navigational channels and berthing areas can affect the ability to maneuver safely in and out of these areas. Continued sediment deposition can be anticipated due the geographic location of the harbor, its function as a sink for sediment that drains from the watershed, and the erosive nature of much of the sediment in the watershed. Even with a comprehensive management plan in place to minimize erosion in the watershed, continued dredging would be required and no feasible alternatives to the proposed dredging have been identified which would ensure the safe functionality of the navigational channels and berthing areas. The proposed project represents a comprehensive program of operations and maintenance activities designed to maintain and improve navigation channels and berthing areas for recreational boating and commercial fishing and is therefore an allowable use under Coastal Act Section 30233(a)(2). Additionally, and as described in more detail below, the environmental impacts of the dredging program as conditioned are expected to be temporary and generally less than significant.

The calculations that MLHD used to arrive at the 80,000-cubic-yard estimate per dredge season were intended to be a very rough estimate and provide an upper annual limit that would provide some operational flexibility. The estimate assumes that a combined 80,000 cubic yards of sediment could be removed from the North and South Harbor areas in any particular dredge season, although MLHD does not anticipate removing the maximum cubic yards allowed every year. Based on dredging totals from prior permits and current depths, MLHD anticipates dredging up to a total of 550,000 cubic yards over the life of the permit with no more than 80,000 cubic yards dredged in any one year. However, the proposed volumes are estimates and a single storm event could lead to significant sediment deposits over the estimated volumes. Accordingly, **Special Condition 1** limits dredging to the estimated annual volume and total volume over the 10-year life of the permit, and allows the Executive Director to provide for minor adjustments to those volumes if the adjustments are deemed reasonable and necessary and do not adversely impact coastal resources.

#### *Biological Resources*

**Sections 30230 and 30231** of the Coastal Act protect biological resources and state:

**30230.** *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.*

**30231.** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Moss Landing Harbor is located between the Elkhorn Slough watershed and the Monterey Bay National Marine Sanctuary (Sanctuary), which both contain virtually all of the types of valuable marine resources found within the Central Coast area. Monterey Bay supports a diverse complex of marine and marine-related habitats including open ocean, kelp forests, rocky seashore, nearshore intertidal, sandy beaches, coastal streams, estuarine systems, and wetlands. The Sanctuary supports a variety of marine life including fish, seabirds, marine mammals, algae, and one of the world's most diverse invertebrate populations. The Elkhorn Slough watershed is an incredibly rich biological area, with hundreds of resident and migratory bird species, and freshwater ponds and riparian wetland areas that support three rare amphibians, the California red-legged frog, Santa Cruz long-toed salamander and the California tiger salamander. The watershed is surrounded by coastal dunes and upland ridges that both support numerous rare plant species. Moss Landing Harbor provides the vital link between the tidal waters of Monterey Bay and Elkhorn Slough. Marine mammals, fish, and seabirds make use of both the aquatic and terrestrial environments provided within the Harbor. Seals, sea lions, and sea otters have been observed hauling out on the North Harbor sandbar. The tidal marsh and mudflats that fringe the North Harbor also serve as resting and foraging grounds for various shorebirds.

Impacts to biological resources from dredging and disposal are anticipated to be similar to those associated with previously permitted dredging activities. The primary impact to biological resources resulting from dredging occurs through the disturbance, transport, and destruction of benthic organisms on and in the material to be dredged. However, re-colonization by these organisms would occur over time. While, dredged material disposal may induce turbidity and cause lower dissolved oxygen levels, which may cause stress on planktonic larvae and filter feeder organisms (e.g., worms and shellfish), such stress would be temporary.

The removal of sediment from dredge areas could have short-term, adverse impacts on fish and fish habitats by temporarily increasing the total suspended sediments in the water column and possibly decreasing dissolved oxygen levels during dredge operations. However, as proposed, dredging will be conducted using a hydraulic dredge, which removes and transports dredged material as liquid slurry, thereby minimizing disturbance and re-suspension of sediments at the dredge site.

With respect to actual operation of the dredge, the proposed dredging areas are limited to the active working harbor and do not encroach into any of the adjacent estuarine, wetland, or Sanctuary habitats (see **Exhibit 2** for location of dredge areas). As mentioned above, MLHD proposes to utilize a hydraulic cutter dredge that will be inserted into the sandy substrate before activation to limit impacts to aquatic organisms and to reduce turbidity to protect water quality. **Special Condition 3** requires the submission of a Dredge Operations Plan prior to each dredging episode that identifies the dredge and disposal areas and all equipment and methods to be utilized in order to ensure that dredging and disposal only occur within the approved dredge and disposal areas.

