

CALIFORNIA COASTAL COMMISSION

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PROPOSED FINDINGS**ON CONSISTENCY DETERMINATION**Consistency Determination No. **CD-093-98**

Staff: JRR-SF

File Date: 8/6/98

45th Day: 9/20/98

60th Day: 10/5/98

Date of Commission Action: 9/10/98

Commission Meeting: 10/15/98

FEDERAL AGENCY: CORPS OF ENGINEERS**DEVELOPMENT****LOCATION:**

Lower Newport Bay and LA-3, an Environmental
Protection Agency Interim Ocean Disposal Site (Exhibits 1,
2 and 3)

DEVELOPMENT**DESCRIPTION:**

Maintenance dredging with ocean disposal (Exhibit 4)

PREVAILING**COMMISSIONERS:**

Commissioners Herron, Brothers, Flemming, Johnson,
Miller, Potter, Reilly, Tuttle, Vice Chair Wan, and
Chairman Areias

SUBSTANTIVE FILE DOCUMENTS:

1. Draft Environmental Assessment, Maintenance Dredging at Lower Newport Bay Harbor, Orange County, California, U.S. Army Corps of Engineers, Los Angeles District, August, 1998

EXECUTIVE SUMMARY

The Corps of Engineers submitted a consistency determination for its proposed maintenance dredging of Lower Newport Bay Harbor. The Corps proposes to dispose of material dredged from the estuary at LA-3, an Environmental Protection Agency (EPA) designated interim ocean disposal site.

Newport Bay Harbor is a heavily used recreational boating facility. Sediment has accumulated in the federal channels and is interfering with this boating activity. The proposed dredging is necessary to protect navigational safety. Therefore, the project is consistent with the recreational boating policies of the California Coastal Management Program (CCMP).

The Corps proposes to dredge 103,190 to 211,026 cubic meters of sediment from the lower portion of the Upper Bay Channel and dispose of that material at LA-3, an EPA approved interim ocean disposal site. The Corps analysis of sediment chemistry indicates that the proposed dredge material is suitable for ocean disposal without requiring additional toxicity and bioaccumulation tests. Based on its review of sediment chemistry and other water quality data, the EPA agreed with the Corps' conclusion. Therefore, the Commission finds that the project is consistent with the water quality and habitat policies of the CCMP.

The project area supports habitat for the California brown pelican and the California least tern, both federally listed endangered species. The dredging will not occur during the tern nesting season and will not affect this species. However, brown pelicans forage in this area all year long. Since the sediment does not contain contaminants, the dredging will not adversely affect this listed species. Therefore, the Commission finds that the proposed project is consistent with the habitat policy of the CCMP.

The proposed project includes disposal of sediment in an area that will not support beach replenishment. The Corps has evaluated the physical characteristics of this sediment and determined that material dredged from the Lower Newport Bay Harbor is too fine to benefit sand resources. Therefore, the project is consistent with the sand supply policy of the CCMP.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Corps proposes to dredge between 103,190 cubic meters and 211,026 cubic meters of material within the federal channel from Pacific Coast Highway Bridge to the Main Channel junction (Exhibit 4). Specifically, the proposed project consists of dredging a combined 103,190 cubic meters from areas 1, and 2, and 36,328 cubic meters from area 3 of the Upper Channel; and 71,518 cubic meters from the Main Channel junction with the Upper Bay (Exhibit 4). The combined maximum total of proposed dredged material is approximately 211,026 cubic meters. The Corps will perform dredging and disposal operations by cutterhead hydraulic dredge, hopper dredge, or mechanical dredge (barge-mounted cranes with clamshell or bucket). Dredging is scheduled to occur between October 1, 1998, and March 30, 1999.

The Corps proposes to dispose of this material at the EPA approved LA-3, an interim ocean disposal site (Exhibit 3). The LA-3 site has been historically used for disposal of dredged material from upper Newport Bay and Newport Harbor. The LA-3 ocean disposal site is located approximately 4 miles southwest of the Newport Bay Harbor Entrance.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has not incorporated the LCP for the City of Newport Beach into the CCMP.

