

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
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February 22, 2021

Permit Application Number: **5-19-0971****COASTAL DEVELOPMENT PERMIT**

On November 4, 2020, the California Coastal Commission granted to **Joseph Ueberroth, Dana Point Harbor Partners** this permit subject to the attached Standard and Special conditions, for development consisting of **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., more specifically described in the application filed in the Commission offices.**

The development is within the coastal zone at **24650 Dana Point Harbor Dr, 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)**

Issued on behalf of the California Coastal Commission by

Sincerely,

John Ainsworth
Executive Director

A handwritten signature in cursive script that reads "Christine Pereira".

Christine Pereira
Coastal Program Analyst

cc: Commissioners/File

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ACKNOWLEDGMENT:

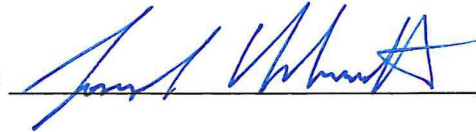
The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part of that: "A Public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date: 2 · 23 · 2021

Signature



STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

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1. Permit Compliance. Coastal Development Permit 5-19-0971 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

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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

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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.

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- 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.

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- 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.

- a. 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

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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:

1. 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. A description of how work will occur.
 - b. Work must be performed using non-mechanized hand tools to the maximum extent feasible.
 - c. Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.
 - d. 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.
2. 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

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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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.

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- g. 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

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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:

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- 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

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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

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- 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.

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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.

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- 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.

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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

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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.

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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.

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- 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,

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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

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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

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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

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- 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.

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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

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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

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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:

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- 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

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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/decommissioning 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

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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.

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- 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

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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.

- B. 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.

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- C. 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.
- D. 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.
- E. 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.
- F. 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.
- 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.

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.