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STAFF REPORT: PERMIT AMENDMENT

Amendment Application No.:	**5-14-1604-A2**
Applicants:	**Waldorf Astoria Monarch Beach Resort & Club and Monarch Bay Association**
Project Location:	500 Monarch Bay Drive, Dana Point, Orange County (APN: 670-151-55)
Original Project Description:	Approval of six-year Monarch Beach Management Plan, including 1) relocation of 835 cy. beach sand to direct discharge from the Salt Creek outflow to the ocean; 2) annual import of 100 cy. of sand to maintain use of an emergency access ramp; and 3) relocation of wrack from the Monarch Bay Club frontage to designated northern and southern areas.
Description of Proposed Amendment:	Extend the permit expiration date for an additional five years, thus allowing implementation of the Monarch Beach Management Plan until June 4, 2029. Establish a designated, 10,000 sq. ft. snowy plover habitat area in the northern beach area.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The project site is a privately-owned portion of Monarch Beach in Dana Point, Orange County. The current co-applicants own the segment of sandy beach located inland of the mean high tide line (MHTL) between a northern bluff edge and southern Salt Creek Outfall **(Exhibit 1)**. Public access to this stretch of sandy beach is available via a roughly

0.5-mile lateral walk north of the nearest vertical public accessway. Direct vertical access to the subject beach area is limited to guests of the Waldorf Astoria Monarch Beach Resort & Club, residents of the Monarch Bay Homeowner's Association (HOA), and lifeguards. These private visitors may access the beach via a staircase and an emergency access ramp. The concrete Salt Creek outlet structure is located approximately 200 ft. south of the access ramp. The outlet drains runoff from a significant watershed and produces a fresh-to-brackish scour pond that periodically flows into the Pacific Ocean. Rather than flowing directly into the ocean, the outflow stream often meanders north along the sandy beach. The stagnating stream cultivates bacterial coliforms that adversely affect water quality in the surrounding area.

In April 2015, the Commission approved Coastal Development Permit (CDP) No. 5-14-1604 for the Monarch Beach Management Plan (MBMP). The action approved six total years of implementation from June 2015 to June 2021, including an initial one-year pilot period to monitor the program's effectiveness. The approved MBMP includes: 1) relocation of 835 cy. beach sand to direct discharge from the Salt Creek outflow to the ocean; 2) annual import of 100 cy. of sand to maintain use of an emergency access ramp; and 3) relocation of wrack (i.e. natural tangles of kelp and organic matter washed from the tides) from the Monarch Bay Club frontage to designated northern and southern areas. The MBMP limits work to specific seasons to avoid sensitive species disturbance. The applicants have complied with timing and monitoring requirements as evidenced by their annual monitoring reports.

The report results illustrate that the sand relocations seem to be working as intended, with reduced bacterial concentrations present in the adjacent surf zone. There is no indication that sand relocation has adversely impacted marine resources. The results are less clear, however, on the effects of wrack relocation. In 2021, the applicants requested an amendment to allow continued MBMP implementation for an additional five years. But the Commission determined that the effects of wrack relocation of habitat value remained unclear and needed more study before authorizing a five-year term. The prior amendment instead revised the permit's expiration to reflect a three-year term ending on June 4, 2024. The applicants now request another five-year term to follow the conclusion of the previously extended implementation period.

The Commission's ecologist explored whether relocating beach wrack lessens its value for wildlife by statistically summarizing bird counts in all submitted monitoring reports between 2015 and 2023. The analysis found that more birds are generally observed in wrack deposit areas than the wrack removal area. It also found that the decline in overall bird counts between 2016 and 2023 consisted almost entirely of a decrease in gulls—other bird taxa remain relatively consistent in number across years. The reduced gull presence may be due to the falconry program which specifically targets gulls and is outside the scope of the MBMP. Regardless, the data does not illustrate a dramatic adverse effect on bird activity in relation to wrack relocation. Furthermore, there are too many confounding factors on the beach (the falconry program, the outfall pond, high activity levels near the Bay Club) which render it impossible to draw a conclusion on the impact of wrack relocation alone from bird count observations.

Considering bird counts are ineffective in drawing a conclusion on the wrack relocation program, **Special Condition 5** is revised to eliminate the bird-count requirement. Staff also recommend revision of **Special Condition 4** to allow the additional five years requested by the applicants and eliminate prior language pertaining to a pilot period that commenced in 2015.

The applicants also propose installation of a roughly 10,000 sq. ft. western snowy plover (*Charadrius nivosus nivosus*) habitat in the northernmost corner of Monarch Beach. The habitat will be fenced with stainless steel needle-posts and rope. An educational sign would be hung from the fencing to educate beach-goers on the purpose and significance of the fencing. To ensure relocated wrack is accessible to plovers (who may have difficulty navigating larger heaps), **Special Condition 5.A.9** is revised to specify that relocated wrack should be spread in natural-looking lines.

The motion is on page 5. The standard of review is the Chapter 3 policies of the Coastal Act, with the certified LCP serving as guidance.

The Executive Director determines that the proposed amendment is a material change. California Code of Regulations (CCR) Section 13166(a) calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit. The proposed amendment would not lessen the intended effect of the Commission's action on April 15, 2015 approving CDP No. 5-14-1604 with conditions. Therefore, the Executive Director accepted the amendment request.

The Executive Director has also determined, in accordance with CCR section 13166(b), that the proposed amendment is a *material* change that affects conditions required for the purpose of protecting a coastal resource or coastal access. As a material amendment, the Commission shall approve the amendment if it finds, by a majority vote of the membership represent, that the development as amended conforms with the policies of the Local Coastal Program.

TABLE OF CONTENTS

EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment 5-14-1604-A2 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves Coastal Development Permit Amendment 5-14-1604-A2 on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. CHANGES TO CONDITIONS

NOTE: **Appendix B**, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment A2.

All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicants and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 2 are shown in the following section.

Within **Appendix B**, changes to the previously approved special conditions are also shown in underline. This will result in one set of adopted special conditions. Unless specifically altered by this amendment, all regular and special conditions attached to CDP No. 5-14-1604, as amended up through amendment 5-14-1604-A2, and reflected in **Appendix B**, remain in effect.

Language to be deleted is shown in ~~strike-out~~ and new language is shown in underline.

A. Standard Conditions

2. Expiration. If development has not commenced, the permit amendment will expire two years from the date on which the Commission voted on the amendment application. Development authorized by the permit amendment shall be pursued

in a diligent manner and completed in a reasonable period of time. Application for extension of the permit amendment must be made prior to the expiration date.

