CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W 9c

Filed:	November 1, 2010
49th Day:	December 20, 2010
180th Day:	April 30, 2011
Staff:	Fernie Sy-LB
Staff Report:	December 22, 2010
Hearing Date:	January 12-14, 2011
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-10-162

APPLICANT: City of Newport Beach, Harbor Resources Dept., Attn: Chris Miller

AGENT: Anchor QEA, L.P., Attn: Joshua Burnam

PROJECT LOCATION: Rhine Channel & portions of areas in lower Newport Bay adjacent to Marina Park, American Legion & the 15th Street Pier, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Approximately 150,000 cubic yards of dredging to remove contaminated sediments from Rhine Channel and three (3) nearby locations where the sediments have migrated; placement of sediments in the Port of Long Beach (POLB) Middle Harbor Confined Disposal Facility (CDF); and remove and replace approximately 125-150 piles and portions of docks in same existing configuration to accommodate dredging

OTHER APPROVALS:

Final Mitigated Negative Declaration (SCH # 2010061035) for the Rhine Channel Contaminated Sediment Cleanup dated July 2010; City of Newport Beach Harbor Resources Division Approval-in-Concept dated August 31, 2010; and E-mail from Kenneth Wong of the U.S. Army Corps of Engineers (USACOE) and the Southern California Dredged Material Management Team (a multiagency group composed of the USACOE, the U.S. Environmental Protection Agency (EPA), California Regional Water Boards, and the California Coastal Commission (CCC)), dated October 26, 2010, stating approval of the proposed project; Letter from the Port of Long Beach (POLB) dated October 18, 2010, approving the placement of approximately 150,000 cubic yards of dredged material from the Rhine Channel Sediment Cleanup Project into the Middle Harbor Slip 1 in the Port of Long Beach (POLB); Final Environmental Impact Statement for the Middle Harbor Redevelopment Project (SCH # 2004091010) dated April 2009; and Port of Long Beach Harbor Development Permit (HDP).

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified LUP; Port of Long Beach Master Plan Amendment No. 16; Letter from Commission staff to Anchor QEA, L.P. dated August 19, 2010; Letter from Anchor QEA, L.P. to Commission staff dated September 9, 2010; Letter from Commission staff to Anchor QEA, L.P. dated October 13, 2010; and Letter from Anchor QEA, L.P. to Commission staff dated October 29, 2010

PROCEDURAL STAFF NOTE:

A Coastal Development Permit is required for the project pursuant to Section 13252(a) (2) of the Commission's regulations because it involves more than one hundred thousand (100,000) cubic yards of dredging within a twelve month period and, therefore, does not qualify as exempt repair and maintenance.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project with **ELEVEN (11) SPECIAL CONDITIONS** regarding **1)** submittal of an amendment for an alternative contaminated sediment disposal site if the contaminated sediments are not deposited at the Port of Long Beach Middle Harbor CDF; **2)** Final Plans for Dock and Pile Removal and Replacement; **3)** pre and post-construction eelgrass surveys and if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*; **4)** a pre-construction survey for *Caulerpa taxifolia* be done and normal protocols followed if its presence is discovered; **5)** construction responsibilities; **6)** turbidity control; **7)** Final Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan; **8)** Spill Prevention, Control, and Countermeasures (SPCC) Plan, **9)** Dredging and Disposal Workplan; **10)** Final Construction Staging Plans/Upland Offloading Plans; and **11)** Temporary Vessel Relocation Plans. The primary issues associated with this development are protection of marine resources, marine environment, water quality and public access.

The proposed project is the least environmentally damaging alternative and will not have significant adverse impacts to marine resources. In fact, the project will result in improvements to marine habitat by removing existing contamination. The dredge materials proposed for disposal at the Port of Long Beach (POLB) Middle Harbor Confined Disposal Facility (CDF) are not suitable for beach replenishment because they consist of contaminated sediment. The proposed project will result in temporary impacts to benthic organisms and a temporary increase in water turbidity in the project dredge area. The California Dredged Material Management Team (a multiagency group composed of the USACOE, the U.S. Environmental Protection Agency (EPA), California Regional Water Boards, and the California Coastal Commission (CCC)) has confirmed the materials are suitable for disposal at The POLB Middle Harbor Confined Disposal Facility (CDF).

Section 30600(c) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Furthermore, most of the project is located in the water which is an area of the Commission's retained jurisdiction. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance. Since the proposed development is located in the coastal zone, and requires a coastal development permit, the coastal development permit will serve as any required federal consistency certification that may be required pursuant to the Federal Coastal Zone Management Act (CZMA).

EXHIBITS:

1. Vicinity Map
2. Section of the letter from the applicant received on December 16, 2010
3. Letter from the Santa Ana Regional Water Quality Control Board (RWQCB) dated July 26, 2010

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-10-162 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

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

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

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. SPECIAL CONDTIONS

1. ALTERNATIVE CONTAMINATED SEDIMENT DISPOSAL LOCATION IF THE PORT OF LONG BEACH MIDDLE HARBOR CONFINED DISPOSAL FACILITY (CDF) IS NOT USED

The applicant shall apply for an amendment to this permit for an alternative contaminated sediment disposal site if the contaminated sediments from the proposed project are not deposited at the Port of Long Beach Middle Harbor CDF.

2. FINAL PLANS FOR DOCK AND PILE REMOVAL AND REPLACEMENT

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval by the Executive Director, two (2) full size sets of Final Plans indicating which docks and piles will be removed and replaced in the same as existing configuration to accommodate dredging, and the plans shall be in substantial conformance with the preliminary plans submitted on September 13, 2010. No reconfiguration, permanent removal, or re-sizing of any existing boat dock/pier (except for reductions to the size of pier platforms to conform to current standards) is authorized by this coastal development permit. No increase in the quantity of piles, or increase in the total quantity of fill by piles is authorized by this coastal development permit. Any such changes requested shall require an amendment to this permit, or a new coastal development permit, as required by the Executive Director.

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.

3. PRE-CONSTRUCTION EELGRASS SURVEY

A. **Pre Construction Eelgrass Survey**. A valid pre-construction eelgrass (Zostera marina) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8

(except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.

B. **Post Construction Eelgrass Survey**. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (SCEMP) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.

4. **PRE-CONSTRUCTION *CAULERPA TAXIFOLIA* SURVEY**

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval by the Executive Director; and

(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted

through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

5. CONSTRUCTION RESPONSIBILITIES

Dredging activities authorized under this CDP shall comply with the following construction-related requirements:

A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow;

B. If turbid conditions are generated during construction, a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable;

C. The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited;

D. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.

E. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

F. Dredge equipment shall be used that is designed to minimize the generation of turbid conditions in the dredge area and to avoid dispersal of contaminated sediments from the dredge area to the maximum extent practicable.

G. Additional Best Management Practices (BMPs) as described by the applicant in a letter received December 16, 2010 (see Exhibit No. 2 of the staff report dated 12/22/2010).

6. TURBIDITY CONTROL

As required by the Santa Ana Regional Water Quality Control Board (RWQCB), the applicant shall follow a detailed monitoring plan to ensure that the project does not result in significant turbidity beyond the immediate dredging area. The following are prohibited by the RWQCB outside of the immediate project area:

A. Increases of water turbidity by more than twenty percent (20%) of the natural turbidity during non-storm conditions, nor

B. Dissolved oxygen in the receiving waters being depressed below 5.0 mg/l.

These turbidity controls will be adhered to unless the RWQCB requires more stringent controls, in which case the more stringent controls shall be followed.

