

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



W20b

Filed: 1/18/21
180th Day: 7/17/21
Staff: CS-LB
Staff Report: 5/21/21
Hearing Date: 6/09/21

STAFF REPORT: PERMIT AMENDMENT

Amendment Application No.: 5-14-1604-A1

Applicants: Monarch Bay Club (KSL Capital Partners, LLC)

Project Location: 500 Monarch Bay Drive, Dana Point, Orange County (APN: 670-151-55)

Original Project Description: Approval of six-year Monarch Beach Management Plan, which includes relocation of beach sand to direct discharge from the Salt Creek outflow to the ocean; relocation of wrack adjacent to the Monarch Bay Club to northern and southern areas; and import of 100 cu. yds. of sand annually to maintain use of emergency access ramp.

Description of Proposed Amendment: Extend permit expiration date for additional five years, for Monarch Beach Management Plan implementation until June 4, 2026.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The project site is located on Monarch Beach in Dana Point and encompasses the beachfront Monarch Bay Club (Bay Club). The sandy beach seaward of the mean high tide line (MHTL) is public lands, while the sandy beach and Club development east of the MHTL are privately-owned. The site includes an emergency access road used by lifeguards and pedestrians (specifically Monarch Beach Home Owners Association (HOA) members and Waldorf Astoria Resort guests) to access the beach, and also

includes the concrete Salt Creek outlet structure located approximately 200-ft. south of the access ramp ([Exhibit 1](#)). The Salt Creek outlet drains runoff from the City of Dana Point to Monarch Beach and produces a fresh-to-brackish scour pond that flows into the Pacific Ocean. The outflow stream often meanders north along the sandy beach instead of flowing directly to the ocean, resulting in stagnation and pooling at the base of the access ramp.

In June 2006, the Bay Club conducted unpermitted activities at the subject site including grading the beach, berming Salt Creek to restrict the natural outflow pattern, artificial breaching of Salt Creek, and removing beach wrack and other organic material from Monarch Beach. Beach wrack consists of organic material, usually tangles of kelp and sea grass, that are deposited on the beach by wave action and serve an important ecological function. On June 23, 2006, Commission enforcement staff notified the Bay Club that a coastal development permit (CDP) was required and that the unpermitted activities must cease. After working closely with Commission Enforcement staff, the Bay Club, the prior owners of what is now the Waldorf Astoria, and other entities associated with the underlying ownership agreed to resolve the Enforcement matter via a consent cease and desist order.

On April 9, 2008, the Commission approved Consent Cease and Desist Order No. CCC-08-CD-01 (Consent Order), which required the Respondents to cease and desist from conducting further unpermitted development and resolve their civil liabilities via penalties and preparing and implementing a plan to install two informational/educational signs at the Bay Club location. The Respondent paid the penalty and installed educational signs at the Bay Club—however, such signs were not approved by the Commission Executive Director prior to being installed, as is required by the Consent Order. The applicant has indicated to Commission staff that they have commenced preparation of the Sign Plan consistent with the Consent Order, but this element of the Consent Order will remain an ongoing Enforcement issue until such time as the Sign Plan is submitted, approved by the Executive Director, and fully implemented pursuant to the terms and conditions of the Consent Order. Commission Enforcement staff is actively working with the applicant on resolving this aspect of the Consent Order compliance.

On April 15, 2015, the Commission approved CDP 5-14-1604 for the Monarch Beach Management Plan (MBMP).¹ The Commission approved a one-year pilot program (June 2015 – June 2016) and subsequent five-year implementation period for the MBMP (June 4, 2016 – June 4, 2021). The MBMP includes ongoing beach management activities consisting of: 1) relocating approximately 835 cu. yds. of sand from the Salt Creek outlet to an adjacent area to establish a three-ft. deep channel to direct outflow; 2) importing

¹ Prior to approval of CDP 5-14-1604 the applicant obtained a permit from the City of Dana Point (CDP 08-013) for ongoing sand and wrack relocation that was subsequently appealed to the Commission (A-5-DPT-08-275). In addition, the applicant obtained a previous CDP and two CDP amendments (CDP 5-10-237, 5-10-237-A1, and 5-10-237-A2) from the Commission for construction of two sand berms and a channel at the outfall. Pursuant to Special Conditions 9 and 10 of CDP 5-14-1604 the applicant agreed to withdraw the local approval and to terminate, abandon, and extinguish all rights and/or entitlements that may have existed relative to the local approval and Commission approvals.

approximately 100 cu. yds. of sand to the base of the emergency access ramp in the event of outflow pooling; and 3) relocating beach wrack by hand from the area in front of the Bay Club to designated areas above the mean high tide line. The MBMP limits work to specific seasons to avoid sensitive species disturbance. The applicant is now proposing an amendment to extend the beach management activities for an additional five years from the expiration date (June 4, 2021 – June 4, 2026) with no other revisions to the MBMP.

The Bay Club's monitoring reports from 2015 to 2020 show that the MBMP has resulted in improvement to Monarch Beach water quality. Based on the results of the monitoring reports, relocation of sand to prevent stagnation of the outlet runoff appears to be working as intended and there is no evidence that the outlet maintenance has resulted in any adverse impacts to marine resources.

However, the monitoring reports also show that the number of shorebirds in areas where beach wrack is deposited were significantly higher than in beach areas where wrack is removed. Thus, interference with the natural distribution of beach wrack appears to have adversely impacted shorebird foraging habitat.