B. Special Conditions

4. Duration of Approval. ~~Unless this permit otherwise expires pursuant to Standard Condition No. 2, this coastal development permit (5-14-1604) shall expire, as follows: the subject development may occur for a one (1) year trial period from the date the applicant initiates the development in accordance with this permit approval; a second year may be authorized by the Executive Director if the Executive Director determines there has been no significant adverse impact upon coastal resources, based on the information supplied pursuant to Special Condition No. 5, and any other relevant information that may become available. Following the same protocol as year 2, additional time may be authorized, on a yearly basis, up to a total of five~~ thirteen (13) ~~years from the date the applicant initiates development in accordance with this permit approval. All such extensions will be provided in writing by the Executive Director. If the Executive Director determines that substantial adverse impacts are occurring to coastal resources an amendment or new permit shall be required to adjust the plan to avoid or reduce such impacts. Within thirty (30) days of initiating the project, the applicant shall notify the Executive Director, in writing, of the date development commenced.~~ This coastal development permit (5-14-1604) shall expire five (5) years from the date of the approval of this Amendment. Except as provided in Public Resources Code Section 30610 and applicable regulations, and as specifically provided in this condition, any future development as defined in PRC section 30106, including but not limited to, maintenance activities beyond the scope of this approval and/or expiration date of this permit, shall require an amendment to 5-14-1604 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission.

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

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

      1. To the greatest extent practicable, all “Minor” maintenance work will be conducted prior to March 1 and after August 31. To protect grunion during their peak spawning season, all “Minor” Maintenance work, to the greatest extent possible, will be scheduled so as to avoid April and May. “Minor” maintenance work refers to work as defined in the Final Revised Monarch

Beach Management Plan (MBMP), that includes a Grunion Avoidance Protocol and Monarch Beach Wrack Management Protocol;

2. Critical project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line established after the previous grunion run can be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been flushed by the previous night's high tide, and new eggs likely won't be deposited for at least 24 hours;

3. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then the high tide line on the morning after the first run of the series shall be marked and project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line shall be postponed until after the incubation period (i.e., until the day before the first date of the next predicted run, as described in 2);

4. Wrack relocation will only take place during the summer months (June 1 through September 30);

5. Only wrack located in front of the area extending between the northernmost edge of the Monarch Bay Club building and the adjacent lawn will be relocated within the northern and southern wrack placement areas as identified in Exhibit 2.

6. Wrack shall never be removed from the beach or relocated on top of cobble;

7. Each morning the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club;

8. Each morning the Monarch Bay Club Staff may collect the wrack from in front of the Monarch Bay Club without the use of mechanized equipment, measure it by volume, and relocate it to designated adjacent beach areas, immediately upcoast and downcoast of the Bay Club;

9. Collected wrack will be spread along the mean high tide line (line marking the boundary between wet and dry sand) in ~~a natural looking manner~~ natural lines and the height of the wrack shall not exceed 10-inches;

10. Once a week, the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club but will leave all the wrack in front of the Monarch Bay Club in place;

11. ~~On those mornings when the wrack is not relocated by the Monarch Bay Club Staff, the biological monitor will monitor bird usage/foraging in the wrack removal, buffer, and wrack deposition areas for a period of one hour in the early morning. Monitoring will include the areas in front of the Bay Club, as well as the areas immediately upcoast and downcoast of the Bay Club;~~ [DELETED]

12. ~~Following monitoring activities, the Monarch Bay Club Staff may then collect, measure, and relocate the wrack to the designated adjacent beach areas; and~~ [DELETED]

13. At the conclusion of the 2015 summer season, the biological monitor will prepare a report documenting the findings of the monitoring and present suggested revisions to be incorporated into the long-term management plan, if appropriate, for Executive Director approval or Coastal Commission approval if an amendment is required. If the Executive Director extends the duration of the subject permit, in accordance with the requirements of Special Condition No. 4, a monitoring report will also be submitted at the conclusion of each year that is approved; and

14. All photo-documentation shall occur from designated points to be established in the final plan.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

III. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION

Project Location

The project site is a privately-owned portion of Monarch Beach in Dana Point, Orange County. The current co-applicants own the segment of sandy beach located inland of the mean high tide line (MHTL) bracketed by a bluff to the north and the Salt Creek Outfall to the south **(Exhibit 1)**. Lateral public access to the subject beach area is available by parking at the County-owned Salt Creek Beach Parking Lot, walking down a paved access road, and following the beach roughly 0.5 miles northward. There are no limitations on who may enjoy this segment of sandy beach (both above and below the MHTL). However, direct vertical access is limited to private residents and guests.

The Monarch Bay HOA is a gated residential community located landward of the subject beach area. Following the private roadway through the HOA community leads to a private parking lot and the Monarch Bay Club: a recreational facility with tables and lounge chairs directly above the sandy beach. Direct vertical access to the beach is

available from the Bay Club stairs and an adjacent emergency access ramp owned by the HOA. Use of these two accessways is limited to lifeguards, HOA residents, and guests of the Waldorf Astoria Monarch Beach Resort & Club (who are conveyed to the site via seasonal shuttles).

The concrete Salt Creek outlet structure is located approximately 200 ft. south of the access ramp **(Exhibit 1)**. The outlet drains runoff from the City's watershed onto the beach, resulting in a fresh-to-brackish scour pond that flows into the Pacific Ocean. But rather than flowing directly into the ocean, the outflow stream often meanders north along the sandy beach **(Exhibit 4)**. The applicants have speculated that this is due, in part, to a gradual elevation and compaction of sand directly south of the outfall pond. Regardless, the adverse effects of the meandering outfall stream are well-documented. The shallow water tends to cultivate bacteria, preclude emergency vehicle access by pooling at the base of the ramp, and render it difficult for beach visitors to cross. These issues are detailed further in the "Public Access" and "Water Quality" subsections below.

Beach wrack is organic material, usually tangles of kelp and sea grass, deposited on the beach by wave action **(Exhibit 4)**. Decomposing wrack serves as a significant habitat for invertebrates, food source for foraging birds, and nutrient source for beach sediment. A varying amount of beach wrack is deposited on Monarch Beach throughout the year. While beneficial for the beach ecosystem, wrack is typically accompanied by an unpleasant odor and jumping invertebrates (including sand fleas) that bother beach-goers. The Bay Club and HOA contend that the wrack impairs beach recreation during seasons of extensive coverage.

Prior to 2015, the applicants dealt with outfall stagnation, ramp blockage, and wrack through a patchwork of unpermitted actions, emergency permits, and CDPs. Monarch Beach's permit history is detailed further below.

Project Background

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

In April 2008, the Commission approved Consent Order No. CCC-08-CD-01**,** which required the respondents to cease and desist from conducting further unpermitted development including, grading, constructing berms, breaching salt creek, and removing wrack and other organic matter from the beach without Coastal Act authorization. Through the Consent Order, the respondents also resolved their civil liabilities by paying $75,000 in penalties and by preparing and implementing a plan to install two informational/educational signs at the Bay Club location.

In September 2008, the City issued local CDP No. 08-0013 for the Monarch Beach HOA to conduct ongoing sand and wrack relocation via hand tools and "lightweight motorized

equipment". Two Commissioners appealed the local CDP, and the appeal was assigned Appeal No. A-5-DPT-08-275. No appeal hearing was scheduled in the following two years while the applicants, the City, and the Commission's staff conferred on appropriate next steps.

In February 2011, the Commission approved CDP No. 5-10-237 for Washington Holdings (a prior property owner) to construct a channel with a sand berm on either side of the constructed channel to direct the outfall pond toward the ocean for one year. Two subsequent amendments were approved to extend the implementation timeframe by an additional two years (i.e. from July 2011 to July 2014). In subsequent applications, the applicants determined that the outfall never meandered south and a single, northern berm would be adequate.

