CALIFORNIA COASTAL COMMISSION 45 FREMONT, SUITE 2000 FRANCISCO, CA 94105-2219 CE AND TDD (415) 904-5200

W190

Staff Report and Recommendation on Consistency Certification

Consistency Certification	on
No. CC-80-97	
Staff:	TNP-SF
File Date:	6/19/97
3 months:	9/19/97
6 months:	12/19/97
Commission Meeting:	8/13/97

Applicant:	County of Orange and California Department of Fish and Game
Project Location:	LA-3 Ocean Disposal Site, five miles southwest of Newport Beach, Orange County (Exhibit 1).
Development Description:	Disposal of approximately 825,000 cubic yards of sediment.

Substantive File Documents:

- 1. Coastal Development Permit Number 5-97-71 (Dredging for Upper Newport Back Bay)
- 2. CC-2-96 (Dredging in Newport Beach and Disposal at LA-3)
- 3. Evaluation of Dredged Material Proposed for Ocean Disposal, Testing Manual, Environmental Protection Agency and the Corps of Engineers, February, 1991.

Executive Summary

The County of Orange and the California Department of Fish and Game have submitted a consistency certification for disposal of approximately 825,000 cubic yards of sediment at the LA-3 ocean disposal site, offshore of Newport Beach. The sediment is the result of a dredging project in the Newport Bay to improve navigation and recreation, and for habitat enhancement. The Commission approved the dredging portion of this project in July, 1997 (cdp 5-97-71). This proposed consistency certification is needed to authorize the disposal of the dredged material beyond the three mile limit of state waters.



ŝ,

LA-3 is an EPA-approved ocean disposal site, located five miles southwest of Newport Beach. The Commission has authorized other dredge disposal projects at this location. The proposed project is the least environmentally damaging alternative and will have no significant impacts to marine resources. The dredge materials are not suitable for beach replenishment, due to the fine grain size of the material. The proposed project will result in temporary impacts to benthic organisms and a temporary increase in water turbidity. However, the site will recolonize quickly. Chemical analysis of the sediments and bioassay tests shows the dredge material is suitable for ocean disposal, and will not generate any impacts to the water quality or marine resources in or around LA-3 or in the coastal zone. The EPA has confirmed that the materials meet the applicable "Green Book" standards and are therefore are suitable for disposal at LA-3. Therefore, the project is consistent with the dredging, water quality, marine resources, and sand supply policies of the Coastal Act (Sections 30230, 30231, and 30233).

The proposed project will have no negative effects on commercial or recreational boating or fishing in the area. Therefore, the project is consistent with the recreational and boating policies of the Coastal Act (Sections 30234, 30234.5, 30220, 30224).

Staff Summary and Recommendation:

I. <u>Project Description</u>: The County of Orange and the Department of Fish and Game propose to dispose approximately 825,000 cubic yards of dredge spoils at the EPA designated LA-3 ocean disposal site, located five miles southwest of Newport Beach at water depths ranging from 1,345 to 1,575 feet (Exhibit 1). In July, 1997, the Commission approved coastal development permit 5-97-71 for dredging 825,000 cubic yards of sediment from Newport Bay to improve navigation and recreation, and for habitat enhancement. This consistency certification is needed to authorize disposal of that sediment.

II. <u>Status of Local Coastal Program</u>: The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Newport Beach LCP has not been certified or incorporated into the CCMP.

III. <u>Staff Recommendation</u>: The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission concur with Orange County's and the Department of Fish and Game's consistency certification.

The staff recommends a YES vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

CC-80-97 LA-3 dredge disposal page 3

Concurrence

The commission hereby <u>concurs</u> with the consistency certification made by the County of Orange and the Department of Fish and Game for the proposed project, finding that the project is consistent with the California Coastal Management Program.

