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# W23b

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# STAFF REPORT: CDP HEARING

| | |
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| **Application Number:** | 3-19-0106 |
| **Applicant:** | Port San Luis Harbor District |
| **Project Location:** | Port San Luis Harbor, including in coastal waters adjacent to the Harford Pier, West Bluff Beach, Fisherman's Beach, and Olde Port Beach, in Avila Beach, San Luis Obispo County. |
| **Project Description:** | Dredge (and use for beach nourishment) up to 75,000 cubic yards of sandy sediment annually within a three-acre area adjacent to Harford Pier at the Port San Luis Harbor to prevent shoaling of navigational channels and boat launching facilities; and also authorize dredging activities conducted under Emergency CDP G-3-19-0100. |
| **Staff Recommendation:** | Approval with Conditions. |

## SUMMARY OF STAFF RECOMMENDATION

The Port San Luis Harbor District has applied to dredge and use for beach nourishment up to 75,000 cubic yards of sediment annually for five years at the Port San Luis Harbor near Avila Beach in San Luis Obispo County. At a maximum, up to approximately three acres of the harbor could be dredged to a depth of 10 feet below mean lower low water (MLLW) in the areas surrounding the Port District's Mobile Hoist Basin, Trailer Boat Launch Basin and Harford Pier, with slurry pipeline disposal of the dredged sediments at three beach sites on the shoreline along San Luis Bay. In the past, sand shoaling has limited the use of these harbor facilities, and the proposed project is necessary to maintain existing depths in navigational channels, turning

basins, berthing areas and boat launching ramps. The project is essential for recreational boaters, commercial fisherman and various marine vessels, as well as other coastal-dependent and coastal-related operations that make use of the Port San Luis facilities. The Commission has historically permitted such activities within Port San Luis Harbor since 1985.

While the proposed dredging and dredge material disposal through beach nourishment facilitate the continuance of high priority uses under the Coastal Act, the project nevertheless raises Coastal Act issues pertaining to the protection of marine resources, coastal water quality, and public access and recreation.

The Coastal Act requires that projects involving the dredging or filling of coastal waters for permissible uses provide measures to minimize adverse environmental effects, and that marine resources and the biological productivity of coastal waters be maintained. Sensitive biological resources have been identified within the project area including rocky reef substrate, nearshore kelp beds, and eelgrass. Also, the sandy beaches surrounding the project site are known California grunion spawning areas. Dredging and beach nourishment operations may increase suspended particulates and turbidity in the harbor area and sediment resuspension can reduce dissolved oxygen levels and primary productivity, as well as potentially smother and scour benthic habitats. To protect these resources from such potential adverse impacts, the Commission's staff ecologist helped to identify recommended permit conditions that require avoidance of grunion spawning areas, rocky reef, eelgrass, and kelp beds during dredging operations. If dredging operations reach 30,000 cubic yards or more in any given year, beach disposal of dredge material exceeding this amount must be done at either of the two beaches that do not have rocky substrate located immediately offshore. With these conditions, the dredging and beach nourishment is not expected to result in any significant adverse impacts on these resources.

Water quality impacts resulting from dredging operations can occur due to dredge operations changing a number of water-related variables (including dissolved oxygen, pH, salinity, total suspended solids, and turbidity). While changes to these water quality variables would result from the proposed dredge operation, pre-dredge ambient water quality conditions should recur shortly after each dredge episode, and impacts to these water quality variables are expected to be short-term and minor in magnitude and scope. Furthermore, the recommended permit conditions require the sediments to be sampled and deemed chemically and physically suitable for beneficial reuse as beach nourishment, and proper dredge equipment maintenance is required to avoid adverse water quality impacts.

The Coastal Act requires that dredge material suitable for beach replenishment should be used for such purposes. As described, the proposal would allow up to 75,000 cubic yards of sediment to be used for beach nourishment at three sites in the Harbor vicinity, and recommended conditions ensure that such materials are tested and confirmed to be suitable for this purpose. The placement of sandy, clean sediment into the nearshore environment will allow the sandy sediment to become available to nourish nearby beaches. As proposed and conditioned, any potential adverse nourishment impacts can be avoided, and the nourishment should help beaches and beach recreational access.

The Coastal Act requires that public recreational access opportunities be protected and maximized. Adverse impacts to public access and recreation are possible with the dredging

operation for any given episode, but will be of limited duration. Although the project will help protect public access and recreation opportunities by nourishing beach areas with sand, dredge operations can impact nearshore activities (e.g., dredge sediments in the nearshore water column and on the beach), and can displace public access uses when they take place in the same areas (e.g., the flexible pipelines used to transport suitable dredge spoils to designated beach replenishment sites can create a modest impediment to pedestrian travel along or to the beach as well as interference with vessel navigation). To minimize these impacts, the recommended special conditions require the dredge operations plans to avoid public recreational access areas and impacts by design, including through managing the placement of dredge pipelines so that they do not interfere with public access or navigation.

Overall, and subject to the recommended conditions, the dredge program is necessary and appropriate to protect Coastal Act priority uses, is essential to support commercial fishing and recreational boating, will avoid adverse impacts to coastal resources, and will protect and enhance public access and recreation. Therefore, staff recommends that the Commission approve a CDP with conditions for the proposed dredging and dredge material disposal project. The necessary motion is found on page 5 below.

