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W14a

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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-19-0971-A1

Applicant: Dana Point Harbor Partners, LLC

Agent: Sherman L. Stacey

Location: 24650 Dana Point Harbor Dr., City of Dana Point, Orange County (APN(s): 682 021 01, 682 021 02, 682 021 03, 682 022 01, 682 022 02, 682 022 03, 682 022 04, 682 022 05, 682 022 06, 682 022 07, 682 022 08, 682 022 16, 682 022 17, 682 022 19, 682 022 22, 682 022 23, 682 022 24, 682 023 02, 682 023 03, 682 023 04, 682 023 05, 682 023 06, 682 171 03, 682 172 01, 682 172 02, 682 172 03, 682 172 04, 682 172 05, 682 172 06, 682 172 07, 682 172 08, 682 172 09, 682 172 10, 682 172 12, 682 173 01, 682 173 02)

Approved Project: Large-scale remodel of Dana Point Harbor over a period of 5 years, involving replacement of a 2,409 recreational boat slip marina with a 2,254 recreational boat slip marina, replacement of 16 commercial fishing slips, replacement of 11 yacht club slips with 13 yacht club slips in the Dana Point Yacht Club in the Inner Basin; replacement of 16 sportfishing charter slips and 1 dock-and-dine guest dock adjacent to the Catalina ferry, relocation and reconfiguration of the fuel dock and emergency dock, slight relocation of the bait dock, installation of a new drive-in boat wash

in the Outer Basin; relocation and expansion of transient guest docks to the Outer Basin; replacement of 11 existing boater service buildings with 10 boater service buildings; repair to 9,964 linear feet of seawalls/revetment; replacement of 1,644 designated boater parking spaces with 1,410 spaces, and relocation and expansion of parkscape and public access areas closer to the water

Proposed Amendment:

Modification of the approved marina layout, including (1) a reconfiguration of guest docks in the Outer Basin resulting in a reduction in overwater coverage and associated pile count; (2) modifications to the sportfishing and charter dock configuration to incorporate an ADA-compliant gangway and headwalk; (3) after-the-fact approval of conversion of previously approved 37 15-foot slips to transient side-ties within the Inner Basin resulting in an increase of approximately 45 15-foot slips and the conversion of former slip areas to public day-use docking; (4) reduction in the number of slips for vessels between 28-58 feet and an increase in the number of slips for 65 foot vessels with an overall increase in the number of slips, and an overall increase in the number of slips (5) authorization for flexible rental of 24 65-foot end ties to either one 65 foot vessel or multiple 30 to 35 foot vessels, consistent with the approved marina slip mix and average berth length requirements.

Staff Recommendation:

Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Dana Point Harbor Partners, LLC (DPHP) requests a permit amendment to modify the approved marina layout to 1) reconfigure the guest docks in the Outer Basin resulting in a reduction of overwater coverage and associated piles; 2) modify the sportfishing and charter dock configuration to incorporate an ADA-compliant gangway and headwalk; and 3) after-the-fact approval of the conversion of the previously approved 15-foot slips to transient side ties within the Inner Basin, resulting in an increase of approximately 45 15-foot slips overall, including the addition of 28 new 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall, and minor conversion of some slip areas to public day use docking. The project includes reducing the number of slips for vessels between 28-58 feet and increasing the number of slips for 65-foot vessels and overall increase the number of slips to 2,275. The proposed project is located in the Dana Point Harbor marina ([Exhibit 1](#)).

The Commission's Enforcement staff sent a Notice of Violation letter to DPHP on September 4 and October 4, 2024 notifying them that development that is noncompliant with Coastal Development Permit 5-19-0971 was occurring in the Harbor. This included the absence of required small boat slips from the current marina layout. Specifically, 37 15-foot slips in Cove East and 22 21-foot slips in Island East, none of which appeared on the slip layout maps reviewed by staff. Staff also noted that the Marina at Dana Point's website advertises slips only between 21 and 85 feet, with no mention of the required 15-foot slips, further indicating a deviation from the approved CDP plans. These discrepancies suggest that DPHP had not constructed, and may not intend to construct, the small slips required under Special Condition 1, constituting unpermitted development unless a CDP amendment is obtained. The applicant subsequently submitted the subject amendment application seeking authorization for relocation of the 37 15-foot slips to secure locations within the marina, the addition of 28 new 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall, and after-the-fact authorization for the conversion of the previously approved 15-foot slips in Cove East to free public day-use docking in high-use areas of the marina, thereby increasing public access opportunities. The application also includes related marina layout refinements identified by enforcement staff, as well as additional proposed marina dock modifications addressed with this amendment application.

The proposed amendment involves development within Dana Point Harbor, portions of which are located within the Commission's retained permit jurisdiction, including areas seaward of the mean high tide line. Although the City of Dana Point has a certified Local Coastal Program (LCP), originally certified by the California Coastal Commission on September 10, 1980, the waterside portions of the project remain within the Commission's permit jurisdiction. Pursuant to Coastal Act Section 30601.3, the underlying harbor revitalization project was approved as a consolidated coastal development permit in order to streamline review and avoid potentially inconsistent conditions of approval between the Commission and the City of Dana Point. Accordingly, the standard of review for the proposed amendment is the Chapter 3 policies of the Coastal Act. The Dana Point Harbor Revitalization Plan and District Regulations may be used as guidance where applicable.

On September 9, 2020 the Commission approved CDP No. 5-19-0971 (Dana Point Harbor Partners) for the replacement of 2,409 recreational boat slips with 2,254 recreational boat slips, replacement of 16 commercial fishing slips, replacement of 11 yacht club slips with 13 yacht club slips in the Dana Point Yacht Club in the Inner Basin; replacement of 16 sportfishing charter slips and 1 dock-and-dine guest dock adjacent to the Catalina ferry, relocation and reconfiguration of the fuel dock and emergency dock, slight relocation of the bait dock, installation of a new drive-in boat wash in the Outer Basin; relocation and expansion of transient guest docks to the Outer Basin; replacement of 11 existing boater service buildings with 10 boater service buildings; repair to 9,964 linear feet of seawalls/revetment; replacement of 1,644 designated boater parking spaces with 1,410 designated boater parking spaces, and relocation and expansion of parkscape and public access areas closer to the water.

The primary coastal resource issues associated with the underlying approval included potential impacts to marine biological resources, water quality, overwater coverage, and public access. As proposed, the amendment would reduce overwater coverage and pile counts in the Outer Basin and relocate certain slips within the Inner Basin without requiring structural expansion of development. These modifications would reduce the amount of fill of open coastal waters by reducing the numbers of piles associated with the reconfigured marina and would decrease the amount of shading to underwater coastal habitats by reducing the amount of overwater coverage, and would therefore not result in any new or increased adverse impacts to coastal resources.

The proposed amendment would also result in improved public access and recreational opportunities within the harbor. Specifically, the amendment would relocate 37 previously approved 15-foot side-tie slips from the approved Cove East side-tie areas at docks E1-E3 and E10-E12 to revised side-tie docking locations at docks W12, W13, and E26 within the Inner Basin and would add 28 additional 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall. The revised configuration ,including the addition of 28 new 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall, would result in 82 total 15-foot side-tie slips under the amended marina layout and would allow portions of the former side-tie areas to be converted to free public day-use docking in high-use areas of the harbor, thereby increasing public access opportunities, while also increasing the number of 15-foot slips when compared with the previously approved marina. In addition, the incorporation of ADA-compliant gangways and headwalks would enhance accessibility to the sportfishing and charter docks, further supporting Coastal Act policies related to maximizing public access and recreation. The project would reduce the number of slips available for vessels 28- 58 feet but increase the number of slips available for both 15 foot and 65-foot vessels. Overall, there will be an increase in the total number of slips, and allowing for flexible use of the larger end-ties for smaller vessels could further increase the number of available slips, which is consistent with the requirements of the LCP and the Coastal Act's focus on increasing recreational boating uses.

Revisions to **Special Condition 28** require the applicant to submit final revised plans and **Special Condition 29** requires as-built plans, including a tabulation of slip sizes, to the Executive Director for review and written approval to demonstrate that the completed marina section has been built in strict conformance with the approved final plans.

Therefore, staff recommends that the Commission **APPROVE** the CDP amendment. All of the special conditions applied to the marina pursuant to Coastal Development Permit 5-19-0971 remain in effect and apply equally to this amendment to ensure consistency with the Chapter 3 policies of the Coastal Act include: **1)** permit compliance; **2)** invasive algae pre-construction survey; **3)** pre-and post-construction eelgrass survey (s); **4)**

construction and pile-driving noise level and turbidity restrictions; **5)** project lighting; **6)** additional biological surveys; **7)** tree trimming or tree removal; and **8)** acoustic monitoring plan; **9)** marine wildlife protection plan; **10)** construction pollution plan; **11)** best management practices for installation and removal of piles; **12)** materials to construct or repair overwater and in-water structures **13)** best management practices for use of treated wood in overwater and in-water structures; **14)** treatment of stormwater runoff; **15)** marina water quality management plan; **16)** marina inspection and maintenance program; **17)** public access to and along the waterway; **18)** parking; **19)** transition process for displaced boats during and after dock reconstruction; **20)** dry boat storage requirements during construction; **21)** repair and removal of the development; **22)** resource agencies; **23)** assumption of risk, waiver of liability, and indemnity agreement applicable to the applicant-lessee; **24)** public rights; **25)** final design plans for signage; **26)** education and sailing program for underserved youth; **27)** marine debris reduction program; and **28)** final plans. The CDP was issued on February 23, 2021. The amendment modifies **Special Condition 28** to specific revisions to the final plans. A new **Special Condition 29** requires the applicant to provide as built plans after completion of construction. The motion to carry out the staff recommendation is on page 8 of this report.

PROCEDURAL NOTE

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

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

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

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects the conditions required for the purposes of protecting coastal resources or coastal access.

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EXHIBITS

Exhibit 1 – Vicinity Map and Project Site

Exhibit 2 – Project Plans

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment No. 5-19-0971-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 the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit Amendment 5-19-0971-A1 for the proposed development and adopts the findings set forth below on the grounds that the development as conditioned 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 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. CHANGES TO STANDARD AND SPECIAL 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 this Amendment 5-19-0971-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 action 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 5-19-0971-A1 are shown in the following section. Language to be added is shown in bold/underlined format. Language to be removed is shown in strikethrough.