In recognition of the potential adverse impacts of continued wrack relocation, and in order to provide for the collection of additional data related to wrack relocation, **Special Condition 4** provides for a three year permit extension rather than the five years requested by the applicant. **Special Condition 5** reduces the previously approved, 400-ft. long area of wrack relocation by approximately half the length and expands the approximately 325-cumulative ft. long northern and southern areas of wrack placement by approximately half their existing width ([Exhibit 2](#)). **Special Condition 5** also prohibits the placement of wrack on cobble-sized beach sediment, reduces the allowable height of relocated wrack piles from 15-inches to 10-inches, and specifies the time of day the consulting biologist must conduct shorebird monitoring. These revisions enable the Commission to make any necessary plan improvements or changes at the end of the three-year implementation. The revisions will also better balance the preservation of shorebird foraging habitat with the Bay Club's desire to provide a beach area free of wrack for the users of the private development.

Commission staff recommends approval of the amendment request with revisions to Special Conditions 4 (Duration of Approval) and 5 (Final Revised MBMP that Includes the Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol). The conditions of the underlying permit, as revised, continue to apply. The motion is on page 6. The standard of review is the Chapter 3 policies of the Coastal Act, with the certified LCP serving as guidance.

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

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of

immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

In this case, the Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting a coastal resource or coastal access.

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit. The proposed amendment would not lessen the intended effect of the Commission's action on April 15, 2015 approving Coastal Development Permit No. 5-14-1604 with conditions. Therefore, the Executive Director accepted the amendment request.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	6
II. CHANGES TO CONDITIONS	6
III. FINDINGS AND DECLARATIONS	9
A. Project Description and Background	9
B. Biological Resources	11
C. Water Quality	16
D. Public Access	18
E. Coastal Act Violations	19
F. Local Coastal Program	20
G. California Environmental Quality Act	20
Appendix A—Substantive Files	22
Appendix B – List of All Conditions that Apply to CDP 5-14-1604, as Amended ..	23

EXHIBITS

[Exhibit 1—Vicinity Map](#)

[Exhibit 2—Wrack Removal and Placement Areas](#)

[Exhibit 3—Sand Relocation Plan](#)

[Exhibit 4—Site Photos](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment 5-14-1604-A1 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves Coastal Development Permit Amendment 5-14-1604-A1 on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment A1. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 1 are shown in the following section. Within **Appendix B**, changes to the previously approved special conditions are also shown in **bold**. This will result in one set of adopted special conditions.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-14-1604, as amended up through amendment 5-14-1604-A1, and reflected in Appendix B, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underline**.

A. Special Conditions

4. **Duration of Approval.** Unless this permit otherwise expires pursuant to Standard Condition No. 2, this coastal development permit (5-14-1604) shall expire, as follows: the subject development may occur for a one (1) year trial period from the date the applicant initiates the development in accordance with this permit approval; a second year may be authorized by the Executive Director if the

Executive Director determines there has been no significant adverse impact upon coastal resources, based on the information supplied pursuant to Special Condition No. 5, and any other relevant information that may become available. Following the same protocol as year 2, additional time may be authorized, on a yearly basis, up to a total of ~~five~~ **eight (8)** years from the date the applicant initiates development in accordance with this permit approval. All such extensions will be provided in writing by the Executive Director. If the Executive Director determines that substantial adverse impacts are occurring to coastal resources an amendment or new permit shall be required to adjust the plan to avoid or reduce such impacts. Within thirty (30) days of initiating the project, the applicant shall notify the Executive Director, in writing, of the date development commenced. Except as provided in Public Resources Code Section 30610 and applicable regulations, and as specifically provided in this condition, any future development as defined in PRC section 30106, including but not limited to, maintenance activities beyond the scope of this approval and/or expiration date of this permit, shall require an amendment to 5-14-1604 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission.

5. Final Revised Monarch Beach Management Plan (MBMP) that Includes the Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a Final Revised Monarch Beach Management Plan (MBMP), that is in substantial conformance with the plan dated June 2013, that includes a Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol, except that it shall be modified and be in substantial conformance with the following:

1. To the greatest extent practicable, all "Minor" maintenance work will be conducted prior to March 1 and after August 31. To protect grunion during their peak spawning season, all "Minor" Maintenance work, to the greatest extent possible, will be scheduled so as to avoid April and May. "Minor" maintenance work refers to work as defined in the Final Revised Monarch Beach Management Plan (MBMP), that includes a Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol;
2. Critical project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line established after the previous grunion run can be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been flushed by the previous night's high tide, and new eggs likely won't be deposited for at least 24 hours;

3. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then the high tide line on the morning after the first run of the series shall be marked and project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line shall be postponed until after the incubation period (i.e., until the day before the first date of the next predicted run, as described in 2);
4. Wrack relocation will only take place during the summer months (June 1 through September 30);
5. ~~Only wrack located in front of the Monarch Bay Club and the adjacent grassy area (as generally identified in Exhibit No. 6) will be relocated with such area indicated in the final revised plan;~~ **Only wrack located in front of the area extending between the northernmost edge of the Monarch Bay Club building and the adjacent lawn will be relocated within the northern and southern wrack placement areas as identified in Exhibit 2.**
6. Wrack shall never be removed from the beach **or relocated on top of cobble;**
7. Each morning the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club;
8. Each morning the Monarch Bay Club Staff may collect the wrack from in front of the Monarch Bay Club without the use of mechanized equipment, measure it by volume, and relocate it to designated adjacent beach areas, immediately upcoast and downcoast of the Bay Club;
9. Collected wrack will be spread along the **mean** high tide line **(line marking the boundary between wet and dry sand)** in a natural looking manner and the height of the wrack shall not exceed 45-inches **10-inches;**
10. Once a week, the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club but will leave all the wrack in front of the Monarch Bay Club in place;
11. On those mornings when the wrack is not relocated by the Monarch Bay Club Staff, the biological monitor will monitor bird usage/foraging associated with the wrack **in the wrack removal, buffer, and wrack deposition areas** for a period of one hour in the ~~mid-morning~~ **early morning**. Monitoring will include the areas in front of the Bay Club, as well as adjacent **the** areas immediately upcoast and downcoast of the Bay Club. ~~The purpose of this monitoring will be to determine if there is any difference in utilization of the wrack by birds, based on proximity to humans;~~