7. RHINE CHANNEL CONTAMINATED SEDIMENT CLEANUP WATER QUALITY/LONG TERM MONITORING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval by the Executive Director, two (2) copies of the Final *Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan* which shall be in substantial conformance with the preliminary *Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan* dated November, 2010.

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

8. SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval by the Executive Director a copy of an approval certification by the Environmental Protection Agency (EPA) for an adequate *Spill Prevention, Control, and Countermeasures (SPCC) Plan*. The Plan shall demonstrate conformance with applicable Federal and State requirements for such plans.

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

9. DREDGING AND DISPOSAL WORKPLAN

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval by the Executive Director, two (2) copies of the *Dredging and Disposal Workplan*. The plan shall demonstrate how the applicant will implement best management practices at its debris offloading and staging areas to ensure that surrounding uses and resources are not adversely impacted during and after construction. These best management practices will be required to include, as a minimum, but not be limited to, such measures as: ensuring against loss of material from the site by runoff and erosion by use of silt fence, silt curtain, hay bales, or similar barriers; containing water that flows off of stockpiles or equipment staging areas so that it does not flow back into coastal waters, including management of stormwater runoff; and installing a stabilized construction entrance with the ability to wash wheels, as to prevent tracking of sediment and/or dirt from the site by truck and car traffic. Dredged contaminated materials will be placed directly on barges for removal to the final beneficial reuse location and will not be placed on land.

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

10. **FINAL CONSTRUCTION STAGING PLANS/UPLAND OFFLOADING PLANS**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director two (2) full size sets of a Final Construction Staging Plan/Upland Offloading Plan for the review and approval by the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will minimize public access impacts in the Lower Newport Bay.

(1) The plan shall demonstrate that:

(a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition.

(b) Construction equipment, materials, or activity shall not be placed on the sandy beach outside of the immediate construction zone.

(c) The construction staging area will gradually be reduced as less materials and equipment are necessary.

(d) The construction access route will only be intermittently closed for transport of equipment and materials. When not in use for transportation of equipment and materials, it will be made available for undisrupted public access.

(e) Public parking spaces will not be adversely impacted by this plan and will remain open and available for public use.

(f) Wetland areas and/or upland areas covered in native vegetation shall not be adversely impacted with this plan.

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

(a) A site plan that depicts:

1. limits of the staging area(s);
2. construction corridor(s);
3. construction site;
4. location of construction fencing and temporary job trailers with respect to the existing parking lot, day use area and the sandy beach.

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.

11 TEMPORARY VESSEL RELOCATION PLANS

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval by the Executive Director, two (2) full size sets of a Temporary Vessel Relocation Plan indicating how and where boats, occupying slips to be impacted by the dredging, will be temporarily relocated. Adverse impacts to public access and recreational boating shall be minimized. Only existing vacant moorings or slips, or existing upland storage areas, can be used. No new docks or moorings (temporary or permanent) are allowed without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. BACKGROUND, PROJECT LOCATION AND DESCRIPTION

The proposed project is located in the coastal waters of Lower Newport Bay (LNB). Newport Harbor (located within Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the Santa Ana Regional Water Quality Control Board (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency (EPA). Further, the RWQCB has targeted the Newport Bay watershed, which would include Lower Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water resources should be examined to assure that potential impacts are minimized.

The purpose of this project is to remove contaminated sediments from the Rhine Channel in Lower Newport Beach (LNB) (Exhibit No. 1, page 1-2) as well as from other nearby areas in the bay found unsuitable for unconfined ocean disposal during agency consideration of U.S. Army Corps of Engineers (USACOE) Regional General Permit (RGP) 54. The project timing is critical to allow the City of Newport Beach to place the contaminated sediments in a Confined Disposal Facility (CDF) at the Port of Long Beach (Exhibit No. 1, page 3) that will only be available for a limited time in mid-2011. The area to be filled in the Port of Long Beach was made allowable by the Commission in 2001, under Port of Long Beach Port Master Plan Amendment No. 16. In 2009, the Port of Long Beach prepared a Final Environmental Impact Statement (EIS) for the Middle Harbor Redevelopment Project (SCH # 2004091010) and also issued a Port of Long Beach Harbor Development Permit (HDP) for use of the site as landfill and CDF. The POLB has tentatively agreed to take the contaminated sediments from this project as long as the project can meet the POLB timeline, which is based on the engineering properties of the materials, coordination with other regional dredging projects and requirements of the POLB project to complete construction of new land area in a timely manner. The decision of the POLB project to combine the development of a regional CDF site with their wharf modernization project is a key result of the Los Angeles Region Contaminated Sediments Task Force (CSTF) and supports the implementation of the CSTF Long Term Management Strategy approved by the CCC in 2005. The proposed dredging areas are comprised of the Rhine Channel and the area located between the bulkhead and the project lines along a stretch of waterfront encompassing Marina Park, the American Legion, and the 15th Street Pier (Exhibit No. 1, page 2). The RWQCB is fully aware of the level of contaminated sediments found in Lower Newport Bay and that is why they have put their full attention to this project since it would help remedy this serious situation.

LNB, where the majority of commerce and recreational boating exists, is highly developed with urban and recreational uses, and the USACOE considers it a high priority for maintenance dredging.

From the 1930's through the 1950's, shipyard and cannery operations, boat building activities, and metal plating facilities were located in the Rhine Channel and other portions of LNB, resulting in a legacy of sediment contamination. Due to a lack of cost-effective sediment management options

for material with elevated chemical concentrations, many areas of LNB have not been dredged in decades. As a result in the most contaminated areas like the Rhine Channel, dredging is needed to restore beneficial uses.

Rhine Channel sediment investigations have revealed elevated concentrations of metals, pesticides, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) as well as significant toxicity to representative benthic organisms. An ecological risk assessment substantiated the potential for wildlife risks associated with Rhine Channel sediments. The potential for ecological risks resulting from direct contact with contaminated sediments would be greatly reduced by removing these sediments from the Rhine Channel. Since the Rhine Channel is currently included as an impaired water body on the state of California's 303(d) List, it has been targeted as a priority for cleanup by the California Water Resources Control Board.

The proposed project will remove approximately 150,000 cubic yards of contaminated sediments from the Rhine Channel & portions of areas in lower Newport Bay adjacent to Marina Park, American Legion & the 15th Street Pier (a total project area of approximately 18.2 acres of submerged lands/open coastal waters) to restore and enhance state-designated impaired beneficial uses of the Rhine Channel, dispose of the impacted material in an environmentally responsible and cost-effective manner, and to improve navigation. No wetlands will be impacted by the proposed project since no wetlands are located within the project area.

Contaminated sediments will be excavated using a mechanical dredging process (i.e. clamshell bucket with a special cover to minimize spillage of sediment) to a depth where clean, uncontaminated material is found. Sediment samples will be collected and analyzed to confirm the dredging has successfully removed the contaminated material. The project will dredge at least one foot into native material that existed prior to industrialization of this portion of Newport Bay in order to ensure that all contaminated materials in the project foot print are removed. Operating from a crane or derrick on a barge, the bucket is lowered, filled with sediment, raised through the water column, and positioned above the barge; the sediment is then placed in the barge for transport to the fill site (in this case, the Port of Long Beach Middle Harbor CDF). Depending on the condition of existing structures in the project area, an excavator or similar long-reach device may be used to dredge under docks and around or near piles. Using this piece of equipment rather than the clamshell bucket may enable the contractor to dredge closer to piles and under floats without damaging them.

