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# F17a

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 4-18-0820

**Applicant:** Ventura County Watershed Protection District

**Project Location:** Southernmost portion (lower reach) of the concrete-lined *tšumaš* Creek Channel between Hueneme Road and Ormond Lagoon, and Ormond Beach within the City of Oxnard and City of Port Hueneme, Ventura County.

**Project Description:** Implementation of a programmatic Beach Elevation Management Plan, for a period of five years, in order to prevent flooding of adjacent development through the periodic grading of sand located between Ormond Lagoon and the Pacific Ocean; and implementation of an operations and maintenance program in the *tšumaš* Creek Channel, including the periodic removal of sediments, brush, and debris, concrete channel repairs; as well as repair and resurfacing of adjacent access roads.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed development with eight (8) special conditions regarding: (1) Beach Elevation Management Plan responsibilities, (2) public access program, (3) sensitive species surveys, (4) tidewater goby protection plan, (5) best management practices, (6) duration of authorization, (7) conformance with the

requirements of other resource agencies, and (8) assumption of risk, waiver of liability and indemnity.

The Ventura County Watershed Protection District (District) is proposing the implementation of a programmatic Beach Elevation Management Plan (BEMP) for a period of five years, in order to prevent the flooding of adjacent development through the periodic grading of sand located between Ormond Lagoon and the Pacific Ocean. The BEMP would involve lowering the level of the beach sand to approximately 6.5 ft. above sea level within a 100 ft. by 100 ft. area between the Ormond Lagoon and the Pacific Ocean to allow Ormond Lagoon to overflow to the ocean in the event that water levels elevate and would otherwise flood existing development in adjacent upland areas. Implementation of these BEMP activities would be limited to no more than three times during each winter storm season. The proposed project also includes implementation of an operations and maintenance program (OMP) in the *tšumaš* Creek Channel, including the periodic removal of sediments, brush, and debris, concrete channel repairs, as well as repair and resurfacing of adjacent access roads.

The *tšumaš* Creek drainage channel (previously called the “J Street Drain”) is a fully lined concrete channel that extends approximately 2.2 miles in length, beginning north of Redwood Street in the City of Oxnard, and terminating at Ormond Lagoon, in both the City of Oxnard and the City of Port Hueneme. Development adjacent to this section of the *tšumaš* Creek drainage channel includes condominiums, Bubbling Springs Community Park, Hueneme Beach Park, the Oxnard Wastewater Treatment Plant, the International Paper Plant, and the Halaco Superfund Site.

Environmentally sensitive habitat areas, as well as sensitive species such as California least tern, California brown pelican, western snowy plover, and tidewater goby have been documented within, and in the vicinity of, the project site. As such, the primary coastal resource issue of concern relates to potential adverse impacts to sensitive species and their habitat from BEMP and OMP activities. In order to ensure that project activities avoid adverse impacts to sensitive species and habitats, **Special Condition Three (3)** would require that an environmental resource specialist survey the project area for sensitive species prior to implementation of any BEMP activities. Furthermore, **Special Condition One (1)** limits the subject BEMP activities to no more than three times between September 15th and March 1st each winter storm season, designates the access routes, and limits BEMP activity to a 100 ft. by 100 ft. area. To avoid impacts to tidewater gobies during OMP activities while there is water in the lower reaches of the channel, **Special Condition Four (4)** requires that an environmental resource specialist clear all fish, including tidewater gobies, from the area to be disturbed for OMP activities, and conduct post-OMP activity surveys. Finally, **Special Condition Five (5)** requires best management practices to be followed for both BEMP and OMP activities, such as removing debris from construction activities immediately, controlling erosion

from disturbed areas, and prohibiting the use of herbicides or rodenticides with anticoagulant compounds.

Additionally, the project site is located adjacent to and within public recreational areas including Hueneme Beach Park and Ormond Beach. The Hueneme Beach parking lot includes many parking spaces for beach users. This area supports a variety of recreational uses, including the Port Hueneme Fishing Pier, volleyball courts, a snack bar, picnic tables, as well as several trails for nature walks, bird watching, and other coastal activities. These public recreational areas, as well as public paths to the beach, surrounding the project site would remain open during BEMP and OMP activities. However, in order to ensure the safety of recreational users and to ensure that the interruption to public access of the project site is minimized, **Special Condition Two (2)** requires that the applicant submit a Public Access Program that describes the methods by which safe public access around BEMP activity areas shall be maintained during project operations.

The Commission previously issued one Coastal Development Permits (CDP) and Emergency Permits to the District for this project area. CDP 4-12-051 was issued for expansion the *tšumaš* Creek drainage channel in order to increase the capacity of the drainage channel to accommodate 100-year flood flows, as well as BEMP and OMP activities. This permit was subject to several special conditions, including a specific provision that limited the effective term of each permit to a five-year period, after which time any BEMP and OMP activities would require a new permit from the Commission. CDP 4-12-051 expired in July 2018. Since then three emergency permits were issued for substantially the same project as the subject application including Emergency Permits G-4-18-0022 issued on September 28, 2018; G-4-19-0024, issued on May 15, 2019; and G-4-19-0052, issued on November 26, 2019. The District is proposing the subject permit application to continue the ongoing BEMP and OMP activities for an additional five-year period.