12. Following monitoring activities, the Monarch Bay Club Staff may then collect, measure, and relocate the wrack to the designated adjacent beach areas; and
 13. At the conclusion of the 2015 summer season, the biological monitor will prepare a report documenting the findings of the monitoring and present suggested revisions to be incorporated into the long-term management plan, if appropriate, for Executive Director approval or Coastal Commission approval if an amendment is required. If the Executive Director extends the duration of the subject permit, in accordance with the requirements of Special Condition No. 4, a monitoring report will also be submitted at the conclusion of each year that is approved; and
 14. All photo-documentation shall occur from designated points to be established in the final plan.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

III.FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The project site is Monarch Beach, an approximately 0.2-mile long sandy beach in Dana Point that runs parallel to a gated community of 214 single-family residences and the associated Bay Club development. The sandy beach seaward of the MHTL constitutes State tidelands, while the sandy beach landward of this demarcation and the seawall protecting the Club development are private property. The public may access the entirety of the sandy beach at Monarch Beach by way of the public parking lot located approximately 0.4 miles downcoast of the subject site; however, the public is prohibited from use of the private Bay Club development. The emergency access ramp also leads to the gated community and is not used by the public ([Exhibit 1](#)). As a result, Monarch Beach is used primarily by residents of the gated community and guests of the nearby Waldorf Astoria Resort, who are conveyed to the site via seasonal shuttles.

The project area encompasses the beachfront Bay Club, an emergency access ramp adjacent to the Bay Club parking lot which provides pedestrian (Monarch Beach HOA members and resort guests) and lifeguard access to the beach, and the concrete Salt Creek outlet structure. The concrete Salt Creek outfall drains runoff from the City of Dana Point to Monarch Beach and is located approximately 200-ft. south of the access ramp. The outflow produces a fresh-to-brackish scour pond that often meanders north along the sandy beach rather than flowing directly to the Pacific Ocean, resulting in stagnation and pooling at the base of the access ramp ([Exhibit 4](#)). A varying amount of beach wrack is deposited on Monarch Beach throughout the year and the Bay Club has

contended the wrack impairs recreational access for the Monarch Beach HOA and Waldorf Astoria guests visitors during seasons of extensive coverage. Beach wrack is organic material, usually tangles of kelp and sea grass, deposited on the beach by wave action. Decomposing wrack serves as a significant habitat for invertebrates, food source for foraging shorebirds, and nutrient source for beach sediment.

In June 2006, the Bay Club conducted unpermitted activities at the subject site including grading the beach, berming Salt Creek to restrict the natural outflow pattern, artificial breaching of Salt Creek, and removing beach wrack and other organic material from Monarch Beach. On June 23, 2006, Commission enforcement staff notified the Bay Club that a CDP was required and that the unpermitted activities must cease. After working closely with Commission Enforcement staff, the Bay Club, the prior owners of what is now the Waldorf Astoria, and other entities associated with the underlying ownership agreed to resolve the Enforcement matter via a consent cease and desist order.

On April 9, 2008, the Commission approved Consent Order No. CCC-08-CD-01, which required the Respondents to cease and desist from conducting further unpermitted development including, grading, constructing berms, breaching salt creek, and removing wrack and other organic matter from the beach without Coastal Act authorization. Through the Consent Order, Respondents also resolved their civil liabilities by paying \$75,000 in penalties and by preparing and implementing a plan to install two informational/educational signs at the Bay Club location. Respondent paid the penalty and installed educational signs at the Bay Club, but such signs were not approved by the Commission Executive Director prior to being installed, as is required by the Consent Order. While the existing installed signs do attempt to provide the required elements detailed in the Consent Order, they are not consistent with Section 10.4 of the Consent Order. The applicant has indicated to Commission staff that they have commenced preparation of the Sign Plan consistent with the Consent Order, but that particular element of the Consent Order will remain an ongoing Enforcement issue until such time as the Sign Plan is submitted, approved by the Executive Director, and fully implemented pursuant to the terms and conditions of the Consent Order. Commission Enforcement staff is actively working with the applicant on resolving this aspect of the Consent Order compliance.

On April 15, 2015, the Commission approved CDP 5-14-1604 for the MBMP.² The Commission approved a one-year pilot program (June 2015 – June 2016) and subsequent five-year implementation period for the MBMP (June 4, 2016 – June 4,

² Prior to approval of CDP 5-14-1604 the applicant obtained a CDP from the City of Dana Point (CDP 08-013) for ongoing sand relocation and wrack relocation that was subsequently appealed to the Commission (A-5-DPT-08-275). In addition, the applicant obtained a previous CDP and two CDP amendments (CDP 5-10-237, 5-10-237-A1, and 5-10-237-A2) from the Commission for construction of two sand berms and a channel at the outfall. The applicant simultaneously obtained an emergency permit (ECDP G-5-12-236) for construction of a temporary sand bridge at the base of the access ramp to cross outfall pooling. Pursuant to Special Conditions 9 and 10 of CDP 5-14-1604 the applicant agreed to withdraw the local approval and to terminate, abandon, and extinguish all rights and/or entitlements that may have existed relative to the local approval and Commission approvals.

2021). The MBMP includes ongoing beach management activities consisting of: 1) excavating approximately 835 cu. yds. of sand from the toe of the Salt Creek outlet lagoon and distributing the sand to an adjacent 0.2-acre area immediately north of the lagoon above the MHTL, creating a slope and 3-ft. deep channel to direct outflow; 2) importing approximately 100 cu. yds. of sand to the base of the emergency access ramp in the event of outflow pooling; and 3) relocating beach wrack by hand from the area in front of the Bay Club to designated areas above the mean high tide line.