Additionally in order to prevent the contaminated sediments from spreading out into the bay during the removal process, the RWQCB is imposing a number of requirements including: requiring the use of silt curtains to contain any turbidity as well as monitoring turbidity conditions such that if natural turbidity (based on reference site values) is between 0 and 50 NTU, the maximum increase shall not exceed 20 percent of the measured natural turbidity.

The volume of contaminated sediments in the Rhine Channel located between the bulkhead and the Pierhead line is relatively small compared to the main channel (approximately 20% of the total sediment volume), and to avoid destabilizing any portion of the bulkhead or piles, the City may necessarily leave a small portion of the material near these structures.

Sediments will be transported to the Port of Long Beach (POLB) Middle Harbor Confined Disposal Facility (CDF) by ocean barge. The Middle Harbor CDF is an approved facility by the U.S. Army Corps of Engineers (Corps Permit No. 2004-01053-AOA), Port of Long Beach Port Master Plan Amendment No. 16 approved by the Commission in 2001, and Port of Long Beach Harbor

Development Permit (HDP) for use of the site as landfill and CDF. The Middle Harbor CDF entails filling the open-water area between two (2) existing terminals to create a longer wharf and additional space for upland infrastructure. The Middle Harbor CDF is approved and permitted to accept contaminated sediments as it will ensure the sediments is isolated from the environment, making it an opportunity for the City to participate in. If for some reason, the Middle Harbor CDF is not used as the disposal site for the contaminated sediments, the Commission must be notified of the alternative disposal location and an amendment to this permit must be obtained. Thus, the Commission imposes **SPECIAL CONDITION NO. 1,** which requires submittal of an amendment for an alternative contaminated sediment disposal site if the contaminated sediments are not deposited at the Port of Long Beach Middle Harbor CDF.

U.S. Coast Guard- (USCG-) certified bottom-dump barges will be used to transport the material approximately 27 miles to the Middle Harbor CDF. These barges typically have a maximum capacity of between 1,000 and 2,000 cy per load. The actual size of the bottom dump barges used for this project will not be known until a contractor is retained. Approximately 100 to 120 round trips are anticipated for dredged material disposal.

The project is anticipated to take approximately 4-5 months to complete and will begin at the Northern end of the Rhine Channel. By dredging from the back of the channel outward, the contractor will be able to advance the dredge without traveling back across previously dredged areas. After Rhine Channel dredging has been completed, the contractor will move to the remaining segments of the project area to conduct dredging of Marina Park, the American Legion, and the 15th Street Pier.

Approximately 3,000-5,000 cubic yards of the dredged contaminated sediment is located in the northernmost portion of the subtidal area away from the beach that fronts the pending Marina Park project (CDP Application No. 5-10-229-(City of Newport Beach) location. Dredging of this contaminated sediment will not affect any coastal resources. The City is not requesting authorization for the pending Marina Park project with this proposed project. The proposed Marina Park project is independent of the Rhine Channel Contaminated Sediment Cleanup Project and consists of the removal of a nonconforming mobile home park located on historic tidelands and the construction of a public park and other amenities.

The project will also include the removal and replacement of approximately 125-150 piles and portions of docks in the same–as-existing configuration to accommodate dredging. To ensure continued stability of floats in project area, the end piles will be replaced with new potentially longer piles (maintaining the same diameter as the existing piles) if the existing pile lengths are not sufficient to provide structural support after dredging. However, the applicant has only submitted plans that are approximately 65% complete. Completed plans are necessary in order to determine the final docks and piles that will be affected. Thus, the Commission imposes **SPECIAL CONDITION NO. 2,** which requires submittal of two (2) full size sets of Final Plans for Dock and Pile Removal and Replacement, for review and approval by the Executive Director, prior to issuance of the permit.

Additionally, the project will also include the removal of miscellaneous debris identified during side-sonar surveys of the dredge area, including eighty-seven (87) pieces of apparent debris, the precise size and nature of which is unknown. Any debris encountered during dredging (i.e. metal, timber, trash, etc.) will be dewatered, if necessary, on a barge prior to loading it into a container or truck for transport to a landfill outside of the Coastal Zone. Any disposal of recovered debris in the Coastal Zone will require a Coastal Development Permit.

B. MARINE ENVIRONMENT/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:

> *(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:*
>
> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
>
> *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
>
> *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
>
> *(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
>
> *(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
>
> *(6) Restoration purposes.*
>
> *(7) Nature study, aquaculture, or similar resource dependent activities.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems

The Coastal Act limits the dredging and fill of open coastal water and also requires that any project which results in dredging and/or fill of open coastal waters provide adequate mitigation. Section 30233 of the Coastal Act allows fill of open coastal waters, such as Lower Newport Bay, for recreational boating purposes. Part of the proposed project includes the removal and replacement of approximately 125-150 piles and portions of docks in the same-as-existing configuration to accommodate dredging. To ensure continued stability of dock floats in the project area, the end piles will be replaced with new piles of the same diameter but may be potentially longer than those existing on the subject site if the previous pile lengths are not sufficient to provide structural support after dredging. The replacement of approximately 125-150 piles will displace habitat bottom. The fill required by the project is for a recreational boating facility, an allowable purpose under 30233 (3) of the Coastal Act. The project can be found consistent with Section 30233, only if it is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize environmental effects. One way to minimize environmental damage is to limit fill. In the proposed project, no new piles are being proposed. Only the replacement of existing piles in the same location and of the same diameter is being proposed. This is the minimum number of piles necessary to adequately support and anchor the docks. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the allowable use. Thus, the project as proposed is the least environmentally damaging alternative. Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The proposed project meets this requirement because the pilings will provide vertical habitat for marine organisms.

The project, as a whole, will also be improving marine habitat by removing contaminated sediments. In this case, the proposed dredging and disposal of sediment at The POLB Middle Harbor CDF would occur in order to restore previously dredged depths in existing navigational channels, to restore and enhance state-designated impaired beneficial uses of the Rhine Channel, and restore marine habitat, and dispose of the impacted material in an environmentally responsible and cost-effective manner. Rhine Channel sediment investigations have revealed elevated concentrations of metals, pesticides, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) as well as significant toxicity to representative benthic organisms. An ecological risk assessment substantiated the potential for wildlife risks associated with Rhine Channel sediments. The potential for ecological risks resulting from direct contact with contaminated sediments would be greatly reduced by removing these sediments from the Rhine Channel. The Rhine Channel is currently included as an impaired water body on the state of California's 303(d) List and had been targeted as a priority for cleanup by the California Water Resources Control Board. Also, without dredging, boat slips within the Rhine Channel would become silted and unusable, thereby decreasing the usefulness of the site for recreation oriented boating.

Federally listed endangered species potentially present in the project vicinity include the light-footed clapper rail (*Rallus longirostris levipes*), and the California least tern (*Sterna antillarum browni*). No individuals of these species have been recorded within the immediate project area, and their potential presence is unlikely.