The dredge operations do have the potential to impact marine mammals, particularly sea otters and seal pups that frequent the North Harbor area. To ensure that sea otters and seal pups are not disturbed by dredging activities, **Special Condition 3(a)** requires a qualified biological monitor to inspect the dredging area prior to the start of each work day and during all dredge operations. The biological monitor is required to stop work or prohibit the start of work if southern sea otters or seal pupping areas are found within 50 meters of the dredge equipment. To ensure that dredge operators do not encroach within the 50-meter buffer, **Special Condition 3(a)** requires that the buffer area must be demarcated with floating buoys or another clearly visible device. These requirements for a biological monitor and delineation of buffer areas are consistent with the terms of the Biological Opinion with respect to sea otters (see **Exhibit 5**).<sup>2</sup>

Although tidewater gobies, a federally endangered species, are not known to breed or inhabit the active harbor area due to high salinity and colder water temperatures than that of identified habitat areas in the slough waters upstream, individual juvenile gobies have been found near the intake pipe of the Dynegy Moss Landing LLC Power Plant. At this time it is unknown whether these juvenile goby individuals are able to survive and migrate upstream toward more suitable habitat to rejoin the main populations or whether these individuals are flushed out of the harbor mouth with the tides. Thus, there is not enough information to determine whether the proposed dredging project will have an impact on goby populations as a whole or will only impact individual gobies that would not naturally survive in the area. Regardless, dredging operations could have an impact on individual gobies. To help minimize goby impacts, **Special Condition 4** requires a qualified biologist to monitor for the presence of gobies during dredging and disposal operations and requires that any identified live goby individuals be captured and relocated to suitable upstream habitat. Additionally, **Special Condition 4** requires MLHD to conduct upstream goby surveys consistent with the “Biological Opinion for Moss Landing Harbor District Maintenance Dredging Project” (see **Exhibit 5**), in conjunction with ACOE, USFWS, and Dynegy Moss Landing LLC, to help determine whether the dredging activities are having any adverse impacts on upstream goby populations. Depending on the results of such survey, MLHD may be required to perform additional surveys, provide for upstream habitat restoration, or participate in reintroduction efforts to mitigate for any observed impacts.

With the above conditions limiting the area of dredging and providing protections for sensitive

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<sup>2</sup> Seals and sea lions are under the jurisdiction of NOAA and the Marine Mammal Protection Act. The USFWS biological opinion therefore does not include an analysis of project impacts to seals and sea lions. The 50-meter buffer was recommended by the Commission Staff Ecologist, Dr. Lauren Garske-Garcia, which she determined in her professional evaluation to be sufficient to mitigate adverse project impacts to other marine mammals commonly found within the harbor.

species, the dredge operation plans, as proposed to be conditioned, adequately protect marine resources and can be found consistent with Coastal Act Sections 30230 and 30231 regarding protection of species of special importance and the maintenance of biological productivity of coastal waters.

#### *Water Quality*

Coastal Act Section 30232 requires that development protect against the spillage of hazardous substances:

*30232. 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.*

Although recent sediment sampling and testing conducted in Moss Landing Harbor has not detected contaminated materials, historically bottom sediments in certain areas of the harbor have contained heavy metals (including arsenic, copper, nickel, cadmium, chromium and mercury), pesticides (including DDT, chlordane, dieldrin, endrin) and PCBs (aroclor) and tributiltin at levels that exceed environmentally safe limits. DDT, toxaphene, dieldrin, endrin, aldrin, and endosulfan are major persistent pesticides that have historically been used for agricultural operations throughout the Salinas Valley. With the exception of endosulfan, these chemicals have now been banned for use in California. Studies undertaken to examine water quality (AMBAG 1992 – see **Appendix A**) suggests that though previously banned, these persistent organochlorine pesticides are still present in agricultural fields and adhere to fine-grained sediments leaving the fields, thereby finding their way as suspended sediments in surface water bodies. Sediment inputs to the harbor include non-point source runoff from the Salinas River, the Old Salinas River Channel, Tembladero Slough, Elkhorn Slough, sloughing of harbor banks, littoral sands entering the harbor mouth, and from by-products of boating and industrial uses in and adjacent to the harbor.