The MBMP limits work to specific seasons to avoid sensitive species disturbance. Semi-annual sand relocation is restricted to the months prior to March 1 and after August 31 (except for monitored minor maintenance events) to avoid the California grunion spawning season. Relocation of beach wrack is permitted to occur in the specified area from June 1 through September 30 for the summer season, with one day of no disturbance per week for monitoring purposes. The project also includes Grunion Avoidance Protocol and requires submittal of annual monitoring reports conducted by a qualified ecologist. The applicant has complied with this requirement by submitting annual monitoring reports from 2015 and 2020 that include photo-documentation, sand relocation logs, bacteria sampling, estimates of wrack relocation volume, and shorebird observation logs.

The applicant is now proposing an amendment to extend the beach management activities for an additional five years from the expiration date (June 4, 2021 – June 4, 2026) with no other revisions to the MBMP.

In a letter dated December 18, 2013, the California State Lands Commission (CSLC) confirmed that no work included in the MBMP would be located within state tidelands and approval from their organization was not necessary for CDP 5-14-1604. This determination is unlikely to have changed appreciably since permit issuance in 2015, as the MBMP work not been revised to occur lower on the sandy beach. Thus, determination from the CSLC is not necessary for the proposed amendment.

Portions of the project may occur above the MHTL in the City's certified Local Coastal Program (LCP) permitting jurisdiction, but the Commission retains permitting jurisdiction over the full project area on the basis of Section 9.69.030(c)(1) of the certified Dana Point Implementation Plan.³

B. BIOLOGICAL RESOURCES

Section 30230 of the Coastal Act states:

³ Section 9.69.030(c)(1) of the Dana Point Zoning Code, which serves as the City's certified Implementation Plan, indicates that when proposed development lies partially within both the Commission's permitting jurisdiction and the Coastal Overlay District and the development is physically integrated, the Commission shall be the permitting authority.

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

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states, in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(4) Incidental public service purposes[...]

The City's certified Land Use Element (LUE) contains the following relevant policies:

Policy 4.5 Consider the environmental impacts of development decisions.

The City's certified Conservation Open Space Element (COSE) contains the following relevant policies:

Policy 1.7 Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged.

Policy 2.5 Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches.

Policy 3.9 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.

The MBMP includes excavation of approximately 835 cu. yds. of sand from the 0.26-acre area in front of the outfall lagoon (Area A in [Exhibit 3](#)). The sand is spread throughout the 0.2-acre area immediately north of the lagoon above the MHTL (Area B in [Exhibit 3](#)) to create a natural-appearing slope up to 3-ft. in height and a small channel up to 3-ft. deep. As shown in [Exhibit 3](#), the proposed sand relocation avoids the establishment of a large sand berm that would impede lateral access.

Additionally, the MBMP allows wrack relocation by hand from an approximately 400-ft. long expanse in front of the Bay Club, with prohibition of any wrack removal or use of mechanized equipment. The permit conditions require wrack relocation above the mean high tide line in a natural-looking distribution, with no wrack pile exceeding 15-inches in height; the Bay Club staff collect the wrack in 44-gallon plastic bins⁴ and immediately deposit it in the designated northern and southern areas, which extend approximately 270-ft. long cumulatively ([Exhibit 2](#)). Anthropogenic trash found in or around the wrack is measured by volume before disposal in off-site receptacles.

The Commission's senior staff ecologist has determined that the Salt Creek outflow lagoon constitutes wetland habitat (specifically, creek mouth lagoon habitat), and thus the proposed outfall channelization must be reviewed for conformance with Coastal Act Section 30233. All other project components are proposed on sandy beach above the MHTL.

Wrack and Shorebird Habitat

The applicant's submitted monitoring reports conducted by the consulting ecologist indicate a diverse community of shorebirds present on Monarch Beach, including Western snowy plovers (*Charadrius nivosus nivosus*), California brown pelicans (*Pelecanus occidentalis californicus*), and a variety of seagulls. Wrack is an extremely important resource on sandy beaches that plays a major role in supporting marine biodiversity. Decomposing wrack provides both food and shelter for invertebrates which in turn provide food for nearshore fish and shorebirds. The decomposition process also cycles nutrients through beach sediment and back into coastal waters.

The monitoring reports show that the volume of wrack relocated each year has ranged from approximately 1,650 gallons in 2019 to a maximum 15,500 gallons in 2018; the average volume of wrack relocated per year is approximately 9,710 gallons. While relocating wrack, the Bay Club staff have also collected an estimated 100-plus gallons of anthropogenic trash from the beach in the last five years.

⁴ The Annual Monitoring Reports submitted by the project ecologist from 2015 to 2020 indicate wrack collection in 60-gallon plastic bags. However, the ecologist has indicated that this is an error and the Bay Club has used reusable 44-gallon bins since at least June 2016. Reusable bins are preferable as a way to avoid single-use plastics and reduce heat stress on wrack during the relocation process.

The monitoring reports from 2016 through 2020 show that the highest concentration of birds was observed in the areas where wrack is deposited, both north and south of the wrack removal area. The maximum observed shorebird concentration reached 1,152 in the northern deposit area during the summer of 2016. This high number of birds in deposit areas is due in part to the outfall pond located near the southern placement areas, which provides a unique opportunity for shorebird bathing and foraging ([Exhibit 2](#)). However, the northern placement area is a significant distance from the outfall pond and still shows larger numbers of birds compared to the relocation area in front of the club. This suggests that beach wrack attracts shorebirds independent of the outfall pond.