The light-footed clapper rail inhabits, nests, and forages within dense stands of marsh vegetation in coastal salt and brackish marshes. No wetlands or marshes exist within the immediate impact area of the project, and no such habitat would be impacted by the proposed dredging activities. The nearest known foraging and nesting location for the California Least Tern is several miles away in the Upper Newport Bay, and there is no suitable nesting or foraging habitat at the project site.

Eelgrass

Eelgrass is a sensitive aquatic plant species which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments which provide plenty of sunlight. On October 24, 2010, an eelgrass survey was conducted that determined that no eelgrass is located in the project area due to poor circulation, fine sediments, and sediment contamination. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the January 2011 Coastal Commission Hearing; therefore, the eelgrass survey would still be valid as of the Commission's action on this matter. However, if construction does not occur within the respective time periods, a subsequent survey will be required. **SPECIAL CONDITION NO. 3** identifies the procedures necessary to be completed prior to beginning any construction. The condition also identifies procedures to be followed if eelgrass emerges in the project area and would be impacted by the proposed development.

Caulerpa Taxifolia

In the late 1990's, a non native and invasive aquatic plant species, Caulerpa taxifolia (herein C. taxifolia), was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies habitat similar to that occupied by eelgrass. Caulerpa taxilfolia is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that Caulerpa taxilfolia can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive Caulerpa taxilfolia. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. Caulerpa taxilfolia is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, Caulerpa taxilfolia, if present, could displace eelgrass in the channels.

If C. taxifolia is present, any project that disturbs the bay bottom could cause its spread by dispersing viable tissue fragments. The proposed project would disturb the harbor bottom by dredging and C. taxifolia could be distributed to other parts of the bay or to the open ocean through transport of the dredge spoils for ocean disposal. A C. taxifolia survey was conducted on October 24, 2010. The survey determined that no C. taxifolia was located in the project area. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the January 2011 Coastal Commission Hearing; therefore, the C. taxifolia survey would still be valid. However, if construction does not occur within the respective time periods, a subsequent survey will be required. **SPECIAL CONDITION NO. 4** identifies the procedures necessary to be completed prior to beginning any construction.

Water Quality

One of the potential adverse effects from dredging is the re-suspension and relocation of contaminants. The proposed dredge material contains elevated levels of heavy metals, pesticides, organics, and other pollutants. These contaminants usually are bound to finer grain material such as clay and silt. As stated previously, Rhine Channel sediment investigations have revealed elevated concentrations of metals, pesticides, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) as well as significant toxicity to representative benthic organisms. An ecological risk assessment substantiated the potential for wildlife risks associated with Rhine Channel sediments. In addition, the Rhine Channel is currently included as an impaired water body on the state of California's 303(d) List and had been targeted as a priority for cleanup by the California Water Resources Control Board. Thus, the dredged sediment will be transported to The POLB Middle Harbor confined disposal facility (CDF).

The City considered dredging and landfill disposal of the sediment as well as dredging of the sediment followed by physical and chemical treatment prior to landfill disposal. The City's evaluation of sediment management options concluded that the best option for managing the sediment originating from the project area would be to beneficially reuse it as part of the POLB Middle Harbor CDF.

Dredging and beach nourishment was also evaluated, but was dismissed as a beneficial use option because of the elevated concentrations of contaminants in Rhine Channel sediments as well as their high percentage of fines (clay and silt sized grains). Placement of contaminated material on a beach system could be detrimental to the environment and to human health and is not considered a proper beneficial use of such sediments. Additionally, sediments with a high percentage of fines could be susceptible to rapid erosion in the surfzone or consolidation on the beach and are not physically suitable for beach nourishment. These sediments are consequently most suitable for beneficial use in the CDF where they will be isolated from the marine environment.

To avoid and minimize potential project impacts on water quality, several Best Management Practices (BMPs) been incorporated into the project description submitted by the applicant in a letter received December 16, 2010 (Exhibit No. 2) and are summarized below.

General BMPs:

- No dredging work will be conducted from land-based equipment.
- Floating debris will be removed from the water and disposed of properly.

Water Quality BMPs:

- Silt curtains will be placed around the perimeter of the active dredging area.
- During construction, the contractor will be required to implement the water quality monitoring program required by the Santa Ana RWQCB and to comply with the permit conditions imposed by the USACE and CCC.
- A Water Quality Monitoring Plan (WQMP) will be developed to monitor conditions in accordance with permit requirements.
- Water quality monitoring during dredging will be conducted according to the requirements of the 401 Water Quality Certification/Waste Discharge Requirements that will be issued by the RWQCB to demonstrate the success of the contractor in meeting water quality standards.

- A Spill Prevention, Control, and Countermeasures (SPCC) Plan will be submitted by the contractor for approval by the City prior to construction. The contractor will be required to follow the SPCC, which will require, among other things, following established refueling, spill containment and countermeasures, and good housekeeping procedures.

Dredging BMPs:

- During construction, the contractor will be required to deploy and maintain silt curtains around active dredging areas and pile installation activities.
- Multiple horizontal dredge cuts will be taken where a thick horizontal volume needs to be dredged, as to avoid overfilling the bucket and causing spillage.
- All dredged material will be handled and transported such that it does not re-enter surface waters of the state outside of the protected immediate work area.
- The load line on disposal barges will be predetermined, and the barge will not be filled above this predetermined level. Before each disposal barge is transported to the Middle Harbor CDF, the dredging contractor and a site inspector must certify that it is filled correctly.

While it is not expected, the contractor will be required to implement additional BMPs should an increase in turbidity outside of the silt curtains occur during construction. These BMPs are implemented only if exceedences of water quality standards are measured outside of the silt curtain and if simple measures, such as reconfiguring the silt curtains, are not effective in preventing the exceedences. Rules and methods set out by the Contaminated Sediments Task Force Long-Term Management Strategy BMP toolbox (CSTF 2005) for use during dredging activities shall be provided to the contractor, if necessary. Examples of BMPs to reduce turbidity during mechanical dredging, if exceedences are observed, include:

- Increasing cycle time. Longer cycle time reduces the velocity of the ascending loaded bucket through the water column, which reduces potential to wash sediment from the bucket.
- Using an environmental dredge bucket. The environmental dredged bucket completely encloses the dredge bite and result is less loss of sediment from the bucket.

Pile driving BMPs:

- Based on the determination of the project geotechnical engineer, the replacement piles will be jetted into place as far as possible, only hammering piles when necessary.
- Silt curtains will be employed during dredging and pile replacement activities.

In order to further protect water quality, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant comply with the construction best management practices for the duration of the dredging period.

The project proposes to incorporate dredging and pile driving Best Management Practices (BMPs) specific to this contaminated sediment dredging project to minimize turbidity and protect water quality, as described above under the headings of general, water quality, dredging and pile driving BMPs. To assure that acceptable levels of turbidity are maintained, the Commission imposes **SPECIAL CONDITION NO. 6.**

In order to monitor water quality during and after the proposed project, the applicant has preliminarily developed in coordination with the RWQCB, a "*Draft Sampling and Analysis Plan and Quality Assurance Project Plan for the Rhine Channel Contaminated Sediment Cleanup Water*

Quality/Long Term Monitoring Plan" dated November, 2010. This plan will dictate activities, such as requiring sediment samples to be collected and analyzed to confirm the dredging has successfully removed the contaminated material. Additionally, water column monitoring will occur at set distances directly downcurrent of the dredging operations. Also, at each station, turbidity, dissolved oxygen, and conventional field sampling measurements will be collected. While the City has preliminarily identified this plan, the City has not submitted the Final "*Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan*". Thus, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicant to submit a Final version of the "*Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan*", for review and approval by the Executive Director, prior to the issuance of the permit.