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# 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 3-19-0106 pursuant to the staff recommendation, and I recommend a* ***yes*** *vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-19-0106 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

# III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Approved Project Parameters.** This CDP shall be valid from the date of Commission approval (May 8, 2019) until February 25, 2024, i.e. concurrent with the expiration of Army Corps of Engineers (ACOE) dredging permit number SPL-2014-00063-CLH. Dredging and disposal events shall only be allowed to occur on weekdays during daylight hours (i.e., one hour before sunrise to one hour after sunset), other than State holidays. Dredging shall not exceed 75,000 cubic yards of materials per calendar year. Sandy (i.e., greater than 80% sand) and clean dredge material (i.e., meeting U.S. Environmental Protection Agency (EPA), ACOE, and Regional Water Quality Control Board (RWQCB) standards – see also **Special Condition 2**) shall be transported to any of the three identified beach replenishment sites shown in **Exhibit 2.** This CDP also authorizes the dredging and disposal activities completed pursuant to Emergency CDP G-3-19-0100. 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. **Initial Sediment Sampling and Testing Required**. PRIOR TO THE COMMENCEMENT OF THE FIRST DREDGING EPISODE ALLOWED UNDER THIS CDP, the Permittee shall submit to the Executive Director for review and approval two copies of each of the following:

   **(a) Sediment Sampling Analysis Plan.** A sediment sampling analysis plan (SSAP) that clearly describes and delineates sediment sampling locations and applicable testing protocols. The SSAP shall ensure that representative sample locations applicable to authorized dredging areas are tested.

   **(b) Sediment Testing.** An analysis of all sediment samples identified by the SSAP (i.e., chemical, physical, and biological analyses) using the most current ACOE, EPA, and RWQCB testing methods and procedures shall be required. If any such samples do not meet ACOE, EPA, and RWQCB dredge disposal standards, then the materials from the sampled area shall not be allowed to be deposited on beaches or in the nearshore environment, but rather shall be properly disposed of at an inland location (i.e., landfill or equivalent). All other dredge materials (i.e., sandy dredge material deemed clean per current ACOE and EPA standards) shall be deposited in the three locations identified by the Port District (see **Exhibit 2**).

3. **Dredge Operations Plan**. PRIOR TO THE COMMENCEMENT OF THE INITIAL DREDGING EPISODE OF EACH CALENDAR YEAR, the Permittee shall submit to the Executive Director for review and approval two copies of a detailed Dredge Operations Plan (DOP) that clearly identifies all dredge operations (including, at a minimum, identification of areas to be dredged, dredging depths, overdredge depths, quantity of materials to be dredged, specific location of dredge spoils disposal, all methods for spreading/grooming beach nourishment areas, all timing (including dredge start and stop days, hours of operations, etc.), all pipeline locations, all measures to be taken to define and delineate dredge activity areas,

equipment to be used, etc.). All such DOPs shall, at a minimum, incorporate the following provisions:

**(a) Allowable Dredge Area.** Dredging operations shall be limited to the vicinity of the Mobile Hoist Pier and Trailer Boat Launch between the Harford Pier and Fisherman's Beach extending down to 10 feet below MLLW as shown in **Exhibit 2**.

**(b) Dredge Prohibition Areas**. Dredging operations shall be prohibited in sensitive rocky substrate and kelp forest areas as identified in **Exhibit 3**. Prior to the commencement of dredging activities, all such areas to be avoided shall be clearly demarcated with floatable buoys, or other devices which are clearly visible on surface waters, so as to allow dredge equipment operators to easily identify dredge prohibition areas.

**(c) Grunion Spawning Protection.** If disposal and/or grooming of dredge spoils will be conducted on beaches during the California grunion spawning season (i.e., from March 1st through September 1st of each year), the affected beach area shall be monitored during all such activities by a qualified professional biologist, approved by the Executive Director, to determine if grunion runs are occurring. If grunion runs are observed, the Permittee shall cease all such beach disposal operations for four days or during any forecasted spawning period, whichever is longer, and if any eggs are found, all disposal activities on the beach shall cease until grunion eggs have hatched (see **Exhibit 5** for additional details for such required grunion protection).

**(d) Public Recreational Access Protection.** Dredging operations and beach replenishment activities shall be conducted in such a manner as to avoid interference with public recreational access in the Port San Luis Harbor area. At a minimum, all measures to be implemented to avoid public recreational access impacts due to dredge pipelines shall be identified (such measures may include, but are not limited to, suspending the disposal pipeline below access areas, placing the pipeline along the riprap revetment, burying the pipeline when not in use, pipeline removal during times of peak beach use, etc.).

**(e) Equipment Maintenance.** All dredging equipment (e.g., pipelines, pumps, etc.) shall be maintained and inspected by the Permittee on a regular schedule to ensure proper operation and to eliminate any potential for spills or waterway/ beach access conflicts.

The Permittee shall undertake development in accordance with the approved DOPs.

4. **Dredged Materials Exceeding 30,000 Cubic Yards per Year.** If dredging activities will result in 30,000 cubic yards or more of dredged material in a given calendar year, the Permittee shall limit disposal of such dredge materials at Fisherman's Beach to no more than 30,000 cubic yards per year, with any dredge material exceeding that yearly amount to be disposed of at Olde Port Beach and/or West Bluff Beach.

5. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (a) that the project area is subject to extreme coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunami, coastal flooding, landslide, earth movement, and the interaction of all of these, many of which will worsen with future sea level rise; (b) to assume the risks to the

Permittee and the properties that are the subject of this CDP of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Coastal Commission, its officers, employees, agents, successors and assigns for injury or damage from such hazards; (d) to indemnify and hold harmless the Commission, its officers, employees, agents, successors and assigns with respect to the Commission's approval of the CDP against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (e) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the Permittee.

# IV. FINDINGS AND DECLARATIONS

## A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION

### Project Location

Port San Luis is situated on the northern portion of San Luis Bay, a hook-shaped bay delineated by upcoast Point San Luis and downcoast Fossil Point. Port San Luis and the coastline surrounding San Luis Bay are protected from predominant northwesterly swells by a 2,300-foot-long rock breakwater that extends out from Point San Luis and which provides safe anchorage to the Harford Pier and surrounding area. San Luis Obispo Creek enters San Luis Bay about a mile downcoast of the harbor. This region is characterized by a number of different habitats including rocky shoreline (with offshore rocks), intermittent sandy beaches, nearshore kelp beds, and bluff-top terraces backed by steep hills. See **Exhibit 1** for a location map and area photos.