The project site has been subject to previous permit action by the Commission. In 2013, the Commission approved Coastal Development Permit (CDP) Number 4-12-051 to expand the *tšumaš* Creek drainage channel in order to increase the capacity of the drainage channel to accommodate 100-year flood flows. BEMP and OMP activities for a period of five years were also approved as part of the project. After CDP 4-12-051 expired in July 2018, several emergency permits were issued by the Commission to allow the applicant to prevent or abate the flooding of development located adjacent to the Ormond Lagoon by allowing for one-time implementation of the same activities proposed as part of the subject BEMP; including Emergency Permits G-4-18-0022 issued on September 28, 2018; G-4-19-0024, issued on May 15, 2019; and G-4-19-0052, issued on November 26, 2019.

Although the Commission has previously certified a Local Coastal Program (LCP) for both the City of Oxnard and the City of Port Hueneme, a portion of the proposed project will be located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. In addition, pursuant to Section 30601.3 of the Coastal Act, a consolidated permit was requested by both the City of Oxnard and the City of Port Hueneme and was agreed to by the Executive Director. Thus, the subject CDP is a consolidated permit for which the standard of review is the Chapter Three policies of the Coastal Act, with the applicable policies of both the City of Oxnard and the City of Port Hueneme LCPs used as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act. Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application 4-18-0820, as conditioned. The motion and resolution are on **page 5**.

## Table of Contents

I. MOTION AND RESOLUTION.....	6
II. STANDARD CONDITIONS .....	6
III. SPECIAL CONDITIONS .....	7
IV. FINDINGS AND DECLARATIONS .....	13
A. Project Description and Background .....	13
B. Marine Resources and Sensitive Habitats .....	16
C. Public Access and Visual Resources .....	23
D. Hazards and Geologic Stability .....	25
E. California Environmental Quality Act .....	26
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....	28

## **EXHIBITS**

Exhibit 1 – Vicinity Map

Exhibit 2 – OMP Site Plan

Exhibit 3 – BEMP Access Routes

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit No. 4-18-0820 pursuant to the staff recommendation.

### Staff Recommendation of Approval:

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

### Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Beach Elevation Management Plan Responsibilities.

By acceptance of this permit the applicant agrees that:

- A. Beach Elevation Management Plan (BEMP) activities shall be implemented pursuant to the following criteria:
  1. Beach elevation management activities shall occur only between September 15th and March 1st of each year and no more than a total of three times per winter season.
  2. Beach elevation management activities shall occur only within a 100 ft. wide corridor between the lagoon and the ocean, as generally shown on Exhibit 3.
  3. Beach elevation management activities shall occur only if the lagoon mouth is in a closed condition and the elevation of the sandy beach is higher than 6.5 ft. above sea level (NGVD) within the 100 ft. wide corridor between the lagoon and the ocean, as generally shown on Exhibit 3.
  4. The elevation of the sandy beach within the 100 ft. wide sand elevation management corridor may be lowered to no less than 6.5 ft. in elevation above sea level (NGVD).
  5. Access for construction vehicles/tractors to the area of the beach where sand elevation management activities will occur shall be limited to only the designated routes shown on Exhibit 3.
- B. The applicant shall undertake all Beach Elevation Management Plan activities in accordance with Part A of Special Condition One (1). No beach elevation management activities shall occur if the above criteria have not been met, or if the applicant has already completed 3 previous management activities in a

winter storm season, unless the Executive Director authorizes additional management activities for good reason.

## 2. **Public Access Program.**

- A. ***Prior to the issuance of the coastal development permit***, the applicant shall submit, for the review and approval of the Executive Director, a Public Access Program and Plan that describes the methods (including signs, fencing, posting of security guards, etc.) by which safe public access around BEMP activity areas and staging areas shall be maintained during all project operations. The plan shall also include signs directing the public to alternative parking areas for the duration of BEMP activities. Where public paths or bikeways will be closed during active operations, a person(s) shall be on-site to detour traffic or adequate fencing and signage shall be used. The applicant shall maintain public access pursuant to the approved version of the report. Any proposed changes to the approved program shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.
- B. Where use of public parking spaces is unavoidable, only the minimum number of public parking spaces that are required for the staging of equipment, machinery, and employee parking shall be used. The number of public parking spaces utilized shall be the minimum necessary to implement the project.

## 3. **Sensitive Species Surveys.** The applicant shall retain the services of a qualified biologist or environmental resource specialist (hereinafter, "environmental resources specialist") with appropriate qualifications acceptable to the Executive Director, to conduct sensitive species surveys (including birds and other terrestrial and marine species) and monitor project operations associated with all BEMP activities. The applicant shall ensure that the environmental resources specialist performs all of the following duties, and the applicant shall observe the following requirements:

- A. At least 30 calendar days prior to commencement of any BEMP activities, the applicant shall submit the name and qualifications of the environmental resource specialist, for the review and approval of the Executive Director. The applicant shall have the environmental resource specialist ensure that all BEMP activities are carried out consistent with the following:
1. The environmental resource specialist shall conduct sensitive species surveys (e.g. globose dune beetle, western snowy plover, raptors, California least tern, black-crowned night herons, great blue herons, snowy



egrets, or other sensitive species) no more than two weeks before any BEMP activities to detect any active sensitive species, reproductive behavior, and active nests within 500 feet of the project site. The environmental resource specialist shall be onsite during BEMP activities to observe/identify any sensitive species/breeding behavior/nests active within 300 feet (500 feet for raptors/owls) of any BEMP activities.