The City has stated that a "*Spill Prevention, Control, and Countermeasures (SPCC) Plan*" that will demonstrate oil pollution measures specific to its equipment and operations will be prepared. However, no such plan has been submitted. The Environmental Protection Agency (EPA) must review this document, but also needs to demonstrate conformance with other applicable Federal and State requirements. Thus, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires applicant to submit a copy of an approval certification by the Environmental Protection Agency (EPA) for an adequate "*Spill Prevention, Control, and Countermeasures (SPCC) Plan*", for review and approval by the Executive Director, prior to the issuance of the permit.

Also, the City has stated that a "*Dredging and Disposal Workplan*" that will implement best management practices at its debris offloading and staging areas to ensure that surrounding uses and resources are not adversely impacted during and after construction will be prepared. These best management practices will be required to include, as a minimum, such measures as: ensuring against loss of material from the site by runoff and erosion by use of silt fence, silt curtain, hay bales, or similar barriers; containing water that flows off of stockpiles or equipment staging areas so that it does not flow back into site waters, including management of stormwater runoff; and installing a stabilized construction entrance with the ability to wash wheels, as to prevent tracking of sediment and/or dirt from the site by truck and car traffic. However, no such plan has been submitted. Thus, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires applicant to submit a "*Dredging and Disposal Workplan*", for review and approval by the Executive Director, prior to the issuance of the permit.

CONCLUSION

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30233 of the Coastal Act.

C. LAND RESOURCES, RECREATION AND PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30240(b) of the Coastal Act states:

(b)Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The proposed project takes place in Lower Newport Bay (LNB)/Newport Harbor where there are many opportunities for public access to the bay. The sediment dredging proposed as part of the project will allow for continued long-term use of coastal waters for recreational boating. Temporary impacts to the use of the bay/harbor during dredging is expected in those areas where work is occurring. However, the proposed project will not result in long term adverse impacts to public access, and the remainder of the bay/harbor not involved in the project will remain available for recreational boating.

The applicant is considering use of the Lower Castaways Staging Area (Exhibit No. 1, page 1) as the construction staging area, which consists of an existing asphalt paved road leading to a parking and maintenance area (covered by 1.5-inch aggregate) that has been serving as the staging area for the Upper Newport Bay dredging project for the past 4.5 years. As a result, no biological resources or sensitive habitats is anticipated to be affected by the temporary use of this area for staging of construction equipment and material. The area provides adequate road access, and the surface of the lot eliminates the potential for resource impacts. Since neither the final location of the construction staging area has not been identified nor have plans been submitted, the Commission imposes **SPECIAL CONDITION NO. 10,** which requires submittal of two (2) full size sets of Final Construction Staging Plans identifying the Construction Staging Plans/Upland Offloading Plans (Upland Offloading Plans to be discussed below), for review and approval by the Executive Director, prior to the issuance of the permit. In order to verify that no resource impacts occur with the use of this site, this special condition states that wetland areas and/or upland areas covered in native vegetation shall not be adversely impacted with this plan.

The proposed upland offloading area for debris removal will be located at the Rhine Wharf (Exhibit No. 1, page 2) in the public right-of-way east of the Cannery Restaurant positioned at the North end of the Rhine Channel. This public right-of-way has been frequently used for debris loading/offloading to and from vessels) and there are public parking spaces adjacent to this area. The area will be used to temporarily offload and store debris that may be encountered during dredging. Any debris encountered during dredging (e.g. metal, timber, trash, etc.) will be dewatered, if necessary, on a barge prior to loading it into a container or truck for transport to a landfill. No dredged material will be offloaded at this location. While the City has identified this location as an offloading area/additional construction staging area, the City has not submitted any specific plans for the use of this site as such. Thus, the Commission imposes **SPECIAL CONDITION NO. 10,** which requires submittal of two (2) full size sets of Final Construction Staging Plans/Upland Offloading Plans, for review and approval by the Executive Director, prior to the issuance of the permit. In order to verify that no public parking areas are adversely impacted by this plan, this special condition states that public parking spaces will not be adversely impacted by this plan and will remain open and available for public use.

The City has stated that a "*Dredging and Disposal Workplan*" that will implement best management practices at its debris offloading and staging areas to ensure that surrounding uses and resources are not adversely impacted during and after construction will be prepared. This workplan will require the contractor to implement best management practices at its debris offloading and staging areas to ensure that surrounding uses and resources are not adversely impacted during and after construction. These best management practices will be required to include, as a minimum, such measures as: ensuring public safety by preventing ingress/egress from restricted areas and through traffic control measures. However, no such plan has been submitted.. Thus, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires applicant to Submit a "*Dredging and Disposal Workplan*", for review and approval by the Executive Director, prior to the issuance of permit.

As stated previously, temporary equipment staging will occur at Lower Castaways and in a portion of the Rhine Wharf and will temporarily impact access to the bay/harbor from these sites. In addition, the dredging taking place adjacent to the beach adjacent to Marina Park and the 15th Street Pier, may temporarily impact full access to the bay/harbor from these sites (it is noted that complete closure of the beach fronting Marina Park or of the 15th Street Pier is not proposed during the course of the project). While the project may cause temporary access impacts to the bay/harbor from these sites, there are many public access points in Lower Newport Bay and along the bay/harbor waterfront. Project activities will not affect these access points.

It is anticipated that vessels will be displaced for a short period of time when the dredging is taking place. Because dredging will occur in a progressive/phased manner, the City anticipates only a small subset of vessels in the project area will be displaced at any given time. Initial efforts will be made to accommodate displaced vessels using available slips near the project area. In addition, the City owns and operates existing adequate mooring spaces within LNB where vessels can be temporarily stored. According to the City, at any given time, there are approximately 100 unused moorings, which are in turn available to the transient boating public. The City states that since mooring availability is never a problem, the City does not anticipate a shortage of moorings. In addition to using existing moorings and docks, the City has indicated they could create temporary mooring areas to accommodate displaced boats, if existing ones are not available. One specific area identified as a temporary mooring location is the area within the channel fronting the Marina Park, the American Legion, and the 15th Street Pier dredging locations (Exhibit No 1, page 2).

The City has stated that there are other locations where new temporary moorings could be located within the LNB. However, other than the general description above, no details have been supplied by the applicant regarding these possible temporary new mooring areas. New temporary moorings (and/or docks) placed in coastal waters for any amount of time may result in adverse resource impacts and would require approval by the Commission prior to their placement.

Mooring locations throughout the bay/harbor are generally made available to visiting vessels by the Harbor Patrol. However, for the minimal time period of this project, the relocated vessels will take priority over visiting vessels for these spaces. Alternative locations for visitors include anchorage in the turning basin off the eastern tip of Lido Isle, yacht clubs, and other rental opportunities. Additionally, the project is planned to occur in the winter and spring months when boating and park use is at its lowest level.

While the City has proposed a general idea of how and where the temporary moorings will be located and work, a detailed and specific Temporary Vessel Relocation Plans has not been submitted. Thus, the Commission imposes **SPECIAL CONDITION NO. 11,** which requires submittal of two (2) full size sets of Temporary Vessel Relocation Plans, for review and approval by the Executive Director, prior to issuance of the permit. In order to verify that no resource impacts may occur with the installation of new docks or moorings, this special condition has included language that states that no new docks or moorings are allowed, unless separately reviewed and approved by the Commission.