To date, prior to each dredge episode, the suitability of the proposed dredged material for disposal in any of the proposed aquatic locations has been evaluated by an interagency group consisting of representatives from ACOE, the U.S. Environmental Protection Agency (EPA), the Regional Water Quality Control Board (RWQCB), the Commission, and the Sanctuary. Advisory to this interagency group are USFWS, the National Marine Fisheries Service (NMFS), and the California Department of Fish and Wildlife (CDFW). The group considers chemical and biological testing results, as well as physical grain size analyses, in relation to standards established by the EPA and ACOE.<sup>3</sup> After reviewing test results, the group then works to reach a consensus opinion as to whether or not the proposed dredged material is suitable for aquatic disposal.

This process would continue under this CDP, as required under **Special Conditions 2, 3, and 5**. To ensure that the sediments to be dredged are uncontaminated and suitable for aquatic disposal, **Special Condition 2** requires submission of a Sampling Analysis Plan (SAP) prior to the commencement of any dredging episode. The SAP must include a sufficient number of testing

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<sup>3</sup> The EPA and ACOE's testing standards are outlined in the 1998 publication "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. – Testing Manual" (also known as the Inland Testing Manual or ITM).

locations to provide a representative sample, and sampling must occur within 180 days of dredging to provide current information. The condition also requires that testing of dredged material be done per the requirements of ACOE, EPA, and the RWQCB and that all dredged materials proposed for unconfined aquatic disposal shall meet RWQCB and EPA Clean Water Act disposal standards.

Because the toxins that have historically been found at Moss Landing adsorb strongly to sediment, desorption into the water is unlikely, but such materials must be disposed of properly. If contaminated materials are found, **Special Condition 3(c)** prohibits dredging within the contaminated areas until a contaminated material disposal plan is submitted that identifies a suitable inland disposal facility, such as a landfill, that will accept the dredge materials. This condition also prohibits the disposal of contaminated materials offshore or on any beaches. Temporary stockpiling of dredge spoils is sometimes necessary in order to dewater the sediment prior to ultimate disposal. This condition further prohibits temporary stockpiling of dredge materials on any beach or vegetated area or within the reach of tidal waters, and requires such materials to be stockpiled in a location that minimizes impacts to public access and recreation. This condition also requires the installation of erosion and sediment controls to prevent runoff from reaching any sensitive habitats. To ensure that the dredge equipment itself does not degrade water quality, **Special Condition 3(e)** requires such equipment to be maintained and inspected by MLHD staff on a regular schedule.

Finally, **Special Condition 5** also requires that the submission of specific plans for each dredging episode be accompanied with written evidence from the ACOE, the RWQCB, EPA, and the Sanctuary that dredge sediment sampling and analyses and dredge operation plans have been reviewed and approved by each of these agencies, or conversely that no such approval is required by these agencies.

Some water quality impacts are expected from dredging and disposal; however these are not related to hazardous substances. Specifically, additional total suspended solids in the water column are expected to increase turbidity near the dredging and disposal sites. Increased turbidity in turn decreases dissolved oxygen levels in the water column, which could impact sea life (see “Biological Resources” section above). The pre-dredge ambient water quality condition is expected to return shortly after each dredging episode, however. Thus the proposed project will be in conformance with Section 30232 of the Coastal Act.

#### *Beach Replenishment*

Coastal Act Section 30233(b) specifies that dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems, and requires that dredge spoils be disposed of in a manner that avoids significant disruption to habitats and water circulation:

*30233(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....*

With respect to the disposal of uncontaminated materials, MLHD has identified two designated unconfined offshore disposal sites (SF-12 and SF-14) and three potential beach replenishment

sites (see **Exhibit 3**). Much of the material to be dredged consists of fine sediments (<80% sand) from the inland watershed that do not meet federal standards for beneficial reuse. However, there is a possibility of the presence of sandy material that is best utilized for beach replenishment purposes.

For fine-grained sediment (i.e. <80% sand) that is suitable for aquatic disposal, MLHD will use one or both of two offshore sites (SF-12 and SF-14) that have been federally designated for such purposes. There is an existing transport pipe from the harbor to SF-12, which is located 1,100 feet offshore just at the head of the Monterey Canyon. SF-14 is located approximately 1.3 miles offshore and would be reached by barge. Dredged materials disposed of at SF-12 or SF-14 may be redistributed by upwelling currents (from February through July), the California Current (from July to November) and Davidson currents (California countercurrent, from November to February); therefore, the resident times for sediments discharged at these locations may vary from 3 to 13 days and is thus highly dispersive. By placing only clean dredge material on the nearshore shelf during winter months, the natural process of sediment transport from the watershed to the littoral system is reconnected. **Special Condition 3(d)** ensures that all suitable fine-grained materials are deposited at one or both of the two designated offshore sites in order to ensure that such material stays within the littoral system, as encouraged by Coastal Act Section 30233(b).