1. Modify Standard Condition 1 as follows:

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.
Any amendment to this permit is not valid and development authorized under such an amendment shall not commence until a copy of the amendment permit, signed by the applicant or authorized agent, acknowledging the receipt of the amended permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Modify Special Condition 28 (Final Plans) as follows:

28. Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT **AMENDMENT**, the applicant shall submit two sets of final project plans to the Executive Director for review and written approval. The final plans shall be in substantial conformance with the preliminary plans **and proposal** submitted **on May 26, 2026**, with this application, except as they are required to be modified by the special conditions of this coastal development permit. **The plans shall be revised as follows:**

1. Include the updated slip mix table (received 5/27/26) on the final site plan sheet.

2. Include the total number of guest slips on the final site plan sheet (both in a table and called out on the plans). In no event shall there be less than 43 guest slips.

3. Identify which 24 end ties could be used for either 65 foot vessels or smaller vessels.

4. The plans shall label each slip with a slip size which conforms to the slip mix table in this staff report. Multiple plan sheets may be necessary.

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

4.. Add new Special Condition 29 (As Built Plans) as follows:

29. As Built Plans. Within 30 days of the completion of construction of each discrete section of the marina including, but not limited to, Island East, Cove East, guest slip dock, and any other phased components, the permittee shall submit as-built plans, including a tabulation of slip sizes (i.e. a slip mix chart with number of slips per slip length), that identify the length of each slip, including, but not limited to, all guest slips, side-ties, and end-ties, to the Executive Director for review and written approval to demonstrate that the completed marina section has been built in strict conformance with the approved final plans. If the Executive Director determines that the plans do not conform to the approved project, an amendment may be required.

III. FINDINGS AND DECLARATIONS

A. Project Location and Description

The project site is located within Dana Point Harbor in the City of Dana Point, Orange County ([Exhibit 1](#)). The proposed amendment area includes portions of the Inner Basin and Outer Basin marina facilities previously approved pursuant to Coastal Development Permit (CDP) No. 5-19-0971. Dana Point Harbor is a regional recreational and visitor-serving harbor consisting of marina slips, sportfishing and charter facilities, guest docks, boater-serving facilities, commercial uses, public accessways, parking areas, and recreational amenities. The harbor is located partially within the Commission's retained permit jurisdiction and partially within the City of Dana Point's jurisdiction. The City of Dana Point has a certified Local Coastal Program (LCP), including the Dana Point Harbor Revitalization Plan and District Regulations, which provides guidance for development within the harbor area.

The surrounding area is fully developed with coastal-dependent and visitor-serving recreational uses associated with Dana Point Harbor. To the north and east of the project area are marina facilities, boater-serving uses, parking areas, and commercial development. To the south and west are additional harbor waters, marina uses, and the harbor entrance to the Pacific Ocean. Public access is provided throughout the harbor via public promenades, docks, parking areas, sidewalks, and recreational facilities.

The County of Orange is the owner in trust of the tidelands and submerged land areas of the harbor. In 2018, the County entered a 66-year lease with the applicant of this coastal development permit, Dana Point Harbor Partners, LLC (DPHP), for the rental of a substantial portion of the harbor, which expires in 2084. The project area is within the portions of DPHP's lease. The proposed project area ([Exhibit 1](#)) includes portion of the Inner Basin marina facilities within Planning Areas 8, 9, and 10 the Outer Basin marina facilities within Planning Area 11, and associated landside areas serving the marina improvements (Planning Areas 2, 3, 4 and 5).

Prior Permit History

On September 9, 2020, the Commission approved Coastal Development Permit No. 5-19-0971 (Dana Point Harbor Partners, LLC) for a large-scale revitalization and reconfiguration of Dana Point Harbor, including replacement and reconfiguration of marina slips and docks, relocation and expansion of transient guest docks to the Outer Basin, replacement of sportfishing and charter slips, relocation and reconfiguration of the fuel dock and emergency dock, slight relocation of the bait dock, installation of a drive-in boat wash, replacement of boater service buildings, seawall and revetment repairs, reconfiguration of parking areas, and expansion of parkscape and public access areas over a multi-year phased construction period.

The Commission approved the permit subject to 28 special conditions addressing marine biological resources, water quality protection, construction best management

practices, marina operations, public access and recreation, parking, marina maintenance, slip transition requirements, lighting, marine mammal protection, signage, and final project plans. The permit was subsequently issued on February 23, 2021.

Compliance and Enforcement Coordination

During the applicant's implementation of the underlying permit, Commission enforcement staff reviewed certain marina slip layout configurations for consistency with the approved plans associated with CDP No. 5-19-0971, including issues related to 15-foot slips, side-tie configurations, and end ties, and informed the applicant of apparent inconsistencies with the approved plans. Following coordination with the applicant to submit information related to the marina construction and review of revised plans and supporting materials, staff informed the applicant that revised slip configurations and related dock layout refinements should be processed through the coastal development permit amendment process.

Accordingly, the applicant submitted the subject amendment application to authorize the proposed revisions to previously approved marina dock configurations.

Project Description

The applicant is now proposing to amend CDP No. 5-19-0971 to authorize revisions to previously approved marina dock layouts within the Inner and Outer Basins. Specifically, the amendment would: (1) reconfigure transient guest docks in the Outer Basin, resulting in reduced overwater coverage and reduced pile counts while continuing to meet the certified LCP requirement to maintain a minimum of 42 guest slips; (2) modify the sportfishing and charter dock configuration to incorporate ADA-compliant gangways and headwalks; and (3) relocate previously approved 15-foot side-tie slips within the Inner Basin, resulting in additional public day-use docking opportunities, (4) reduction in the number of slips for vessels between 28-58 feet and an increase in the number of slips for 65 foot vessels with an overall increase in the number of slips, and an overall increase in the number of slips and (5) authorization for flexible operational use of certain marina end ties, which may accommodate either separate smaller vessels (30 to 35 feet) or a single larger vessel (65 feet) , consistent with the approved marina slip mix and average berth length requirements ([Exhibit 2](#)). The amendment would also relocate certain previously approved 15-foot side-ties slips within the marina, including relocations of side-tie slips associated with revised public access docks layouts in Cove East. The proposed amendment would not alter the overall use, intensity, or purpose of the previously approved harbor revitalization project.

Dock Slip Reconfiguration

The proposed amendment includes reconfiguration and relocation of previously approved 15-foot side-tie slips within the Inner Basin marina facilities. Under the approved plans for CDP No. 5-19-0971, 20 15-foot side-tie slips were approved along the floating walkway serving docks E10–E12 and 45 15-foot side-tie slips were

approved along the floating walkway serving docks E1–E3, for a total of 37 such slips. The proposed amendment would relocate 37 previously approved 15-foot side-tie slips from the approved Cove East side-tie areas at docks E1-E3 and E10-E12 to revised side-tie docking locations at docks W12, W13, and E26 within the Inner Basin and would add 28 additional 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall. The additional slips would be accommodated within existing marina facilities and would not require new structural development, new piles, or expansion of overwater coverage. As reflected in the revised slip mix chart, the proposed amendment would modify the distribution of slip sizes throughout the marina while maintaining the overall average berth length of 32 feet consistent with the approved CDP. Compared to the slip mix approved under CDP No. 5-19-0971, the amended slip mix would increase the number of 15-foot slips from 37 to 82 slips and increase the number of 65-foot slips from 23 to 45 slips through revised operational assumptions associated with certain end ties. The amended slip mix would also decrease the number of 35-foot slips from 248 to 239. Reductions would occur in several other berth categories, including reductions in 20-foot slips from 9 to 7 slips, 28-foot slips from 146 to 144, 30-foot slips from 476 to 458 slips, 40-foot slips from 138 to 134 slips, 42-foot slips from 27-26 slips, 45-foot slips from 141 to 136 slips, 50-foot slips from 45 to 43 slips, 56-foot slips from 21 to 20, and 58-foot slips from 51 to 49 slips. Slip categories for 21-foot, 24-foot, 25-foot, 26-foot, 31-foot, 32-foot, 33-foot, 34-foot, 36-foot, 38-foot, 41-foot, 44-foot, 48-foot, 55-foot, and 60-foot vessels would remain unchanged. Overall, the revised slip mix would increase the total number of marina slips from 2,254 slips approved under CDP No. 5-19-0971 to 2,275 slips under the proposed amendment (See Table 1, below). According to the applicant, the relocation is proposed to provide improved security for the small vessel slips because the revised locations would be situated within gated marina areas. In addition, the relocation would allow portions of the former side-tie areas within Cove East to be converted to free public day-use docking in high-use commercial areas of the harbor, thereby increasing public access opportunities while maintaining and expanding small-vessel boating opportunities that support continued public and visitor access to lower-cost recreational boating facilities within the harbor. The revised slip mix chart also reflects operational flexibility for certain end ties. Specifically, certain end ties may be leased either as two separate slips (for 30-to-35-foot vessels) or as a single 65-foot berth depending on vessel demand and marina operational needs. Based on the revised slip mix calculations submitted by the applicant, up to 24 end ties may function as 65-foot slips under maximum occupancy reflected in the amended slip mix chart. The proposed slip mix chart has been revised accordingly to count end ties as one 65-foot slip instead of multiple shorter slips. If all 24 end ties are double rented to multiple 30 or 35 foot or smaller vessels, the potential number of slips could further increase from 2,275 to 2,299.

The proposed amended recreational boat slip distributions are as follows:

5-19-0971-A1 (Dana Point Harbor Partners)

	Amended Slip Mix Chart						
Boat Slip Length (Feet)	West Cove	West Island	East Cove	East Island		Total	Ln Ft
15	16	47	0	19		82	1,230
20	7	2	0	0		9	180
21	17	8	0	22		47	987
24	10	0	0	5		15	360
25	267	106	0	326		699	17,475
26	22	9	0	20		51	1,326
28	94	0	0	50		144	4,032
30	187	88	1	182		458	13,740
31	0	5	0	13		18	558
32	0	0	0	8		8	256
33	0	1	0	1		2	66
34	0	0	0	2		2	68
35	0	106	33	100		239	8,365
36	0	0	4	0		4	144
38	0	0	1	0		1	38
40	0	0	134	0		134	5,360
41	0	1	2	0		3	123
42	0	0	26	0		26	1,092
44	0	0	1	8		9	396
45	0	17	103	16		136	6,120
48	0	0	23	0		23	1,104
50	0	43	0	0		43	2,150
55	0	0	0	0		0	0
56	0	20	0	0		20	1,120
58	0	0	49	0		49	2,842
60	0	0	0	8		8	480
65	4	5	29	7		45	2,925
	624	458	406	787		2275	72,537
							32

Table 1- Revised Slip Mix Chart

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 states:

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

Section 30213 of the Coastal Act states:

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

Section 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30224 states:

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

The Certified Dana Point Harbor Revitalization Plan and District Regulations, which is used as guidance for determining consistency with the Coastal Act, includes

recreational boating policies that mirror the recreational boating policies of the Coastal Act and provide additional protective policies to ensure the protection of harbor support facilities. The certified LCP policies related to public access, recreational boating and the protection of harbor support facilities state:

4.2.2-1 Provide a variety of berthing opportunities reflecting state and regional demand for slip size throughout Dana Point Harbor.