Other in-water public uses of the channel include, diving, fishing, kayaking, paddle boarding, parasailing, rowing, sailing, swimming, and windsurfing. Just as there may be temporary impacts to the previously discussed mooring locations, these activities may be temporarily displaced as well from the immediate vicinity of active dredging operations to protect public safety.

The proposed project will dispose of the contaminated sediment by placing the spoils on a barge and using the Port of Long Beach (POLB) Middle Harbor Confined Disposal Facility (CDF). Thus, this would avoid land disposal which would have used a large number of trucks and also impacted roads that would have impacted public access. Nevertheless, its important to make sure that public access is maintained and that parking is protected. Therefore, within **SPECIAL CONDITION NO. 10**, which requires submittal of two (2) full size sets of Final Construction Staging Plans identifying the Construction Staging Plans/Upland Offloading Plans, it has been required that public parking spaces will not be adversely impacted and will remain open and available for public use.

CONCLUSION

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30213, 30221 and 30240(b) of the Coastal Act.

D. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that

the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. . The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. The City's LUP states that the City seeks to ensure the highest quality of water in the bay and along their beaches. As conditioned, the proposed project is not expected to create additional long-term adverse impacts to marine resources, marine environment, water quality and public access in the bay, harbor and along the beaches.

The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

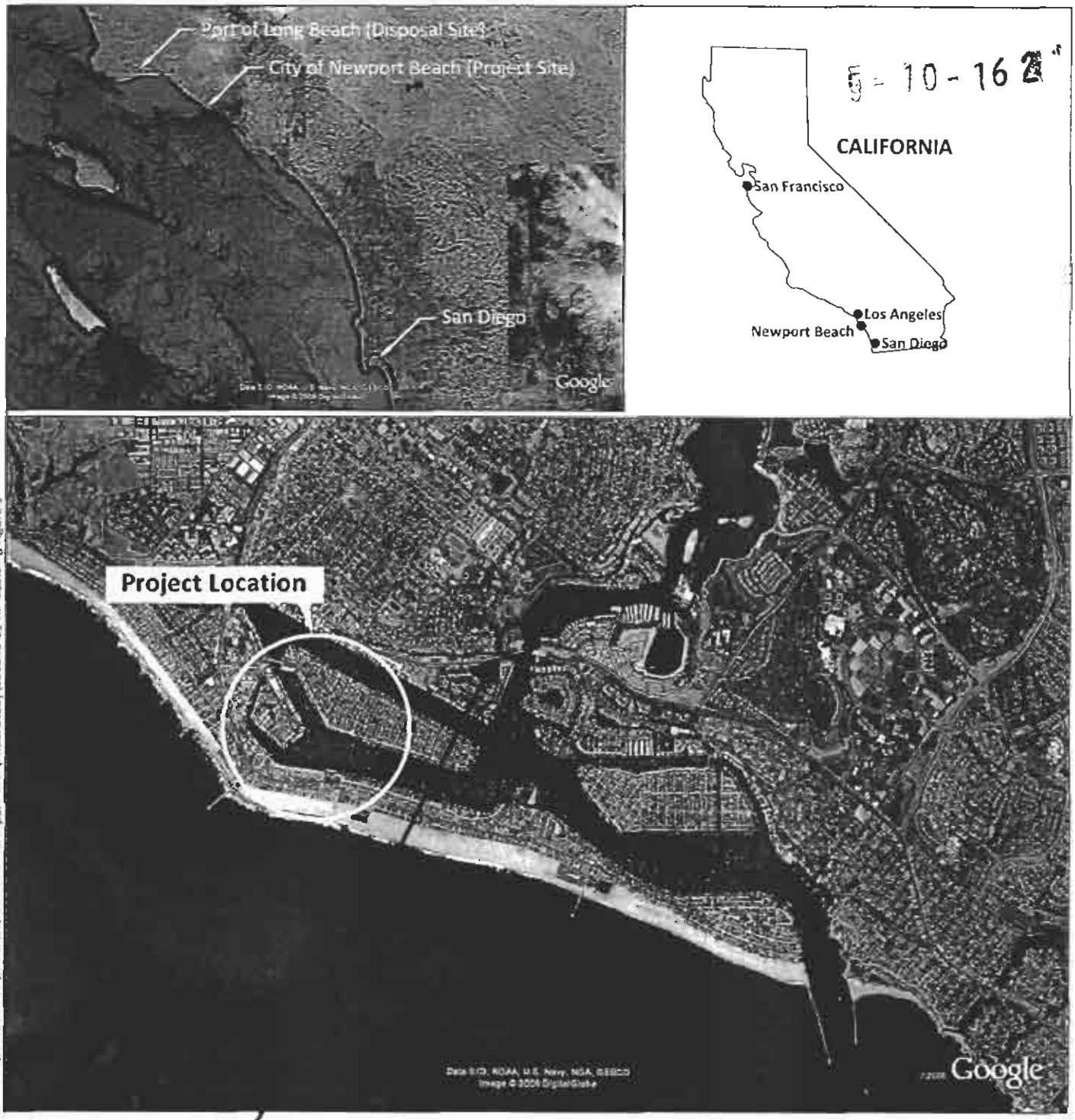
E. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach is the lead agency for purposes of CEQA compliance. A Final Mitigated Negative Declaration was prepared for this project in July 2010 pursuant to the provisions of CEQA. Mitigation measures included a measure to minimize any impacts to marine resources, marine environment, water quality and public access.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area (i.e., docks, parking). The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the marine resources, marine environment, water quality and public access policies of the Coastal Act. Mitigation measures to minimize adverse effects include: **1)** submittal of an amendment for an alternative contaminated sediment disposal site if the contaminated sediments are not deposited at the Port of Long Beach Middle Harbor CDF; **2)** Final Plans for Dock and Pile Removal and Replacement; **3)** pre and post-construction eelgrass surveys and if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*; **4** a pre-construction survey for *Caulerpa taxifolia* be done and normal protocols followed if its presence is discovered; **5)** construction responsibilities; **6)** turbidity control; **7)** Final Rhine Channel Contaminated Sediment Cleanup Water Quality/Long Term Monitoring Plan; **8)** Spill Prevention, Control, and Countermeasures (SPCC) Plan, **9)** Dredging and Disposal Workplan; **10)** Final Construction Staging Plans/Upland Offloading Plans; and **11)** Temporary Vessel Relocation Plans. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the

activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



L:\AutoCAD Project Files\090243-01 Newport CAD\Initial Study\090243-01 RP-013.dwg Figure 1

