

CALIFORNIA COASTAL COMMISSION45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200**RECORD PACKET COPY****Tu 14a****STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY CERTIFICATION**

Consistency Certification No.	CC-078-99
Staff:	JRR-SF
File Date:	07/30/1999
6 th Month extend to:	03/25/2000
Commission Meeting:	03/14/2000

APPLICANT:**City of Newport Beach****DEVELOPMENT
LOCATION:**

Lower Newport Bay, Orange County (Exhibit 1)

**DEVELOPMENT
DESCRIPTION:**

Maintenance Dredging with Ocean Disposal

EXECUTIVE SUMMARY

The City of Newport Beach has submitted a consistency certification for dredging and ocean disposal of suitable material. The City has also submitted a companion coastal development permit application, 5-99-282, for beach disposal associated with the proposed dredging.

The proposed project has the potential to affect water quality, habitat, and sand supply resources of the coastal zone. The City has modified its consistency certification to address these potential effects. Specifically, the City will protect water quality resources by avoiding areas where there are elevated levels of contaminants and by reducing turbidity from the dredging activities. Additionally, the City will protect environmentally sensitive habitat areas by avoiding California least tern foraging habitat and providing a buffer between authorized activities and eelgrass beds. Finally, the City will protect sand resources by using suitable

material for beach replenishment purposes. Therefore, the project is consistent with Section 30230, 30231, 30233(b), and 30240 of the Coastal Act.

Additionally, the project is consistent with the dredge and fill section of the Coastal Act. The City has limited the authorized activities to maintenance dredging of existing boat facilities, and thus the project is an allowable use. Additionally, the City has incorporated measures to avoid impacts to coastal resources, and therefore, the project is the least damaging feasible alternative, does not affect marine resources, and does not require additional mitigation. Therefore, the project is consistent with Sections 30233(a) and 30233(b) of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS:

1. Physical and chemical sediment testing associated with the regional general permit for dredging in Newport Harbor, August 1999.
2. Southern California Eelgrass Mitigation Policy, July 31, 1999, as amended.
3. Coastal Development Permit # 5-89-259, Maintenance dredging in lower Newport Bay.

STAFF SUMMARY AND RECOMMENDATION:

I. **Staff Note.** The City of Newport (City) proposes to dredge berthing and boat-launch areas in Newport Bay on an as needed basis with disposal at either an ocean disposal site or on the beach. The City has applied to the Corps of Engineers (Corps) for a general permit to authorize these dredging and disposal activities. Pursuant to the federal Coastal Zone Management Act, the Corps' general permit triggers the requirement for a consistency certification. The City has submitted both a permit application, 5-99-282, and a consistency certification to the Commission. The coastal development permit application is exclusively for the beach disposal activities authorized by the Corps' permit and functions as a consistency certification for that alternative.

The City submitted a separate consistency certification for those activities not requiring coastal development permit, i.e. maintenance dredging and ocean disposal. Although the dredging is within the coastal zone, it is exempt from coastal permit requirements because the regulations implementing the Coastal Act state that no permit is needed for maintenance dredging of less than 100,000 cubic yards in a one-year period. The City's application to the Corps limits the maintenance dredging to 20,000 cubic yards per year. In addition, the disposal activities at either the ocean disposal sites do not require coastal development permits because they are not within the coastal zone. In order to facilitate

Commission review of these items, both the coastal development permit application and the consistency certification will be heard at the same time.

II. Project Description. The City of Newport has submitted a consistency certification for maintenance dredging and ocean disposal of suitable material. The dredging will occur in Newport Bay and the ocean disposal will occur at either LA-2 or LA-3 (EPA approved permanent and interim disposal sites, respectively). The City has also submitted a companion coastal development permit application, 5-99-282, for beach disposal associated with the proposed dredging. The City has modified its consistency certification to address Coastal Act issues. The modifications are as follows:

A. Removal, from the project, areas where sediment quality is of a concern: Lido Island, Bay Front, Linda Isle, and any area north of the Pacific Coast Highway bridge. These areas are fully defined in the map in exhibit 2.

B. The City will not dispose of sediment that is equal to or greater than 80% sand retained on a standard #200 sieve at any ocean disposal site.

C. The City will not conduct any dredging or disposal activities within 50 feet of any eelgrass bed.

D. The City will limit its Corps permit, consistency certification, and coastal development permit to a five-year period.

E. The City will not dredge, pursuant to this consistency certification, more than 20,000 cubic yards of sediment per year.

F. The City will provide the Commission staff with notice of the proposed project at least 15 business days before commencement of any dredging project. This notice will include the following:

1. A vicinity map showing the exact location, including latitude and longitude coordinates, of the individual dredging project and the maximum dredging depth. If beach disposal is proposed, the vicinity map shall show the area of the beach to be replenished and detailed site plans of the disposal areas. All vicinity maps shall be drawn to scale.

2. Results of a survey to determine the presence of eelgrass within or adjacent to the proposed dredging area that could be affected directly or indirectly by the proposed activity. The results of the eelgrass survey shall include the person conducting the survey, when and how the survey was conducted, and the results of the survey. The eelgrass survey shall be done in accordance with the

Southern California Eelgrass Mitigation Policy, adopted July 31, 1991, as amended.

3. Results from physical testing conducted on a composite of at least three cores taken at different locations within the proposed dredging area for each project. Additionally, if appropriate, at least one core from the receiving beach. The core depth shall be equivalent to the proposed dredging depth plus any proposed over-dredging. Grain size data shall be reported to the nearest 1% for sand, silt, and clay consistent with procedures defined in:

"Procedures for Handling and Chemical Analysis of Sediment and Water Samples," by Russell H. Plumb (1981), Corps Technical Report EPA/CE-81-1, pages 3-28 to 3-47.