2. In the event that any sensitive species are present in the project area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the environmental resource specialist shall either: (1) initiate a salvage and relocation program prior to any BEMP activities to move sensitive species by hand to safe locations elsewhere along the project reach or (2) as appropriate, implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The applicant shall also immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Fish and Wildlife Department, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.
3. If an active nest of a federally or state-listed threatened or endangered species, bird species of special concern, or any species of raptor or heron is found, the applicant shall notify the appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action specific to each incident. The applicant shall notify the California Coastal Commission in writing by facsimile or e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.
4. If an active nest of any federally or state listed threatened or endangered species, species of special concern, or any species of snowy plover, raptor, least tern, blackcrowned night heron, great blue heron, snowy egret, or other sensitive species is found within 300 feet of construction activities (500 feet for raptors), the applicant shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The applicant shall ensure that the environmental resources specialist is present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds

are not disturbed by construction related noise. The applicant shall ensure that the environmental resources specialist shall monitor birds and noise during all periods of BEMP activities. Activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest site(s). If construction noise exceeds a peak level of 65 dB at the nest site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting trees/areas shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

5. The applicant shall ensure that the environmental resources specialist shall be present during all BEMP activities. If the environmental resource specialist becomes aware of any breach in permit compliance or any unforeseen sensitive habitat issues, the environmental resources specialist shall so inform the applicant, and the applicant will cease work. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised, or supplemental, program to adequately mitigate such impacts. The revised, or supplemental, program shall be submitted to the Executive Director for review and approval.
- 4. Tidewater Goby Protection Plan.** The applicant shall retain the services of a qualified biologist or environmental resource specialist with experience handling tidewater gobies or other sensitive aquatic species and with the requisite permit(s) and experience in the application of standard survey, capture, and handling methods for tidewater gobies and other sensitive aquatic species. At least 30 days prior to commencement of any onset of work, the applicant shall submit the name and qualifications of the qualified biologist or environmental resources specialist, for the review and approval of the Executive Director. When Operations and Maintenance Program (OMP) activities are occurring while there is water in the lower reaches of the channel, the applicant will exclude tidewater gobies and other sensitive aquatic species from the OMP area by following the actions:
- A. The applicant shall ensure that the qualified biologist or environmental resource specialist retained by the applicant conducts a training session for all operations and maintenance personnel prior to the onset of work. The training shall include a description of the tidewater goby, southern steelhead, and other sensitive aquatic species; their habitats; the specific measures that are being implemented to protect sensitive aquatic species during OMP activities; and the project limits.

- B. The applicant shall ensure that the qualified biologist or environmental resource specialist and a crew working under his/her direction clears all fish, including tidewater gobies, from the area to be disturbed for OMP activities. The capture, handling, exclusion, and relocation activities identified by the qualified biologist or environmental resource specialist will be completed no earlier than 48 hours before OMP activities begin in order to minimize the probability that listed species will recolonize the affected areas during the work.
  - C. Following OMP activities, and annually for the duration of the permit, the applicant shall ensure that the qualified biologist or environmental resource specialist completes post-OMP activity surveys, for the review of the Executive Director, for tidewater gobies and other sensitive aquatic species.
5. **Best Management Practices.** It shall be the applicant's responsibility to assure that the following occurs concurrent with, and after the completion of, all project operations:
- A. No construction material, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion. Any and all debris resulting from construction activities shall be removed immediately. Any debris inadvertently discharged into coastal waters shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit;
  - B. Construction vehicles shall be restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the final plans approved pursuant to Special Condition One (1). Equipment shall not be in contact with coastal waters at any time;
  - C. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of coastal waters; and
  - D. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.

- E. Best Management Practices (BMPs) shall be implemented to control erosion from the disturbed area and prevent sediment and potential pollutants from entering coastal waters and/or native habitat plant communities during OMP channel maintenance activities.
- F. Non-native or invasive plant species shall be removed by hand where feasible, and herbicide use shall be prohibited. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 6. Term of Permit Approval.** This coastal development permit authorizes implementation of the approved Beach Elevation and Management Plan (BEMP) and Operations and Maintenance Program (OMP) activities on a temporary basis only for a period of five (5) years from the date that Coastal Development Permit 4-18-0820 is approved by the Commission, after which time all activities shall cease unless either a new coastal development permit, or amendment to this permit, authorizing additional future BEMP or OMP activities is approved and issued by the California Coastal Commission.
- 7. Conformance with the Requirements of the Resource Agencies.** By acceptance of this permit, the applicant agrees to conform with requirements outlined in permits, approvals and biological opinions of other State and Federal agencies, including the California Department of Fish and Wildlife, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the Division of the California Code of Regulations implementing the Coastal Act.
- 8. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wave action, flooding, erosion, and sea-level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

***Prior to commencement of development***, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

The proposed project includes implementation of a Beach Elevation Management Plan (BEMP) and channel Operations and Maintenance Program (OMP) at Ormond Beach the and *tšumaš* Creek drainage channel (previously called the “J Street Drain”), respectively, for a period of five years. The proposed BEMP is a programmatic response to prevent the flooding of development located adjacent to Ormond Lagoon, and/or the channel upstream of the lagoon, through the periodic grading of the sand located between Ormond Lagoon and the Pacific Ocean, at the terminus of the *tšumaš* Creek channel.

The proposed OMP activities would include the periodic removal of vegetation, sediment, and debris from the drainage channel by various machinery and hand crews. Damaged concrete structures, including channel linings and retaining walls, would be repaired to original condition to prevent further deterioration. Adjacent access roads within the applicant’s right-of-way would also be maintained through the implementation of the OMP.