In August 2012, the Executive Director issued Emergency Permit No. G-5-12-236 for Washington Holdings to install a temporary, 450 sq. ft., four-foot deep sand bridge at the base of the access ramp. This was intended to remediate pooling at the base of the emergency ramp from the outfall pond's northward meander.

In April 2015, the Commission approved CDP No. 5-14-1604 for the Bay Club to implement the MBMP. The action approved six total years of implementation of the MBMP from June 2015 to June 2021, including an initial one-year pilot period to monitor the program's effectiveness. The components of the approved plan are described in the 'Project Description' section below. Pursuant to Special Conditions 9 and 10 of CDP 5-14-1604 the Bay Club agreed to withdraw local CDP No. 08-0013 and extinguish all rights and/or entitlements that may have existed relative to prior local and Commission approvals. As such, the terms and conditions of the permits preceding CDP No. 5-14-1604 no longer apply to the project site.

In June 2021, the Commission approved CDP Amendment No. 5-14-1604-A1 for revisions to the MBMP, including extension of the implementation term by an additional three years. The applicants requested another five-year term rather than three. But the Commission determined it unclear from the monitoring data whether wrack relocation was having an adverse effect on bird concentrations and wished to obtain more information before approving a longer term. The Commission also added wrack relocation requirements to ensure the relocated distribution would decompose naturally. The new requirements included limiting the pile heights and avoiding placement on cobble.

The applicants now seek another CDP amendment authorizing an additional, five-year implementation term.

Project Description

The MBMP is intended to integrate the many maintenance activities approved under various permits into a single, cohesive plan approved under CDP No. 5-14-1604. The MBMP consists of three primary components consisting of outfall management, access ramp protection, and wrack relocation.

First, the applicants are permitted dig a two-foot deep channel from the outfall to the MHTL. This dilution channel is achieved by excavating 835 cy. of sand from a 0.26-acre

Area A (i.e. the MHTL directly seaward of the outfall pond) and placing it in a 0.2-acre Area B, directly north of the outfall **(Exhibit 3)**. An elevated berm was constructed during the first pilot year of implementation. In subsequent years, sand placement was adjusted to mimic natural beach contours. Each year the applicants may excavate the two-foot deep channel in the fall (before the rainy winter season) and spring (before the grunion-spawning and recreational summer season). Relocation of the maximum allowable 835 cy. of sand constitutes a semi-annual maintenance event under the MBMP. Semiannual maintenance events are conducted with mechanized equipment and machinery.

Under the first project component, the applicants are also allowed to conduct "minor" maintenance events (in addition to the semiannual maintenance). These constitute maintenance of the dilution channel using a lesser degree of equipment and less sand relocation. Minor maintenance events may occur in any season as needed, although they cannot exceed two times per month. Any minor maintenance events conducted during the California grunion spawning season (March 1 through August 31) must follow the Grunion Avoidance Protocol specified in the MBMP. The protocol includes, but is not limited to, conducting work before the start date of a predicted run and within certain hours during which spawning is unlikely.[1]

Second, the applicants are permitted to import up to 100 cy. of sand to allow continued use of the emergency access ramp during interference from the outfall pond **(Exhibit 4)**. When the outfall pond meanders north, it can form either deep pools of water or depressions where sand has eroded at the ramp's base. This renders the ramp accessway unsafe for both pedestrians and emergency vehicles. The outfall management described above is typically adequate to avoid these issues, but they may still occur concurrent with excavation of the dilution channel. During these periods, the applicants may import sand comparable in grain size and appearance to that of Monarch Beach in order to form a 450 sq. ft., four-foot deep ramp extension. In past years, the applicants have used sand from a quarry in San Juan Capistrano. The applicants are not permitted to relocate sand from other beach areas to use in the 'sand bridge'. There is no limitation on when this work may occur.

Third, the applicants are permitted to relocate beach wrack away from the sand fronting the Bay Club above the MHTL **(Exhibit 2)**. Wrack is collected by hand from an approximately 200-ft. long area and placed in 44-gallon plastic bins[2] for immediate placement in three designated northern and southern areas, which extend 438 cumulative ft. Wrack is placed in a natural-looking distribution above the MHTL, with no wrack pile exceeding 15 inches in height. No wrack is allowed for removal from the beach. Anthropogenic trash found in or around the wrack is measured by volume before

[1] California grunion are small fish endemic to California who wriggle out of the water and as far up the beach as possible to lay their eggs. This process, called 'runs' are guided by moonlight and occur with such regularity that the timeframe may be predicted up to a year in advance.

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

being disposed of in off-site receptacles. Wrack relocation is limited to the summer season (June 1 through September 30). On each relocation day, wrack distributions are photographed before and after relocation.

The applicants have complied with timing and monitoring requirements since 2015, as evidenced by annual monitoring reports submitted between 2015 to 2024. The monitoring reports include photo-documentation, sand relocation logs, bacteria sampling, estimates of wrack relocation volume, and bird observation logs.

The applicants are now requesting amendment of **Special Condition 4** to extend MBMP implementation for an additional five years from the expiration date (June 4, 2024 – June 4, 2029). The applicants also propose installation of a 500-ft. long by 20-ft. wide, 10,000 sq. ft. western snowy plover (*Charadrius nivosus nivosus*) habitat in the northernmost corner of Monarch Beach **(Exhibit 5)**. The habitat will be fenced with stainless steel needle-posts and rope, also known as "symbolic fencing" due to its relative lack of formal security. An educational sign would be hung from the fencing to educate beach-goers on the purpose and significance of the fencing. Further detail is provided in the "Biological Resources" subsection below. No other revisions to the MBMP are proposed.

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

Portions of the project may occur above the MHTL in the Coastal Overlay District of the City's certified Local Coastal Program (LCP) permitting jurisdiction. But Section 9.69.030(c)(1) of the Dana Point Zoning Code, which serves as the City's certified Implementation Plan, designates the Commission as the permitting authority when proposed development is physically integrated and extends across both the Commission's permitting jurisdiction and the City's Coastal Overlay District. The project site satisfies this criterion. The Commission is therefore the permitting authority.

B. Biological 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 30231 of the Coastal Act states:

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

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

> (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: …
>
> (4) Incidental public service purposes…

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

Policy 1.7 Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff… shall be encouraged.

Policy 3.9 Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Sections 30230 and 30231 of the Coastal Act require that marine resources, including biological productivity, be maintained, enhanced, and, where feasible, restored. This is echoed by Conservation Open Space Element Policy 1.7 and 3.9, which further require minimization of adverse effects from wastewater discharges and runoff. There are an abundance of marine resources present on Monarch Beach, including sensitive avian species, less sensitive (but still important) wrack decomposition, and a major wastewater discharge pond. Each of these resources are discussed below.

Wrack and Avian Habitat

The applicant's submitted monitoring reports conducted by the consulting ecologist indicate a diverse community of birds present on Monarch Beach, including western snowy plovers (*Charadrius nivosus nivosus*), California brown pelicans (*Pelecanus occidentalis californicus*), and a variety of gulls. Wrack plays a major role in supporting marine biodiversity on sandy beaches. Once the tangles of kelp and organic matter wash onto dry sand, they begin to trap heat and grow warmer. The decomposition process

cycles nutrients through the beach sediment, where it eventually filters back into coastal waters. In this way, beach wrack acts as an effective fertilizer for the beach environment.