The Port San Luis Harbor District (or "The Port District") was created in 1954 to repair and maintain the piers in the area, and also to support commerce associated with oil and gas extraction, movement of passengers and cargo, and commercial fishing. Port San Luis Harbor is a commercial fishing/small craft harbor adjacent to the unincorporated coastal community of Avila Beach on the south coast of San Luis Obispo County. The Port is both a major commercial fishing harbor and a popular sport fishing site. The Port San Luis Boatyard, one of the last self-service haul-out and boatyards in the California, launched more than 4,000 boats in 2016. Access to vessels occurs by means of getting boats into the water via a mobile hoist facility and public sport launch ramp. The facilities for harbor users include public amenities such as self-service boat storage, boat servicing operations, public boat launching facilities, restaurants and shops, a live fish retailer, restrooms, RV camping, about three acres of sandy beach on the downcoast side of the harbor, and over 300 parking spaces that support marine related uses.

Port San Luis is located at the upcoast end of the San Luis Obispo Bay Littoral Cell,[1] a three-mile-long, near-closed system contained between Point San Luis and the Fossil Point headland downcoast of Avila Beach. While Point San Luis and the breakwater generally provide adequate protection from large northwesterly swells, high-energy surges can still produce significant water movement within the harbor. The seasonal disposition of an estimated approximately 7,300 to

[1] A littoral cell is a closed or near-closed coastal system into which sediment is discharged, within which sediment is deposited or scoured, and out of which sediment is lost.

8,000 cubic yards per year of sediment from San Luis Obispo Creek, combined with strong wave action, transport sand and other suspended particles into calmer harbor areas where they are eventually deposited. Shoaling[2] is due to natural and unavoidable littoral drift processes and occasionally renders the Mobile Hoist Pier and Trailer Boat Launch basins impassable to recreational and commercial boats, particularly following heavy winter storms (see **Exhibit 1**). The historical solution to the sediment accretion within Port San Luis has been dredging.

**Project Background**

*Past Dredging Activities*

The Port District has historically conducted relatively small-scale annual maintenance dredging events in order to manage shoaling of navigational channels, turning basins, and boat launching ramps. A large influx of sport boating activity at the Port begins on April 1st of each year as most federally-regulated fishing seasons for boat-based anglers are closed from January 1st through the end of March. In anticipation of this, the Port District typically begins dredging promptly in March. The Port District uses its own work force and hydraulic suction equipment with a land-based crane to dredge the basins around the Harford Pier's public boating launching facilities, referred to as the Mobile Hoist Pier and Trailer Boat Launch basins. Sandy dredged materials are transported in a rigid slurry pipeline to beach disposal sites for continuous disposal. Prior to 2003, Fisherman's Beach and Olde Port Beach were used for disposal of sandy dredged sediment; from 2003 to 2009, West Bluff Beach was the primary disposal site. Since 2014, the Port District has used Fisherman's Beach exclusively for sediment disposal (see **Exhibit 2** for the locations of the dredging areas and the beaches). Since 2008, the Port District has dredged an average of 22,655 cubic yards of sandy sediment per year, with the largest dredging amount being 45,821 cubic yards in 2013. Many sediment accretion factors are subject to significant inter-annual variability, and yearly dredge volumes vary considerably as a result. The table on **Exhibit 6** shows the chronology of dredge activity (in cubic yards (cy) per year) from the Mobile Hoist Pier and Trailer Boat Launch basins during the period from 1985 through 2018 present.

*Dredging Permit History*

Past dredging activities authorized by the Commission as shown in **Exhibit 6** include: CDP 4-85-301 (dredging and disposal of up to 10,000 cy of material); CDP 3-93-27 (annual dredging and disposal of up to 30,000 cy of material for five years); CDP 3-97-078 (annual dredging and disposal of up to 30,000 cy of material for five years); CDP 3-02-100 (annual dredging and disposal of up to 250,000 cy of material for five years); CDP 3-08-038[3] (annual dredging and disposal of up to 250,000 cy of material for five years); and Emergency CDP (ECDP) G-3-19-0100[4] (emergency dredging of up to 30,000 cubic yards of material between March 1st and May 31st, 2019).

[2] 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.

[3] CDP 3-08-038 was amended in 2014 (CDP 3-08-038-A1). The amendment extended the base permit's dredging time frame by an additional five years while providing for the same maximum amount of dredging as the base CDP. CDP 3-08-038, as amended, expired in December 2018.

[4] ECDP G-3-19-0010 was issued on February 28, 2019 because shoaling of the Port's boat launch facilities following winter storms made it difficult for boats to maneuver safely in and out of these areas and presented a significant risk to life and property if no action was taken. At the time the ECDP was issued, the most recent five-year dredging and disposal CDP (CDP 3-08-038, as amended) had expired on December 10, 2018. The Port District

As described in the paragraph above, although the amount of actual dredging remained fairly consistent (as seen in the table above), the amount of dredging *authorized* increased significantly in 2002 from a maximum of 30,000 cy per year to a maximum of 250,000 cy per year authorized by CDP 3-02-100. This change corresponds to an alternative dredging strategy described in a comprehensive analysis and sand management plan to improve the Port District's dredging program.[5] This alternative included intercepting larger volumes of sediment farther out in the harbor before it would reach the boat launching areas of the harbor, and disposing of the sediment at more distant beaches, thereby increasing the time that it would take for the sediment to be transported back to the harbor. To pursue this "preventative maintenance" approach alternative, the Port District proposed to dredge these larger volumes of sediment using a floating, hydraulic or mechanical dredge located offshore in harbor waters, with disposal at more distant beaches.