III. Federal Agency's Consistency Determination.

The Corps of Engineers has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

IV. Staff Recommendation.

The staff recommends that the Commission adopt the following motion and resolution in support of its action:

MOTION. I move that the Commission adopt the revised findings set forth below in support of its September 10, 1998, action concurring with the Corps' consistency determination.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative by the prevailing Commissioners (see page 1) will result in adoption of the following resolution and findings:

A. Concurrence

The Commission hereby **concurs** with the consistency determination made by the Corps of Engineers for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

V. Findings and Declarations:

The Commission finds and declares as follows:

A. Recreational Boating. Section 30220 of the Coastal Act provides that:

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 of the Coastal Act provides, in part, that:

Increased recreational boating use of coastal waters shall be encouraged....

Shoaling of Lower Newport Bay Harbor interferes with recreational boating within the bay. The design depth of the Lower Newport Bay Harbor's channels is 6.1 meters below mean lower low water (MLLW). In its consistency determination, the Corps describes the current situation as follows:

The Federally-authorized channel of the Upper Bay Channel, south of PCH Bridge, has accumulated heavy sediment deposits washed downstream from Upper Newport Bay sediment control basins. Sediment Basins II and III are in-bay sediment control basins located in the Upper Bay, and are part of the County's Upper Newport Bay Sediment Control and Enhancement Project. Of these, Basin III has reached full capacity, and Basin II is over 75% capacity. Overflows of sediment from these basins have shoaled in areas within the Federally-authorized navigation channels directly downstream. This shoaling, in turn, has produced

unsafe navigation conditions in and around the project area and, specifically, at the junction of the Main and Upper Bay Channels, where access to the Upper Bay, Harbor Isle, and Linda Isle has become more difficult. It is estimated that dredging a minimum of 103,190 to a maximum of 211,206 cubic meters (m³) of sediment will be necessary to maintain the Federally-authorized configurations of -6.1 meters, and to ensure necessary depths for sustained safe navigation.

Newport Bay is an important recreational boating area. It attracts visitors from around the state and country to utilize its boating facilities. In its Environmental Assessment, the Corps describes the boating resources as follows:

The area serves as a major vacation destination within Southern California and the Southwest. The Lower Bay, having an open-water area of about 600 acres, offers recreational opportunities to a wide range of boating enthusiasts; from single-person rowboats to large sailing and motor vessels that are capable of trans-ocean navigation. The local beach front communities also support water recreational services, with tourism as one of the most important land use activities in the regional area.

The proposed dredging will improve navigation within the Lower Newport Bay Harbor, and thus supports and protects recreational boating. Therefore, the Commission finds that the proposed project is consistent with the recreational boating policies of the CCMP.

B. Water Quality and Biological Resources. Section 30230 of the Coastal Act provides that:

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 provides that:

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 includes disposal of dredged material at LA-3, an EPA designated interim ocean disposal site. The technical guidance for determining the suitability of dredged material involves a tiered-testing procedure, which includes four levels of testing. Tiers I and II apply to existing or easily obtained information and require limited chemical testing to predict effects. If these predictions indicate that the dredged material has any potential for significant adverse effects, EPA will elevate the sediment analysis to a higher tier. Tiers III and IV use water column and benthic bioassay and bioaccumulation tests to determine effects on representative marine organisms. Specifically, EPA requires bioassay tests on suspended particulate and solid phases of the material before allowing the disposal (Tier III testing). (40 C.F.R. Section 227.6[c].) These tests allow EPA to evaluate the acute and chronic toxicity of the contaminated material on biological resources. EPA also measures bioaccumulation potential of contaminants. The intent of that test is to determine if organisms are concentrating chemicals in their tissues to levels that might prove harmful to either themselves or their predators. Both the bioassay and the bioaccumulation tests measure the biological effect of contaminated dredge spoils. Although these tests are not precise predictors of environmental effects, they provide quantitative estimators of impacts. The Commission also uses the results from the EPA process to evaluate ocean disposal activities for consistency with the CCMP. These tests allow the Commission to determine if the ocean disposal activity will adversely affect water quality or biological resources of the coastal zone.

