

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE



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Giles Matthews
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601 North Ross Street
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**ORANGE COUNTY SAND COMPATIBILITY AND OPPORTUNISTIC USE PROGRAM
MITIGATED NEGATIVE DECLARATION
SCH # 2026060047**

Dear Mr. Matthew Giles:

The California Department of Fish and Wildlife (Department) received a Mitigated Negative Declaration (MND) from Orange County (County) for the Orange County Sand Compatibility and Opportunistic Use Program (Program), pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding Program activities that may affect California fish and wildlife. We appreciate the opportunity to provide comments regarding those aspects of the Program that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, section 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California and ensuring fisheries are sustainably managed under the Marine Life Management Act.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

PROGRAM DESCRIPTION SUMMARY

Proponent: Orange County

Objective: The primary Program objective is for the County to obtain regulatory approvals to allow for beach nourishment projects to occur along the County coast as sediment source opportunities arise from inland sources. Future beach nourishment projects from the Program are intended to restore beaches and protect against coastal erosion through transporting and placing the source material on public city, state, and county beaches. The Program's scope includes 25 beach receiving sites and 10 stockpile sites. The sand will be sourced from a variety of inland sources, including sediment detention basins, lakes, dams, rivers, creeks, channels, storm drains, wetlands, marshes, ocean outlets, quarries, and construction sites. All events where opportunistic sand would be used for beach nourishment within the scope of the Program would have to demonstrate compliance with a pre-determined set of science-based criteria, using sediment and water quality guidelines from the United States Environmental Protection Agency, United States Army Corps of Engineers, and others. The criteria for source sand suitability for placement on receiver beaches include chemical characteristics, grain size, color, debris content, vegetation content. The projects in the Program would take precautions against invasive species (e.g., *Caulerpa* species), including through timing of sand placement, fill design, and monitoring. The potential receiving sites include the following: on the dry beach as a beach berm; on the dry beach as a storm dike; below the mean high tide line; on the back beach as a dune; and on the back beach as a cliff/bluff stabilization measure.

Location: The Program sites are located along the Orange County coast and inland in the following Cities (listed north to south): City of Seal Beach, City of Huntington Beach, City of Costa Mesa, City of Newport Beach, City of Irvine, City of Dana Point, and City of San Clemente.

Timeframe: Once the Program is established, the timing of each beach nourishment event would be on a case-by-case basis as inland sand sources become available.

BIOLOGICAL SIGNIFICANCE

The marine ecosystems of the Southern California Bight host diverse habitats and thousands of species of marine plants, fish, invertebrates, seabirds, turtles, and mammals, some of which are unique to Southern California. This biological complexity stems from the region's dynamic ocean environment, where upwelling provides nutrient-rich water to the coast and complicated current patterns mix cold- and warm-water communities. Southern California's variety of marine habitats, such as hard (rocky or reef) and soft (sand or mud) substrate, kelp forests, and seagrass beds, provide marine organisms with nursery grounds, shelter, and areas to forage and reproduce. These habitats and species contribute to the state's economy by supporting numerous commercial and recreational fisheries, ecotourism, commerce, and recreation.

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Program's significant, or potentially significant, direct, and indirect impacts on fish and wildlife resources.

Marine Protected Areas

Comments: The need to safeguard the long-term health of California’s marine life was recognized by the California Legislature in 1999 with the passage of the Marine Life Protection Act (MLPA). The MLPA aims to protect California’s marine natural heritage through establishing a statewide network of marine protected areas (MPAs). MPAs protect the diversity and abundance of marine life, the habitats they depend on, and the integrity of marine ecosystems.

The MND notes that four receiver sites occur in MPAs:

- Newport Dunes is in the Upper Newport Bay State Marine Conservation Area (SMCA),
- Little Corona Del Mar is in the Crystal Cove SMCA,
- Crystal Cove State Park is in the Crystal Cove SMCA, and
- Salt Creek Beach is in the Dana Point SMCA.

Even though the MND states that “practitioners operating nourishment projects under the Program would comply with the specific rules for the MPA in which they are operating,” beach nourishment is not an allowable activity in the Upper Newport Bay SMCA (e.g., Newport Dunes) or the Dana Point SMCA (e.g., Salt Creek Beach) in Title 14 California Code of Regulations section 632.