Equally important is the shelter wrack offers marine invertebrates. Sand hoppers, amphipods, kelp flies, and rove beetles are just some of the tiny inhabitants of decomposing wrack. Many of the invertebrates feed on kelp and help in the decomposition process. In turn, the invertebrates serve as a feast for nearshore fish and birds. This can be observed at any deposited beach wrack, where birds will wander through the tangle and help themselves to the masses of insects and crustaceans.

The fertilizer, shelter, and food sources offered by beach wrack are invaluable to the habitat. But they can also annoy nearby beach-goers. Residents of the HOA and guests of the Bay Club complained of odors, clouds of insects, and a lack of recreational space on the sandy beach from the wrack. This is often part of the rationale behind beach-grooming efforts. In this case, the Commission determined that it was possible to relocate beach wrack away from the Bay Club without lessening its habitat value when approving CDP No. 5-14-1604. The applicants contended that birds were less likely to feed at wrack located immediately adjacent to human activity, where beach-goers were more likely to frighten birds away. There were also reports of uninformed beach-goers burying wrack in sand, dragging it below the MHTL, or attempting other harmful methods of disposal. When approving the underlying permit, the Commission determined that relocating wrack to areas of lesser human disturbance would facilitate improved usability for marine wildlife.

The Commission questioned this determination in the findings for Amendment No. 5-14-1604-A1, in which the applicants requested an additional five years of implementation. The findings note that recorded bird concentrations from 2016 to 2020 were highest in the northern and southern wrack deposit areas, further speculating:

> This high number of birds in deposit areas is due in part to the outfall pond located near the southern placement areas, which provides a unique opportunity for shorebird bathing and foraging… However, the northern placement area is a significant distance from the outfall pond and still shows larger numbers of birds compared to the relocation area in front of the club. This suggests that beach wrack attracts shorebirds independent of the outfall pond.

The Commission determined that it remained unclear whether wrack relocation was harmful to its natural processes. On this basis, the MBMP was extended by three years (rather than the requested five years) to allow collection of additional data. The Commission also reduced the wrack collection area by half of its prior length and roughly doubled the length of the deposit areas. Now, as the applicants request an additional five years of implementation, the question remains: Does relocating beach wrack lessen its value to the habitat?

The Commission's ecologist attempted to answer this question by considering:

> A) the difference in bird concentrations across wrack removal and deposit areas,
> B) the difference in bird taxa across wrack removal and deposit areas, and
> C) whether the differences in A) and B) above varied over time.

The Commission's ecologist obtained the raw, cumulative data from monitoring years 2015 through 2023 and performed analytical summaries to produce the graphs below.

Regarding Item A (differences by location), **Figure 1** below compiles bird observation counts per year and location. The locations were categorized by the north wrack deposit area, south wrack deposit areas (which were combined into a single area for summary purposes), wrack removal area above the MHTL, and wrack removal area below the MHTL. It is important to note that no wrack was actually removed from below the MHTL. The underlying permit limits wrack removal to above the MHTL. The 'wrack removal area below the MHTL' category simply refers to the portion of sandy beach immediately seaward of the actual removal area.

Figure 1. *Total number of birds observed in designated wrack relocation areas per year.*

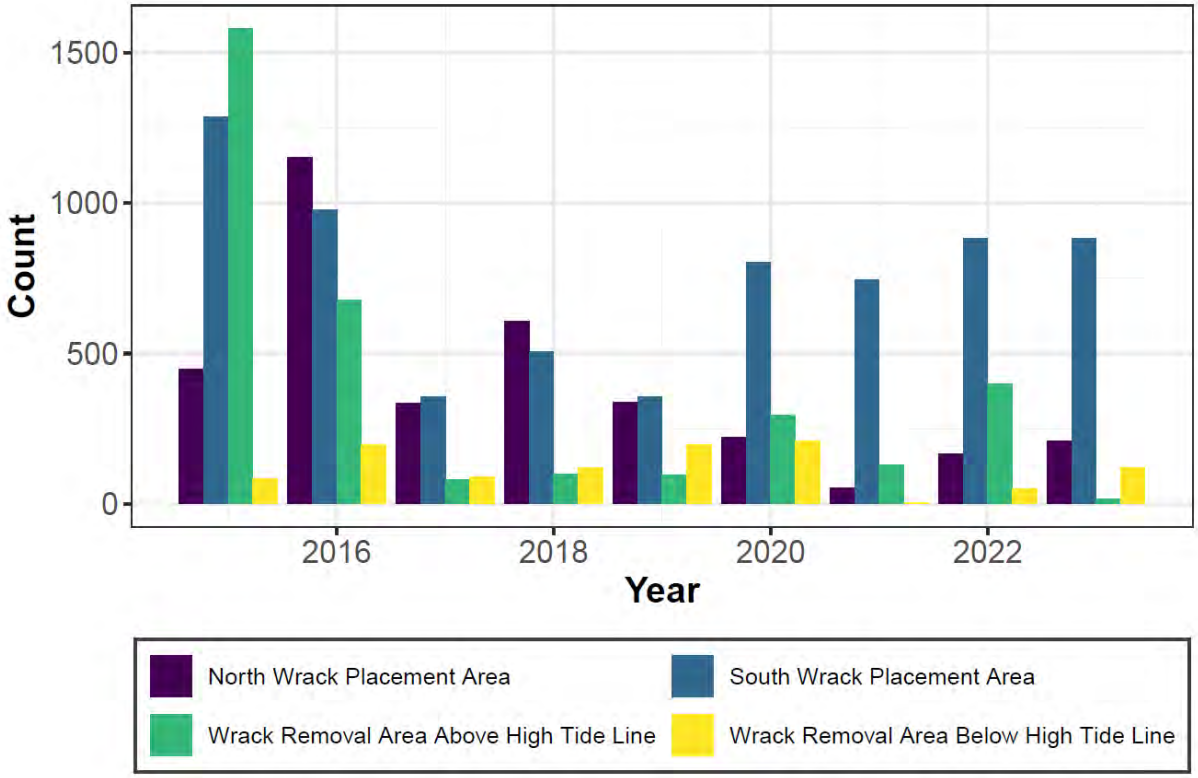

Figure 1 shows a higher concentration of birds observed in wrack deposit areas than removal areas across all years of study and an overall decrease in the total number of birds using the beach. In 2016 and 2018, more birds were observed in the northern deposit area than the southern placement area. This switched in 2020 through 2023, with more birds observed in the two southern deposit areas than the northern area. The cause of this change is unclear.

Regarding Item B (differences by taxa), **Figure 2** compiles bird counts from all years of data collection and separates them by taxa. The taxa categories are gulls, shorebirds (such as willets and sanderlings), waterbirds (such as pelicans, terns, and ducks), and 'other' (such as crows and hummingbirds). While gulls and birds in the 'other' category may feed on wrack invertebrates, they generally do not depend on wrack as a primary food source.