In its original submittal, the Corps conducted a Tier I evaluation and concluded that no further testing was required. However, the Commission and EPA raised concerns about evidence of possible contaminants in a nearby marinas and inflows of contaminants from San Diego Creek (largest source of fresh water and sediment to Newport Bay) and the Pacific Coast Highway Bridge. Based on these concerns, EPA and the Commission rejected a Tier I evaluation of the area as adequate to authorize ocean disposal and recommended full Tier III testing for the Newport Bay material. However, the Corps collected bulk chemistry data and used that information to argue that the regulatory agencies should authorize ocean disposal without additional toxicity and bioaccumulation testing. These bulk chemistry data indicate that the sediment is not contaminated and is similar to sediment recently dredged from lower Newport Bay and disposed of at LA-3. The EPA has reviewed this data and believes that it is sufficient to support a determination that the proposed dredge material is suitable for ocean disposal without conducting the Tier III biological tests (Exhibit 6). Since the Corps recognizes that EPA's and the Commission's conclusions are based on draft bulk chemistry data, it has agreed to

postpone dredging until both EPA and the Commission staff review and concur with the final analysis of the sediment chemistry (Exhibit 7). Therefore, the Commission finds that the proposed project is consistent with the water quality policies of the CCMP.

C. Endangered Species. Section 30240 of the Coastal Act provides that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(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.

The proposed project potentially affects habitat for two federally listed species. These species include California brown pelican (*Pelecanus occidentalis californicus*) and California least tern (*Sterna antillarum browni*). Additionally, several species of marine mammals and sea turtles may be transient visitors to the harbor and the LA-3 disposal site, but the project will not affect these species. In its environmental assessment, the Corps describes the habitat needs of the federally listed species as follows:

Brown Pelican

The California brown pelican is a frequent visitor of coastal areas of Southern California; they can be observed throughout the year, but are most conspicuous in the fall and winter following the breeding season on Anacapa and Santa Barbara Islands. They forage for surface fish, particularly anchovies, along the open coast, in the bay and well out to sea, and scavenge for fish remains around commercial fishing boats and piers in the Harbor.

Brown pelicans are extremely tolerant of human activity at daytime roosts; they are often seen roosting and loafing on breakwaters, piers, buoys, harbors and wharves. Birds are far less tolerant of any types of disturbances on night roosts, however, and are known to quickly flush from roosts at the slightest disturbances.

California Least tern

California least terns winter in Mexico and Central America and migrate to south and central California in mid-April to breed. During their stay in

California birds forage for fish in the nearshore coastal waters and embayments. Birds typically nest in small colonies; the nest usually occurs in the open expanse of lightly colored sand or dirt or dried mud next to lagoons or estuaries, or on open sandy beaches. The nests generally consist of merely a small depression or scrape in the soil or sand, and are lined with pebbles or sea shell fragments. Nesting usually concludes by mid-August, with post-breeding groups still present into mid-September (USFWS 1980).

In the mid-1980's two islands were constructed in the extreme northeast corner of Upper Newport Bay. In the 1990 the estimated tern population was 70 nesting pairs with 85 fledglings. Another nearby nesting colony, Bolsa Chica State Ecological Reserve, had a nesting population of some 2,250 pairs in 1993.

Both of the California least tern and the California brown pelican forage in the Lower Newport Bay Harbor and could be affected by increases in turbidity and resuspension of contaminated sediment. However, the Corps proposes to conduct the dredging between October 1, 1998 and March 30, 1999, which would avoid the least tern nesting season. Additionally, the consistency determination does not provide for contingency dredging to occur during the nesting season. Therefore, the proposed dredging will not affect the least tern.

On the other hand, the brown pelican forages in the area most of the year. The Commission is concerned that the proposed project could affect this species. The primary concern is that the project could result in resuspension of contaminated sediment making the pollutants more available to fish that are preyed upon by the pelican. These chemicals could then accumulate in the tissues of the pelican. However, as described above, the Corps's sediment chemistry data indicates that the proposed dredge material is free of contaminants, and thus is unlikely to affect the pelican. Therefore, the Commission finds that the proposed project is consistent with the environmentally sensitive habitat policies of the CCMP.

D. Dredging. Section 30233(a) of the Coastal Act provides, in part, that:

(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.*

Section 30233(a) of the Coastal Act imposes a three-part test on dredging and filling projects: (1) an allowable use test; (2) an alternatives test; and (3) a mitigation test. The project complies with the first test because maintenance dredging of existing navigation channels is an allowable use for dredging and filling.