The goal of the proposed BEMP is to prevent the flooding of the properties located adjacent to Ormond Lagoon and the channel north of the lagoon, which are developed with existing residential and industrial uses. The program would involve lowering the level of the beach to approximately 6.5 ft. above sea level within a 100 ft. wide area between Ormond Lagoon and the Pacific Ocean to allow Ormond Lagoon to overflow to the ocean in the event that the water level elevates to the point where it would otherwise flood adjacent upland areas. Implementation of the these BEMP activities would be limited to no more than three times between September 15th and March 1st each winter storm season.

Throughout much of the year, Ormond Lagoon remains in a semi-closed state due to sand accretion and resultant high sand elevations between the lagoon and the ocean. Prior to a breaching event, continual freshwater inputs from the *tšumaš* Creek drainage channel and adjacent waterways cause the Ormond Lagoon water level to remain at approximately 6.5 ft. in elevation above mean sea level (NGVD). However, during a storm event the water within Ormond Lagoon can rise rapidly, as the *tšumaš* Creek Drainage Channel receives large quantities of storm water runoff. If the lagoon has not breached naturally prior to a storm event, and the sand level between the lagoon and

the ocean is at an elevation above 6.5 ft. NGVD, the water within the lagoon will begin to backflow into adjacent developed properties.

Construction vehicles would access the designated 100 ft. wide BEMP activity area from Hueneme Beach Park parking lot B, with alternate access through parking lot A when parking lot B is impassable, along designated routes, as depicted in Exhibit 3. As proposed, a qualified biologist or resource specialist would be present on site during all activities to ensure that impacts to sensitive species are avoided. Lowering of the beach sand elevation would occur within an approximately 100 ft. wide by 100 ft. long area where the width of the beach between the lagoon and the ocean is typically at its most narrow point. A permanent elevation measurement pole that extends approximately 6.5 ft. in height above the normal level of beach sand was installed on site pursuant to CDP 4-12-051 and is used to measure beach sand elevations. Sand removed in the process of lowering the elevation would be placed on the beach immediately adjacent to the activity area. The sand elevation after the implementation of the BEMP activities would be no lower than 6.5 ft. in elevation above mean sea level (NGVD), to ensure that the proposed BEMP activities do not themselves cause a breaching event, but rather facilitate the occurrence of one prior to the flooding of adjacent development.

## **Background**

The *tšumaš* Creek drainage channel was originally constructed as an earthen channel in 1956. In 1961, the bottom and sides of the earthen drainage channel were lined with concrete. As it currently exists, the *tšumaš* Creek Drainage channel remains as a fully lined concrete channel that extends approximately 2.2 miles in length (from a point outside the Coastal Zone), beginning north of Redwood Street in the City of Oxnard, and terminating in Ormond Lagoon. Portions of the channel are located in both the City of Oxnard and the City of Port Hueneme. The southernmost 3,430 linear ft. section of the drain, from Hueneme Road to Ormond Lagoon, is located within the Coastal Zone. Development adjacent to this section of the *tšumaš* Creek drainage channel including condominiums, Bubbling Springs Community Park, Hueneme Beach Park, the Oxnard Wastewater Treatment Plant, the International Paper Plant, and the Halaco Superfund Site. Ormond Lagoon, located at the terminus of the *tšumaš* Creek drainage channel on Ormond Beach, is supplied by freshwater flows from the *tšumaš* Creek drainage channel, Bubbling Springs, and the Oxnard Industrial Drain, as seen in Exhibit 3.

The subject CDP was submitted to the Commission on August 17, 2018. The permit application was deemed incomplete and letters outlining the additional information needed were sent to the applicant on September 13, 2018 and January 10, 2020. The applicant provided all of the information requested by staff and the permit application was deemed complete for filing on August 28, 2020.

## Permit History

The project site has been subject to previous permit action by the Commission. In 2013, the Commission approved Coastal Development Permit (CDP) Number 4-12-051 to expand the *tšumaš* Creek drainage channel in order to increase the capacity of the drainage channel to accommodate 100-year flood flows. BEMP and OMP activities for a period of five years were also approved as part of the project. After CDP 4-12-051 expired in July 2018, several emergency permits were issued by the Commission to allow the applicant to prevent or abate the flooding of development located adjacent to the Ormond Lagoon by allowing for one-time implementation of the same activities proposed as part of the subject BEMP; including Emergency Permits G-4-18-0022 issued on September 28, 2018; G-4-19-0024, issued on May 15, 2019; and G-4-19-0052, issued on November 26, 2019.

## Project Jurisdiction and Consolidated Review

The proposed project includes components that are located within both the City of Port Hueneme and City of Oxnard's Local Coastal Program (LCP) jurisdictions, as well as components within the retained jurisdiction of the Coastal Commission. Both the City of Port Hueneme and City of Oxnard would typically have jurisdiction over the portions of the project within their respective LCP jurisdictions. However, Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated coastal development permit application, when certain criteria are satisfied, for the entirety of a proposed project that would otherwise require separate coastal development permits from both a local government with a certified local coastal program and the Commission.

Pursuant to Section 30601.3(a)(2), the applicant, appropriate local government, and the Commission may agree to consolidate a permit action for a project that spans local and state jurisdictions. In this case, both the City of Oxnard and the City of Port Hueneme have submitted letters to Commission staff dated February 14, 2019, and September 27, 2018, respectively, requesting that the Commission assume jurisdiction over all activities associated with the proposed project. The applicant both consented to and facilitated this consolidated jurisdictional process.

The standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3(a) is Chapter Three of the Coastal Act (commencing with Section 30200), with the appropriate local coastal program(s) used as guidance. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of both the City of Oxnard and the City of Port Hueneme Local Coastal Programs (LCP) as guidance.

## **B. Marine Resources and Sensitive Habitats**

Section 30230 of the Coastal Act, as incorporated into the City of Oxnard and City of Port Hueneme LCPs, states:

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

Section 30231 of the Coastal Act, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states that:

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

Section 30236 of the Coastal Act, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 of the Coastal Act, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states:

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



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

City of Oxnard LUP Policy 6, Part C, states in part:

Disturbance or destruction of any dune vegetation shall be prohibited unless no feasible alternative exists and then only when revegetation with native California plants is a condition of approval.

City of Oxnard LUP Policy 6, Part D, states in part:

New development adjacent to wetlands or resource protection areas shall be sited and designed to mitigate any adverse impacts to the wetlands or resource.

City of Port Hueneme LUP Sand Dune Protection Policy states in part:

Due to statewide significance, Southern foredune and backdune habitats within the Resource Conservation Zone Overlay shall be preserved and protected.

Coastal Act Section 30230 requires that new development within the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Coastal Act Section 30231 requires that the biological productivity and quality of coastal waters be appropriate to maintain optimum populations of marine organisms and for the protection of human health. Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) must be protected against disruption of habitat values and that only resource dependent uses may be allowed within ESHA. Additionally, development adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade or destroy the ESHA. City of Oxnard LUP Policy 6, Part C, limits the disturbance or destruction of dune habitats and requires revegetation if disturbance or destruction occurs. City of Oxnard LUP Policy 6, Part D, requires that new development be sited and designed to mitigate impacts to sensitive resources. City of Port Hueneme LUP Sand Dune Protection Policy requires the preservation and protection of sand dunes.

The *tšumaš* Creek Drainage Channel, where the project is located, and Ormond Lagoon are hydrologically connected to the Bubbling Springs Channel, Perkins Drain, and the Oxnard Industrial Drain. Water from Bubbling Springs, located west of the *tšumaš* Creek drainage channel, enters the *tšumaš* Creek drainage channel and Ormond Lagoon through the Hueneme Drain Pump House. The Oxnard Industrial Drain is located east of the *tšumaš* Creek drainage channel, and like the *tšumaš* Creek drainage channel,

terminates at Ormond Lagoon. Perkins drain extends parallel between the *tšumaš* Creek drainage channel and the Oxnard Industrial drain, as seen on Exhibit 3.

The convergence of the above-mentioned waterways has formed Ormond Lagoon. As described within both the City of Oxnard and City of Port Hueneme LCPs, this area supports a variety of sensitive species, including the California brown pelican (*pelecanus occidentalis californicus*), a CDFW species of special concern; California least tern (*Sterna antillarum browni*), a federal and state endangered species; western snowy plover (*Charadrius alexandrinus nivosus*), a federal threatened species; and the tidewater goby (*Eucyclobius newberryi*), a federally listed endangered species and a state species of special concern. Steelhead trout (*onchorhynchus mykiss irideus*), have not been documented within the project site. Sensitive habitats that meet the definition of ESHA pursuant to Coastal Act Section 30107.5 can also be found within the project area.

Although there are areas that meet the definition of ESHA within the project site, the proposed Beach Elevation Management Plan (BEMP) has been designed to avoid these areas. As depicted on Exhibit 3, the proposed access routes and the 100 ft. wide sand management area have been sited outside of ESHAs, consistent with Coastal Act Section 30240, which provides that new development may not be allowed within ESHA unless the use is dependent on the sensitive resource. Additionally, Section 30236 of the Coastal Act specifically allows for stream alteration, such as for the proposed BEMP facilitating breach of the Ormond Lagoon, for necessary flood control, and when the best mitigation measures feasible are incorporated. As described in further detail below, mitigation measures have been incorporated into the subject project.

### **Operations and Maintenance Program**

The proposed Operations and Maintenance Program (OMP) would consist of channel maintenance including the removal of sediments, brush, and debris. Trash, vegetation, and sediment will be manually removed from channels to prevent blockages and accelerated debris depositing and to restore channel capacity. The proposed OMP would remove approximately one ton of sediment, brush, and debris from the drainage channel annually. Pursuant to CDP 4-12-051, the *tšumaš* Creek Drainage Channel was expanded to accommodate flows that would result from a 100-year storm event. Because large volumes of water enter the drainage as stormwater runoff during both large and small storm events, a trash boom (debris collection device) was installed as part of that CDP, and the accumulated debris must be periodically removed.

As noted above, the tidewater goby is a federally listed endangered species and a state species of special concern. Tidewater gobies are typically found in the upper ends of lagoons in brackish water, such as those within Ormond Lagoon. Although the *tšumaš* Creek Drainage Channel is not suitable for spawning, gobies have been observed using

the lower reaches of the drainage channel for foraging. Gobies have been found in waters with salinity that ranges from 0 to 40 parts per thousand. They are bottom dwellers and are typically found at depths of less than 3 ft. Ormond Lagoon has been identified by the USFWS as critical habitat for tidewater goby. Gobies typically exhibit an extreme seasonal variation in population size that reflects the variation in salinity, temperature, and hydrologic conditions in a coastal lagoon. Tidewater gobies spawn throughout the year, but spawning typically peaks from May to July. Sediment removal and vegetation control in the lower reaches of the drainage channel have the potential to adversely impact tidewater goby populations if they occur when there is water present. Safe relocation of the goby outside of the maintenance area requires a qualified biologist or environmental resource specialist with experience handling goby. Therefore, **Special Condition Four (4)** requires the applicant to submit the name of the qualified biologist or natural resource specialist 30 days prior to any onset of construction work, and requires the capture, handling, exclusion, and relocation of any gobies present within the OMP area to be completed no earlier than 48 hours before OMP activities begin. Special Condition Four (4) also requires that the applicant to obtain from the qualified biologist or environmental resource specialist a post-project monitoring report documenting the measures that were implemented to protect the goby, and the affects that those measures had on the goby population.