Thus, in 2002, the Commission authorized the Port District to dredge and use for beach nourishment up to 250,000 cubic yards of sediment annually to maintain the Port District's boat launch facilities (CDP 3-02-100). Under this CDP, the allowed dredging footprint grew from three acres to 32 acres and the allowed dredging volume increased from 30,000 cubic yards per year to 250,000 cubic yards per year. The sites authorized for sediment disposal included those historically used for disposal, specifically Fisherman's Beach, Olde Port Beach, and Avila Beach, and new two sites were introduced: Lighthouse Beach and West Bluff Beach. More recently, CDP 3-08-038 (as amended) allowed for the same dredging and disposal amounts. However, although the Port District has been authorized to remove larger volumes of sediment since 2002, the Port District has not acquired a floating, hydraulic or mechanical dredge that would allow for a greater amount of dredging as proposed under the Everts Coastal analysis, and the Port District has continued to conduct relatively small-scale dredging projects on an as-needed basis as it has done for the last three decades years (see **Exhibit 6**). Thus, in this application, the Port District is requesting a lesser volume of sediment to be dredged and disposed of on a yearly basis more in line with historical need and actual dredging activity prior to the Everts Coastal analysis.

As with other dredging locations statewide, all dredged sediments are evaluated by an interagency group (including Commission staff) and must meet all U.S. Environmental Protection Agency (EPA), Army Corps of Engineers (ACOE), and Regional Water Quality Control Board (RWQCB) standards for ocean disposal and/or beach replenishment. The interagency group considers chemical and biological testing results, as well as physical grain size analyses, in relation to these rigorous federal and state standards. As a result, *only* sediments that are determined to be "clean" (i.e., consistent with federal and state requirements) and that consist of more than 80% sand are allowed to be placed on a beach. This is not an atypical standard and in fact is the protocol that has been applied by the Commission and its dredge-related agency partners for decades in California.

Sediment sampling and testing conducted by the Port District, as required by all CDPs issued

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had submitted CDP application 3-19-0016 (which is the subject of this report), but that application was not yet filed as complete, and so the ECDP was issued. In addition to requesting authorization for five years of dredging and disposal activities, CDP application 3-19-0016 also seeks to authorize the dredging and disposal activities undertaken pursuant to ECDP G-3-19-0010.

[5] Everts Coastal, Year-2000 Sediment Management Tactic for Port San Luis, January 2000.

since 2002, has always shown that the material to be dredged consists of coarse-grained "clean" sediment that is suitable for beneficial reuse (i.e., greater than 80% sand). Results of particle size analysis indicate that all samples can be characterized as coarse to medium grained, ranging from 89% to 99% sand.[6] On the whole, chemical contaminants have not been an issue at the project site since chemical contaminants are much more likely to adhere to fine-grain sediments than larger sand grains.

**Project Description**

The Port San Luis Harbor District has requested approval of a five-year permit: (1) to annually dredge up to 75,000 cubic yards of sand and sediment from the approximately three-acre area adjacent to the Harford Pier's public boating launching facilities, referred to as the Mobile Hoist Pier and Trailer Boat Launch basins, down to a depth of 10 feet below mean lower low water (MLLW); and (2) to annually deposit up to 75,000 cubic yards of material on the beach and into the surf zone at three possible beach locations within San Luis Bay (see **Exhibit 2** for a map of the proposed dredging and disposal sites). Dredging methods proposed by the Port District include hydraulic suction using a small, submersible pump suspended by a land-based crane. A floating dredge hose from the crane will transport dredged materials in a rigid, slurry pipeline fixed on the shoreline to the beach disposal site for continuous disposal. The majority of the pipe is left in place throughout the year, and is removed where it would cause access or storm issues. Beach nourishment sites include West Bluff Beach, Fisherman's Beach, and Olde Port Beach. Dredging and disposal generally occurs for seven hours per day during weekdays for the duration of the dredging period, excluding State holidays.

## B. STANDARD OF REVIEW

The dredging area and beach nourishment sites are located within State tidelands and thus are 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

Port San Luis 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 areas around the boat launching facilities and their associated navigational channels (see **Exhibit 2**). Coastal-dependent and coastal-related developments are among the highest priority Coastal Act uses.

**Applicable Policies**

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.*

[6] The percentage of sand equates to the fraction of sediment that passes through a #8 U.S. Standard Sieve, but which is retained by a #200 U.S. Standard Sieve.

> ***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:

> ***Section 30001.5:*** *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**

Port San Luis Harbor is one of three commercial harbors located in San Luis Obispo County (with the others being in Morro Bay and San Simeon). Port San Luis Harbor is a major commercial fishing harbor with commercial fish processing facilities, including offloading hoists, ice, fuel, and support facilities. In 2016, Port San Luis was the top performing Pacific hagfish port in California. The Port is home to a commercial fishing fleet that targets a wide diversity of fish and shellfish species. This fleet has grown from 12 to at least 20 fishing boats since 2008, and is operated primarily by small-scale family-owned companies. In addition to commercial fishing activities, the Port is a popular sport fishing site and is home to the Port San Luis Boatyard, which is one of the last self-service haul-out and boatyards in California, drawing vessel owners from as far as San Diego. The boatyard also sells marine supplies and outboard motors. The Port is also a recreational destination for the public with charter vessels that conduct thousands of recreational fishing trips every year and visitor service facilities, including three restaurants, a live fish retailer, a small market, kayak rental, a surf school, paddle board

concessions, a chandlery,[7] and RV camping.

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.