IV. Findings and Declarations:

The Commission finds and declares as follows:

A. Dredging and Filling

Section 30233 of the Coastal Act provides the following, in relevant part:

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

•••

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

•••

(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 proposed project is the result of a restoration/habitat enhancement project in Newport Bay, which the Commission approved under coastal development permit 5-97-71. In that approval, the Commission found the dredging consistent with Section 30233 of the Coastal Act. However, the disposal of the dredge materials also needs to be examined for consistency with this section. Thus, under Section 30233, fill of open waters, including disposal of dredge materials, is limited to those cases where the proposed project is an allowable use, is the least damaging alternative, and where mitigation measures have been provided to minimize environmental impacts. As was the case for the dredging, the disposal is an allowable use under Section 30233 (a) (2). The proposed disposal location is an EPA-approved disposal site, and is the least damaging alternative for disposal of the

CC-80-97 LA-3 dredge disposal page 4

dredged materials. As discussed below, the project will have no significant impacts on coastal resources; therefore, no mitigation measures are necessary. Further, the materials being disposed are not suitable for beach replenishment. Therefore, the Commission finds that the proposed project is consistent with Coastal Act Section 30233.

B. Water Quality and Marine 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.

The proposed project involves the disposal of approximately 825,000 cubic yards of sediment from Upper Newport Bay at the LA-3 ocean disposal site. The proposed disposal site is located on the slope of Newport Canyon at a depth of approximately 1,500 feet, five miles southwest of Newport Harbor. The site is situated at the foot of a submarine canyon and receives sediments from erosion and nearshore transport. EPA has recognized the LA-3 ocean site as an interim site for disposal of dredged material from the Newport Harbor. Deposition of dredged materials from Newport Harbor has altered the character of the approximately five square-mile LA-3 site. Site surveys indicate a localized reduction in infaunal density, diversity, and species richness in the benthic community, and a change in the sediment composition when compared to adjacent areas. Sediments at the site do not contain elevated levels of metals or hydrocarbons. The Commission has previously concurred with other dredge disposal projects using the LA-3 site.

Although the disposal site is located five miles offshore, and thus outside the state's coastal zone, an adverse effect on marine habitat from dredged material disposal could affect the coastal zone. The primary concern regarding ocean disposal of dredged material is the presence and level of contamination in the sediments, and the impacts that any contaminants present could have on marine resources. Analysis of the sediments, including bioassay, bioaccumulation, and chemical tests, performed in 1996, indicate that the material complies with the "Green Book" standards (Evaluation of Dredged Material Proposed for Ocean Disposal, Testing Manual,

CC-80-97 LA-3 dredge disposal page 5

Environmental Protection Agency and the Corps of Engineers, February, 1991), and is therefore suitable for ocean disposal. The EPA has also reviewed the compliance with the Green Book tests and has determined that the sediments are suitable for disposal at LA-3 (Exhibit 2).

This project will result in minor, short-term impacts to existing benthic habitat; however, the disposal area will recolonize quickly. Turbidity increases will be localized and will be short-term. The Commission has previously found that these types of impacts are not significant when it concurred with other dredge material disposal operations at LA-3 and at other southern California EPA-designated ocean disposal sites. In conclusion, the proposed disposal of dredge materials at LA-3 will not significantly affect the marine environment at or adjacent to the LA-3 site or in the coastal zone. Therefore, the Commissions finds that the proposed project is consistent with the marine resources and water quality protection policies (Section 30230, 30231, and 30233) of the Coastal Act.

C. Fishing and Boating:

The Coastal Act states:

Section 30234:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30220:

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

Section 30224:

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

The LA-3 site is located in an area devoid of submerged relief and at a depth beyond most commercial bottom fishing. While a setline dory fishery exists in the general area of LA-3, dredged material disposal has not adversely affect this fishery in the past, and there is no indication that continued disposal at LA-3 will generate adverse effects on this fishery. Likewise, there are no significant recreational fisheries in the area that could be affected by the project. The site is outside the designated vessel traffic approach lanes for the Ports of Los Angeles and Long Beach, and no significant effects on commercial shipping are generated by use of LA-3. Use of LA-3 also will not affect recreational boating in this area. Therefore, the Commission finds that the proposed project is consistent with the commercial and recreational fishing and boating policies of the Coastal Act (Sections 30234, 30234.5, 30220, and 30224).