For coarse-grained sediment that is suitable for beneficial reuse (>80% sand), MLHD has identified three beach replenishment sites where such material could be placed (see **Exhibit 3**). Two of the replenishment sites are the sandy beaches immediately adjacent to the harbor mouth on MBARI property, while the third beach is approximately half a mile north at Moss Landing State Beach adjacent to Bennett Slough. Past harbor dredging projects (e.g., CDP P-77-0737; 3-83-186; and 3-99-011) have included beach replenishment near the north and south jetties to reduce the impacts of shoreline erosion in those areas. Shoreline erosion has also occurred between the south jetty and Sandholdt Pier due to the blocking of littoral sediments by the harbor entrance jetties, and the high wave energies that attack the shore. Beach replenishment also provides additional material to stabilize the width of the beach, enhance public access, and protect the narrow zone of sand dune habitat that exists in the back beach area. To ensure that the project is consistent with Coastal Act Section 30233(b), which encourages beneficial reuse of dredged materials, **Special Condition 3(b)** requires sandy sediment to be utilized for beach replenishment purposes. **Special Condition 3(b)(i)** requires submission of a plan that provides sand replenishment parameters. **Special Condition 3(b)(vi)** requires property owner authorization by MBARI and/or State Parks for any beach replenishment activities.

However, beach replenishment operations, particularly the placement of pipelines and use of grooming equipment, have the potential to disturb sensitive dune habitats that lie between the harbor and the replenishment sites. The replenishment sites are also known to provide habitat for the endangered western snowy plover. To ensure that sensitive dune areas are protected, **Special Condition 3(b)(iv)** requires submission of a beach replenishment plan that prohibits beach replenishment activities within vegetated dune areas. Additionally, the plan requires a qualified biologist to install temporary exclusionary fencing to demarcate the dune areas prior to replenishment. **Special Condition 3(b)(iii)** requires pre-construction surveys for Monterey spineflower prior to beach replenishment activities. To protect snowy plovers, **Special Condition 3(b)(ii)** prohibits beach replenishment during nesting season (March 1 through

September 30) and also requires a pre-construction survey for wintering plovers during the rest of the year. If wintering plovers are identified, beach replenishment activities must be relocated or delayed to avoid impacts to wintering snowy plover individuals.

With the above conditions, the project is consistent with Coastal Act Section 30233(b) with respect to beach replenishment.

### **Marine and Biological Resources Conclusion**

In summary, the proposed project represents a multi-year program for dredging activities that are necessary to maintain and improve navigation channels and berthing areas for recreational boating and commercial fishing. As conditioned to require plans that limit the areas of dredging to the active harbor areas; sample and test the sediments to be dredged; dispose of dredge spoils in an appropriate manner; and protect sensitive habitat and species, the Commission finds that: (1) the proposed project is a type of development that may be permitted consistent with Coastal Act Section 30233; (2) there is no feasible less environmentally damaging alternative; (3) feasible mitigation measures have been provided to minimize adverse environmental effects; and (4) no significant disruption of environmentally sensitive habitats will result. As such, the project can be found consistent with the Coastal Act.

## **E. PUBLIC ACCESS**

### **Applicable Policies**

**Coastal Act Section 30604(c)** requires that every coastal development permit issued for new development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road.

**Coastal Act Sections 30210 through 30214, as well as Sections 30221 and 30224**, specifically protect public recreational access opportunities. In particular:

*Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*Section 30212 (a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....*

*Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...*

*30214(a). The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case....*

*Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for*

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

***Section 30224.** Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

In addition, **Coastal Act Section 30240(b)** requires that development not interfere with recreational areas:

***30240(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.*

### **Consistency Analysis**

The Coastal Act requires public recreational access opportunities to be maximized, including lower-cost visitor facilities and water-oriented activities (like recreational boating), and protects areas near and at the shoreline for this purpose. Moss Landing Harbor provides public access and recreational opportunities of regional and statewide significance. These include boat launching, berthing for commercial vessels and recreational boats, marine-related retail/commercial businesses, kayaking, whale watching, safety and enforcement, and diving. The proposed dredging project will strongly benefit public access and recreation by restoring and maintaining adequate water depths in the Harbor's navigation channels and by directing suitable sandy dredge spoils onto nearby beach areas for beach replenishment or back into the littoral system through offshore disposal.