Additionally, the monitoring reports have documented Western snowy plovers roosting and foraging within the project area during all five years of MBMP implementation. The project site is not designated as Critical Habitat for Western snowy plovers by the U.S. Fish and Wildlife Service (USFWS), but it does provide valuable foraging and roosting area for the federally designated threatened species. The MBMP requires a qualified biologist to survey for and document any Western snowy plover individuals prior to any sand maintenance activities during the breeding and nesting season (March 1 to September 30,) as will be discussed further below.

In summary, Coastal Act sections 30230 and 30231 require that work conducted in the marine environment sustain biological productivity of coastal waters and maintain healthy populations of all marine species. Because of the importance of wrack as food and shelter for invertebrates, that in turn provide food for nearshore fish and shorebirds, wholesale removal of wrack from the beach would adversely impact the marine environment. In recognition of the potential adverse impacts of continued wrack relocation, the continued monitoring of wrack volume and bird numbers is important. **Special Condition 4** provides for a three-year permit extension, rather than the five years requested by the applicant. While the reduced number of shorebirds observed where wrack is removed compared to where the wrack is placed may be due to increased recreation and foot-traffic near the Bay Club, the additional monitoring data will be informative.

Additionally, **Special Condition 5** reduces the previously approved 400-ft. long area of wrack relocation by approximately half the length (i.e. from the northernmost building edge to the southern edge of the adjacent lawn, approximately 200-ft. in length) and expands the northern and southern areas of wrack placement from approximately 325 cumulative ft. in length to 438 cumulative ft. in length ([Exhibit 2](#)). **Special Condition 5** also prohibits the placement of wrack on cobble-sized beach sediment, (as this impedes the decomposition process by allowing more air flow through the wrack and trapping less heat,) and reduces the height of relocated wrack above the MHTL from 15-inches high to 10-inches high, (as this better reflects the natural height of wave-deposited wrack.) Lastly, **Special Condition 5** requires that during the summer season, on days of no wrack disturbance, the project consulting ecologist must conduct bird monitoring during the early morning. This is intended to ensure the observations are not impacted by potentially higher instances of foot traffic, which could reduce bird presence independently of wrack.

These revisions will allow Commission staff to better determine whether wrack relocation corresponds to a change in shorebird abundance, and will allow the Commission to make any necessary plan improvements or changes at the end of the three-year implementation.

Wetland Habitat

Section 30233(a) of the Coastal Act limits the dredging of wetlands to specific, enumerated uses and requires that any project which results in dredging of wetlands constitutes the least environmentally damaging alternative and provides adequate mitigation for any environmental impacts. The proposed channelization at the toe of the outfall lagoon is a protective measure against the outflow drift which stagnates in pools, draws a greater distribution of seagulls along the beach, and increases bacterial concentrations in Monarch Beach coastal waters (as further discussed in the 'Water Quality' section below.) While the work is proposed by a private entity (the Bay Club), it has resulted in a recorded water quality improvement that benefits the public Salt Creek Beach located immediately south of Monarch Beach. As such, the cut of 835 cu. yds. of sand and placement immediately adjacent to create a 3-ft deep channel at the outfall lagoon constitutes an incidental public service purpose and an allowable use under Section 30233(a)(4).

Regarding project alternatives, the applicant has attempted to control the stagnating northward stream through the construction of two sand berms on either side of the outfall and a two-ft. deep channel (ref. CDP 5-10-237). This alternative necessitated a greater volume of sand relocation and more frequent maintenance without sufficiently addressing the issue, as the applicant still applied for an emergency permit to establish a temporary sand bridge at the base of the access ramp to cross a deep outfall pool (ref. Emergency Permit G-5-12-236). The applicant has also implemented the alternative of no sand relocation during the years between the Consent Order issued in 2008 and CDP 5-10-237 issued in 2011.

The proposed amendment to allow establishment of a three-ft. deep channel and 3-ft. high adjacent slope to prevent northward migration of the lagoon constitutes the least environmentally damaging alternative, compared to the possibility of increased sand relocation or no sand relocation. Furthermore, the applicant's submitted monitoring reports do not show a reduction in the lagoon size or observed bird concentrations at the outfall lagoon throughout the five years of MBMP implementation, suggesting that the limited sand relocation does not produce environmental impacts requiring mitigation.

Sand Relocation and Sensitive Species

The wide, gradual slope of Monarch Beach serves as a spawning habitat for California grunion (*Leuresthes tenuis*), which incubate eggs above the high tide line for subsequent hatching and "runs" during the high tides associated with lunar cycles. The subject permit allows the relocation of 835 cu. yds. of sand for directing the lagoon outflow before March 1 and after August 31 to avoid the grunion spawning season. Minor maintenance events must be minimized to the greatest extent feasible during the spawning season, and if work must occur during the season a qualified biologist shall monitor for the presence of adult grunion on the beach during predicted runs. The permit also prohibits

mechanized equipment from entering jurisdictional waters or potential grunion spawning areas.

Additionally, Monarch Beach serves as a foraging and nesting area for Western snowy plover. To ensure the relocation of sand near the outfall does not damage potential plover nesting sites, the approved MBMP requires a qualified biologist to survey for and document any presence of this species prior to any sand maintenance activities during the breeding and nesting season (March 1 to September 30). If any Western snowy plovers are present during this time, no excavation, construction, reconstruction, maintenance, or removal activities will occur within 300 ft. of any nesting or breeding areas for this species until subsequent monitoring indicates that the nesting or breeding snowy plovers are no longer present.

Conclusion

As conditioned and amended, the Commission finds the project consistent with Coastal Act sections 30233, 30230, and 30231, as well as relevant policies of the Dana Point certified LCP.