Additionally, to ensure that the applicant avoids adverse impacts to all sensitive species, including those to tidewater goby, **Special Condition Seven (7)** also requires that the applicant complies with all permit requirements and mitigation measures of the Regional Water Quality Control Board, California Department of Fish and Wildlife, State Lands Commission, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations implementing the Coastal Act.

Furthermore, the stream and estuarine environment surrounding the *tšumaš* Creek drainage channel and Ormond Lagoon could be adversely impacted as a result of the OMP activities by unintentional introduction of sediment or debris. To ensure that construction material, debris, or other waste associated with project activities does not enter the water, **Special Condition Five (5)** outlines construction-related requirements to provide for the safe storage of construction materials and removal of debris from the area. To avoid the unintentional introduction of harmful chemicals into the stream and estuarine environment surrounding *tšumaš* Creek, vegetation control activities as part of the OMP on the subject site must be done through mechanical means or by hand (or mowing and cutting of vegetation) instead of utilizing herbicide. With herbicide use, there is a potential for the herbicide to be introduced to the aquatic environment and for

other non-targeted vegetation to receive overspray. Given that the subject site is habitat for sensitive species, the Commission requires **Special Conditions Five (5)** to prohibit the use of any herbicide in order to minimize adverse effects to habitat from the implementation of the OMP activities.

The proposed OMP is intended to maintain functionality of the *tšumaš* Creek Channel while minimizing adverse impacts to sensitive species. However, in order to consider any potential changes in circumstances which may be discovered at some future point in time, such as new information regarding sensitive habitat and wildlife resources on site, or new impacts from the OMP activities, **Special Condition Six (6)** specifically limits the duration of all OMP activities approved by this permit (to a period of no more than five (5) years from the date of Commission action, unless a new coastal development permit, or amendment to this permit, authorizing future OMP activities is approved by the California Coastal Commission.

### **Beach Elevation Management Plan**

Throughout much of the year Ormond Lagoon remains in a closed state due to sand accretion and resultant high sand elevations between the lagoon and the ocean. Prior to a breaching event, continual freshwater inputs from the *tšumaš* Creek Drainage Channel and adjacent waterways cause the Ormond Lagoon water level to remain at approximately 6 ft. above mean sea level (NGVD). During a storm event, the water within Ormond Lagoon can rise rapidly, as the *tšumaš* Creek Drainage Channel receives large quantities of storm water runoff. If the lagoon has not breached naturally prior to a storm event, and the sand level between the lagoon and the ocean is at an elevation of greater than 6.5 ft. NGVD, the water within the lagoon will begin to backflow, flooding adjacent properties which are developed with residential, public, and industrial uses. This occurs due to the topographic difference between Ormond Lagoon and surrounding development. As an example, past flooding has placed the Oxnard Wastewater Treatment Plant at risk of releasing untreated sewage effluent into the surrounding waterways, roads, and residential properties due to the inundation of electrical equipment.

The proposed BEMP is a programmatic response to prevent the flooding of development adjacent to Ormond Lagoon and the channel upstream of the lagoon through the periodic lowering of the sand elevation located between an approximately 100 ft. segment of the beach between Ormond Lagoon and the Pacific Ocean, near the terminus of the *tšumaš* Creek drainage channel. The program would involve lowering the level of the beach to approximately 6.5 ft. above sea level within a 100 ft. wide area between Ormond Lagoon and the Pacific Ocean to allow Ormond Lagoon to overflow to the ocean in the event that water levels elevate and would otherwise flood the adjacent upland areas. Implementation of these BEMP activities would be limited to no more than three times between September 15<sup>th</sup> and March 1<sup>st</sup> each winter storm season. The

applicant's engineers have indicated that if water levels in the lagoon exceed 6.5 ft. NGVD, then imminent flooding of the surrounding developed properties is expected. Therefore, the applicant is proposing to implement BEMP activities only if the elevation of the beach seaward of the lagoon is higher than 6.5 ft. NGVD in elevation.

The applicant has proposed to lower the sand elevation adjacent to the lagoon to facilitate a breaching event, rather than to create an overflow channel (which would cause an immediate breaching event), to minimize adverse impacts to sensitive species, such as the tidewater goby. Similar activities to lower the sand elevation adjacent to the lagoon have previously occurred on site pursuant to CDP 4-12-051 and emergency permits referenced in Part A of Section IV above. These previous actions have been successful in that lowering the sand elevation is adequate to both abate flood hazards and prevent an unnecessary breaching event. As an example, the applicant lowered the sand elevation adjacent to the lagoon on December 18, 2015, and the lagoon breached on January 5, 2016. Additionally, on December 14, 2016 the sand elevation was lowered, and a breaching even occurred the following day on December 15, 2016. On February 28, 2018 the sand elevation was lowered. However, a breaching event did not occur until March 12, 2018.