Figure 2. *Total number of birds observed in designated wrack relocation areas per taxa.*

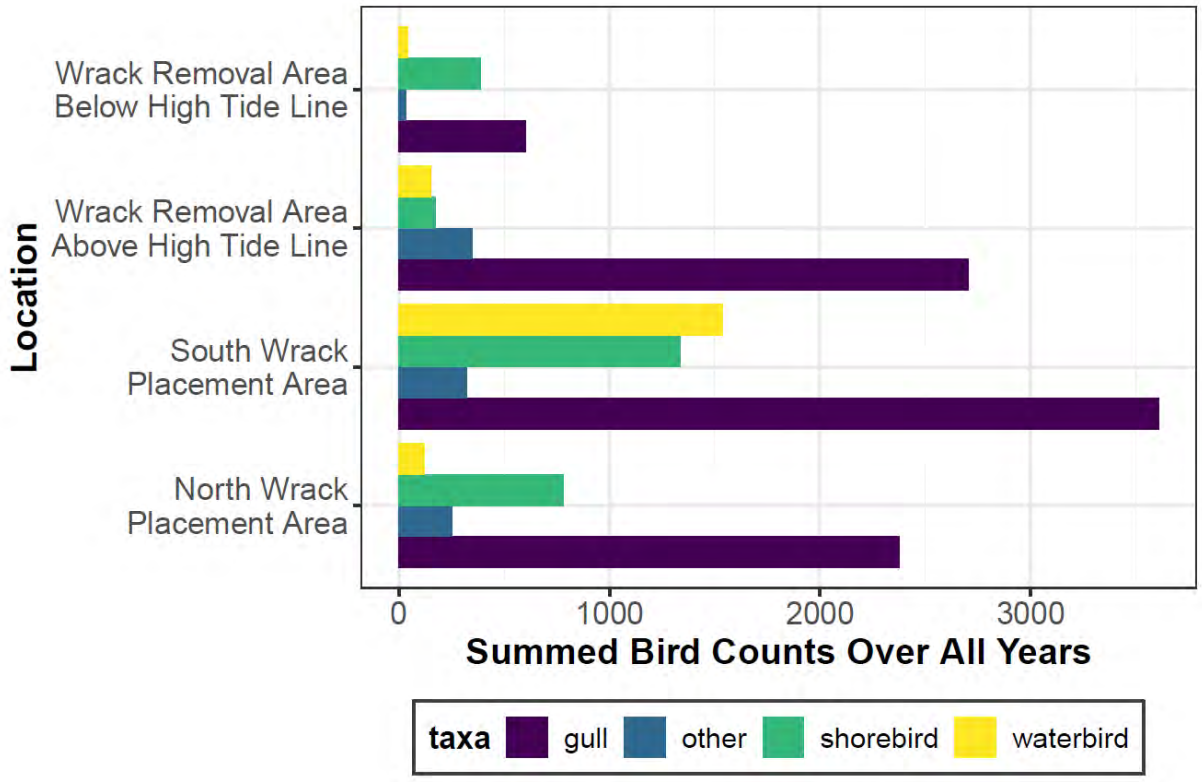

Figure 2 shows that gulls comprise the highest percentage of the birds observed across wrack removal and deposit areas. Notably, all bird taxa appeared to use the wrack placement areas more than the removal areas. Gulls were the most abundant taxa across all areas, and concentrations of gulls varied across the removal and deposit areas. Shorebird concentrations were higher in the deposit areas than the removal areas, with slightly higher concentrations in the south deposit area versus the north.

Waterbirds were most frequently observed in the south wrack deposit area (i.e. the location of both the outfall pond and the falconer) compared to all other locations. The likely causes for these observed preferences for wrack relocation areas are likely due to the presence of wrack itself, which provides forage for species in multiple taxa, as well as the habitat diversity provided by the outfall area in the south wrack placement area. This diversity appears especially important for waterbirds compared to the other bird taxa. However, the presence of the falconer in the south wrack placement area starting in 2016 prevents the analytical ability to determine the potential impact of wrack relocation alone on bird counts in the removal and placement areas.

Regarding Item C (differences by year), **Figure 3** shows bird counts per taxa and year via a line graph. **Figure 4** shows bird counts per taxa and year via four bar graphs grouped by location. **Figure 3** shows that shorebird, waterbird, and ‘other’ bird counts have remained relatively consistent across data collection years. By contrast, the number of gulls observed plummeted in the years following 2016. This suggests that the falconry program has achieved its goal of reducing seagull activity (and the associated

guano) near the outfall. And, perhaps most importantly, it explains the decrease in bird counts since 2016: the reduction is largely attributable to a reduction in observed gulls.

Figure 3. *Total number of birds observed in each taxa per year*.

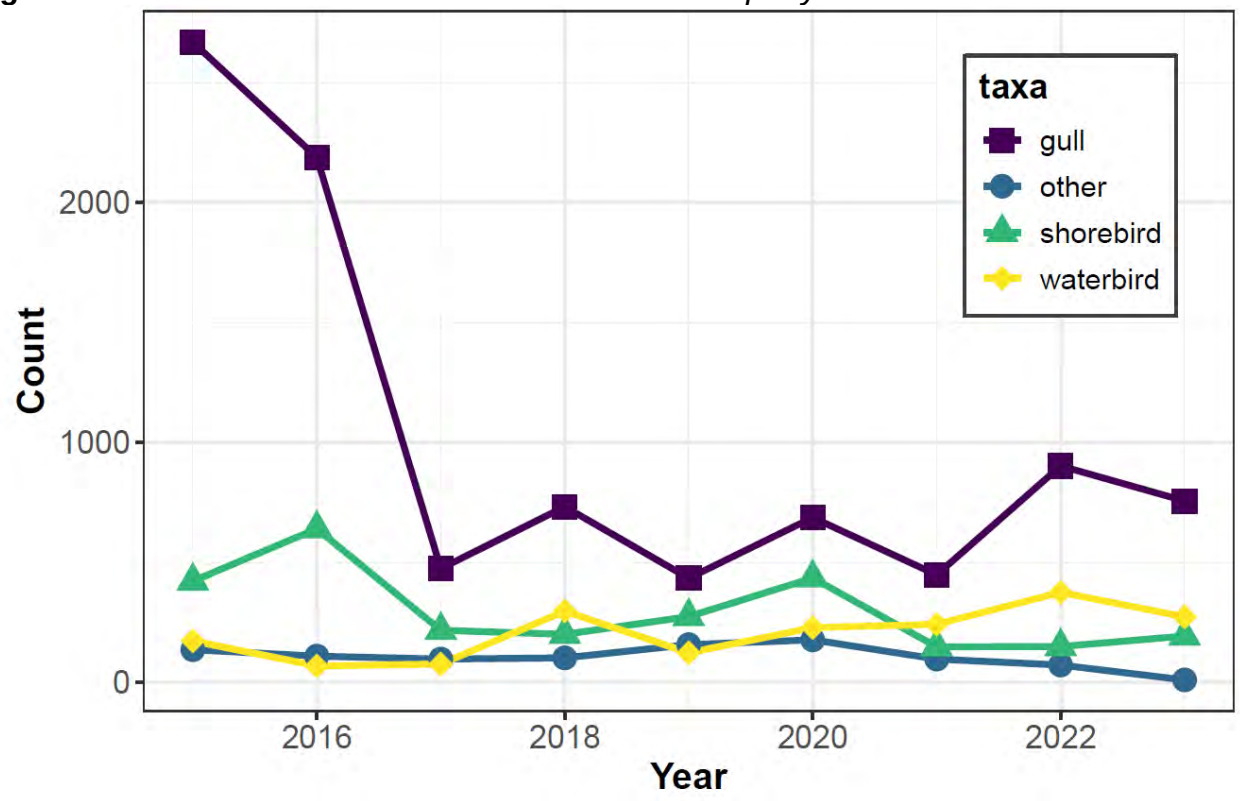

Figure 4. *Total number of birds observed in each taxa per year and location*.