C. WATER QUALITY

Section 30231 of the Coastal Act states:

The biological productivity and 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The City's certified LUE contains the following policies in relevant part:

Policy 1.8 Coordinate with the appropriate Regional Water Quality Control Board, the County of Orange, and other agencies and organizations in the implementation of the National Pollution Discharge Elimination System Permits (NPDES) regulations to minimize adverse impacts on the quality of coastal waters.

Policy 4.4: Preserve, maintain, enhance, and where feasible restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. Sustain and where feasible restore general water quality and biological productivity as necessary to maintain optimum populations of marine organisms and for the protection of human health.

The proposed amendment would allow continuation of work at an urban stream outlet that carries runoff from surrounding Dana Point development to the Pacific Ocean. As described above, the MBMP includes relocation of approximately 835 cu. yds. of sand from the outfall entrance to the adjacent northern area to create a 3-ft. deep channel and

adjacent slope. This channel ensures direct outflow dilution, rather than allowing discharge to meander northward on the beach and stagnate in pools ([Exhibit 4](#)).

Monarch Beach struggles with bacterial contamination from both urban runoff and an associated concentration of seagulls. The Salt Creek outfall is a discharge point for contaminants that have entered the urban runoff, such as particulate debris, petroleum hydrocarbons, bacteria and pathogens, and pesticides/herbicides. The Salt Creek Ozone Treatment Facility was installed upstream of the outfall in 2005 to address contamination, but the facility does not operate November through May of each year and has shown limited success without additional supporting measures. The National Pollution Discharge Elimination System Permit, issued by the Regional Water Quality Control Board (RWQCB) to Dana Point as part of a comprehensive Orange County program, requires routine bacterial monitoring at the Salt Creek outfall and has City staff collect weekly dry-weather samples of fecal bacteria indicators from the area where the fresh-water runoff mixes with ocean water in the surf zone. These samples indicate that the Ozone Treatment Facility did not produce a corresponding improvement in water quality, likely due to subsequent stagnation and re-contamination by seagulls after treatment. Gulls often feed at landfills, resulting in contaminated guano—and even in the absence of anthropogenic contamination, large amounts of bird droppings can introduce excess amounts of nutrients to coastal waters and bolster harmful algae and bacterial blooms.

During the first year of MBMP implementation, Monarch Beach was listed in Heal the Bay's 2015-2016 Beach Report Card as the fourth worst beach in California in terms of dry-weather water quality.⁵ The report stated, in relevant part:

The local agencies have argued that the meandering portion of Salt Creek has facilitated a greater bird population, and in turn increased the amount of bird feces at this location—ultimately leading to the poor water quality.

This poor rating was issued during the first year of MBMP implementation, perhaps too early in the program implementation for a tangible improvement in water quality. While the applicant continued permitted, semi-annual channelization, the City instituted a new falconry program⁶ in July 2016 to deter gulls from the outfall area. The annual monitoring reports show a general pattern of reduction in bacteria levels in the following four years (with periodic spikes in bacteria corresponding to rainy seasons.) The Salt Creek outfall-ocean mixing area ultimately received an A grade in Heal the Bay's 2019-2020 Beach Report Card for dry-weather water quality, a dramatic improvement from its rating in 2016.⁷ This improvement in Monarch Beach water quality seems to be a result of the

⁵ https://healthebay.org/sites/default/files/BRC_2016_final.pdf

⁶ The falconry program is implemented by the City in April through October of each year and adheres to Western snowy plover avoidance protocol, including pre-falconry plover surveys.

⁷ https://healthebay.org/wp-content/uploads/2020/06/Report-2020_web.pdf

comprehensive management program currently in place, including the City's Ozone Treatment Center, the City's falconry program, and the applicant's sand relocation for improved outflow dilution.

Thus, as conditioned and amended, the Commission finds that the proposed project is consistent with Coastal Act Section 30231 of the Coastal Act and relevant policies of the certified Dana Point LCP.

D. PUBLIC ACCESS

Coastal Act Section 30604 states, in relevant part:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Coastal Act Section 30210 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 30251 states, in relevant part:

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...

The City's certified LUE contains the following policies in relevant part:

Policy 3.7 Encourage safe and convenient bicycle and pedestrian access throughout the community.

Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Policy 4.6 Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving developments in the coastal zone.

Policy 4.8 Encourage the reasonable regulation of signs to preserve the character of the community.

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3, including Section 30210. The proposed amendment would allow the continuation of development (i.e. grading and wrack relocation) on sandy beach above the MHTL and must thus be evaluated for public access impacts.

As noted above, the subject beach is used primarily by Monarch Beach HOA residents and guests of the Waldorf Astoria Resort. The emergency access ramp included in the project area connects the Bay Club private parking lot to the beach, and terminates inland in a gated entrance on Pacific Coast Highway. However, the beach may be accessed via a public parking lot located approximately 0.4 miles downcoast of the Bay Club. Thus, there is lateral access to Monarch Beach.

The subject permit includes BMPs which protect beach access for the public and the private residents. All mechanized equipment must enter and exit the beach at a single point identified by the biological monitor, and all equipment will be temporarily staged and refueled only in the nearby paved parking area without obstructing beach visitor parking or beach access areas. Temporary construction fencing will be installed at the beginning of each maintenance event to demarcate the construction limits and prevent beach visitors from entering the project area where mechanized equipment will be used during that day. This temporary fencing will consist of caution tape, or rope mounted on T-posts at 10-ft. intervals, and will be removed at the end of each day for storage in the staging area.

The proposed amendment will allow continued use of the emergency access ramp and increased availability of sandy beach for the Monarch Beach HOA and guests of the St. Regis hotel. While the establishment of substantial sand berms and channels can impede lateral access if too wide or deep, the project limits the slope created by the sand relocation to three-ft. high, limits the adjacent channel to 3-ft. deep, and locates the channel on a slope that may still be crossed by public visitors.