Next, the Commission must consider the project's compliance with the alternative and mitigation tests. As described above, the project will not have significant water quality impacts from contaminated sediment or significant endangered species impacts. However, the project will result in minor, short-term impacts to benthic habitat. Since the disposal area will recolonize over several years, this impact will not be significant. Turbidity increases will be localized and short-term. The Commission 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. The proposed disposal location is an EPA-approved disposal site, and is the least damaging alternative for disposal of clean dredged materials (the dredged sediments are not suitable for beach replenishment due to their fine grain size). As discussed above, the project will have no significant impacts on coastal resources and no additional mitigation measures (beyond the standard monitoring conditions required by EPA) are necessary. Therefore, the Commission finds that the project is consistent with the dredge and fill policy of the CCMP.

E. Sand Supply. Section 30233(b) of the Coastal Act provides that:

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.

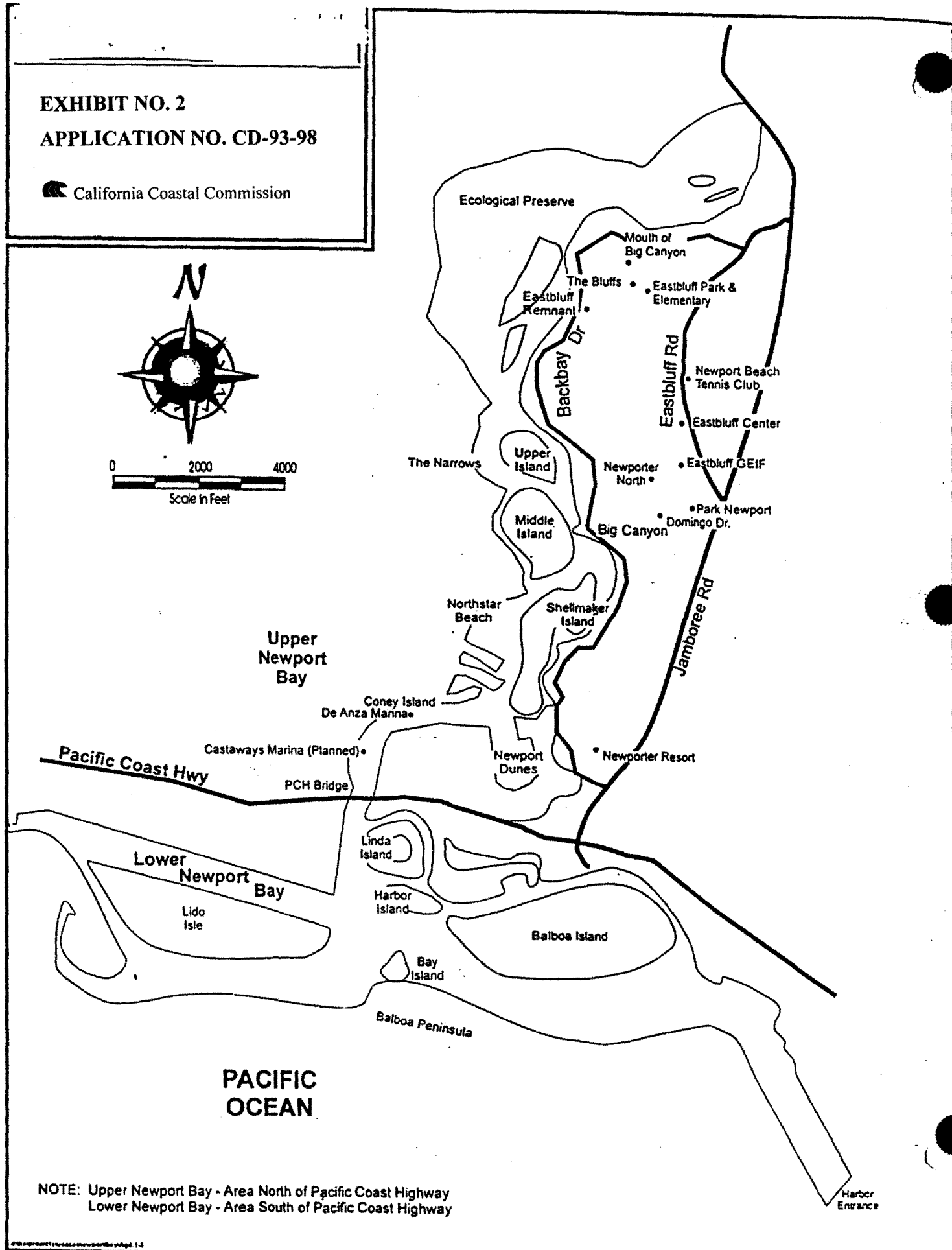
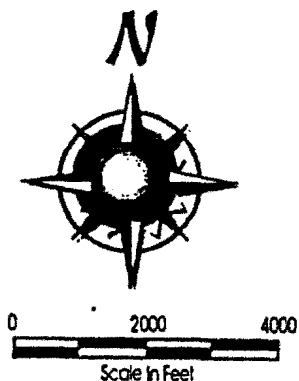
The Corps proposes to dispose of material dredged from Newport Bay at LA-3. Material disposed of at this site is outside of the littoral system and will not support sand supply. However, the proposed dredge material is too fine for beach replenishment purposes. The Corps conducted grain size analysis on 13 sediment samples from the proposed dredging area. That analysis indicates that the material proposed for dredging is between 9 percent and 46 percent sand (Exhibit 5). The Commission does not usually consider the use of dredge material for