D. Sand Supply

The Coastal Act provides for protection of sand supply in the littoral system. Specifically, Section 30233 (b) of the Act states:

(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 County and the Department of Fish and Game propose to dispose 825,000 cubic years of dredged material at LA-3, an EPA-approved ocean dredge material disposal site five miles offshore from Newport Beach. Since this site is in approximately 1,500 feet of water, the material would not be available for beach replenishment after disposal. Analysis indicates that the dredged material is not suitable for beach placement due to the predominately small grain size of the material. Since the material is predominately silt and clay, wave energy would move this relatively fine material off the beaches and out of the littoral system if the material were placed on the beach or in the nearshore zone. Therefore, the Commission finds that the dredged materials are not suitable for beach replenishment and that the proposed disposal at LA-3 is consistent with Section 30233 of the Coastal Act.



FEB - 5 1997



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX

75 Hawthorne Street San Francisco, CA 94105

February 2, 1997

EXHIBIT NO. 2.]
APPLICATION NO.	

Michael H. Cheney 6630 Heartwood Drive Oakland, CA 94611

Subject: Upper Newport Bay Sediment Quality Determination

Dear Mr. Cheney:

This is in response to your January 17, 1997, letter requesting EPA's suitability determination for disposal of sediments proposed to be dredged from Upper Newport Bay at the LA-3 Ocean Disposal Site. Up to 825,000 cubic yards of dredged material would be generated by maintenance dredging of existing access channels, and deepening the sedimentation basins within the original "Unit 1" area to -14 feet MLLW.

The sediments proposed to be dredged have been evaluated in three rounds of testing between October 1995 and August 1996. Initially, the Upper Newport Bay sediments did not show substantially elevated chemical contamination, and with the exception of the amphipod acute toxicity bioassy, did not appear to present a risk of unacceptable biological effect. However, the amphipod bioassays using *Rhepoxinius abronius* were, at best, equivocal. In the first round of testing, the amphipods exhibited significantly reduced survival in the "Unit 1 Bottom" samples but also had similarly reduced survival in LA-3 reference site sediments. The unacceptably low reference sediment survival coupled with other QA/QC related issues rendered this bioassay unusable, and therefore it was repeated in January, 1996. The January testing resulted in even greater mortality of *Rhepoxinius* in both the "Unit 1 Bottom" and reference sediments.

Upper Newport Bay "Unit 1 Bottom" sediments were then included in a separate round of testing which evaluated two amphipod species - *Rhepoxinius*, and *Ampelisca abdita* - side by side using two different potential reference sediments. Two relevant conclusions were apparent from this final evaluation. First, *Ampelisca* survived somewhat better than *Rhepoxinius* in "Unit 1 Bottom" sediments, but this increased survival was not explainable by grain size differences or other obvious factors. Second, both amphipod species exhibited less-than-adequate survival in most potential LA-3 reference sediments [only *Ampelisca* showed minimally acceptable reference survival (85 percent) in one reference sample ("Reference 1").] It is apparent that the reference site utilized to date for the LA-3 Ocean Disposal Site may no longer be appropriate to continue using in amphipod bioassays - particularly for *Rhepoxinius*. EPA will be working to identify more appropriate reference sediment(s) for this site. In the meantime, based on the lack of adverse indications in any of the other chemical and biological testing conducted on these sediments, EPA has determined that the Upper Newport Bay sediments identified as both "Unit 1 Top" and "Unit 1 Bottom" are suitable for disposal at the LA-3 Ocean Disposal Site, in accordance with 40 CFR Part 227.4 - 227.13.

Please note that this determination addresses only the chemical and biological suitability of Upper Newport Bay sediments for potential ocean disposal, and does not constitute EPA concurrence in the issuance of a permit for such disposal at this time. EPA's decision whether to concur regarding disposal will follow review of a Public Notice to be distributed by the Corps of Engineers, which will also evaluate the need for ocean disposal ant the potential for other disposal options including beneficial reuse of some or all of the dredged material. In addition, nothing in this letter should be construed as agreement by EPA that the proposed dredging will result in overall enhancement of habitat quality in Upper Newport Bay, or approval or endorsement by EPA of any proposals for mitigation banking credits.

Thank you for your patience in awaiting these comments. If there are any questions about EPA's suitability determination for this project, please call me at (415) 744-1979 or Steven John in Los Angeles at (213) 452-3806.

Sincerely,

Brian D. Rova

Brian D. Ross Dredging & Sediment Management Team

cc: John Wolter, Tettemer & Assoc. Fari Tabatabai, LA District COE 2