4.2.2-5 Protect and where feasible expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest slips, club guest slips, pump-out stations and other facilities. A minimum of 42 guest slips shall be maintained in the Harbor.

4.2.2-6 Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips harbor-wide. However, if conformance with current engineering and Americans with Disabilities Act (ADA) design requirements and/or the provision of larger slips to meet demands requires a reduction in the quantity of slips in existing berthing areas, those slips should be replaced if feasible in new berthing areas elsewhere in the Harbor (e.g., within a portion of the 'safe harbor' area near the east breakwater). Priority shall be given to provision of slips that accommodate boats less than 25 feet in length. The average slip length shall not exceed 32 feet. If new berthing areas are not available or are limited in size, the net loss of slips harbor-wide shall be minimized and shall not exceed 155 slips.

4.2.2-10 Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:

- ...
 - Maintain space for at least 493 boats to be stored on dry land in Planning Area 1; 400 of these spaces may be provided in a dry stack storage facility. Maintain a minimum of 93 surface boat storage spaces that can accommodate vessels that can not be stored in a dry stack storage building within the Harbor at all times; additional spaces shall be provided where feasible;
- ...
 - Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

4.3.1-1 Protect public coastal access recreational opportunities through the provision of adequate support facilities and services.

4.4.1-5 Public access parking shall not be reduced as a result of new development.

6.1.1-3 Preserve, maintain and enhance existing public accessways and existing areas open to the public. Create new public access opportunities where feasible. (Coastal Act Sections 30210, 30212)

6.1.1-4 Existing, new or improved public access shall be well posted. A comprehensive signage plan shall be implemented in conjunction with new development to inform the public of the availability of and provide direction to coastal accessways, on-site recreational amenities and public parking areas. The County shall coordinate an access signing system to facilitate regional access from Interstate 5 and Pacific Coast Highway.

6.2.1-2 The City of Dana Point and OC Dana Point Harbor shall cooperate to the maximum extent feasible to provide a convenient shuttle service to link Dana Point Harbor with the Town Center and reduce energy consumption and vehicle miles traveled wherever feasible. (Coastal Act Sections 30252, 30253)

6.2.1-5 Bike racks shall be incorporated into the design of the Harbor wherever feasible.

6.2.2-4 Ensure accessibility of public transportation for elderly and disabled persons.

6.2.3-10 Maximize public access to and along the waterfront and bulkhead. As a goal, maintain and where necessary establish continuous, uninterrupted public access along the waterfront and bulkhead, except along those segments of the bulkhead in the Marine Service Commercial area where provision of such access would interfere with boat launch and repair operations (in which case connecting detours shall be provided around those areas). Remove existing obstructions to public access along the waterfront and bulkhead and establish new public accessways through those areas.

6.2.3-11 Pedestrian walkways and trails shall provide connection points to off-site, existing or proposed walkways/trails, including integration with the California Coastal Trail.

6.2.4-1 All parking facilities shall be designed to include safe and secure parking for bicycles.

6.3.1-1 Encourage the provision of a range of recreational facilities and programs to meet the needs of Harbor visitors.

6.3.1-6 Maintain, enhance and where feasible, expand places to hand launch small nonmotorized watercraft and provide necessary parking, as well as opportunities to rent and store such watercraft. Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.

Dana Point Harbor provides a wide range of coastal-dependent and visitor-serving recreational opportunities, including recreational boating, guest docking, sportfishing and charter operations, public promenades, parkscape areas, and public access

facilities. As approved under CDP No. 5-19-0971, the harbor revitalization project included substantial improvements intended to maintain and enhance public access and recreational opportunities within the harbor.

The proposed amendment would modify certain previously approved marina dock configurations within the Inner and Outer Basins but would not reduce the overall recreational boating capacity or visitor-serving function of the harbor. Although the amendment would reduce the footprint of the approved transient guest docks in the Outer Basin, the project would continue to meet the Dana Point Harbor LCP requirement to maintain a minimum of 42 guest slips. The LCP requires approximately 1,495 linear feet of guest dock facilities. While the previously approved project included approximately 2,321 linear feet of guest docks, the revised configuration would provide approximately 1,788 linear feet of guest docks, which would continue to exceed the minimum guest dock requirement while improving marina navigation and circulation. The original staff report for CDP No. 5-19-0971 described the guest dock program as accommodating approximately 43 to 72 boats depending on vessel size, reflecting flexibility in how guest docking capacity is achieved. Accordingly, the proposed reduction in dock area does not alter the project's consistency with the public access and recreational objectives of the underlying approval. Although portions of the previously approved guest dock area would be reduced, the revised side-tie and public access dock configuration would continue to provide short-term and visitor-serving boating opportunities within the harbor.

The applicant also submitted an updated slip mix table reflecting revised dock configurations associated with the proposed amendment. Revised plans specifically note that end ties may be rented flexibly depending on operational demand and vessel size, and that individual end ties may accommodate either separate vessels or a single larger vessel. In addition, the revised plans relocate certain previously approved 15-foot side-tie berths associated with revised public access dock layouts in Cove East. The revised slip mix chart demonstrates that the amended marina configuration would continue to maintain the LCP requirement that the average slip length not exceed 32 feet.

Specifically, the amendment would relocate 37 previously approved 15-foot side-tie slips from the approved Cove East side-tie areas at docks E1-E3 and E10-E12 to revised side-tie docking locations at docks W12, W13, and E26 within the Inner Basin and would add 28 additional 15-foot slips along the Phase 8 West Island side tie adjacent to the seawall, resulting in a total of 82 15-foot side-tie slips under the amended marina layout. The amendment would also incorporate ADA-compliant gangways and headwalks serving the sportfishing and charter docks, thereby improving accessibility to visitor-serving recreational facilities.

Overall, the proposed amendment would maintain the harbor's approved recreational boating program while reducing overwater development and improving public accessibility. The revised slip mix would increase the total number of marina slips from 2,254 slips approved under CDP No. 5-19-0971 to 2,275 slips under the proposed amendment, including an increase in 15-foot

slips intended to expand lower-cost and small-vessel boating opportunities within the harbor. The amendment would also improve public access opportunities through the conversion of certain former slip areas to free public day-use docking in high-use areas of the harbor and through incorporation of ADA-compliant gangways and headwalks serving the sportsfishing and charter docks. In addition, the revised marina configuration would continue to maintain guest docking opportunities and operational flexibility necessary to support recreational boating demand within Dana Point Harbor while maintaining consistency with Dana Point LCP requirements related to average berth length and boating access. Accordingly, the Commission finds that the proposed amendment protects and enhances public access opportunities consistent with Coastal Act Sections 30210 and 30211; prioritizes lower-cost visitor and recreational boating opportunities consistent with Section 30213; protects and enhances water-oriented recreational activities consistent with Sections 30220 and 30221; and provides for priority coastal-dependent recreational boating facilities consistent with Section 30224. Therefore, the Commission finds that the proposed amendment remains consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, including Sections 30210, 30211, 30213, 30220, 30221, 30221, and 30224.

C. Marine and Coastal Resources

Section 30230 of the Coastal Act States:

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

Section 30233 of the Coastal Act States:

- (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:

...

- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities

...

- (b) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

The Coastal Act defines fill as follows:

Section 30108.2 "Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

The proposed amendment involves revisions to previously approved marina dock layouts within the Inner and Outer Basins of Dana Point Harbor, including reconfiguration of transient guest docks, modifications to sportfishing and charter dock facilities, and relocation of certain side-tie slips. Marine and coastal resource issues associated with the underlying CDP included potential impacts related to overwater coverage, pile installation, shading of marine habitat, water quality, and construction-related impacts to marine biological resources. These issues were extensively analyzed in the Commission's approval of CDP No. 5-19-0971 and addressed through numerous special conditions related to marine biological resources, pile installation and removal methods, water quality protection, eelgrass surveys, acoustic monitoring, marina management practices, and final project plans.

The proposed amendment would not result in any new or substantially different marine resource impacts beyond those previously analyzed and approved under the underlying permit. Rather, the amendment would reduce overall overwater development and associated in-water structures within the harbor. Specifically, the amendment would reduce the square footage of transient guest docks in the Outer Basin from approximately 34,000 sq. ft. to 26,278 sq. ft. and reduce associated pile counts for the Guest and Fuel Dock and Sportfishing/Charter Dock facilities from 126 piles to 59 piles overall, resulting in a reduction in pile impact area from approximately 262 sq. ft. to 122 sq. ft. Although the amendment includes approximately 1,498 sq. ft. of water coverage associated with ADA-compliant gangways and headwalks serving the sportfishing and charter docks, the project would result in a net reduction in overwater coverage and pile counts overall compared to the previously approved project. The amendment would also not require dredging or expansion of marina use beyond what was previously approved.

In addition, the relocation of 15-foot side-tie slips within the Inner Basin and addition of 28 new 15-foot slips along the Phase 8 West Island side tie would occur within existing marina facilities and would not require structural expansion or new impacts to marine habitat. According to the applicant, the revised side-tie configuration would improve security for the relocated slips while increasing public access opportunities with Cove East. The proposed modifications are therefore limited to refinements of the previously approved marina configuration and would either maintain or reduce previously analyzed impacts to marine and coastal resources.

Because the amendment would reduce overall overwater coverage and pile counts, would not introduce new impact types, and would remain subject to the existing special conditions imposed under CDP No. 5-19-0971, the Commission finds that the proposed amendment remains consistent with the marine resource protection policies of Chapter 3 of the Coastal Act, including Sections 30230 and 30233.

D. Water Quality

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 30232 of the Coastal Act states:

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

The proposed amendment includes revisions to previously approved marina dock configurations within Dana Point Harbor but would not result in any new or increased adverse impacts to water quality beyond those previously analyzed and approved under CDP No. 5-19-0971. Water quality issues associated with the underlying permit included potential impacts related to pile installation, construction activities, marina operations, vessel use, and stormwater runoff. These issues were extensively addressed through special conditions requiring construction best management practices, a final Construction Pollution Prevention Plan, marina water quality management measures, stormwater treatment requirements, Marine Debris Reduction Program, pile installation restrictions, and construction pollution control measures. Although limited and temporary turbidity may occur during pile removal and related in-water construction activities, such impacts would be short-term, localized, and controlled through the previously approved construction best management practices, turbidity restrictions, and water quality protection measures required under CDP No. 5-19-0971.