Adverse impacts to public access from the dredge operations are possible (e.g., displacement of activities in dredge and disposal areas, presence of dredge pipes impacting access, stockpiling of unsuitable dredge materials, etc.). For example, the pipelines used to transport suitable dredge spoils to designated beach replenishment sites can create an impediment to navigation and pedestrian access to the beach in certain circumstances. Furthermore, sandy entrance channel dredged material that is disposed of directly on the dry beach can also create temporary impacts to beachgoers. These sediments are pumped from the pipeline as a liquid mixture of water and insoluble sand material, creating a zone of slurry on the beach or in the surf zone that renders those areas temporarily unusable by the public. Fortunately, these types of impacts can be minimized in this case through dredge operation design. Specifically, the pipelines utilized can be small enough to be traversed by persons walking across the beach and the placement of ramps can be used to allow access for less nimble beach visitors. Similarly, the area to be taken up by the replenishment activities is generally fairly small and would be located in areas that will not significantly reduce the availability for normal public beach recreational pursuits (see **Exhibit 3**). Replenishment activities will be limited to weekdays during the off-peak fall and winter months and typically are only temporary, further limiting impacts to public access. Finally, although dredge disposal of sandy material onto the beach may cause a temporary disturbance to

swimmers or surfers, again these impacts are temporary, i.e. since the dredging takes place in the fall and winter months, high energy ocean conditions will quickly disperse the sediments.

With respect to disposal of materials found to be unsuitable for reuse, often these materials must be stockpiled to allow the material to dry before the materials can be disposed of off-site. Stockpiling of such materials can occupy areas that are normally used for public access, such as public parking areas, but these impacts can be minimized by utilizing private paved areas for stockpiling, hauling materials offsite prior to stockpiling, or staggering dredging of unsuitable materials to minimize the size of the stockpiles. Thus, public beach recreational activities should not be significantly adversely affected by the proposed project. To ensure this is the case, **Special Condition 3(b)(v)** requires that dredging operations be conducted in such a manner as to avoid, to the greatest extent possible, interference with public recreational access in the Moss Landing Harbor area and on the adjacent beaches. With respect to dredge pipelines specifically, such measures may include, but are not limited to, uncoupling segments to allow unimpaired pedestrian movement, building small-scale sand ramps over pipelines, and pipeline removal during times of peak beach use.

In conclusion, the dredge program by its very nature is necessary to protect public access and recreational opportunities provided by the Moss Landing Harbor and adjacent beaches. Although the disposal of dredge materials may temporarily impact public access, as designed and as conditioned these impacts will be minimized to the greatest extent feasible. Therefore the project, as conditioned, is consistent with the above-cited public access and recreational policies of the Coastal Act.

## **F. OTHER**

Finally, Coastal Act Section 30620(c)(1) authorizes the Commission to require Applicants to reimburse the Commission for expenses incurred in processing CDP applications.<sup>4</sup> Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 6** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit.

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

Section 13096(a) of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

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<sup>4</sup> See also California Code of Regulations Title 14 Section 13055(g).

The Harbor District determined that the project is categorically exempt from the requirements of CEQA under the CEQA Guidelines, 14 CCR Section 15304(g) for maintenance dredging where the dredge material is deposited in an area authorized by all applicable state and federal regulatory agencies. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).) The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal related to land use priorities, the protection of marine and biological resources, and public access; and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS<sup>5</sup>**

*Master Sampling and Analysis Plan Moss Landing Harbor District Dredged Material Evaluations 2006-2018*, Moss Landing Harbor District, March, 2006.

*Biological Resources Assessment Maintenance Dredging at Moss Landing Harbor*, Caravel LLC, September 23, 2016.

*Lower Salinas River Near Coastal Waters Initiative Project*. Association of Monterey Bay Area Governments. Kleinfelder, Inc. 1992.

## **APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS**

- Moss Landing Harbor District
- Monterey County Resources Management Agency
- Army Corps of Engineers
- United States Fish and Wildlife
- United States Environmental Protection Agency
- Monterey Bay National Marine Sanctuary
- National Ocean and Atmospheric Administration
- Regional Water Quality Control Board

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<sup>5</sup> These documents are available for review in the Commission's Central Coast District office.