Mar 12, 2010 5:57pm banaya

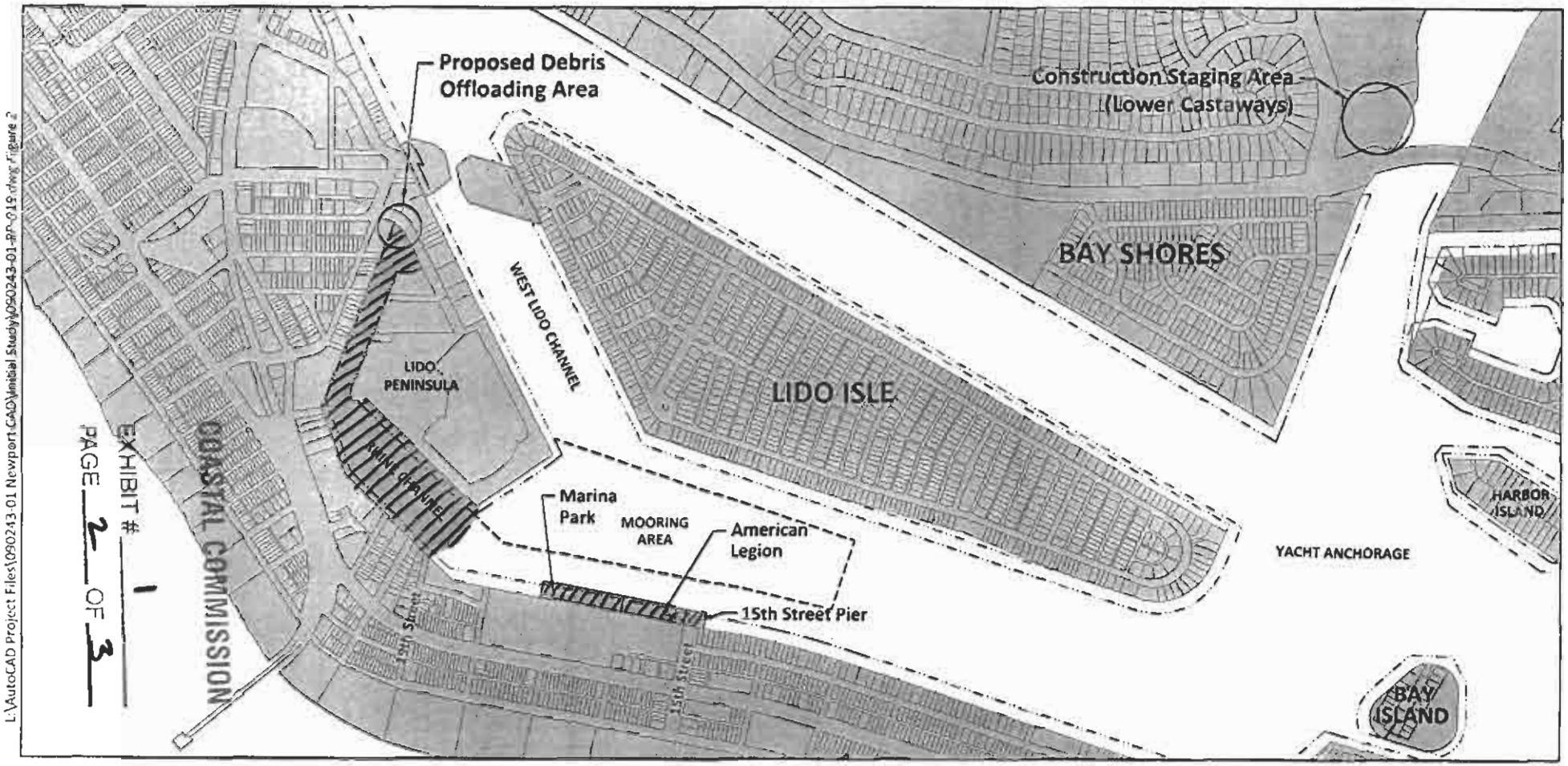
SOURCE: Drawing prepared from Google Earth Pro 2009.

CONSTRUCTION STAGING AREA (LOWER CASTAWAYS)

Not to Scale

Figure 1
Project Location
Rhine Channel Contaminated Sediment Cleanup

ANCHOR QEA



L:\AutoCAD Project Files\090243-01 Newport CAD\Initial Study\090243-01-IP-019.dwg Figure 2
Jun 07, 2010 1:39pm banaya

SOURCE: Basemap prepared from City of Newport Beach GIS files.

NOTE: Temporary moorage areas are located throughout Lower Newport Bay.

LEGEND:

Proposed Project Area

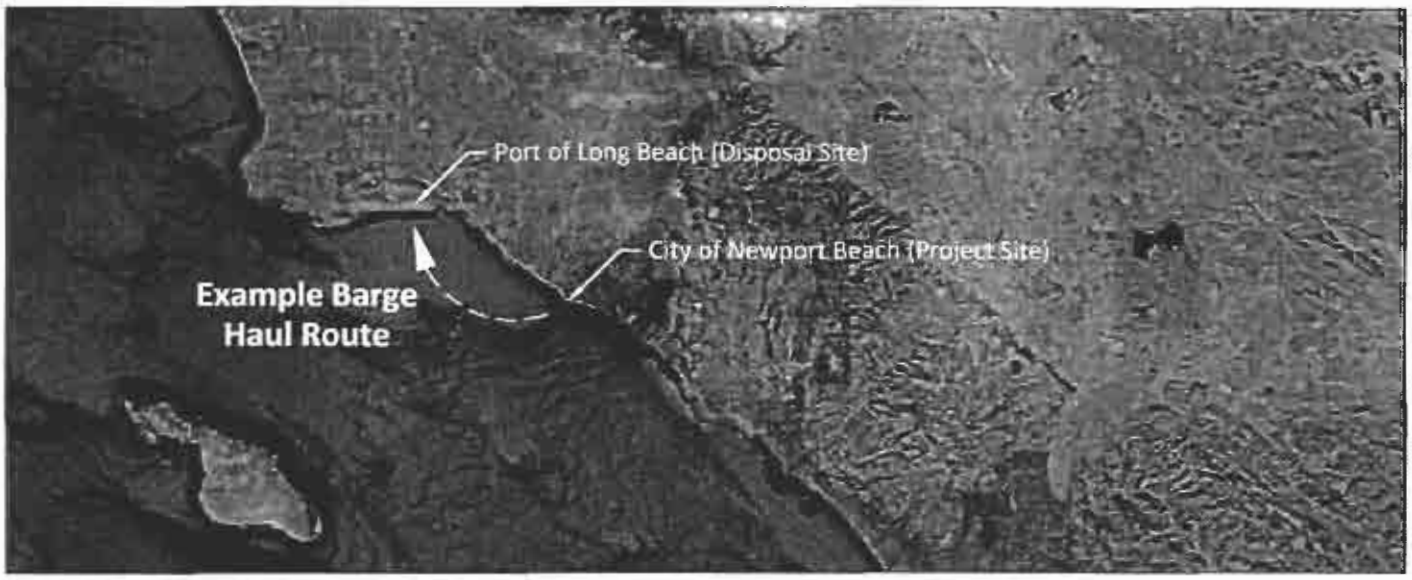
Pierhead Lines (Approximate)

0 1000

Scale in Feet

Figure 2
Proposed Project Area
Rhine Channel Contaminated Sediment Cleanup

ANCHOR QEA



I:\AutoCAD Project Files\0902243-01 Newport CAD\Initial Study\0902243-01-RP-016.dwg Figure 4

Mar 15, 2010 10:50am banaya

SOURCE: Drawing prepared from Google Earth Pro 2009.