The proposed amendment would reduce overall overwater coverage, and associated pile counts within the harbor and would not increase marina intensity or vessel capacity beyond what was previously approved. In addition, the amendment would not require dredging or introduce new sources of pollutants or runoff. The proposed relocation of side-tie slips would occur within existing marina facilities and would not involve substantial new structural development. The proposed amendment would not modify the previously approved construction methods, marina management practices, stormwater treatment measures, or water quality best management practices (BMPs) required under CDP No. 5-19-0971. All previously imposed special conditions related to construction BMPs, the approved Construction Pollution Prevention Plan, marina water

quality management, stormwater runoff treatment, construction pollution control, Marine Debris Reduction Program, and pile installation and removal practices would remain in effect and continue to apply to the amended project.

Because the proposed amendment would not result in new or increased water quality impacts and remains subject to the existing water quality protection measures and special conditions imposed under CDP No. 5-19-0971, the Commission finds that the proposed amendment remains consistent with Section 30231 and 30232 of the Coastal Act.

E. Local Coastal Program

The City of Dana Point has a certified Local Coastal Program (LCP), including the Dana Point Harbor Revitalization Plan and District Regulations, which govern development within the harbor area. As discussed above, portions of Dana Point Harbor remain within the Commission's retained permit jurisdiction. The underlying Dana Point Harbor revitalization project approved pursuant to CDP No. 5-19-0971 was reviewed for consistency with both the Chapter 3 policies of the Coastal Act and the applicable provisions of the certified Dana Point Harbor LCP.

The proposed amendment would revise certain previously approved marina dock layouts within the Inner and Outer Basins but would not alter the overall use, intensity, or visitor-serving recreational function of the harbor. The amendment would reduce overall overwater coverage and pile counts, maintain the required minimum number of guest slips established under the Dana Point Harbor LCP, improve ADA accessibility to the sportfishing and charter docks, and increase public day-use docking opportunities within the harbor. In addition, the amendment would not alter the approved harbor revitalization program, boating capacity framework, or public access system previously determined to be consistent with the certified LCP.

Accordingly, the Commission finds that the proposed amendment remains consistent with the applicable policies and standards of the certified Dana Point Harbor Local Coastal Program.

F. Unpermitted Development

During construction associated with implementation of CDP No. 5-19-0971, Commission enforcement staff became aware of certain changes to previously approved marina slip configurations, including conversion of 37 15-foot slips in the "Cove East" section of the marina to side-tie transient docking configurations and other minor slip layout modifications that differed from the approved plans. By letters dated September 4, and October 4, 2024, Commission staff described the unpermitted changes to the approved marina slip configurations and notified the applicant that a coastal development permit amendment would be required to authorize the revised slip configurations and associated dock layout changes.

The applicant subsequently submitted the subject amendment application seeking authorization for relocation of the 37 15-foot slips, noted above, to secure locations

within the marina and after-the-fact authorization for conversion of the previously approved 15-foot slips in Cove East to free public day-use docking in high-use areas of the marina, thereby increasing public access opportunities. The application also included related marina layout refinements identified by enforcement staff, as well as additional proposed marina dock modifications discussed herein. As described above, the proposed amendment would maintain consistency with the public access, recreational boating, marine resource, and water quality policies of Chapter 3 of the Coastal Act and applicable policies of the Dana Point Harbor LCP.

Notwithstanding the above, the Commission's consideration of this amendment application has been based solely on the consistency of the proposed development with the applicable policies of Chapter 3 of the Coastal Act and the certified Dana Point Harbor LCP. Commission review and action on this amendment application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein. Approval of the amendment, if implemented in accordance with the approved plans and conditions, would resolve the unpermitted slip configuration changes described above going forward.

G. CEQA

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The Commission's approval of CDP No. 5-19-0971 included extensive analysis of potential environmental impacts associated with the Dana Point Harbor revitalization project, including impacts to marine biological resources, water quality, public access, recreation, and marina operations.

The proposed amendment would revise certain previously approved marina dock layouts but would not increase the overall intensity or scope of development previously analyzed and approved under the underlying permit. Rather, the amendment would reduce overall overwater coverage and pile counts, would not require dredging, and would remain subject to the existing special conditions imposed under CDP No. 5-19-0971 addressing marine resources, water quality, construction best management practices, and public access. As discussed above, the proposed amendment would not result in any new or substantially more severe significant environmental impacts beyond those previously analyzed.

Therefore, the Commission finds that there are no additional feasible mitigation measures or alternatives available that would substantially lessen any significant adverse environmental effects that the proposed amendment may have on the environment. Accordingly, the Commission finds that the proposed amendment is consistent with CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application Number 5-19-0971 and associated file documents

APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP AMENDMENT NO. 5-19-0971-A1

Note: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-19-0971, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-19-0971-A1. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

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. Any amendment to this permit is not valid and development authorized under such an amendment shall not commence until a copy of the amendment permit, signed by the applicant or authorized agent, acknowledging the receipt of the amended 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions

1. Permit Compliance. Coastal Development Permit 5-19-0971-A1 permits only the development expressly described and conditioned herein. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an

amendment to this coastal development permit is required pursuant to the requirements of the certified LCP, the Coastal Act and the California Code of Regulations. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

2. Invasive Algae Pre-Construction Survey.

- A. By acceptance of this permit, the applicant agrees that no earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of invasive algae, including *Undaria Pinnatifida* and *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Undaria Pinnatifida* and *Caulerpa Taxifolia* surveys expires, a new survey is required prior to commencement of work in that area.
- B. The survey protocols shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval by the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through Loni Adams, California Department of Fish & Wildlife (858/627-3985) or Bryant Chesney, National Marine Fisheries Service (562/980 4037), or their successors.
- D. If *Undaria Pinnatifida* and/or *Caulerpa Taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Undaria Pinnatifida* and/or *Caulerpa Taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Undaria Pinnatifida* and/or *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Pre-and Post-Construction Eelgrass Survey(s)

- A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area that would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is required.
- B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (see <https://www.fisheries.noaa.gov/west-coast/habitat-conservation/seagrass-west-coast>) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, if suitable habitat is available, or at another pre-approved location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

4. Construction and Pile-Driving Noise Level and Turbidity Restrictions. BY ACCEPTANCE OF THIS PERMIT, the applicant agrees to retain the services of a qualified independent biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director, to conduct a biological survey of the trees within 500 feet of project site prior to (within seven days of) the commencement or

re-commencement of demolition and construction activities, and once a week upon commencement or re-commencement of demolition and construction activities that include use of heavy equipment that can cause excessive noise, odors, or vibrations (e.g., pile driving). The environmental resource specialist shall be directed to conduct the survey in order to determine the presence of the California gnatcatcher, black-crowned night herons, great blue herons, snowy egrets, raptor species, or any other sensitive species within 500 feet of the work site and immediately report the findings of the survey to the permittee and the Executive Director of the Coastal Commission. In the event that the environmental specialist reports any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species listed pursuant to the federal or California Endangered Species Act, or any California bird species of special concern that exhibit reproductive or nesting behavior within 500 feet of the work site, the following restrictions shall apply:

- A. Construction noise reduction measures such as sound shields made from plywood or sound-board or molded sound shields shall be used and measures shall be taken to minimize noise generation to the maximum feasible extent during construction.
- B. Construction employees shall not bring pets (e.g., dogs and cats) to the construction site.
- C. If an active nest of any bird species listed pursuant to the federal or California Endangered Species Act, California bird species of special concern or a wading bird (herons or egrets), or raptors are found, construction activities within 300 feet (500 feet for raptors) shall not exceed noise levels of 65 dB peak until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting, unless ambient noise in the absence of construction-related activities is found to exceed 65 dB, in which case a threshold should be set at no more than ambient sound levels plus 5 dB. Surveys for the above bird species during their breeding season shall be conducted by a qualified biologist prior to commencement or re-commencement of construction.
- D. If construction noise exceeds 65 dB, then alternative methods of pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to, sound shielding, use of wood blocks to mute sound, and noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. If these sound mitigation measures do not reduce noise levels, construction within 500 feet of the nesting trees shall cease and shall not recommence until either new sound mitigation can be employed or young of the year have fledged.
- E. The applicant shall use the least damaging alternative methods for the construction of pilings and any other activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

5. **Project Lighting.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Lighting Plan which specifies that
- A. All permanent lighting associated with the harbor and the parking complex shall be shielded and directed downward. No light shall be directed onto the water. Bright upward shining lights shall not be used during construction.
 - B. Specifications for all lighting, including those used for the operation of construction equipment, if performed at night, shall be included, with light temperatures maintained at 2,700 Kelvin (in no case shall exceed 3,000 Kelvin) and a foot candle value of no higher than 0.01 fc (lm.ft-2) incident along the property edge.
 - C. Wherever possible, the applicant shall use cover material composed of dark, non-reflective material demonstrated to minimize the contribution to sky glow
 - D. All existing parking lot lighting shall be redesigned to include a motion detector system that dims the parking lot lighting to 10% of standard light output during times the lighting is not actively in use.
 - E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.
6. **Additional Biological Surveys –** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, the following biological surveys:
- A. Bird Surveys to be conducted by a qualified biologist.
 - i. Inclusive of bird survey results for the gnatcatcher and its habitat within 500 feet of the proposed project area.
 - B. Ocean Floor Resource Surveys to be conducted by a qualified marine biologist specialist.
 - i. Pre- and post-construction surveys of sea floor resources encompassing all areas within the breakwater shall be mapped and evaluated for resident species by an appropriate marine biological specialist. Surveys should be sufficiently comprehensive as to identify all macrofaunal and macrofloral communities and substrate present, and to establish a pre-construction baseline that may be used to assess whether detectable changes occurred in post-construction benthic habitat associated with the harbor revitalization project.
- Benthic surveys should follow accepted protocols for characterizing the benthic environment, and should produce, at a minimum, documentation of the diversity of benthic resources present, a list of all species encountered, including fish species, at a scale appropriate for a comprehensive assessment of project impacts, if any.

In anticipation that impacts to benthic habitats may result, the applicant must identify locations where mitigation of benthic impacts will occur at a ratio of 1.5:1, or greater, with the exception of eelgrass (see **Special Condition 3**)

Benthic surveys shall be repeated a month after the onset of construction activities with a significant chance of imparting harm to benthic habitats, (e.g. pile or dock removal) to ascertain that appropriate BMPs and impact minimization measures have not led to significant impacts. This second survey may follow rapid assessment methods and need not catalogue physical and biological resources. However, it must be sufficiently comprehensive as to determine that no, or only very minor, impacts to benthic resources have resulted, and to instigate a revision of protective measures if significant impacts are detected. A report documenting such shall be submitted to the Executive Director upon completion, as a condition for resumption of potentially impactful activities.