As indicated above, Port San Luis Harbor provides an array of commercial and recreational boating, fishing, and coastal-related opportunities. Commercial fishing and related waterfront activities in Port San Luis generate jobs, provide recreational opportunities, and draw tourists from around the world. The proposed dredging and discharge activities not only support coastal-dependent and coastal-related uses but are integral to such uses and therefore have a high priority under the Coastal Act. Accordingly, the Commission finds that the proposed development is a high-priority coastal-dependent and coastal-related 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, stating in applicable part:

> ***Section 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 Port San Luis Harbor include areas where sediment deposition routinely reduces depths in and around existing boat launching areas and their associated navigation channels. Continued sediment inflows from San Luis Obispo Creek and natural littoral drift processes are expected and inevitable under current conditions. On average, the Port San Luis Harbor facilities receive an estimated approximately 5,000 to 10,000 cubic yards of sediment per year. Extreme depositional events greater than these amounts resulting from winter storms have rendered these areas impassable by recreational, commercial, or emergency boats

[7] A chandlery is the warehouse or store of a chandler (i.e., a dealer in supplies and equipment for ships and boats).

and present a risk if no action is taken. Therefore, it is necessary to dredge around the Mobile Hoist Pier and Trailer Boat Launch basins to manage shoaling that inhibits the ability to maneuver boats safely in and out of these areas, and dredging open coastal waters for such purpose is expressly allowed for under Section 30233(a)(2). The alternatives to annual maintenance dredging on the current scale are financially infeasible for the Port District to implement, and may also have significant impacts on coastal resources.[8]

The Port District uses its own work force and dredge equipment consisting of a land-based crane that has a reach of roughly 80 feet to suspend a Toyo 50 HP eight-inch submersible pump that is attached to a floating dredge hose. This uses hydraulic suction to intake sediment through the dredge hose and transports dredged materials within a rigid, slurry pipeline to the disposal beach site for continuous disposal when operations are taking place.

The Port District proposes annual maintenance dredging up to 75,000 cubic yards per year. Since 2008, the Port has been dredging on average 22,655 cubic yards per year; the largest amount of dredged material during a single year was 45,821 cubic yards in 2013 (see **Exhibit 6**). The proposed 75,000-cubic-yard-maximum yearly dredging amount is greater than historic dredging volumes, but is significantly less than the up to 250,000 cubic yards authorized by the Commission since 2002. Sediment accretion factors are subject to significant inter-annual variability and yearly dredge volumes vary considerably as a result. It is not unreasonable to anticipate a single storm event could lead to significant sediment deposits greater than the historic volumes. The 75,000-cubic-yard-per-year maximum will provide the Port District with some operational flexibility in case of extreme weather or ocean swell events that deposit larger-than-expected volumes of sediment into the harbor.

The depth of dredging (to -10 MLLW) is necessary to accommodate vessel navigation (i.e., the size of vessels and their draft). The three-acre area adjacent to dredge the Mobile Hoist Pier and Trailer Boat Launch basins is the minimum necessary area required to ensure safe egress and ingress of boats in these areas.

In conclusion, continued sediment inflows can be anticipated in the boat launching areas and turning basins and their associated navigational channels, requiring dredging to ensure the safe functionality of these areas. The proposed project is designed to maintain and improve navigation channels for recreational boating and commercial fishing and is therefore an allowable use under Coastal Act Section 30233(a)(2). Hence, the maintenance of adequate navigational depths in the Harbor is essential, as is the beach line pipeline, which allows the Port District to maintain necessary depths. As discussed above, no feasible alternatives to ongoing dredging have been identified. Additionally, and as described in more detail below, the environmental impacts of the dredging program as conditioned are expected to be temporary and less than significant. Accordingly, **Special Condition 1** limits dredging and beach nourishment to a maximum of 75,000 cubic yards per year of "clean" sandy sediment over the life of the CDP with disposal of sandy dredge materials onto the three identified beach replenishment sites, and

[8] Permanent structural solutions to reduce or eliminate the need for dredging were identified by the Everts Coastal Analysis and include fixed groins, permanent sand retention structures, and opening the breakwater to limit sediment shoaling.

also authorizes the dredging and disposal activities done pursuant to emergency CDP G-3-19-0100.

*Water Quality*

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

> ***Section 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.*

To date, the suitability of the proposed dredged material for disposal in any of the proposed locations has been evaluated every five years by an interagency group consisting of representatives from ACOE, EPA, RWQCB, and the Coastal Commission. Advisory to this interagency group are U. S. Fish and Wildlife Service (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, ACOE, and the RWQCB, as described above.[9] 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 and/or beach replenishment disposal.

The proposed sampling plan is consistent with the standardized methods utilized by ACOE, EPA, and RWQCB for dredging projects throughout the state, and is typical of Commission protocols applied to dredging CDPs statewide. The number of sample sites was determined based on a formula that takes into account total dredge area. The locations of sampling stations were chosen to place them adjacent to the principal storm drain thereby maximizing the probability of sampling any potential contaminants that have accumulated in these sediments from land based sources. Consistent with standardized sampling procedures, the sample cores will be tested in the three layers that could potentially be disturbed by the dredging operations; the first layer is the level to navigable depth, the second is the level of allowed overdredge depth (i.e., additional dredging below the navigable depth, which is done to reduce the frequency of re-dredging), and the third is the level below the overdredge depth that could become the new exposed sea floor. The composited sample covers the entire depth of range of the area to be dredged, extending down to 10 feet below MLLW in the vicinity of the Mobile Hoist Pier and west of the Harford Pier and down to the rock substrate in the vicinity of the Trailer Boat Launch Ramp. Contaminants are measured based upon units found within a uniform quantity (e.g., parts-per-million in a gram of water) and would not be diluted or otherwise missed based on the relative size of the core. In addition to the two dredge stations, samples will be collected for sediment grain size analysis at two additional sites that are used for dredge disposal: Fisherman's Beach and West Bluff Beach.