beach replenishment unless the material is greater than 80 percent sand and is compatible with the receiver beach. In this case, the sediment dredged from the Lower Newport Bay Harbor is too fine to use for sand supply purposes. Therefore, the Commission finds that the proposed project is consistent with the sand supply policy of the CCMP.

EXHIBIT NO. 2

APPLICATION NO. CD-93-98

 California Coastal Commission



NOTE: Upper Newport Bay - Area North of Pacific Coast Highway
Lower Newport Bay - Area South of Pacific Coast Highway

LOCATION MAP

FIGURE 2

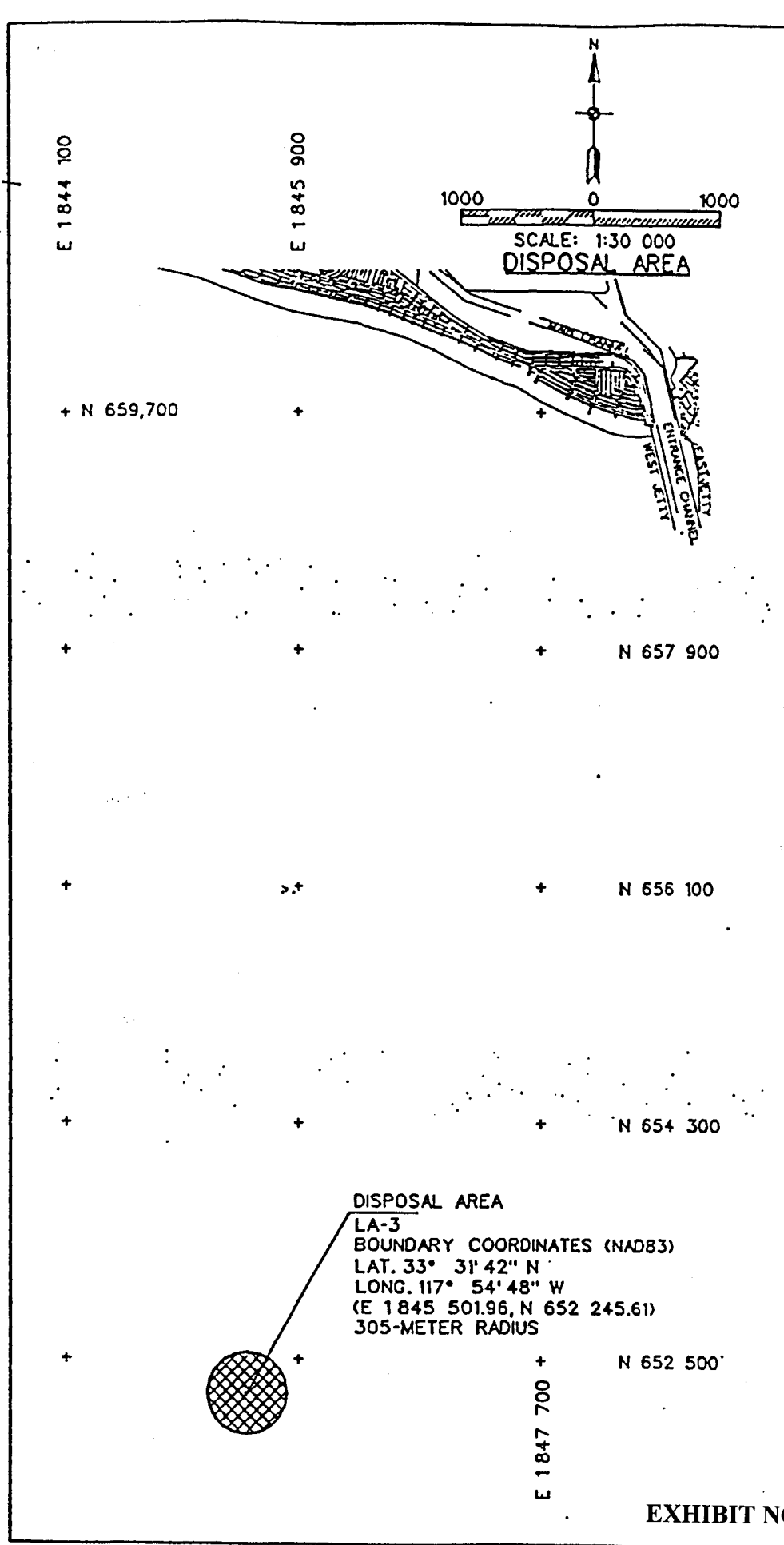
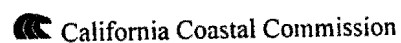