Comprehensive post-construction benthic surveys, using the same pre-construction protocol must be conducted immediately following project completion, and final reports submitted to the Executive Director.

7. Tree Trimming or Tree Removal.

Tree trimming or tree removal when necessary, either during the project development phase and/or for the life of the proposed development, shall be conducted only during the non-breeding and non-nesting season (October through December) of the bird species listed pursuant to the Fish and Game Code, the Migratory Bird Treaty Act, Federal or California Endangered Species Acts, California bird species of special concern and wading birds as well as raptors which have an especially valuable role in the overall coastal ecosystem, unless the County of Orange in consultation with a qualified arborist and with review and comment from the Audubon Society determines that a tree causes danger to public health and safety. A health and safety danger shall be considered to exist if a qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The applicant shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season. If tree trimming or removal activities cannot feasibly avoid the breeding and nesting season because a health and safety danger exists, the following guidelines shall be followed:

A qualified biologist or ornithologist shall conduct surveys and submit a report at least one (1) week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/or removal plan shall be prepared by an arborist in consultation with the qualified biologist or

ornithologist. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the County of Orange, the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The applicant shall maintain the plans on file as public information and to be used for future tree trimming and removal decisions. The plan shall incorporate the following information:

A description of how work will occur.

Work must be performed using non-mechanized hand tools to the maximum extent feasible.

Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.

Steps shall be taken to ensure that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding and nesting birds and their habitat.

Prior to commencement of tree trimming and/or removal, the applicant shall notify in writing the Executive Director of the Coastal Commission, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.

All tree trimming and tree removal shall be conducted in strict compliance with these provisions. All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location. Any proposed change or deviation from these requirements must be submitted to the Executive Director of the California Coastal Commission to determine whether an amendment to this coastal development permit is required.

Prior to conducting regular tree maintenance activities during the non-breeding and non-nesting season, a qualified biologist or ornithologist shall conduct a survey of the trees to be trimmed or removed to detect nests of bird species identified by these provisions to identify specific trees with nests and submit the survey report(s) to the Executive Director and the County of Orange. The applicant shall maintain a database of survey reports that includes a record of nesting trees that is available as public information and to be used for future tree trimming and removal decisions. Tree trimming and/or removal, if necessary may proceed if a nest is present but no courtship or nesting behavior or evidence of that behavior is observed.

Any trimming of trees during the non-breeding and non-nesting season containing a nest(s) of the species contained in these provisions shall be supervised by a qualified biologist or ornithologist and a qualified arborist to ensure that adequate nest support and foliage coverage is maintained in the tree, to the maximum extent feasible, in order to preserve the nesting habitat. Trimming of any nesting trees shall occur in such a way that the support structure of existing nests will not be trimmed and existing nests will be

preserved, unless the County of Orange, in consultation with a qualified arborist, determines that such trimming is necessary to protect the health and safety of the public. The amount of trimming at any one time shall be limited to preserve the suitability of the nesting tree for breeding and/or nesting habitat.

In the event that any protected birds continue to occupy trees during the non-breeding and non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased and given approval to proceed with maintenance operations.

Trees or branches with a nest of a state or federal listed species, a California bird species of special concern or a wading bird (heron or egret) as well as raptors that has been active anytime within the last five (5) years shall not be removed or disturbed unless a health and safety danger exists and then shall be replaced with a mitigation ratio of 2:1. The removal of any other tree shall require mitigation at a 1:1 ratio.

A tree replacement planting plan for each tree replacement shall be developed to specify the amount of trees to be replaced, tree location, tree type, tree size (no less than 36-inch box size), planting specifications and a five (5) year monitoring program with specific performance standards.

Further, these provisions shall be undertaken in compliance with all applicable codes and regulations of the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the Migratory Bird Treaty Act.

8. **Acoustic Monitoring Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall prepare an Acoustic Monitoring Plan (AMP) for review and approval by the Executive Director. The AMP shall include the following elements:
- A. To prevent adverse impacts to marine mammals and fish from elevated levels of underwater sound associated with pile driving, the AMP shall outline an underwater hydro-acoustic monitoring program to be implemented during the installation of an initial subset of representative piles in order to establish the limits of the exclusion zone, or the distance between the work site and the locations at which the maximum recorded peak sound pressure level (SPL) or cumulative sound exposure level (SEL) falls below the temporary and permanent threshold shift levels for marine mammals. The maximum SPL or SEL thresholds utilized to determine the exclusion zone shall be based on the best available science on temporary and permanent threshold shift (TTS and PTS) levels for NOAA's most up-to-date Marine Mammal Acoustic Technical Guidance, and shall indicate the location at which pile driving, or other noise-generating construction-related activities should cease upon the entrance of a marine mammal into the zone where temporary or permanent hearing damage may result.
 - B. The AMP represents the acoustic monitoring plan that the contractor will be

- responsible for implementing during pile driving activities. The AMP shall fully describe the testing program, monitoring equipment, the number of proposed hydro-acoustic monitoring sessions, the hydrophone locations along the Dana Point Harbor and in the ocean waters around the harbor, the distance of hydrophones from the active pile driving site, and shall describe the rationale for how the program will capture a representative amount of readings that address changes in bathymetry and substrate (e.g. rocky versus sandy) in the waters surrounding the harbor. In addition, the AMP shall identify protocols for communicating hydro-acoustic monitoring results, including any changes in the boundaries of the exclusion zone, to the approved marine mammal observer (see **Special Condition 9**).
- C. Underwater acoustic monitoring devices (capable of recording both SPL and SEL at the frequencies corresponding with the hearing capabilities of special status fish species and marine mammals anticipated to be present in the project area) shall be placed at an array of increasing distances from the site of active pile driving to fully monitor the project area and allow for multiple readings below the SPL and SEL levels associated with temporary and permanent threshold shifts (TTS and PTS).
 - D. Hydro-acoustic testing locations shall occur, at a minimum, at the far oceanside corners of the harbor dock infrastructure on both the east and west sides to determine the maximum exclusion zone appropriate during pile driving activities taking place at any location within the harbor. Prior to initiation of the hydro-acoustic testing for exclusion zone establishment, background underwater noise shall be measured for a minimum of one full 24- hour cycle (i.e. 6am to 6am) in the absence of construction activities, to determine background sound levels. Sound data collected by the underwater hydro-acoustic testing devices shall be monitored throughout implementation of all pile driving activities, and this directive will be included in the AMP.
 - E. Using a preliminary exclusion zone of 500 feet from the harbor terminus during the testing phase, the exclusion zone should be adjusted if during hydro-acoustic testing the SPL or SEL threshold is exceeded at a distance beyond the 500-foot exclusion zone and/or if the marine mammal monitor observes dead or injured fish in the vicinity of active pile driving operations. If either of these occur, the exclusion zone shall be expanded or the applicant shall implement additional feasible power reduction and/or sound dampening measures to ensure that the SPL and SEL thresholds are not exceeded.
 - F. No more than 30 days after the completion of the required hydroacoustic testing activities, the applicant shall submit a final hydroacoustic testing report to the Executive Director for review. The final report shall include a description of all pile driving activities, a description of the acoustic monitoring equipment and protocols that were used during the pile driving activities, the results of the hydroacoustic monitoring, a determination of the necessary

marine mammal exclusion zone(s) to be implemented during future pile driving activities, and a description of any observable fish and marine mammal behavior that took place during hydroacoustic testing activities.

- G. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

9. **Marine Wildlife Protection Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall prepare a Marine Wildlife Protection Plan (MWPP) for review and approval by the Executive Director. The MWPP shall incorporate the following parameters:

- A. Avoidance of pile-driving activities during the breeding season for seals and sea lions if pregnant and/or nursing individuals are present within the exclusion zone.
- B. An initial ramp-up period or “soft start” procedure at the commencement or re-commencement of pile-driving activities shall be implemented to avoid potential impacts to marine mammals and fish that may be present, but undetected, in the exclusion zone. The pile driver operator shall commence pile driving operations at the lowest possible power setting with no less than a one-minute interval between each initial strike for a five-minute period. In addition, the pile driver shall employ sound dampening techniques and/or devices (such as wooden blocks, pile cushions, and/or caps) during all pile driving activities.
- C. One qualified marine mammal observer (MMO), or more if required to effectively observe the entire exclusion zone, approved by the Executive Director, shall be present to conduct observations during all pile driving activities. The MMO shall be a qualified marine biologist and shall have experience in marine science or marine operations that includes experience observing marine mammals and differentiating normal behavior from signs of injury or distress. The MMO’s duties shall be dedicated to observing marine wildlife only and shall not be assigned other pile driving-related duties. The MMO shall have the appropriate safety and monitoring equipment (e.g. binoculars) adequate to conduct his or her activities and be located at an effective vantage point in order to observe the entire exclusion zone without obstruction (e.g., from the rooftop of existing buildings).
- D. To carefully evaluate the effects of pile driving on pinnipeds in the project area, the first piles to be driven will be located as far as possible from known pinniped haul-out locations in the harbor so that the reaction of the pinnipeds to pile driving activities can be evaluated. The MMO will monitor pinniped reactions during the initial pile driving strikes and then report his/her observations and related information to the Executive Director in the required

Hydroacoustic Testing Report (see **Special Condition 8**).

- E. It is anticipated that pinnipeds accustomed to living on or hauling out within the Dana Point Harbor, the breakwater and adjacent areas will tolerate some amount of commotion and disturbance associated with the project's pile driving activities.
 - i. If the normal commotion of preparing the work site for the day's pile driving does not cause the resident pinnipeds to disperse beyond the exclusion zone, the MMO will record this in the required logs (see subsection (F) below) and take photos of any lingering pinnipeds in the Dana Point Harbor vicinity.
 - ii. If pinnipeds remain within the exclusion zone upon completion of soft-start pile driving activities, regular pile driving activities may proceed as long as the pinnipeds do not exhibit any observable signs of injury or distress. If one or more pinnipeds appear injured or distressed, the MMO shall direct pile driving activities to cease and shall immediately notify the Executive Director for further assistance and guidance.
- F. The MMO shall maintain a daily log of observed marine mammals and their behavior that shall be of sufficient detail to determine whether the project causes observable effects to marine mammals. A copy of the MMO's logs shall be submitted to the Executive Director within a week of completion of any pile driving event that takes place daily without interruption. At a minimum, the daily log observations shall include:
 - i. The date and time that monitored pile driving activity begins and ends
 - ii. Piling driving activities (e.g., number of piles being driven and their location on the pier) occurring during each observation period
 - iii. Weather parameters (e.g., wind speed and direction, percent sky cover, visibility, precipitation)
 - iv. Ocean conditions (e.g., water level fluctuation, tide, etc.)
 - v. A map showing species, numbers, location, and, if possible, sex and age class of all observed marine mammals
 - vi. A description of any observable marine mammal behavior patterns, including those in response to piling driving activities, including their location and distance relative to the work site, direction of travel, and if possible, the correlation of behavior to sound pressure levels (SPLs)
 - vii. A description of implementation of any required mitigation measures (e.g., shutdown or delay of piling driving activities)
 - viii. Other human activities in the area.