A Dredge Operation Plan (DOP) must be developed and approved by the Executive Director based on the testing report before each dredging or disposal events authorized by this permit can

[9] EPA and ACOE 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).

occur. The interagency team must coordinate to review the results, come to a consensus on the best course of action for dredging and disposal, and a DOP must be drafted and approved before dredging can begin. This interagency process can take anywhere from 4 to 12 weeks depending on the testing results, size and complexity of the project, and general availability of the agency representatives.

Sediment sampling and testing conducted by the Port San Luis Harbor District has historically shown that the material to be dredged is coarse-grained "clean" sediment that is suitable for beneficial reuse (i.e., greater than 80% sand). The smallest percentage of sand (i.e., 81.3%) was found in a sample collected in 2002 from an area north of the Harford Pier, but that percentage still qualifies as sand under the EPA's guidelines. All other results of particle size analysis over time have shown that all samples were characterized as coarse to medium grained, ranging from 89% to 99% sand. On the whole, chemical contaminants have not been an issue at the project site because chemical contaminants are much more likely to adhere to fine-grain sediments than larger sand grains. Nevertheless, a precautionary approach is warranted due to the significant biological resources implicated (see discussion below) and **Special Condition 2** requires that all dredge materials be tested and meet ACOE, EPA, and RWQCB disposal standards prior to commencement of dredging activities to be authorized. The dredge operation plan process is also required under this CDP pursuant to **Special Condition 3**, and includes a requirement that all dredging equipment be maintained and inspected regularly to ensure proper operation and eliminate potential water quality impacts from faulty equipment (**Special Condition 3(e)**).

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 below). However, 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, and the pre-dredge ambient water quality condition is expected to return shortly after each dredging episode. Thus, as conditioned, 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.…*

The three sites proposed for beach replenishment include those historically used for disposal: 1) West Bluff Beach, which is upcoast of the Harford Pier; 2) Olde Port Beach, which is seaward of the restrooms and 3) Fisherman's Beach (see **Exhibit 2** for these beaches). The Port District

has used Fisherman's Beach exclusively for beach nourishment since 2014 and will continue to use it as the primary beach nourishment site. As previously stated, the Port District uses its own equipment for dredging activities and the current disposal pipelines are only able to relocate sediment over a relatively short distance (roughly 1,200 feet).

For the Port District to use Old Port Beach, the Port District will need to acquire the necessary booster pump to transport sediment the longer distance to Olde Port Beach (roughly 2,500 ft).As previously mentioned, previous testing results have historically shown that the material to be dredged consists of clean, sandy sediment. Thus, the material to be dredged under this CDP is also expected to be coarse-grained "clean" sediment that is suitable for beneficial reuse. With respect to utilizing sandy dredge material for beach nourishment, sediment science is clear that predominantly sandy material is inert and incapable of exhibiting elevated contaminant concentrations (i.e., chemical contaminants are much more likely to adhere to finer-grain sediments). In fact, EPA and ACOE typically do not require any sediment testing for material that consists predominantly of sand and is suitable for beneficial reuse.[10] Thus annual testing prior to a nourishment event is unnecessary as predominantly sandy material is understood to be essentially incapable of absorbing or exhibiting elevated contaminant concentrations. Nevertheless, a precautionary approach is warranted given the significant biological resources implicated (see discussion below) and the CDP requires that a sampling analysis plan and sampling and dredge operation plan report be prepared prior to the dredging activities pursuant to **Special Condition 2**. Furthermore, as discussed in the next section, the proposed project, as conditioned to be approved, is adequately planned to be carried out to avoid significant disruption of marine and wildlife habitats. In sum, the sediment testing as proposed is consistent and adequate to ensure the protection of public safety, water quality, and coastal habitats, and there is not a coastal resource need to alter these sediment testing parameters further beyond as conditioned as part of this approval. With the above conditions, the project is consistent with Coastal Act Section 30233(b) with respect to beach replenishment.

The proposed project will make sandy sediments available for beach replenishment by way of direct disposal onto Fisherman's Beach, West Bluff Beach, and/or Olde Port Beach. The Port District's dredging and beach replenishment projects over the past over three decades have included beach replenishment primarily on two of these beaches (i.e., Fisherman's Beach and West Bluff Beach). Beach replenishment provides additional material to stabilize the width of the beach and enhance public access. Thus, the Commission anticipates that the sandy material present in the dredged sediments will become available for beach replenishment. The project therefore is consistent with section 30233(b) of the Coastal Act.

*Biological Resources*

Coastal Act Sections 30230 and 30231 protect marine and inland watercourse biological resources, stating:

> **Section *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*

[10] See Title 40 if the Code of Federal Regulations Section 230.60(a).

*healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

**Section *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.*

Port San Luis Harbor is located at the upcoast end of San Luis Bay and is formed by a natural outcrop (Point San Luis) and a man-made breakwater extending from it. This large rocky breakwater forms a protective coastal embayment which supports a diverse complex of marine and marine-related habitats including open ocean, kelp forests, rocky subtidal, sandy beaches, coastal streams, and wetlands. These habitats support a variety of marine life including benthic communities, cetaceans, pinnipeds, otters, fish, and both resident and migratory bird species. Commission staff has observed seals and sea lions resting upon piers and jetties, and sea otters in nearshore kelp beds. Ecologically significant habitats where endangered or sensitive species occur are present in the area, including California grunion (*Leuresthes tenuis*), black abalone (*Haliotis cracherodii*), South-Central Coast California steelhead (*Oncorhynchus mykiss),* and giant kelp (*Macrocytstis pyrifera).* In addition, the project is located in an area that has been identified as Essential Fish Habitat (EFH) for fish species included in the Coastal Pelagics and Pacific Groundfish Fishery Management Plans, as defined by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