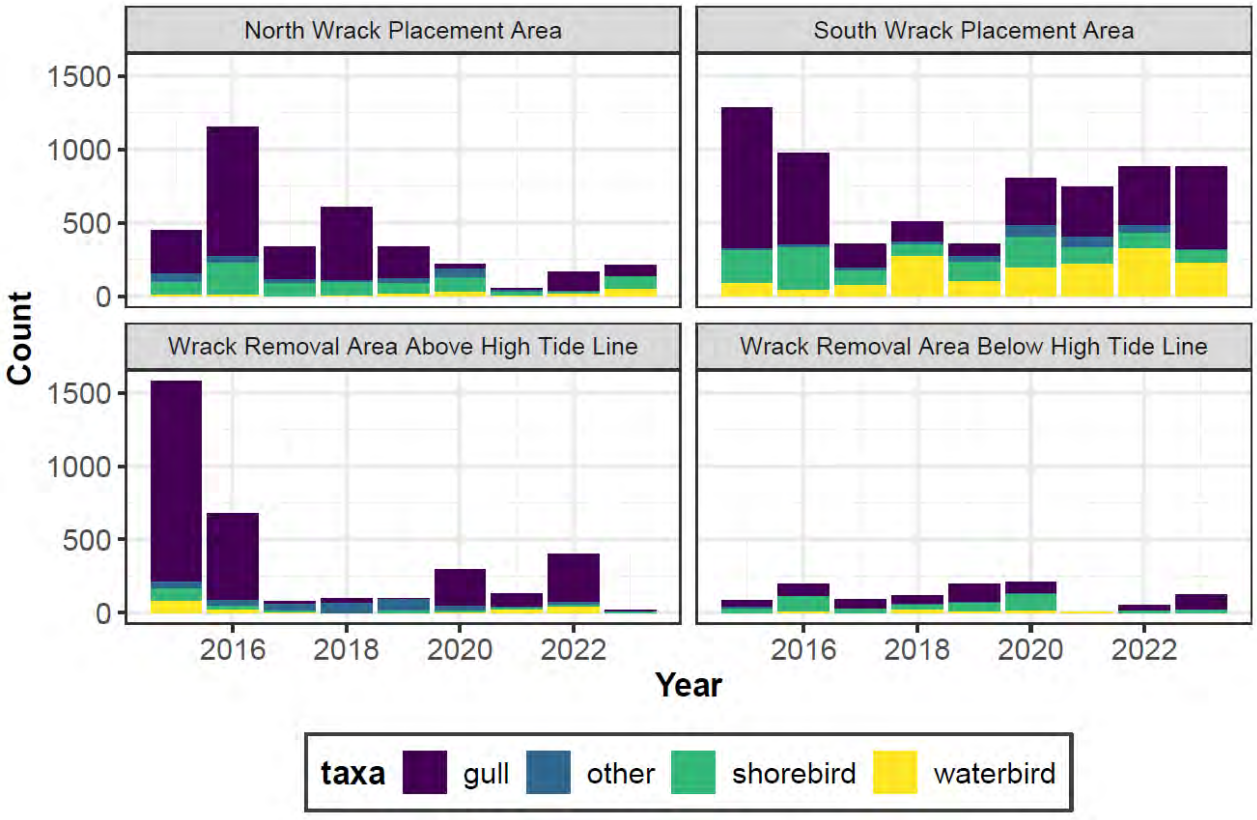

Figure 4 reinforces this explanation by showing that bird counts for taxa other than gulls remained relatively consistent across the different areas and years. Since 2020, gulls appear to use the south wrack placement area more than all the other areas, despite the presence of a falconer (although the gull counts are still lower than in the years prior to the falconry program.) This finding may demonstrate learning on the part of the gulls that use the area – for example, gulls may avoid areas within the active range of the falconer, but still find useful habitat and resources within the south wrack placement area. **Figure 4** also demonstrates that the observed shorebird use of the south placement area was highest in 2015 and 2016, whereas shorebird use of both wrack placement areas was relatively similar in both wrack placement areas following the addition of the falconer.

In summary, the impact of wrack relocation on birds remains inconclusive. Birds in all observed taxa seem to prefer the wrack deposit areas to the removal areas, with no consistent preference between the northern and southern deposit areas over time. The decrease in bird counts between 2015 and 2023 seems largely associated with an overall decrease in gulls, the primary cause of which is unclear.

The falconry program interferes with determining any causal relationship between bird presence and wrack relocation under the approved MBMP. This would be true even with comparison data and consistent monitoring protocols from the consulting ecologist. The Bay Club's proximity is another confounding factor. If the MBMP impacts bird counts at Monarch Beach, the multiple management activities regarding biological resources and water quality at the Beach render it infeasible to tease apart the strength of the potential impact.

Bird counts are thus unlikely to illustrate the effects of the wrack relocation. On this basis, **Special Condition 5.A.11 and 12** are revised to eliminate required bird monitoring in conjunction with wrack relocation. All other monitoring requirements shall remain in place, including the required tracking of relocated wrack and removed trash volumes.

The monitoring reports document western snowy plovers (a federally-designated sensitive species) as roosting and foraging in the project site. While the project site has not been officially designated as 'Critical Habitat', it still provides valuable space for a critically endangered species. Commission staff consulted with the United States Fish and Wildlife Service (USFWS) on whether additional measures were possible to encourage plover use of Monarch Beach. A USFWS biologist encouraged the establishment of a fenced area in which sand hummocks could form. The subject stretch of privately-owned beach is relatively limited in width and may be subject to periodic tidal influence beyond the MHTL. While plovers prefer dry sand, the CDFW representative indicated that periodic inundation is unlikely to lessen the habitat's value. Similarly, siting the plover habitat in a wrack deposit area would not raise concerns if the wrack is arranged in lines, rather than piles. Lines of beach wrack are considered easier to navigate for small birds.

Upon discussion with Commission staff, the applicants have proposed installation of a 10,000 sq. ft. snowy plover habitat area in the northernmost corner of Monarch Beach

(Exhibit 5). As described in the "Project Location, Background, Description", the habitat area will be marked by using stainless steel needle-posts that California State Parks has used in past western snowy plover restoration and maintenance projects. The metal posts will decrease the likelihood of post displacement (and if they are displaced, they are less likely to become mobile and difficult to find) compared with plastic or wooden posts. The proposed educational signage will ideally help beach-goers to respect the symbolic fencing. The proposed habitat will be a valuable addition to the limited habitat available to plovers along the California coastline.