Not to Scale

Figure 4

Middle Harbor Confined Disposal Facility Fill Site and Example Barge Haul Route
Rhine Channel Contaminated Sediment Cleanup

ANCHOR QEA

ultimately determine the sequence of activities, it is likely that dredging will begin at the north end of the Rhine Channel. Once sediments in the Rhine Channel have been removed, the remaining segments of the Project Area (Marina Park, American Legion, and 15th Street Pier) will be dredged. Dredging would involve the following sequence of events:

- Coordinating with the U.S. Coast Guard, Harbor Patrol, Harbor Resources, and POLB pilots to identify barge routes and communications protocols
- Completing pre-construction activities, such as preparing the offloading area for disposal of debris and mobilizing the dredging equipment
- Removing end piles from floats in the immediate dredging area and replacing them with new end piles as dredging progresses
- Mechanically dredging contaminated sediments and placing dredged material into bottom-dump barges
- Transporting bottom-dump barges to the Middle Harbor CDF using tugboats
- Disposing of sediments into the Middle Harbor CDF fill site
- Repeating process for remaining segments of the Project Area until project is completed
- Demobilizing construction equipment and replacing any structures removed to facilitate dredging

This sequence of activities was developed based on current design knowledge, professional judgment, and experience from similar projects, and it may be modified if conditions change.

Environmental Commitments: To avoid and minimize potential project impacts, several design features have been incorporated into the project. These operational requirements, typically referred to as BMPs, are summarized in the following lists.

General BMPs:

- No dredging work will be conducted from land-based equipment.
- Floating debris will be removed from the water and disposed of properly.

Water quality BMPs:

- Silt curtains will be placed around the perimeter of the active dredging area.
- During construction, the contractor will be required to implement the water quality monitoring program required by the Santa Ana RWQCB and to comply with the permit

conditions imposed by the USACE and CCC.

- A Water Quality Monitoring Plan (WQMP) will be developed to monitor conditions in accordance with permit requirements.
- Water quality monitoring during dredging will be conducted according to the requirements of the 401 Water Quality Certification/Waste Discharge Requirements that will be issued by the RWQCB to demonstrate the success of the contractor in meeting water quality standards.
- A Spill Prevention, Control, and Countermeasures (SPCC) Plan will be submitted by the contractor for approval by the City prior to construction. The contractor will be required to follow the SPCC, which will require, among other things, following established refueling, spill containment and countermeasures, and good housekeeping procedures.

Dredging BMPs:

- During construction, the contractor will be required to deploy and maintain silt curtains around active dredging areas and pile installation activities.
- Multiple horizontal dredge cuts will be taken where a thick horizontal volume needs to be dredged, as to avoid overfilling the bucket and causing spillage.
- All dredged material will be handled and transported such that it does not re-enter surface waters of the state outside of the protected immediate work area.
- The load line on disposal barges will be predetermined, and the barge will not be filled above this predetermined level. Before each disposal barge is transported to the Middle Harbor CDF, the dredging contractor and a site inspector must certify that it is filled correctly.

While it is not expected, the contractor will be required to implement additional BMPs should an increase in turbidity outside of the silt curtains occur during construction. These BMPs are implemented only if exceedences of water quality standards are measured outside of the silt curtain and if simple measures, such as reconfiguring the silt curtains, are not effective in preventing the exceedences. Rules and methods set out by the Contaminated Sediments Task Force Long-Term Management Strategy BMP toolbox (CSTF 2005) for use during dredging activities shall be provided to the contractor, if necessary. Examples of BMPs to reduce turbidity during mechanical dredging, if exceedences are observed, include:

- *Increasing cycle time.* Longer cycle time reduces the velocity of the ascending loaded bucket through the water column, which reduces potential to wash sediment from the

bucket.

- *Using an environmental dredge bucket.* The environmental dredged bucket completely encloses the dredge bite and result is less loss of sediment from the bucket.

Pile driving BMPs:

- Based on the determination of the project geotechnical engineer, the replacement piles will be jetted into place as far as possible, only hammering piles when necessary.
- Silt curtains will be employed during dredging and pile replacement activities.

EFH, Endangered Species Act, and Marine Mammal Protection Act BMPs:

- Consistent with California Coastal Act, Southern California Eelgrass Mitigation Policy, and City Harbor Code, a pre-construction eelgrass and *Caulerpa taxifolia survey* will be performed in the Project Area between 30 to 60 days prior to dredging; a post-construction survey will be performed if eelgrass is located during the pre-construction survey.
- Operators of construction equipment and all other project workers shall not harass any marine mammals, waterfowl, or fish in the Project Area.

Project Summary: In summary, the currently proposed project, as conceived, entails the following major components:

- Dredging the Rhine Channel and portions of the area adjacent to Marina Park, the American Legion, and the 15th Street Pier, which could generate an estimated 150,000 cy of sediment
- Beneficially reusing dredged material in the Middle Harbor CDF, an approved facility, authorized by the POLB, the USACE, CCC, and the Los Angeles RWQCB
    - The POLB was issued a Standard Individual Permit (SIP; No. 2004-01053-AOA) and Waste Discharge Requirements (No. 09-204) to construct the CDF. Details of the CDF construction methods and monitoring requirements are described in these and other permits.
- Removing and replacing approximately 150 end piles of dock floats incidental to dredging
- Removing miscellaneous debris identified during side-scan sonar surveys of the dredge area, including 87 pieces of apparent debris of which precise size and nature is unknown

California Regional Water Quality Control Board
Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

July 26, 2010

Mr. David Kiff
City Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 2

Mr. Garry Brown
Executive Director
Orange County Coastkeeper
3151 Airway Ave, Suite F-110
Costa Mesa, CA 92626

CITY OF NEWPORT BEACH AND ORANGE COUNTY COASTKEEPER LEADERSHIP ON RHINE CHANNEL REMEDIATION

Dear Mr. Kiff and Mr. Brown:

The Santa Ana Regional Water Quality Control Board (Regional Water Board) staff commends the City of Newport Beach and the Orange County Coastkeeper for your active pursuit of remediation of the Rhine Channel at the west end of Newport Bay. Your actions support the implementation of the 2002 Newport Bay Rhine Channel TMDLs established by the U.S. Environmental Protection Agency, and contribute to efforts to improve quality conditions in the Bay as a whole. We applaud you both for your leadership and diligence.

As you know, historical water quality data resulted in findings of impairment for the Rhine Channel, which placed it on the Clean Water Act Section 303(d) List of impaired waters. The Channel was also identified as a "toxic hot spot", one of a few most polluted waterbodies in Southern California. The Channel appears to act as a source of pollutants in other parts of Lower Newport Bay. In 2003, the Orange County Coastkeeper (OCCK) was awarded a Proposition 13 grant to conduct, with the City of Newport Beach and the Regional Water Board, a comprehensive characterization of the Rhine Channel's water quality condition and to assess feasible remediation options. The final report, Rhine Channel Sediment Remediation Feasibility Study and Alternatives Evaluation, Newport Bay, California, January 2006, included a thorough site assessment, an investigation of historic and current sources of pollution, and an evaluation of various remedial actions.

This report, along with additional City and OCCK-sponsored studies, enables the City to initiate a proposed, comprehensive plan to dispose of the contaminated sediments from

the Rhine Channel by taking advantage of a unique disposal opportunity at the Port of Long Beach in early 2011. The Regional Water Board staff strongly supports these efforts. Working closely with City of Newport Beach staff, we will do all that we can to ensure the success of the project.

Like you, we recognize the significance of the Bay as an ecological and recreational resource. Again, we thank you for your genuinely commendable efforts to remediate the Rhine Channel and contribute to water quality and beneficial use improvement in the Bay.

Sincerely,

Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc: Regional Board