EXHIBIT NO. 3

APPLICATION NO. CD-93-98

DISPOSAL AREA



CORPS GAIN SIZE ANALYSIS
Newport Bay Harbor Maintenance Dredging Sampling
Sampling Date 29 July 1998

08/07/98
 FRI 10:12 AM 813454204
 PLANNING DIVISION

Hole Number	(MLLW) Elevation (m)		Percent Passing by Weight			Soil Class.	Description
	Top	Bottom	#4	#60	#200		
PNH98-1	-2.4	-2.5	100	95	91	CL	CLAY:
PNH98-2	-2.3	-2.4	100	96	85	CL	CLAY with sand:
PNH98-3	-2.4	-2.5	100	96	83	CL	CLAY with sand:
PNH98-4	-2.3	-2.4	100	98	74	CL	SANDY CLAY:
PNH98-5	-2.0	-2.1	100	94	64	CL	SANDY CLAY:
PNH98-6	-0.8	-0.9	100	99	74	CL	SANDY CLAY:
HCNH98-5	-2.0	-2.1	100	97	62	CL	SANDY CLAY:
HCNH98-6	-0.8	-1.2	100	99	83	CL	CLAY with sand:
HCNH98-7	-1.9	-2.1	100	98	76	CL	SANDY CLAY:
HCNH98-7	-2.1	-2.3	100	98	72	CL	SANDY CLAY:
HCNH98-8	-2.0	-2.4	100	98	71	CL	SANDY CLAY:
HCNH98-8	-2.4	-2.7	100	97	89	CL	CLAY:
HCNH98-8	-2.0	-2.3	100	97	68	CL	SANDY CLAY:
HCNH98-9	-2.2	-3.1	100	98	88	CL	CLAY:
HCNH98-10	-2.2	-2.8	100	87	54	CL	SANDY CLAY:
HCNH98-10	-2.8	-3.1	100	95	79	CL	CLAY with sand:
HCNH98-11	-1.6	-2.1	100	99	79	CL	CLAY with sand:
HCNH98-12	-2.2	-2.8	100	97	70	CL	SANDY CLAY:
HCNH98-13	-2.2	-3.0	100	100	98	CL	CLAY:

Note: Fine grained fraction of all samples (<#200 sieve) visually classified as clay.