- G. During hydroacoustic monitoring in accordance with the AMP (**Special Condition 8**), the MMO shall establish a marine mammal exclusion zone from the work site. If the MMO observes any marine mammals within this exclusion zone (except for pinnipeds– see subsections (D) and (E) above), the MMO shall notify the applicant and/or pile driving contractor staff as appropriate and require an immediate shut down of pile driving activities. Such activities may restart once the mammal(s) is observed to leave the exclusion zone or is not observed within the exclusion zone for at least 30 minutes.
- H. Once hydroacoustic monitoring is complete, for all subsequent days of pile driving, the outer edge of the exclusion zone shall be determined by the results of the Acoustic Monitoring Plan (**Special Condition 8**).
- I. If the exclusion zone is not entirely visible (e.g., due to darkness, fog, etc.), pile driving shall not commence or continue to proceed (if it is underway) until visual conditions have improved.
- J. An annual report summarizing the results of monitoring activities shall be submitted to the Executive Director no later than January 30th, for the preceding calendar year throughout the entirety of the project construction period. The report shall include marine mammal observations (see subsection (e) above), descriptions of any project delays or cessation of operations due to the presence in the project area of marine mammal species subject to protection, and an evaluation of monitoring protocol effectiveness.
- K. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

The requirements of the approved MWPP are to be implemented during all pile driving and other construction-related activities requiring high decibel noise generation that are part of the scope of the proposed development of this CDP, including during hydro-acoustic testing activities authorized pursuant to **Special Condition 8**.

10. Construction Pollution Prevention Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a final Construction Pollution Prevention Plan that identifies (in site plan view) the specific location of all construction areas, staging areas, storage areas, equipment fueling and maintenance areas, and access corridors to these areas. The Construction Pollution Prevention Plan shall, at a minimum, include the following required criteria, specified via written notes within the plan:

- A. The location of all water quality BMPs to be implemented during construction and demolition shall be specified, including the proposed repairs to the seawalls and revetments.

- B. The footprint of areas within which construction activities and/or staging are to take place shall be minimized to the extent technically feasible, to minimize impacts on public access and the marine environment.
- C. Construction activities (including materials and equipment storage, and equipment fueling and maintenance) shall be prohibited outside of the designated construction, staging, storage, and maintenance areas.
- D. Construction work and equipment operations below the mean high water line shall be minimized to the extent technically feasible, and, where possible, shall be limited to times when tidal waters have receded from the authorized work areas.
- E. All work shall be performed during favorable tidal, ocean, wind, and weather conditions that will enhance the ability to contain and remove, to the maximum extent feasible, construction and demolition debris.
- F. All construction methods to be used shall be specified, including methods to keep the construction areas separated from the beach and other public recreational use areas, and a final construction schedule shall be included.
- G. Silt fences or equivalent measures shall be installed at the site perimeter to prevent sediment in runoff from construction-related activities from entering coastal waters.
- H. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, in order to minimize wildlife entanglement and plastic debris pollution.
- I. Turbidity curtains shall be used to contain sediment during in-water construction or demolition, where coastal resources such as benthic communities or eelgrass, may be at risk.
- J. Floating booms shall be used to contain any debris discharged into coastal waters; the debris shall be removed as soon as possible, but no later than the end of each day.
- K. Tarps or other devices shall be used to capture debris, sawdust, particulates, oil, grease, rust, dirt, and spills from overwater construction and demolition, to protect the quality of coastal waters.
- L. All construction materials shall be properly stored and contained so that these products will not spill or otherwise enter the coastal environment.
- M. Erosion and sediment control BMPs shall be used to prevent sedimentation impacts to coastal waters during project staging and demolition. BMPs shall include a pre-construction meeting to review procedural and BMP guidelines.

N. Spills of fluids from construction equipment, or other hazardous materials, shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as possible. Disposal within the coastal zone shall require a coastal development permit.

P. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction vehicles shall be serviced immediately. Equipment and machinery shall be serviced, maintained, and washed only in confined areas specifically designed to control runoff and prevent discharges into Dana Point Harbor or the ocean. Thinners, oils, and solvents shall not be discharged into sanitary sewer or storm drain systems.

Q. Equipment washing, refueling, and/or maintenance shall not take place on the tidelands or on over-water structures, to eliminate the possibility that pollutants from these activities may enter coastal waters.

R. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

- i. An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project site to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials.

S. Vegetable oil-based hydraulic fluids shall be used in heavy equipment used for construction overwater or adjacent to coastal waters, if feasible, particularly for construction lasting 30 days or longer. Standard hydraulic fluids are based on petroleum products, and due to their high aquatic toxicity they pose a risk if leaked or spilled in or near sensitive aquatic habitats. Vegetable oil-based hydraulic fluids are formulated for rapid biodegradability and low aquatic toxicity, and do not bioaccumulate in aquatic organisms.

T. Biodiesel fuel shall be used in heavy equipment used for construction overwater and adjacent to coastal waters, if feasible, particularly for construction lasting 30 days or longer. Diesel fuel may leak or spill from heavy equipment and vehicles used in construction, and where construction takes place in or adjacent to

the ocean, diesel poses a risk of aquatic toxicity. Biodiesel is a non-petroleum alternative fuel that is less toxic than diesel fuel, and can be used in construction equipment and vehicles operating in or near sensitive aquatic habitats.

U. The construction site shall maintain good site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and debris; dispose of all wastes properly, using trash receptacles placed on site for that purpose; cover open trash receptacles during wet weather; and remove all construction debris from the tidelands).

V. A construction coordinator shall be designated who is available should questions arise regarding the construction, for both routine inquiries and emergencies. The coordinator's contact information (including a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site in a location that is readily visible from public viewing areas. The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

W. A copy of the approved Construction Pollution Prevention Plan shall be kept at the construction job site at all times, and all persons involved with the construction shall be briefed on its content and meaning prior to commencement of construction.

X. The Coastal Commission's District Office shall be notified at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Y. All construction shall be undertaken in accordance with the approved Construction Pollution Prevention Plan. Any proposed changes to the approved Construction Pollution Prevention Plan shall be reported to the Executive Director. No changes to the approved Construction Pollution Prevention Plan shall occur without a coastal development permit amendment or waiver, unless the Executive Director determines that no coastal development permit amendment or waiver is necessary.

11. Best Management Practices for Installation and Removal of Piles. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a report documenting the BMPs to be used for installation and removal of piles. The applicant shall comply with the following requirements:

A. Installation of piles shall prioritize driven or hammered methods, if feasible, in order to minimize water quality impacts. Vibratory hammer method shall be prioritized over impact hammer methods. However, if an impact hammer is used, pile driving shall use a soft-start/ramping up BMP with hammer strikes that begin at approximately 40 to 60 percent energy levels with no less than a one-minute

interval between each strike for a five-minute period. If a water-jetting method is utilized, silt curtains shall be installed in the work area to contain turbidity where coastal resources, such as benthic communities or eelgrass, may be at risk.

B. Removal of existing piles shall comply with the following requirements, where applicable:

- i. Work shall occur during favorable tidal, ocean, and weather conditions that will enhance the ability to remove, to the maximum extent, the full length of the pile and any associated debris generated during demolition.
- ii. Removed piles and debris shall be placed directly into a vessel or container suitable for transport off-site.
- iii. Degraded pile sections that cannot be recovered from the substrate shall be cut at the deepest feasible elevation to maximize partial-retrieval.
- iv. All removed piles and debris shall be moved to an off-site, authorized disposal site. Sediment adhered to the removed piles shall be removed from coastal waters.
- v. Piles shall be removed slowly and handled carefully to minimize turbidity. Vibratory extraction shall be prioritized over direct-pull methods, where feasible, in order to limit disturbance.

C. The High Density Polyethylene (HDPE) sleeves proposed to be applied to steel piles shall be periodically monitored during the life of the structure, to ensure that the plastic material maintains its structural integrity, and shall be repaired or replaced if the material begins to deteriorate. A monitoring and maintenance plan for the HDPE sleeves shall be submitted.

12. Materials to Construct or Repair Overwater and In-Water Structures. Prior to issuance of the coastal development permit, the applicant shall submit, for the written approval of the Executive Director, a plan documenting the amount and type of materials proposed to be used to construct or repair all overwater and in-water structures. The applicant shall comply with the following requirements:

- A. Specify the proposed type and amount of materials to be used to construct or repair each component of overwater and in-water structures. List the amount of each material (e.g., the surface area of dock decking). Specify the type of building material (e.g., preservative type and preservative retention level for treated wood), including any coating, wrapping, adhesive, sealant, or grout.
- B. For dock decking and other above-water dock components, prioritize the use of alternative materials instead of treated wood, such as concrete, fiberglass, metal, plastic (e.g., polyethylene, polypropylene, or PVC), fiberglass-plastic composites (e.g., fiber-reinforced polymer), wood-plastic composites, or naturally decay-

resistant untreated wood (e.g., redwood, red cedar, ipe, greenheart, and in some cases Douglas fir), where feasible. An alternatives analysis shall be submitted if treated wood is proposed to be used for any component of the overwater or in-water structures.