Additionally, Laguna Beach State Marine Reserve and Laguna Beach SMCA occur in the vicinity of the Program’s receiver sites and indirect impacts could occur. The Department recognizes that the MND has the following proposed Program Guideline Measures (PGM):

- PGM BIO-2: Sensitive bird species monitoring will be implemented if sand placement is anticipated to occur during the California least tern (*Sternula antillarum browni*) or Western snowy plover (*Chardrius alexandrinus nivosus*) nesting seasons;
- PGM BIO-3: California grunion (*Leuresthes tenuis*) monitoring will be implemented for any beach nourishment event occurring within the spawning season on any sandy beach where spawning could potentially occur and with sand placement or equipment access seaward of the mean high tide line;
- PGM BIO-4: Turbidity monitoring will be implemented to avoid significant impacts to water quality if sand placement is seaward of the mean high tide line and in accordance with the scale of the nourishment event and percentage of fines in the source material;
- PGM BIO-6: If sand placement occurs in the vicinity of known Habitat Areas of Particular Concern (HAPC; e.g., surfgrass, kelp, or rocky substrate), monitoring of that habitat will occur in accordance with the sand placement scale and proximity to the surfgrass, kelp, or rock substrate; and
- PGM BIO-7: If sand placement occurs in the vicinity of known or potential eelgrass, monitoring of eelgrass will occur in accordance with the California Eelgrass Mitigation Policy (NOAA 2014).

While the Department appreciates that the Program includes PGMs to monitor for turbidity and several types of HAPC including rocky reefs, seagrass (e.g. surfgrass and eelgrass), and canopy kelp, the Department is concerned that sediment placement activities could have direct or indirect impacts to HAPC and the species that inhabit them in MPAs via burial/smothering, increased turbidity, and/or decreased light availability during or following sediment placement. The MND

does not address how the potential indirect effects, as a result of the sediment placement, would be monitored and/or mitigated for post-construction to avoid impacts to HAPC in MPAs.

Recommendations: The Department recommends that beach nourishment projects in this Program only occur where it is an allowable activity pursuant to Title 14 California Code of Regulations section 632. The MND should be revised to remove the Newport Dunes and Salt Creek Beach receiving sites because these are within MPAs where beach nourishment is not an allowable activity under Title 14 California Code of Regulations section 632.

The Department recommends that sediment placement activities should not have direct or indirect impacts to HAPC or species within MPAs. While the Department recognizes the PGMs for monitoring sand placement, the Department recommends that the Program fully avoid direct sand placement within HAPC habitats including but not limited to surfgrass, eelgrass, and rocky substrate. The MND should address how the potential indirect effects from sediment placement in MPAs would be monitored and mitigation for post-construction to ensure HAPC are not impacted within MPAs.

Invasive Species Impacts

Comments: Disturbance of the bottom sediments from dredging and anchoring may redistribute non-native species that compete with native species. This could cause widespread adverse impacts to eelgrass and marine ecology. The invasive alga *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive alga species found recently in Newport Bay and San Diego Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native algae. *Caulerpa prolifera* can grow as deep as 50 meters and appears to be more tolerant of low light environments than most other macroalgae. Additionally, since all *Caulerpa* species pose a serious risk in harming native marine life, Fish and Game Code section 2300 was amended in 2023 so that no person shall sell, possess, import, transport, transfer, release alive in the state, or give away without consideration all species of the genus *Caulerpa*, with the exception of bona fide scientific research upon authorization by the Department.

Recommendations: While the Department appreciates that the MND notes that any source sediment from Newport Bay would need to adhere to the guidelines in the Caulerpa Control Protocol (<https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>, October 2021) prior to placement on beaches, the Department recommends adding the following language in bold underline text to the MND:

*“Caulerpa is an invasive algae known to be present in Newport Bay. Therefore, any source sediments from the Newport Bay marine environment, **and any other locations in Orange County’s marine environment**, will need to adhere to the guidelines set forth in the Caulerpa Control Protocol prior to placement on beaches. This includes survey and reporting requirements as well as coordination with the appropriate regulatory agencies to ensure that the invasive algae is not spread elsewhere.”*

The Department recommends conducting pre-construction *Caulerpa spp.* surveys in areas where source sediments would be collected in the marine environment to identify the potential existence of invasive *Caulerpa spp.* in accordance with the Caulerpa Control Protocol. Any sightings of *Caulerpa spp.* should be reported within 24 hours to the Department(Caulerpa@wildlife.ca.gov), and National Marine Fisheries Service at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, section 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Program surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Program, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the environmental document filing fee is required for the underlying Program approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Program impacts on biological resources. Questions regarding this letter or further coordination should be directed to Leslie Hart, Environmental Scientist at R7CEQA@wildlife.ca.gov.

Sincerely,



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