As conditioned and amended, the project is in conformance with public access and public recreation policies of Chapter 3 and relevant policies of the certified Dana Point LCP.

E. COASTAL ACT VIOLATIONS

Violations have occurred on the project site including, but not necessarily limited to, unpermitted grading, constructing sand berms along Salt Creek to restrict its natural flow pattern, artificial breaching of Salt Creek, and removing beach wrack and other organic material from Monarch Beach by former owners of both the Bay Club and the hotel: the St. Regis Resort, the Mathis Family 1996 Trust, and Makar Properties, LLC (referred to in the Consent Order as "Respondents") without a CDP.

To address these violations, the Commission issued Consent Cease and Desist Order No. CCC-08-CD-01 on April 9, 2008, which required the Respondents to cease and desist from engaging in any further unpermitted development, including grading, removing wrack, and breaching Salt Creek, at property located seaward of, and at, 500 Monarch Bay Drive. Through the Consent Order the Respondents also agreed to resolve their civil liabilities by paying a \$75,000 monetary penalty and installing educational signs at the Monarch Bay Club describing the importance of beach wrack and the unique characteristics of California grunion, two of the resources impacted by the above-described unpermitted development. While the applicant, a predecessor in interest of the Respondents, has installed three educational signs on-site, they did not first submit a Sign Plan to the Executive Director for his review and approval prior to installing the signs, as required by Section 10.4 of the Consent Order. While the existing signs that were installed do attempt to provide the required elements detailed in the Consent Order, they are not consistent with Section 10.4 of the Consent Order. The applicant has indicated to Commission staff that they have commenced preparation of the Sign Plan consistent with the Consent Order, but that particular element of the Consent Order will remain an ongoing Enforcement issue until such time as the Sign Plan is submitted, approved by the Executive Director, and fully implemented pursuant to the terms and conditions of the Consent Order. Commission Enforcement staff is actively working with the applicant on resolving this aspect of the Consent Order compliance.

Although development had taken place prior to submission of the original permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to any alleged violations on the property, nor does it constitute an implied statement of the Commission's position regarding the legality of any other development undertaken on the subject site without a coastal permit. Failure to comply with the conditions of this permit, as amended, in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act.

F. LOCAL COASTAL PROGRAM

The Commission certified the Dana Point Specific Plan/1986 LCP on September 13, 1989. However, the subject work will occur on sandy beach area which constitutes public trust lands and consequently, the standard of review is Chapter 3 of the Coastal Act with the certified LCP serving as guidance. As conditioned and amended, the proposed project within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act and the Dana Point Specific Plan/1986 LCP.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would

substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Dana Point is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Dana Point on July 18, 2013 determined that the development is Categorical Exempt from CEQA. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality and public access and recreation policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A—Substantive Files

Appeal No. A-5-DPT-08-245 and associated materials.

CDP No. 5-10-237 and subsequent amendments, 5-10-237-A1 and 5-10-237-A2.

CDP No. 5-14-1604 and associated materials.

Consent Cease and Desist Order No. CCC-08-CD-01.

Dana Point Specific Plan and certified Local Coastal Program.

Heal the Bay's Beach Report Card Archives. , <https://beachreportcard.org/33.481081/-117.725639/14>>

Heal the Bay's 2015-2016 Beach Report Card.
<https://healthebay.org/sites/default/files/BRC_2016_final.pdf>

Heal the Bay's 2019-2020 Beach Report Card. <https://healthebay.org/wp-content/uploads/2020/06/Report-2020_web.pdf>

Monarch Beach Resort Final Specific Plan.

RWQCB Clean Water Act Section 401 Water Quality Certification No. R9-2013-0126 dated May 7, 2014.

Appendix B – List of All Conditions that Apply to CDP 5-14-1604, as Amended

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-14-1604, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-14-1604-A1. Any changes, pursuant to amendment A1, from the previously approved special conditions are shown in **bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions

A. STANDARD CONDITIONS:

This permit, as amended, 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.

B. SPECIAL CONDITIONS:

This permit, as amended, is granted subject to the following standard conditions:

1. No Mechanized Equipment. No mechanized equipment shall operate below the daily high tide line.
2. Public Access. By acceptance of this permit, the applicant agrees to not place or install development anywhere on the public beach that would obstruct or impede public access in any way and/or give any impression to a member of the public that the beach area is private and not public, or create the appearance of a private beach. To minimize impacts on public access, the reconfiguration of beach sand that is authorized by this coastal development permit shall occur during non-holiday, mid-

week periods to the maximum extent feasible. The top elevation of the beach sand relocated from Area A to Area B, as identified in the final plan required pursuant to Special Condition No. 5, shall not be more than three (3) feet above the adjacent sandy beach and will mimic the natural beach contour as it slopes toward the emergency access ramp (Exhibit No. 3). The relocated beach sand will be relocated above the high tide line.

3. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
4. Duration of Approval. Unless this permit otherwise expires pursuant to Standard Condition No. 2, this coastal development permit (5-14-1604) shall expire, as follows: the subject development may occur for a one (1) year trial period from the date the applicant initiates the development in accordance with this permit approval; a second year may be authorized by the Executive Director if he determines there has been no significant adverse impact upon coastal resources, based on the information supplied pursuant to Special Condition No. 5, and any other relevant information that may become available. Following the same protocol as year 2, additional time may be authorized, on a yearly basis, up to a total of **eight (8)** years from the date the applicant initiates development in accordance with this permit approval. All such extensions will be provided in writing by the Executive Director. If the Executive Director determines that substantial adverse impacts are occurring to coastal resources an amendment or new permit shall be required to adjust the plan to avoid or reduce such impacts. Within thirty (30) days of initiating the project, the applicant shall notify the Executive Director, in writing, of the date development commenced. Except as provided in Public Resources Code Section 30610 and applicable regulations, and as specifically provided in this condition, any future development as defined in PRC section 30106, including but not limited to, maintenance activities beyond the scope of this approval and/or expiration date of this permit, shall require an amendment to 5-14-1604 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission.
5. Final Revised Monarch Beach Management Plan (MBMP) that Includes the Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol.
 - A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a Final Revised Monarch Beach Management Plan (MBMP), that is in substantial conformance with the plan dated June 2013, that includes a Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol, except that it shall be modified and be in substantial conformance with the following:
 1. To the greatest extent practicable, all "Minor" maintenance work will be conducted prior to March 1 and after August 31. To protect grunion during their peak spawning season, all "Minor" Maintenance work, to the greatest

extent possible, will be scheduled so as to avoid April and May. "Minor" maintenance work refers to work as defined in the Final Revised Monarch Beach Management Plan (MBMP), that includes a Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol;

2. Critical project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line established after the previous grunion run can be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been flushed by the previous night's high tide, and new eggs likely won't be deposited for at least 24 hours;
3. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then the high tide line on the morning after the first run of the series shall be marked and project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line shall be postponed until after the incubation period (i.e., until the day before the first date of the next predicted run, as described in 2);
4. Wrack relocation will only take place during the summer months (June 1 through September 30);
5. **Only wrack located in front of the area extending between the northernmost edge of the Monarch Bay Club building and the adjacent lawn will be relocated within the northern and southern wrack placement areas as identified in Exhibit 2.**
6. Wrack shall never be removed from the beach **or relocated on top of cobble**;
7. Each morning the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club;
8. Each morning the Monarch Bay Club Staff may collect the wrack from in front of the Monarch Bay Club without the use of mechanized equipment, measure it by volume, and relocate it to designated adjacent beach areas, immediately upcoast and downcoast of the Bay Club;
9. Collected wrack will be spread along the **mean** high tide line (**line marking the boundary between wet and dry sand**) in a natural looking manner and the height of the wrack shall not exceed **10-inches**;

10. Once a week, the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club but will leave all the wrack in front of the Monarch Bay Club in place;
 11. On those mornings when the wrack is not relocated by the Monarch Bay Club Staff, the biological monitor will monitor bird usage/foraging **in the wrack removal, buffer, and wrack deposition areas** for a period of one hour in the **early morning**. Monitoring will include the areas in front of the Bay Club, as well as **the** areas immediately upcoast and downcoast of the Bay Club;
 12. Following monitoring activities, the Monarch Bay Club Staff may then collect, measure, and relocate the wrack to the designated adjacent beach areas; and
 13. At the conclusion of the 2015 summer season, the biological monitor will prepare a report documenting the findings of the monitoring and present suggested revisions to be incorporated into the long-term management plan, if appropriate, for Executive Director approval or Coastal Commission approval if an amendment is required. If the Executive Director extends the duration of the subject permit, in accordance with the requirements of Special Condition No. 4, a monitoring report will also be submitted at the conclusion of each year that is approved; and
 14. All photo-documentation shall occur from designated points to be established in the final plan.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.
- A. The permittee shall comply with the following construction-related requirements:
1. No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;
 2. Any and all debris resulting from construction activities shall be removed from the project site within twenty-four (24) hours of completion of the project;
 3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

4. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
 5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
1. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
 2. The applicant shall develop and implement spill prevention and control measures;
 3. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm-drain, open ditch or surface water; and
 4. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
7. Storage/Staging Area for Construction and Construction Access Corridor.
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to public access, to beach areas or to sensitive habitat areas.
1. The plan shall demonstrate that:
 - a) Construction equipment shall not be staged or stored outside the staging or storage area;
 - b) Public parking areas shall not be used for staging or storage of equipment;

- c) Beach areas and habitat areas shall not be used as staging or storage areas; and
 - d) The staging and storage area for construction of the project shall not obstruct vertical or lateral access to the beach.
2. The plan shall include, at a minimum, the following components:
- a) A site plan that depicts:
 - i. Limits of the staging area(s);
 - ii. Construction corridor(s);
 - iii. Construction site; and
 - iv. Location of construction fencing and temporary job trailers, if any.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
8. Consent Cease and Desist Order Remains Fully In Effect. Nothing in this permit shall be construed as superceding or replacing the requirements of Consent Cease and Desist Order No. CCC-08-CD-01, adopted by the Commission on April 9, 2008. As the successor in interest to the responding party subject to the Consent Order, the applicant shall comply with the terms and conditions of the Consent Order, which includes but is not limited to, the prohibition on grading of the beach, construction of berms, breaching of Salt Creek or other breaching activities, and removing wrack and other organic material, except as explicitly authorized in this permit, and the requirements to install and maintain two (2) informational/educational signs which describe, through text and photographs/graphics, the importance and biological significance of beach wrack and grunion, and an agreement to stipulated penalties for non-compliance with the order.
9. Withdraw Project Approved by Local Government. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant agrees to withdraw the application for development of the subject site approved by the City of Dana Point and to abandon and extinguish all rights and/or entitlements that may exist relative to the City's approval of a project at the subject site (Local Coastal Development Permit No. 08-0013) that is the subject of Coastal Commission Appeal No. A-5-DPT-08-245.
10. Termination of Coastal Development Permit 5-10-237, as amended. By acceptance of this permit the applicant agrees to the termination and extinguishment of all rights and/or entitlements that may exist relative to any development of the subject site approved by Coastal Development Permit No. 5-10-237, as amended, following

5-14-1604-A1 (Monarch Bay Club)

commencement of the sand relocation approved by this Coastal Development Permit No. 5-14-1604.