- C. If treated wood is used for dock decking or other above-water dock components, a type of treated wood shall be selected that minimizes the risk of aquatic and sediment toxicity.
- i. For treated wood decking and other above-water components of overwater structures, the preservative Ammoniacal Copper Zinc Arsenate (ACZA) shall be used to treat components where frequent contact with humans or marine mammals is not expected. Wood treated with the arsenic-free preservatives Alkaline Copper Quaternary (ACQ) or Copper Azole Type C (CA-C) shall only be used for components where frequent human or marine mammal contact will occur, as these preservatives leach substantially more copper (and thus have a higher risk of aquatic toxicity) than does ACZA.
 - ii. Specify the preservative retention level of any treated wood that will be used. Treated wood shall be selected that has been treated to the standards of the lowest appropriate Use Category for each component, to ensure that the treated wood does not exceed the minimum preservative retention level. This will help minimize the amount of preservatives that may leach into coastal waters. Use Categories, as specified by the American Wood Protection Association, are based on factors such as whether the wood is subject to saltwater splash vs. immersion, and whether the component is critical and difficult to replace.
 - iii. Where available, only treated wood that has been certified as produced for use in aquatic environments shall be used (as indicated by a BMP Quality Mark or Certificate of Compliance), in accordance with industry standards such as the Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments by the Western Wood Preservers Institute, et al.
 - iv. The use of wood preservatives containing chemicals that may contribute to any listed water quality impairment of the waterway by that chemical shall be avoided. Copper pollution is often an issue for marinas and harbors, due to copper leaching into the water from copper-based antifouling paints commonly used on boat hulls. Dana Point Harbor is listed on the Clean Water Act section 303(d) list of impaired waters as impaired by several

pollutants, including copper and zinc, which are chemicals contained in the wood preservative ACZA. Copper is also found in the other common water-based wood preservatives approved for use in marine waters. Therefore, the use of preservative-treated wood for overwater and waterfront structures in Dana Point Harbor shall be avoided, unless there is a valid engineering reason to use treated wood.

- v. The use of treated wood shall be avoided in locations with a low water circulation or flow rate (typically 0.3 ft./sec. or less, measured at slack tide or low flow conditions). Treated wood shall only be used where water circulation is strong and will provide dilution of any leached chemicals, such as in the surf zone or where tidal flushing occurs.
 - vi. The use of treated wood shall be avoided in locations where especially copper-sensitive aquatic organisms (such as salmon, trout, herring, Dungeness crab, blue mussels, abalone, oysters, sea urchins, and certain zooplankton) may be present. Dissolved copper is highly toxic to a broad range of aquatic species, and juvenile and larval stages of fish and invertebrates are especially sensitive to copper.
- D. Any fill, coating, wrapping, sealant, adhesive, grout, or other materials used in construction or repair of overwater and in-water structures shall be composed of materials that are inert when fully dried and cured, and will not leach chemicals that could contribute to aquatic toxicity.

13. Best Management Practices for Use of Treated Wood in Overwater and In-Water Structures. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a plan documenting the construction-phase and post-construction BMPs to be used for all overwater and in-water structures that are constructed using preservative-treated wood. The applicant shall comply with the following requirements:

- A. Employ all appropriate construction-phase BMPs to minimize the discharge of treated wood sawdust and debris to coastal waters. Construction-phase BMPs shall specifically address the use of treated wood in aquatic environments, including materials selection, materials storage, cutting or drilling treated wood, preservative field-treatment, and coating application. BMPs shall include, but are not limited to:
 - i. Keep treated wood sawdust and debris out of the water. Because of their large surface to volume area, small treated wood particles (such as

sawdust) entering the water contribute a disproportionately large amount to the leaching of preservatives from the structure.

- ii. Apply field-treatment of Copper Naphthenate preservative sparingly to cut ends and drilled holes in treated wood, because it does not bond as strongly to wood compared to pressure-treatments. Also avoid drips or spills of Copper Naphthenate into the water.
 - iii. Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets. The treated wood and treated wood debris shall be stored on impervious pavement or an impervious tarp, and covered during rain events.
 - iv. If treated wood is sanded or sawcut during demolition, installation, or maintenance, all sawdust and debris generated shall be contained and removed.
- B. Employ all appropriate post-construction BMPs addressing long-term use, repair, monitoring, and maintenance of the structure. Post-construction BMPs shall specifically address the use of treated wood in aquatic environments. BMPs shall include, but are not limited to:
- i. Install design features (such as bumpers or a protective wearing surface) to protect treated wood components, where appropriate, to minimize the release of treated wood particles through abrasion by vessels or vehicle traffic.
 - ii. Avoid sanding, scraping, or pressure-washing treated wood decking, to the extent feasible, as this may increase the leaching of wood preservatives and the discharge of treated wood particles into the water.
 - iii. Deck cleaners and brighteners, especially those containing acid-based or highly oxidizing chemicals (such as bleach, sodium hydroxide, sodium percarbonate, oxalic acid, and citric acid) should not be used on treated wood, as they may increase the leaching of wood preservatives, and contain ingredients that may directly harm aquatic life.
 - iv. Consider applying a coating (such as a semitransparent penetrating stain or a durable epoxy sealer) to treated wood decking used in overwater structures, to reduce leaching and surface dislodgment of the preservative chemicals. Maintenance and reapplication of the coating shall follow BMPs

to minimize the release of treated wood particles and leaching of preservatives into coastal waters.

14. Treatment of Stormwater Runoff. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a final plan documenting that the proposed Treatment Control BMPs shall be sized and designed to adequately infiltrate and/or treat the stormwater runoff from the project's inland areas, in order to protect coastal water resources. The applicant shall comply with the following requirements:

- A. Provide a summary of the total surface area of existing impervious surfaces; the impervious surfaces proposed to be replaced; and the proposed new impervious surfaces. If the area of new and/or replaced impervious surfaces is greater than or equal to 50% of the area of the existing impervious surfaces, runoff from the entire developed area (including the existing impervious surfaces) shall be treated by Treatment Control BMPs.
- B. Provide calculations documenting that the project will retain on-site (by means of infiltration, uptake by plants, evaporation, or harvesting for later on-site use) the runoff produced by the 85th percentile 24-hour design storm, to the extent technically feasible. If the runoff from the 85th percentile 24-hour storm will not be retained on-site, the applicant shall conduct an alternatives analysis to demonstrate that there are no technically feasible alternative project designs that would substantially improve runoff retention. This may entail converting selected parking areas or landscaped areas to runoff retention BMPs.
- C. For each type of surface (e.g., parking lots, roadways, walkways, buildings, and landscaping) provide a summary of the existing, new, or replaced impervious and pervious surface area, and the pollutants of concern expected to be found in runoff from each of these types of surfaces. Provide documentation that the proposed Treatment Control BMPs will be designed to effectively remove the pollutants of concern expected to be found in runoff from the type(s) of surfaces that are tributary to that BMP.
- D. Provide calculations documenting that all Treatment Control BMPs shall be sized to treat the runoff flow produced by the 85th percentile 1-hour design storm event, multiplied by a safety factor of 2, from the Drainage Management Area tributary to each Treatment Control BMP. List all values used in the runoff calculations (e.g., the 85th percentile 1-hour storm rainfall depth, the runoff coefficient, and the area of the Drainage Management Area), and state where the rainfall depth value was obtained and how the runoff coefficient values were calculated.

15. Marina Water Quality Management Plan. The applicant shall adhere to the marina water quality management requirements of the California Clean Marine Certification (<https://cleanmarina.org/>) and/or the 401 Certification by the California Regional

Water Quality Control Board, San Diego Region, whichever is most protective. In addition, the applicant shall adhere to:

A. Boat Cleaning Management Measures

- i. Wherever possible, boaters shall select non-toxic, phosphate-free cleaning products that do not harm humans or aquatic life. Boaters and marina operators shall implement protective practices to prevent cleaning products from entering the water.
- ii. The marina shall prohibit in- water hull scraping, or any other process that occurs under water that results in the removal of paint from boat hulls.

B. Solid Waste Management Measures

Implementation of a solid waste reduction and recycling program, including the following Solid Waste Management Measures:

- i. Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e., close to the dock).
- ii. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e., close to the dock).
- iii. All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities.

C. Liquid Waste Management Measures

Implementation of a liquid material control program that provides and maintains appropriate storage, transfer, containment, and disposal facilities for liquid materials commonly used in boat maintenance, including the following Liquid Waste Management Measures:

- i. The marina shall provide a secure location to store hazardous wastes, including petroleum products, old gasoline or gasoline mixed with water, absorbent materials, and oily rags.
- ii. Containers shall be provided by the marina for anti-freeze, lead acid batteries, used oil, and used oil filters that will be collected separately for recycling.
- iii. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers'

signage shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.

D. Petroleum Control Management Measures

The marina shall make available to boaters a service that reduces oily discharges from in-board engines. The marina's environmental policies shall encourage boaters to regularly inspect and maintain engines, lines and hoses in order to prevent oil and fuel spills. These policies shall encourage boaters to use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. The use of soaps that could be discharged by bilge pumps shall be discouraged.

E. Public Education Measures

F. The BMPs shall also include enforcement, which may include eviction from the marina. The marina shall provide information about all of the measures in the BMP program, through a combination of signage, tenant bill inserts, and distribution of the BMP program information to new tenants, and each year to repeat tenants. The program information shall be posted at the Harbormaster's Office/Administration Building and at all dock entrances, and shall be included and attached to all slip lease agreements.

16. Marina Inspection and Maintenance Program. Throughout the life of the development approved by this permit, the permittee shall exercise due diligence in periodically inspecting (at least once a year) the marina facilities that are subject to this coastal development permit. The permittee shall immediately undertake any repairs necessary to maintain the structural integrity of the docks, pilings, over-water sewer lines, and other utility connections; shall prevent leaks; and shall ensure that pieces of unattached plastic or other debris do not enter the environment. Overwater sewer lines, including all pipes from sewage pump-out facilities and any other pipe that leads to a sanitary sewer, shall be visually inspected at least once per month, and dye- or pressure-tested at least twice every year. The inspections shall be undertaken by boat during periods of extreme low tides. All leaks shall be repaired immediately upon discovery. If the inspections confirm that the use of the plastic or other materials used in the marina is harming marine resources, the use of such materials shall be stopped, and less harmful materials shall be used instead.

17. Public Access To and Along the Waterway. Public areas shall remain open for public access, 7 days a week, 24 hours a day. The permittee and the development shall not interfere with public access and use of the public walkways, the proposed expanded promenade landside of the harbor, the sidewalks along Island Way, and the walking paths in and along the Inner Basin of the harbor (except for the temporary disruptions that may occur during the construction of the permitted

development). No gates are permitted, except at the entrance to the gangways or on the docks.