One BEMP marker pole was installed on the beach pursuant to CDP 4-12-051 to allow monitors to measure the levels of sand on the beach and also to mark the 100 ft. wide section where the sand levels adjacent to Ormond lagoon would be reduced in elevation. The marker stands approximately 6.5 ft. in height above the average level of beach sand under normal conditions. The pole is used to measure the sand level to determine if conditions meet the requirements described in **Special Condition One (1)** to enact BEMP activities, and also designates the activity area to ensure that impacts to adjacent sensitive habitat areas are avoided during implementation of the BEMP activities. Additionally, "bird spiders" were placed on top of the pole to deter raptors from roosting and potentially foraging where they could predate on sensitive species such as the snowy plover. Sand removed in the process of lowering the elevation would be placed on the beach adjacent to the activity area.

In order to ensure that implementation of the proposed BEMP activities avoid adverse impacts to both sensitive species and habitats, Special Condition One (1) outlines the criteria that will be utilized to determine when implementation of the BEMP activities is necessary and the responsibilities of the applicant to ensure that they are carried in such a way as to avoid impacts to sensitive species and habitats. Pursuant to Special Condition One (1), lowering the sand elevation between Ormond Lagoon and the ocean would occur no more than three times between September 15<sup>th</sup> and March 1<sup>st</sup> each winter storm season, which would avoid the peak breeding seasons of tidewater goby, grunion, snowy plover, and least tern, in order to minimize adverse impacts to these sensitive species. Although winter storm seasons in recent years have created

conditions that required the beach to be shaved down more than three times per storm season and, at times, beyond the September 15<sup>th</sup> to March 1<sup>st</sup> window to prevent flooding, the BEMP activity is limited to three times per storm season and within the September 15<sup>th</sup> to March 1<sup>st</sup> window to minimize disturbance to sensitive species and habitat. Additional BEMP activities and/or BEMP activities outside of the September 15<sup>th</sup> to March 1<sup>st</sup> window can be requested for authorization by the Executive Director as needed.

Additionally, in order to ensure that unnecessary breaching events do not occur, **Special Condition One (1)** provides that beach elevation management activities shall occur only if the lagoon mouth is in a closed condition and the elevation of the sandy beach is higher than 6.5 ft. above sea level (NGVD) within the 100 ft. wide corridor between the lagoon and the ocean, as generally shown on Exhibit 3. The elevation of the sandy beach within the 100 ft. wide sand elevation management corridor may be lowered to no less than 6.5 ft. in elevation above sea level (NGVD). Furthermore, although there is no dune habitat or native vegetation located within the proposed 100 ft. wide BEMP activity area, in order to ensure that adverse impacts to adjacent dune habitat areas are avoided, Special Condition One (1) also requires that all BEMP activities shall occur only within a 100 ft. wide corridor between the lagoon and the ocean, as generally shown on Exhibit 3.

As proposed, access to the designated 100 ft. by 100 ft. activity area would occur from Hueneme Beach Park parking lot B on the designated path, with alternate access through parking lot A only by permission on a case-by-case basis when parking lot B is impassable. The designated paths for access through both lot A and lot B are depicted in Exhibit 3. Although the BEMP access routes have been specifically designed to avoid sensitive dune habitat located along the back portions of the beach and known nesting or foraging areas of sensitive species including snowy plover, brown pelican, California least tern, and grunion consistent with Section 30240 of the Coastal Act, City of Oxnard LUP Policy 6, Part C, and City of Port Hueneme LUP Sand Dune Protection Policy, it is still possible that a species may be located within the approved access route or the BEMP activity area. Therefore, to ensure that adverse impacts to adjacent sensitive habitats and species are avoided, Special Condition One (1) restricts access for construction vehicles/tractors to the BEMP site to only the designated routes shown on Exhibit 3. Further, to ensure that unintended adverse impacts to adjacent sensitive habitats and species are avoided, **Special Condition Three (3)** requires that an environmental resource specialist shall be present during all BEMP activities. The applicant must cease work if the environmental resource specialist finds any breach in permit compliance, or if any unforeseen sensitive habitat issues arise. The applicant shall immediately notify the Executive Director if the environmental resource specialist(s) finds that activities outside of the scope of the subject CDP occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately

mitigate such impacts. The revised or supplemental, program shall be submitted to the Executive Director, for review and approval.

In addition, the Commission notes that the proposed BEMP will involve the use of construction equipment. As such, the Commission further finds that the proposed project could result in the potential generation of debris and/or presence of equipment and materials that could be subject to tidal action. Such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. As provided under **Special Condition Five (5)**, it is the applicant's responsibility to ensure that no construction materials, debris or other waste is placed or stored on the beach or where it could be introduced to coastal waters and that any and all debris that results from the construction period shall be immediately removed from the sandy beach. Further, construction equipment shall not be cleaned on the beach or in the beach parking lots.

The proposed BEMP is designed and conditioned to ensure that activities related to facilitating breaches of Ormond Lagoon will not result in adverse impacts to sensitive species. However, in order to consider any potential changes in circumstances that may be discovered at some future point in time, such as new information regarding sensitive habitat and wildlife resources on site or new impacts from the BEMP activities, **Special Condition Six (6)** specifically limits the duration of all BEMP activities approved by this permit to a period of no more than five (5) years from the date of Commission action, unless a new coastal development permit, or amendment to this permit, authorizing future BEMP activities is approved by the California Coastal Commission.

Due to the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30236, and 30240 of the Coastal Act, City of Oxnard LUP Policy 6, Parts C and D, and City of Port Hueneme LUP Sand Dune Protection Policy.