To ensure relocated wrack is accessible to plovers, **Special Condition 5.A.9** is revised to specify that relocated wrack should be spread in natural-looking lines. In recognition that no adverse effects are evident from the monitoring reports, **Special Condition 4** is revised to allow an additional five years of MBMP implementation.

In summary, Coastal Act sections 30230 and 30231 require that work conducted in the marine environment sustain biological productivity of coastal waters and maintain healthy populations of all marine species. The wrack relocation component of the MBMP, as conditioned and amended, does not raise inconsistency with Coastal Act sections 30230 and 30231.

Wetland Habitat
Section 30233(a) of the Coastal Act limits the dredging of wetlands to specific, enumerated uses, including incidental public uses. It also requires that any project which results in dredging of wetlands constitutes the least environmentally damaging alternative and provides adequate mitigation for any environmental impacts.

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

The proposed channelization at the toe of the outfall lagoon is a protective measure against the outflow drift which stagnates in pools, draws a greater distribution of seagulls along the beach, and increases bacterial concentrations in Monarch Beach coastal waters (as further discussed in the 'Water Quality' section below.) While the work is proposed by private entities, it has resulted in a recorded water quality improvement that benefits the public Salt Creek Beach located immediately south of Monarch Beach. As such, the cut of 835 cu. yds. of sand and placement immediately adjacent to create a two-foot deep channel at the outfall lagoon constitutes an incidental public service purpose and an allowable use under Section 30233(a)(4).

Regarding project alternatives, the applicants have attempted to control the stagnating northward stream through the construction of two sand berms on either side of the outfall and a two-ft. deep channel (ref. CDP 5-10-237). This alternative necessitated a greater volume of sand relocation and more frequent maintenance without sufficiently addressing the issue, as the applicants still applied for an emergency permit to establish a temporary sand bridge at the base of the access ramp to cross a deep outfall pool (ref. Emergency Permit G-5-12-236). The applicants have also implemented the alternative of

no sand relocation during the years between the Consent Order issued in 2008 and CDP 5-10-237 issued in 2011.

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

Sand Relocation and Sensitive Species
The wide, gradual slope of Monarch Beach serves as a spawning habitat for California grunion (*Leuresthes tenuis*), which incubate eggs above the high tide line for subsequent hatching and "runs" during the high tides associated with lunar cycles. As discussed in the "Project Location, Background, and Description" subsection above, the MBMP requires protective measures to avoid the grunion spawning season. Semiannual maintenance events are prohibited during the grunion spawning season. Minor maintenance events must be minimized to the greatest extent feasible during the spawning season, and if work must occur during the season a qualified biologist shall monitor for the presence of adult grunion on the beach during predicted runs. The permit also prohibits mechanized equipment from entering jurisdictional waters or potential grunion spawning areas.

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

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

C. WATER QUALITY

Section 30231 of the Coastal Act states:

> The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging

waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The City's certified Land Use Element contains the following policies in relevant part:

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

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

The proposed amendment would allow continuation of work at an urban stream outlet that carries runoff from surrounding Dana Point development to the Pacific Ocean. As described above, the MBMP includes relocation of approximately 835 cu. yds. of sand from the outfall entrance to the adjacent northern area to create a 3-ft. deep channel and adjacent slope **(Exhibit 3)**. This channel ensures direct outflow dilution, rather than allowing discharge to meander northward on the beach and stagnate in pools.

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

During the first year of MBMP implementation, Monarch Beach was listed in Heal the Bay's 2015-2016 Beach Report Card as the fourth worst beach in California in terms of dry-weather water quality.[3] The report stated, in relevant part:

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

This poor rating was issued during the first year of MBMP implementation, perhaps too early in the program implementation for a tangible improvement in water quality. While the applicants continued the permitted channelization, a falconry program was instituted. The program is managed by the City of Dana Point and County of Orange, with partial funding provided by the applicants.

Under the falconry program, a qualified professional conducts a survey for snowy plovers and other sensitive species in the immediate vicinity of the outfall pond. If sensitive species are observed, the professional keeps a Harris' hawk (*Parabuteo unicinctus*) tethered to their wrist and circles the outfall pond when seagulls arrive. If no sensitive species are observed, the professional allows the hawk to fly over and around the outlet. The City conducts weekly water quality sampling to assess the falconry program's efficacy in improving water quality.

Both the MBMP's annual monitoring reports and the City's weekly monitoring show a general pattern of reduction in bacteria levels in the four years following implementation of the falconry program, with periodic spikes in bacteria corresponding to rainy seasons. The Salt Creek outfall-ocean mixing area ultimately received an A grade in Heal the Bay's most recent 2022-2023 Beach Report Card for dry-weather water quality, a dramatic improvement from its rating in 2016.[4] This improvement in Monarch Beach water quality seems to be a result of the comprehensive management program currently in place, including the City's Ozone Treatment Center, the City's falconry program, and the applicant's sand relocation for improved outflow dilution.

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

D. PUBLIC ACCESS

Coastal Act Section 30604 states, in relevant part:

> (c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity

[3] https://healthebay.org/sites/default/files/BRC_2016_final.pdf

[4] https://healthebay.org/wp-content/uploads/2023/06/Beach-Report-Card-2022-2023.pdf

> with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Coastal Act Section 30210 states:

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

The City's certified Land Use Element contains the following policies in relevant part:

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

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3, including Section 30210. This is echoed by certified Land Use Element Policy 4.3. The proposed amendment would allow the continuation of development (i.e. grading and wrack relocation) on sandy beach above the MHTL and must thus be evaluated for public access impacts.

As noted above, the subject beach is used primarily by Monarch Beach HOA residents and guests of the Waldorf Astoria Resort. The emergency access ramp included in the project area connects the Bay Club private parking lot to the beach, and terminates inland in a gated entrance on Pacific Coast Highway. However, the beach may be accessed via a public parking lot located approximately 0.5 miles downcoast of the Bay Club **(Exhibit 1)**. Thus, there is lateral public access available to Monarch Beach.

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

The proposed amendment will allow continued use of the emergency access ramp and increased availability of sandy beach for the Monarch Beach HOA and guests of the resort. While the channel could impede lateral access if too wide or deep, the project limits the slope created by the sand relocation to three-feet high, limits the adjacent

channel to two-feet deep, and locates the channel on a slope that may still be crossed by public visitors. Failure to achieve these metrics will require remediation from the applicants (i.e. a minor maintenance event to move sand into passable elevations).

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

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

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

Appendix A—Substantive Files

Policies of the Dana Point Specific Plan and certified Local Coastal Program cited in the staff report.

Materials associated with Immaterial Amendment Application No. 5-14-1604-A2.

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

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-14-1604, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-14-1604-A2. Any changes, pursuant to amendment A2, from the previously approved special conditions are shown in **bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions

A. STANDARD CONDITIONS:

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

3. 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.

4. Expiration. If development has not commenced, the permit amendment will expire two years from the date on which the Commission voted on the amendment application. Development authorized by the permit amendment shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit amendment must be made prior to the expiration date.

5. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

6. 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.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. SPECIAL CONDITIONS:

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

1. No Mechanized Equipment. No mechanized equipment shall operate below the daily high tide line.

2. Public Access. By acceptance of this permit, the applicant agrees to not place or install development anywhere on the public beach that would obstruct or impede public access in any way and/or give any impression to a member of the public that the beach area is private and not public, or create the appearance of a private beach. To minimize impacts on public access, the reconfiguration of beach sand that is authorized by this coastal development permit shall occur during non-holiday, mid-

week periods to the maximum extent feasible. The top elevation of the beach sand relocated from Area A to Area B, as identified in the final plan required pursuant to Special Condition No. 5, shall not be more than three (3) feet above the adjacent sandy beach and will mimic the natural beach contour as it slopes toward the emergency access ramp (Exhibit No. 2). The relocated beach sand will be relocated above the high tide line.

3. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. Duration of Approval. ~~Unless this permit otherwise expires pursuant to Standard Condition No. 2, this coastal development permit (5-14-1604) shall expire, as follows: the subject development may occur for a one (1) year trial period from the date the applicant initiates the development in accordance with this permit approval; a second year may be authorized by the Executive Director if the Executive Director determines there has been no significant adverse impact upon coastal resources, based on the information supplied pursuant to Special Condition No. 5, and any other relevant information that may become available. Following the same protocol as year 2, additional time may be authorized, on a yearly basis, up to a total of five~~ thirteen ~~(13) years from the date the applicant initiates development in accordance with this permit approval. All such extensions will be provided in writing by the Executive Director. If the Executive Director determines that substantial adverse impacts are occurring to coastal resources an amendment or new permit shall be required to adjust the plan to avoid or reduce such impacts. Within thirty (30) days of initiating the project, the applicant shall notify the Executive Director, in writing, of the date development commenced.~~ This coastal development permit (5-14-1604) shall expire five (5) years from the date of the approval of this Amendment. Except as provided in Public Resources Code Section 30610 and applicable regulations, and as specifically provided in this condition, any future development as defined in PRC section 30106, including but not limited to, maintenance activities beyond the scope of this approval and/or expiration date of this permit, shall require an amendment to 5-14-1604 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission.

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

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

      1. To the greatest extent practicable, all "Minor" maintenance work will be conducted prior to March 1 and after August 31. To protect grunion during their

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

2. Critical project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line established after the previous grunion run can be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been flushed by the previous night’s high tide, and new eggs likely won’t be deposited for at least 24 hours;

3. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then the high tide line on the morning after the first run of the series shall be marked and project activity that entails mechanized equipment or other sand disturbance seaward of the marked high tide line shall be postponed until after the incubation period (i.e., until the day before the first date of the next predicted run, as described in 2);

4. Wrack relocation will only take place during the summer months (June 1 through September 30);

5. Only wrack located in front of the area extending between the northernmost edge of the Monarch Bay Club building and the adjacent lawn will be relocated within the northern and southern wrack placement areas as identified in Exhibit 2.

6. Wrack shall never be removed from the beach or relocated on top of cobble;

7. Each morning the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club;

8. Each morning the Monarch Bay Club Staff may collect the wrack from in front of the Monarch Bay Club without the use of mechanized equipment, measure it by volume, and relocate it to designated adjacent beach areas, immediately upcoast and downcoast of the Bay Club;

9. Collected wrack will be spread along the mean high tide line (line marking the boundary between wet and dry sand) in ~~a natural looking manner~~ natural lines and the height of the wrack shall not exceed 10-inches;

10. Once a week, the Monarch Bay Club Staff will photo-document the distribution of wrack on the beach in front of the Monarch Bay Club but will leave all the wrack in front of the Monarch Bay Club in place;

11. ~~On those mornings when the wrack is not relocated by the Monarch Bay Club Staff, the biological monitor will monitor bird usage/foraging in the wrack removal, buffer, and wrack deposition areas for a period of one hour in the early morning. Monitoring will include the areas in front of the Bay Club, as well as the areas immediately upcoast and downcoast of the Bay Club;~~ [DELETED]

12. ~~Following monitoring activities, the Monarch Bay Club Staff may then collect, measure, and relocate the wrack to the designated adjacent beach areas; and~~ [DELETED]

13. At the conclusion of the 2015 summer season, the biological monitor will prepare a report documenting the findings of the monitoring and present suggested revisions to be incorporated into the long-term management plan, if appropriate, for Executive Director approval or Coastal Commission approval if an amendment is required. If the Executive Director extends the duration of the subject permit, in accordance with the requirements of Special Condition No. 4, a monitoring report will also be submitted at the conclusion of each year that is approved; and

14. All photo-documentation shall occur from designated points to be established in the final plan.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.

A. The permittee shall comply with the following construction-related requirements:

1. No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;

2. Any and all debris resulting from construction activities shall be removed from the project site within twenty-four (24) hours of completion of the project;

3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

4. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and

5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

1. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;

2. The applicant shall develop and implement spill prevention and control measures;

3. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm-drain, open ditch or surface water; and

4. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

7. Storage/Staging Area for Construction and Construction Access Corridor.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to public access, to beach areas or to sensitive habitat areas.

1. The plan shall demonstrate that:

a) Construction equipment shall not be staged or stored outside the staging or storage area;

b) Public parking areas shall not be used for staging or storage of equipment;

c) Beach areas and habitat areas shall not be used as staging or storage areas; and

d) The staging and storage area for construction of the project shall not obstruct vertical or lateral access to the beach.

2. The plan shall include, at a minimum, the following components:

   a) A site plan that depicts:

      i. Limits of the staging area(s);

      ii. Construction corridor(s);

      iii. Construction site; and

      iv. Location of construction fencing and temporary job trailers, if any.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Consent Cease and Desist Order Remains Fully In Effect. Nothing in this permit shall be construed as superceding or replacing the requirements of Consent Cease and Desist Order No. CCC-08-CD-01, adopted by the Commission on April 9, 2008. As the successor in interest to the responding party subject to the Consent Order, the applicant shall comply with the terms and conditions of the Consent Order, which includes but is not limited to, the prohibition on grading of the beach, construction of berms, breaching of Salt Creek or other breaching activities, and removing wrack and other organic material, except as explicitly authorized in this permit, and the requirements to install and maintain two (2) informational/educational signs which describe, through text and photographs/graphics, the importance and biological significance of beach wrack and grunion, and an agreement to stipulated penalties for non-compliance with the order.

9. Withdraw Project Approved by Local Government. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant agrees to withdraw the application for development of the subject site approved by the City of Dana Point and to abandon and extinguish all rights and/or entitlements that may exist relative to the City's approval of a project at the subject site (Local Coastal Development Permit No. 08-0013) that is the subject of Coastal Commission Appeal No. A-5-DPT-08-245.

10. Termination of Coastal Development Permit 5-10-237, as amended. By acceptance of this permit the applicant agrees to the termination and extinguishment of all rights and/or entitlements that may exist relative to any development of the subject site approved by Coastal Development Permit No. 5-10-237, as amended, following commencement of the sand relocation approved by this Coastal Development Permit No. 5-14-1604.