18. Parking. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a detailed parking plan, for review and approval by the Executive Director, showing the following current and proposed parking components subject to this coastal development permit:

- A. Designated Boater Parking. The number of vehicle parking spaces provided and maintained for designated boater parking shall be a minimum of 1,410 parking spaces for the project area of the subject CDP Application No. 5-19-0971 ([Exhibit 9](#)). Any future change to the number of boater parking spaces will require an amendment to this permit.
- B. Public Parking – The applicant shall maintain a minimum of 466 parking spaces for the public. Any future change to the number or designation (free or metered) of public parking spaces will require an amendment to this permit.
- C. Clean Air Vehicles.
 - i. Install infrastructure and EV charging stations to provide capacity for a minimum of 24 EV charging spaces prior to completion of the marina construction;
 - ii. Designate clean air only parking spaces for a minimum of 32 clean air vehicles with required marked stalls which state: CLEAN AIR/VANPOOL/EV;
- D. Maintain a minimum of 168 existing bicycle parking spaces in the project area.
- E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

19. Transition Process for Displaced Boats During and After Dock

Reconstruction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a “Slip Transition and Implementation Plan” to assist small-sized boat (30 feet and under) owners to locate a temporary slip for lease during reconstruction. The applicant shall use its best efforts to alert marina tenants displaced by reconstruction of a temporary slip for the displacement of boats sized 30 feet and under by identifying vacant slips throughout Dana Point Harbor. Priority shall be given to provision of slips that accommodate boats less than 25 feet in length.

Immediately following the final phase of reconstruction, the applicant shall extend to previous slip renters of boats 30 feet and under a 30-day right of first refusal for available slips of the same previously leased size. The Slip Transition and

Implementation Plan shall include, but not be limited to, the following mitigation measures:

- A. Utilize successive reconstruction phases within Dana Point Harbor to secure slips for boats temporarily displaced during the previous phase;
- B. Identify an appropriately-sized slip within the harbor; and/or;
- C. Until a slip of the previously leased size is identified in the harbor, lease to the displaced boat owner a larger slip (may include end-ties/side-ties) at a rate equal to the currently-posted slip rate of the size previously rented to the displaced boat.
- D. If neither an appropriate-sized slip nor larger slip is available to the boater with a boat 30 feet and under in a private lease hold anchorage, the applicant shall make accommodation for a displaced boater in the guest docks.
- E. The marina operator will not be required to honor special requests for the specific location of the slip. These procedures shall only apply to:
 - i. accommodate the specific vessel that occupied the previously leased slip;
 - ii. slip renters in good standing at the start of the reconstruction project; and
 - iii. seaworthy vessels (no houseboats, floating homes or inoperable boats).
- F. After the above actions have been implemented to accommodate smaller boat slip renters, the applicant may adhere to the Transition Plan between the applicant and the County of Orange.
- G. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

20. Dry Boat Storage Requirements During Construction. The applicant shall provide to the Executive Director, an annual monitoring report documenting the reconstruction of the harbor approved pursuant to this coastal development permit and the availability of dry boat storage during construction of the marina. The monitoring report shall include the following information:

- a. The number of slips and docks reconstructed within the last year, including a breakdown of the boat slip sizes.
- b. The number of slips and docks projected to be constructed within the next 12-month period.
- c. The number of boat slips 30 feet and under that will be permanently eliminated and the number of slips 30 feet and under out of commission during the next 12-month period due to reconstruction of the harbor.
- d. The number of boat slips under 25 feet that will be permanently eliminated and the number of slips under 25 feet and under commission during the next 12-month period due to reconstruction of the harbor.
- e. The current number of dry spaces available for dry storage in Dana Point Harbor.

If, at the time of the annual report, fewer than 5% of the total number of dry boat storage spaces are available for rent to boats 30 feet and under that have been displaced during construction, the applicant shall establish sufficient boat dry storage space so as not to fall below a 5% dry boat storage availability threshold. If the annual report demonstrates that there is less than 5% of dry boat storage spaces available in the marina for boats 30 feet and under that have been displaced during construction, then no marina reconstruction may occur until there is a minimum 5% of the total dry boat storage spaces available for rent to boats 30 feet and under that have been displaced during construction. The report shall be provided annually to the Executive Director, no later than January 30th of each year.

21. Repair and Removal of the Development. By acceptance of this Permit, the applicant agrees, on behalf of itself and all other successors and assigns, that should any development approved under this Permit, including but not limited to the gangway, piers, docks, pump-out stations, and associated infrastructure, become threatened due to structural failure, wave action, or other manmade or natural processes, and prior to taking any maintenance or repair actions on any of the development approved in this Permit, the applicant shall conduct a study of the structural stability of the approved development and an analysis of alternatives for correcting any structural deficiencies. This study shall be submitted to the Executive Director in order to determine if the proposed correction requires a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the permittee is required to remove any development authorized by this permit for which any of the following criteria applies: (1) the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to natural hazards, including but not limited to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for use; (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

At the end of the useful life of the development, the applicant or its successors and assigns shall conduct an analysis to determine the least environmentally damaging alternative for decommissioning the development. Removal of the development shall be one of the alternatives considered in any analysis required by this condition. No removal/decommissioning of the approved development shall take place until the applicant submits the required analyses, as stated above, to the Executive Director in order to determine if the removal/decommission of the development requires a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

22. Resource Agencies. The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the 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 that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine whether the proposed change shall require a permit amendment pursuant to the requirements of the certified LCP, Coastal Act and the California Code of Regulations.

23. Assumption of Risk, Waiver of Liability, and Indemnity Agreement Applicable to the Applicant-Lessee. By acceptance of this permit, the applicant, Dana Point Harbor Partners, LLC, on behalf of (1) itself; (2) its successors and assigns; and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storms, flooding, sea level rise, earth movement, landslide, and erosion; (ii) to assume the risks to the applicant-lessee 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; (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; and (v) to include a provision in any subsequent sublease or assignment of the lease covering the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, agreeing to the application of parts (i) through (v) of this condition to it.

24. 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 now or in the future.

25. Final Design Plans for Signage. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, and then implement the approved version of, a Public Access Signage Plan that includes:

- A. The installation of adequate informational and directional signage related to the parking areas, walking paths and all boardwalks/sidewalks in the project area.
- B. All signs shall be sited and designed to provide clear information without adversely affecting public views and site character. Any existing signs in the project area not meeting such criteria shall be removed.
- C. The plans shall include signage details such as the location, materials, design and text for all signs, including all existing signs proposed to be retained.
- D. All signage in the proposed project area subject to this coastal development permit shall be, at a minimum, printed in English and Spanish. This includes, but is not limited to, wayfinding signage, harbor and/or marina map signage.
- E. The California Coastal Trail (CCT) logo shall be incorporated along the portion of the CCT that traverses the harbor. The applicant shall work with Commission staff to identify the CCT and appropriate locations to place the logo. Commission staff will provide the logo to the applicant.
- F. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

26. Education and Sailing Program for Underserved Youth. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed plan for a year-round education and sailing program in Dana Point Harbor for underserved youth that would include providing the fees necessary to host a minimum of 1,000 youths per year from low-income and other underserved communities that lack equitable access to coastal resources in Orange County for the lifetime of the proposed development.

- A. The plan shall include or address the following:
 - i. **Program Design.** The program shall either: (1) coordinate the youth sailing program by providing the fees necessary to pay for 1,000 scholarships per year for underserved youth to participate in an established youth education and sailing program or (2) provide the fees necessary to an organization that has an established youth education and sailing program or that will develop such a program that meets the criteria set forth in this special condition for a minimum of 1,000 underserved youths per year. Payment of fees shall commence when the proposed development authorized by this CDP begins and shall continue annually, throughout the life of the development approved by this permit.

- ii. **Program Eligibility.** The program shall include a process for determining eligibility of youth for the program. “Underserved youth” may include youth from low-income households, youth who attend Title 1 schools, foster youth, youth with disabilities, youth of color, and indigenous youth.
- iii. **Programmatic Elements.** The submittal shall describe programmatic elements and staffing. Educational topics may include, but are not limited to, plastic pollution, ocean and marine science, and water quality. The program shall include components that provide an interactive ocean education experience for all participants. The program shall be of sufficient length to provide for, at a minimum, one of the educational topics listed above and to engage in an outdoor ocean-related component, such as sailing, paddle boarding, swimming, surfing, bodyboarding, or kayaking. At a minimum, 10% of the students shall be provided the opportunity to participate in a hands-on, multi-day sailing experience. Preference shall be given to programs that provide transportation to and from the site, provide an opportunity for multiple experiences for continuing education, and/or work with local community-based organizations serving underserved youth to design and implement programmatic elements, including culturally sensitive programming. In addition, the applicant shall contact California State Parks to determine whether the components of this program that cannot be accommodated in the harbor (i.e. swimming, surfing, and bodyboarding) can occur at the nearby state beaches.
- iv. **Marketing and Outreach Strategy.** In order to increase the number of free opportunities to coastal resources for underserved youth groups from Orange County and substantially increase the awareness of harbor facilities and activities to underserved communities, prior to commencement of the education and sailing program, the applicant shall provide Commission staff with a proposed marketing plan for public outreach to reach underserved youth eligible for the program in Orange County. This can include, but is not limited to, outreach to Orange County school districts with Title 1 schools, afterschool programs and organizations serving youth in underserved communities, online advertisement, e-mail and digital marketing campaigns.
- v. **Program Evaluation.** The program shall include a robust program evaluation component, including, but not limited to, definitions of program success, key performance indicators (or metrics), methods to measure metrics, and overall goals to assess program effectiveness. The program evaluation may be used to inform the initial program design, as well as future iterations of the program in Dana Point Harbor with the intent of it becoming a successful, scalable program to other coastal regions in California.

B. The applicant (or the appropriate organization) shall provide an annual report to the Executive Director of the Coastal Commission, clearly detailing A. i-v above. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

C. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

27. Marine Debris Reduction Program. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a robust and comprehensive plan to reduce waste and single-use plastics within the project area. The plan shall include commitments consistent with all of the following, and the applicant shall implement the approved version of the plan.

- A. The applicant shall install and maintain smoke-free signage along the public areas of the harbor. This includes, but is not limited to, the promenade, parkscape areas, public guest docks, private docks, parking lots, streets, alleys, sidewalks and public access areas around the Marina.
- B. The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items) along the waterfront.
- C. Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the project area of the proposed development and weekend maximum usage statistics to ensure that adequate bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
- D. Participate in the ReThink Disposable Program (RTDP). Within 6 months of the completion of the proposed development, the applicant shall participate in the Clean Water Fund/Clean Water Action ReThink Disposable program in partnership with The Bay Foundation (or a substantially similar program) and maintain it for 5 years. The applicant shall be responsible for the fees needed to participate in the program.
- E. The applicant shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission, program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.
- F. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

28. Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit two sets of final project plans to the Executive Director for review and written approval. The final plans shall be in substantial conformance with the preliminary plans submitted with this application, except as they are required to be modified by the special conditions of this coastal development permit. The permittee shall undertake development in conformance

with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.