### **C. Public Access and Visual Resources**

Coastal Act Section 30210, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states:

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

Coastal Act Section 30211, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states:

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

Coastal Act section 30251, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

City of Oxnard LUP Policy 37 states, in part, that:

All new development in the Coastal Zone shall be designed to minimize impacts on the visual resources of the area.

City of Port Hueneme LUP Hueneme Beach Park Coastal Visual Resources Policy states:

Because the viewshed at Hueneme Beach Park is an important public resource, improvements to the park shall not interfere with public enjoyment of views of the beach and ocean.

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. In addition, Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. City of Oxnard Policy 37 requires that new development minimize impacts to visual resources. City of Port Hueneme Beach Park Coastal Visual Resources Policy requires that improvements do not interfere with views of the beach and ocean.



The proposed project will be located adjacent to and within public recreational areas including Hueneme Beach Park and Ormond Beach. The Hueneme Beach parking lot includes many parking spaces for beach users. This area supports a variety of recreational uses, including the Port Hueneme Fishing Pier, volleyball courts, a snack bar, picnic tables, as well as several trails for nature walks, bird watching and other coastal activities. These public recreational areas as well as public paths to the beach surrounding the project site would remain open during BEMP and OMP activities.

As depicted on Exhibit 3, implementation of the proposed BEMP would require the temporary use of some public access and recreational areas, including a small area of the parking lot, and a portion of the sandy beach. To ensure the safety of recreational users of the project site and to ensure that the interruption to public access of the project site is minimized, the Commission requires the applicant to submit a public access plan, pursuant to **Special Condition Two (2)**, to the Executive Director for review and approval. Special Condition Two (2) requires a description of the methods (including signs, fencing, posting or security guards, etc.) by which safe public access to and around the BEMP activity areas shall be maintained during all project operations. Where use of public parking spaces is unavoidable, the minimum number of public parking spaces that are occupied for the staging of equipment, machinery and employee parking shall be used.

As described above, the *tšumaš* Creek drainage channel and Ormond Lagoon are visible from both surrounding development and beach areas. During implementation of BEMP activities, impacts to visual resources associated with the sand management activities and equipment would occur; however, these impacts would be temporary in nature and would not result in significant adverse impacts to visual resources. Further, the result of BEMP activities would result in negligible changes to public views due to the small portion of sand being moved around.

For these reasons, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30211, 30212, and 30251, City of Oxnard Policy 37, and City of Port Hueneme Beach Park Coastal Visual Resources Policy.

#### **D. Hazards and Geologic Stability**

Section 30253 of the Coastal Act, as incorporated into City of Oxnard and City of Port Hueneme LCPs, states, in pertinent part, that new development shall:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The project site and surrounding area has been subject to periodic flooding. The purpose of the proposed OMP is to maintain the functionality of the channel and reduce the potential for flooding. Further, by lowering the sand elevation and thereby facilitating a breach of the lagoon, the proposed BEMP is also necessary to minimize potential flooding hazards.

As described above, the Commission notes that the proposed project is located in an area of the Coastal Zone that has been identified as subject to potential hazards from flooding, tidal action, high surf conditions, and storm surge. Although the proposed development is intended as a flood control project that will serve to reduce the potential for flooding of existing development, there remains some inherent risk. The Coastal Act recognizes that certain types of development, such as the proposed project, may involve some risk. Coastal Act policies require the Commission to assess the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. As such, the Commission finds that due to the unforeseen possibility of storm waves, surges, and flooding, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition Eight (8)** requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253.

## **E. California Environmental Quality Act**

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to any public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as

4-18-0820

Ventura County Watershed Protection District

special conditions. **Special Conditions One (1) through Eight (8)** are required to assure the project's consistency with Section 13096 of Title 14 of the California Code of Regulations. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

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

Coastal Development Permit Application No. 4-12-051 and associated file documents.

Emergency Coastal Development Permit No. G-4-18-0022, September 2018.

Emergency Coastal Development Permit No. G-4-19-0024, May 2019.

Emergency Coastal Development Permit No. G-4-19-0052, November 2019.

Final Environmental Impact Report J Street Drain Project Ventura County, California SCH# 2008041057, prepared by HDR Engineering, Inc., January 2012.

Annual Monitoring Report – Fiscal Year 2015-2016, prepared by Ventura County Watershed Protection District, March 2016.

Annual Monitoring Report – Fiscal Year 2016-2017, prepared by Ventura County Watershed Protection District, December 2016.

Annual Monitoring Report – Fiscal Year 2017-2018, prepared by Ventura County Watershed Protection District, March 2018.

Biological Technical Report, J Street Drain Project, Ventura County, California, prepared by HDR Engineering, Inc., July 2008.

Verification Letter Report of the 2008 Biological Technical Report prepared for the J Street Drain Project, prepared by Padre Associates, Inc., July 2020.

Extension of Lake or Streambed Alteration Agreement Notification Number 1600-2004-0512-R5, prepared by California Department of Fish and Wildlife, December 2019.

Initial Proffered Standard Individual Permit, prepared by the U.S. Army Corps of Engineers, February 2020.

Reinitiated Biological Opinion for the Ventura County Watershed Protection District's Routine Operation and Maintenance Program, Ventura County, California, prepared by U.S. Fish and Wildlife Service, December 2019.

Clean Water Act Section 401 Water Quality Certification and Order for the Ventura County Routine Maintenance Program (4WQC40114038), prepared by the Los Angeles Regional Water Quality Control Board, December 2019.