The removal of sediment from dredge areas could have adverse impacts on EFH or sensitive species through degradation of vegetated or soft-bottom habitat via direct disturbance and/or removal of infaunal and epfaunal biota, and some burrowing and bottom dwelling fish within the dredge footprint. Additionally, dredging may induce persistent water-quality changes in the littoral zone (e.g., turbidity and lower dissolved oxygen levels) that hinder foraging, respiration, recruitment, or reproduction of sensitive, benthic species. However, dredging will take place at least 328 feet from any rocky substrate and the impacts of dredging on offshore rocky habitats should generally be minimal or non-existent. Additionally, dredging will be conducted using a hydraulic dredge, which removes and transports dredged material as liquid slurry, further minimizing disturbance and re-suspension of sediments at the dredge site. Thus, direct impacts to biological resources from dredging have been minimized and pre-dredge ambient water quality condition is expected to return shortly after each dredging episode.

Disposal of dredged material may smother and/or scour hard-bottom biological communities that exist near the project area. In January 2003, the Port District had a subtidal substrate survey performed using Sidescan Sonar Imagery to identify sensitive resources and habitat areas, such as rocky reefs, kelp beds and other marine plants, and to evaluate the dredge area and disposal sites accordingly. This mapped the habitat features of the sea floor immediately offshore (from 20 feet to 5 feet below MLLW) from Avila Beach to Lighthouse Beach (see **Exhibit 4**). The sidescan sonar images revealed rocky substrate was present offshore of Fisherman's Beach,

which is one of the three beach nourishment sites (rocky substrate was not found off of Olde Port Beach or West Bluff Beach). The rocky hard substrate extends 100 to 300 meters (i.e., about 328 to 984 feet) from west of the north end of the small boat launch and much of the north part of this subtidal rocky habitat is characterized by dense kelp forests, comprised of giant kelp (*Macrocytstis pyrifera)*. Rocky hard substrate is also habitat for black abalone (*Haliotis cracherodii),* a federally-designated endangered species, and the National Oceanic and Atmospheric Administration identified San Luis Bay as an area of critical habitat for black abalone in 2011. Increased turbidity or deposition from dredging activities has the potential to adversely impact black abalone because these activities result in sediment deposition, which can smother abalone individuals, or increased turbidity, which can interfere with broadcast spawning. The Bureau of Ocean Energy Management (BOEM) has funded black abalone surveys peripheral to San Luis Bay and the monitoring efforts are largely coordinated by the Multi-Agency Rocky Intertidal Network. Although black abalone likely occur on the breakwater, all dredging activity will occur around the Mobile Hoist Pier and Trailer Boat Launch basins where there is very little water movement and lack of sources of drift kelp, which is the preferred food for black abalone. Thus, provided annual dredging and disposal in these areas is kept relatively low (i.e., 30,000 cubic yards per year or less), there are not expected to be any hard substrate and/or black abalone impacts. However, a precautionary approach is warranted as no black abalone surveys have been performed on the identified rocky hard substrate offshore of Fisherman's Beach that could be affected by dredging and disposal of more than 30,000 cubic yards per year, and black abalone has been found on riprap habitats to the south of the proposed dredging area. Thus, **Special Condition 4** requires that any dredged materials in excess of 30,000 cubic yards in a calendar year shall be disposed of at Olde Port Beach and/or West Bluff Beach.

In order to avoid direct impacts to listed species or more sensitive areas (i.e., rocky substrate and potential black abalone habitat) consistent with the Coastal Act, **Special Condition 3(a)** requires that dredging activities take place only within the three-acre area shown in **Exhibit 2. Special Condition 3(b)** prohibits dredging operations from occurring in more sensitive rocky native (non-riprap) substrate and in kelp forest areas and in a buffer zone around these areas (i.e., the dredging exclusion zones as shown in **Exhibit 3**).

Additionally, the disposal of dredge spoils on beach areas has the potential to adversely impact seasonal California grunion (*Leuresthes tenuis*) spawning events because these activities can smother eggs, alter the beach profile in a way that prohibits juvenile grunion from returning to the ocean, and can interfere with the grunion's affinity for a specific beach location. Grunion spawn on beaches during the spring and summer months (March through August) beginning on the nights of the full and new moons. For four consecutive nights, spawning occurs after high tides and continues for several hours. As waves break on the beach, grunion swim as far up the slope as possible to spawn with the rising high tide. Female grunion lay eggs in the sand, which are subsequently fertilized by the male grunion, and each individual adult grunion remains on the beach from 30 seconds to several minutes. The eggs incubate in the sand for 10-14 days and then hatch on the next high tide. In the past, California grunion has been observed using the beach areas surrounding the dredge site for spawning. In 1998, grunion were observed spawning on two of the proposed beach nourishment sites: Fisherman's Beach and Olde Port Beach. In order to avoid adverse impacts to grunion during spawning periods, **Special Condition 4(c)** has been included in this permit. This special condition requires monitoring during grunion spawning season (March 1 – September 1) per the protocol described in **Exhibit 5,** and if grunion are

identified, will require all dredge and disposal activities to cease until the eggs have completely hatched.

Western snowy plover (*Charadrius alexandrinus nivosus*) have been found to overwinter on Avila Beach, a nearby beach, but they are considered to have a low potential for occurring at the project site, including the beaches where sediment disposal is proposed. Winter plovers are mobile and the dredging operations will only restrict one small, fixed area of Fisherman's Beach. Thus, large areas remain available on nearby beaches, including Olde Port Beach and Avila Beach, for plovers to overwinter and the dredging activities are not expected to have any significant impacts.