Note: Sandy = Silt

Note: Over 50% of material passed No. 200 Sieve, material is over 50% Silt and Clay

EXHIBIT NO. 5

APPLICATION NO. CD-93-98

 California Coastal Commission



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

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CALIFORNIA
COASTAL COMMISSION

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **2**

September 9, 1998

MEMORANDUM

To Jim Pzives	From Steven John
Dept./Agency	Phone # 213/452-3806
Fax # 415/904-5400	Fax #
NSN 7540-01-317-7200	5000-101 GENERAL SERVICES ADMINISTRATION

SUBJECT: Maintenance Dredging at Lower Newport Bay Harbor, Orange County, California
FROM: Steven John, U.S. Environmental Protection Agency
TO: Doland Cheung, U.S. Army Corps of Engineers
Stephanie Hall, U.S. Army Corps of Engineers

This memorandum is to follow on EPA's previous review of the Environmental Assessment prepared by the Army Corps of Engineers for the proposed maintenance dredging at lower Newport Bay Harbor. Based on the EA and other data provided by the Corps, EPA concluded that the existing data were insufficient to base a determination that the dredged materials were suitable for disposal at the LA3 ocean disposal site. EPA recommended that the proposed dredged materials be evaluated directly, and assisted the Corps in preparing a Sampling and Analysis Plan (SAP) that would be consistent with the requirements of the joint EPA/Corps Ocean Disposal Testing Manual (Greenbook).

On September 8, 1998 the Corps provided EPA with draft results from the bulk sediment chemistry analysis. These data indicate that the proposed dredged materials are cleaner, in terms of levels of contaminants of concern, than sediments dredged from Dover Shores and the access channel in Newport Bay; dredged materials from these two locations were disposed of at the LA3 site. Additionally, data provided by the Corps (September 9, 1998) for sampling conducted by the County of Orange in approximately the same area as the proposed maintenance dredging (June, 1998) is consistent with the results from the Corps evaluation.

Based on the Corps internal deadline for funding and necessary coordination with the California Coastal Commission, the Corps has requested an expedited review by EPA of this draft data. While this data is still in draft form and the documentation that required QA/QC protocols were followed has not been provided, the information that has been provided to data indicates that these materials are suitable for disposal at the LA3 ocean disposal site. Based on this current information, and the other dredging projects in the vicinity of the proposed maintenance dredging operation that have been permitted for disposal at LA3, EPA does not believe additional biological testing of these proposed dredged materials is necessary. EPA concurs on the disposal of these dredged materials at the LA3 ocean disposal site.

EXHIBIT NO. 6

APPLICATION NO. CD-093-98

08/08/80 11:00 AM 213/452-3806
EPA requests that the Corps provide EPA with a final report which includes a formal presentation of the data and the QA/QC information, as required in the approved SAP.

If you have any questions about EPA's comments on this proposed maintenance dredging operation with disposal at LA3, please contact me at 213/452-3806.

cc: CCC (Raives)



DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS

P.O. BOX 532711

LOS ANGELES, CALIFORNIA 90053-2325

9 September, 1998

Office of the Chief
Navigation Section

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CALIFORNIA
COASTAL COMMISSION

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Dear Mr. Douglas:

The Corps of Engineers previously provided to the California Coastal Commission the Environmental Assessment for the proposed maintenance dredging at the lower Newport Bay Harbor. The Corps has since conducted additional bulk sediment chemistry analysis. Due to the time constraints for the project, only draft form of the chemistry data were provided to the Commission's Staff. Based on these results and data from other dredging projects in the vicinity, we believe the material is suitable for ocean disposal at LA3. However, we realize that our contractor has not made the final report of these data available.

We understand your staff wishes to review the final report results prior to concurring with this project. We will certainly make the results of the final report available to your staff as soon as we receive them.

At this time, we request your concurrence with this project, conditioned, if you desire, on the acceptance of the final report results by your staff. We will not initiate the dredging at Newport Bay Harbor until the staff of the Coastal Commission concurs with the final report.

If you have any questions on this project, please call Mr. Doland Cheung at (213) 452-3400.

Sincerely,

A handwritten signature in black ink, appearing to read "B. M. Moore", written over a horizontal line.

BRIAN M. MOORE, P.E.
Chief, Construction-
Operations Division

EXHIBIT NO. 7

APPLICATION NO. CD-093-98