Finally, to ensure that adequate and effective mitigation measures to protect coastal resources are provided during dredging, dredging operations plans are required before each dredging episode (see **Special Condition 3)**, and the effective timeframe of the permit is limited until February 25, 2024 when the ACOE dredging permit expires (see **Special Condition 1**). With respect to the latter, the areas subject to dredge operations are dynamic environments that are and will continue to be subject to a variety of natural and man-made processes. There is a myriad of potential future changed circumstances that may affect the adequacy of the currently proposed measures (including potential future listing of species that occur within harbor areas; an unforeseen rise in contaminant levels of harbor sediments from new upstream land uses or spill events; etc.). Thus, in order to enable the implementation of this permit in a manner which best addresses potential future changed circumstances, the Commission finds that, only as conditioned by **Special Condition 1**, which limits this permit to a period until February 25, 2024 when the ACOE dredging permit expires, can the project be found consistent with the resource protection polices of the Coastal Act.

**Marine and Biological Resources Conclusion**

With the above conditions confining the area of dredging and providing protections for coastal resources, including sensitive species, the dredge sediment testing and 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.

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 marine and biological resource policies of the Coastal Act.

## E. PUBLIC ACCESS AND RECREATION

Coastal Act Section 30604(c) requires that every CDP issued for any 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 (Avila Beach Drive).

Coastal Act Sections 30210 through 30213, 30221 and 30223 specifically protect public access and recreation. 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 30211:** *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 30213:** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. …*
>
> **Section 30220:** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*
>
> **Section 30221:** *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:

> **Section 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.*

These overlapping Coastal Act policies clearly protect public recreational access, including within the Port San Luis Harbor area, as well as the beaches and offshore recreational areas, particularly free and low-cost forms of access. Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while

respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea. Section 30213 protects lower cost forms of access, such as the free access available in and around the Harbor area. Section 30220 protects coastal areas suited for ocean-oriented activities, such as the beach and offshore access available here, for such purposes. Section 30221 protects oceanfront areas for public recreational uses. Section 30240(b) protects park facilities, such as the beach and related inland areas here, from degradation. And finally, Section 30224 encourages increased recreational boating use of coastal waters, including by increasing boat launching facilities and protecting harbors of refuge.

Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access – it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* such access; rather such access must also be *maximized*. This terminology provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one. In addition, the mean high tide line will move landward over time depending on the beach profile, seasonal tidal activity and continued sea level rise. Port San Luis Harbor is a prime visitor destination heavily used by the public, including in and around the Harbor, and it provides significant coastal access and recreational opportunities for residents and visitors alike. Therefore, it is also critically important that the Commission assess whether the project would impact public access and recreation, and if so, provide measures to avoid or appropriately mitigate such impacts.

**Consistency Analysis**

As indicated, 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. Port San Luis 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 area draws a large number of sport fisherman and is home to one of the last self-service boatyards in the state. There is a concrete ramp, referred to as the Trailer Boat Launch, into the water that enables easy launching of kayaks, small sailboats, inflatable boats, jet skis, and paddle boards. In addition to boat launching, the Port also offers berthing for commercial vessels and recreational boats, boat repair areas, marine-related retail/commercial businesses, kayaking, windsurfing, beach-going, and diving. The beaches are also some off the most popular in the County with as many as approximately 300,000 people visiting these beaches every year, thereby providing significant recreational opportunities for residents and visitors. Olde Port Beach, also known as Port San Luis Beach, is particularly popular to dog-walkers who walk along the ¾-mile stretch of Avila Beach Drive which has numerous access points to the beach and restrooms are available. There are over 300 parking spaces and some more limited overnight parking for RVs. Restaurants, boat launching, a fish market, fishing supplies, whale watching, party-boat fishing, restrooms, and showers can all be found at Port San Luis near the end of Olde Port Beach. Harford Pier also allows drive-on parking.

The proposed dredging project will strongly benefit public access and recreation, in two ways: (1) by restoring and maintaining adequate water depths in the harbor's navigation channels and berthing areas for boating purposes, and (2) by directing suitable sandy dredge spoils onto

nearby beach areas for beach replenishment. Thus, at a broad level, the proposed dredging and nourishment project will improve and maximize public coastal access and recreation.

However, adverse impacts to public access from the dredge operations are still possible. 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. 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 that can render these areas temporarily unusable by the public. Fortunately, these types of impacts can be minimized in this case through dredge operation design. Specifically, the pipelines will be placed on the upper beach such that they do not form a barrier to persons walking across the beach, the pipelines utilized will be small enough (roughly 10-12 inches in diameter) to be removed during peak use times and State holidays, and replenishment activities will be limited to weekdays. To address other potential access-related concerns, **Special Condition 3(d)** requires dredge operations to be conducted in a manner that minimizes interference with public access at Port San Luis (such measures may include, but are not limited to, suspending the disposal pipeline under access areas, placing the pipeline along the riprap revetment, burying the pipeline when not in use, pipeline removal during times of peak beach use, etc.).

In conclusion, the dredge program by its very nature is necessary to protect public access and recreational opportunities provided by the Port San Luis 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 and are not expected to result in significant adverse public recreational access impacts, but rather are expected to help promote beaches for such public recreational access use through replenishment. Therefore the project, as conditioned, is consistent with the above-cited public access and recreational policies of the Coastal Act.

## F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP 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 which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (14 CCR § 15251(c).) The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this CDP will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse environmental effects that approval of the

proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, 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[11]

- CDP File 3-19-0106
- ECDP File G-3-19-0010

## APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- Port San Luis Harbor District
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- National Marine Fisheries Service
- Central Coast Regional Water Quality Control Board
- California Department of Fish and Wildlife
- Multi-Agency Rocky Intertidal Network
- Tenera Environmental

[11] These documents are available for review in the Commission's Central Coast District office.