4. A detailed description of the dredging work at each location authorized by this permit. Description of the dredging work shall include the dredging and disposal procedures for all material proposed for either beach replenishment or ocean disposal.

5. A schedule showing when the individual dredging project is proposed to begin and to end.

6. Evidence showing that the area proposed for dredging has been previously existed at depths similar to the proposed project, and therefore, the proposed project constitutes maintenance dredging.

G. The City will not commence the dredging until it receives notice from the Coastal Commission staff stating that the activity is consistent with the approved coastal development permit and consistency certification.

H. No water or dredged material placed in a disposal barge or scow shall be allowed to flow over the sides or hinge points of such vessels during dredging, transportation, or disposal operations. Water may only flow over the hinge points, if filter fabric is installed across the hinge to minimize the introduction of sediment into Newport Bay. The City will determine the level that a disposal barge or scow can be filled to prevent any dredged material or water from spilling over the sides at the dredging site or during transit from the dredging site to the disposal site. No disposal barge or scow shall be filled above this predetermined level.

I. Dredged material may only be disposed at the LA-3 or LA-2 ocean disposal sites without further testing, if the following conditions have been met:

1. The dredged material meets the exclusionary criteria at 40 CFR 227.13(b)(1), (2), or (3).

2. The volume of dredged material that is proposed for ocean disposal does not exceed 1,000 cubic yards for a completed individual dredging project.
3. There are no known existing or historical sources of pollution that may have caused the proposed dredged material to be contaminated.

J. The City will submit a post-dredging report to the Commission staff for each completed dredging project. That report will document compliance with all of the requirements of the coastal development permit and consistency certification. The post-dredging report will be sent within 45 days after completion of the dredging project. The post-dredging report will include the following information for each individual dredging project:

1. Permit and project number.
2. Start date and completion date.
3. Location and total volume of dredged material disposed at LA-3, LA 2, a beach replenishment site, and/or an approved inland disposal site.
4. Mode of dredging and transportation, and method and frequency of disposal.
5. Form of dredged material (i.e., slurry or cohesive).
6. Procedure and location where the disposal barge or scow was washed.

III. Status of Local Coastal Program.

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 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 City of Newport's LCP into the CCMP.

IV. Applicant's Consistency Certification.

The City of Newport Beach has certified that the proposed project is consistent with the California Coastal Management Program.

V. Motion:

I move that the Commission concur with consistency certification CC-078-99 finding that the proposed project is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

A. Staff Recommendation:

Staff recommends a **YES** vote on the motion. Approval of this motion will result in a concurrence with the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

B. Resolution To Concur With Consistency Certification:

The Commission hereby concurs with the consistency certification by the City of Newport Beach on the grounds that the consistency certification is consistent with the enforceable policies of the CCMP.

VI. Findings and Declarations:

The Commission finds and declares as follows:

A. Water Quality. The Coastal Act protects water quality resources of the coastal zone. Section 30231 of the Coastal Act provides, in part, that:

The biological productivity and the quality of coastal waters ... appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained....

One of the potential adverse effects from dredging and ocean disposal activities is the resuspension and relocation of contaminants. Dredge material can contain elevated levels of heavy metals, pesticides, organics, and other pollutants. These contaminants usually are bound to finer grain material such as clay and silt. Pursuant to the requirements of the Corps and under the direction of the U.S. Environmental Protection Agency (EPA), the City conducted physical and chemical tests on the sediments within the proposed dredging areas of Newport Bay. Four of the areas tested showed slightly elevated levels of heavy metals. The level of contaminants in these areas is not high enough to conclusively determine that that sediment is unsuitable for ocean disposal. However, that level is significant enough to require toxicity and bioaccumulation tests before the Commission can authorize ocean disposal of this material. The City has addressed this concern by removing these areas from the consistency

certification (Exhibit 2 and 3). Any dredging of these sites will require an individual consistency certification.

Finally, the City has modified its project to prevent overflow of the barge or scow. This measure will reduce the turbidity impacts to the water column. The Commission finds that with these measures, the proposed project will not affect water quality resources of the coastal zone, and therefore, the project is consistent with the Water Quality policy of the CCMP.

B. Habitat Resources. Newport Bay provides habitat for environmentally sensitive resources. Section 30230 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 30240(a) also 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.

Newport Bay provides habitat for two sensitive resources potentially affected by this project. These resources include foraging habitat for the California least tern, a federally listed endangered species, and eelgrass areas, an aquatic plant that provides areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Both of these resources can be adversely affected from increased turbidity in the water column caused by the proposed dredging. The tern uses sight to forage for small fish near the surface of the water. The increase in turbidity can interfere with this sight-based feeding. During nesting season, the terns must forage close to their nesting area so that they can bring food to their fledglings.

In addition, the proposed dredging may adversely affect eelgrass habitat. The potential impacts include direct loss of eelgrass beds by dredging within that habitat and degrading the quality of that resource by increasing turbidity in the water column. The increase in suspended sediments caused by dredging could decrease light penetration, deter small fish from using the protective habitat, and interfere with bird foraging.

In order to avoid these impacts, the City has consulted with the U.S. Fish and Wildlife Service (Service), National Marine Fisheries Service, and the California Department of Fish and Game. These agencies have recommended measures to avoid impacts to tern habitat and eelgrass. These measures include limiting the dredging to the lower bay, south of the Pacific Coast Highway bridge, during the tern-nesting season. The least tern nests in upper Newport Bay and not in the lower bay and any dredging in the upper bay during the nesting season may affect tern foraging. However, small dredging projects in the lower bay, such as those proposed in this consistency certification, will not affect foraging in the upper bay because of the distance to the nesting areas. Therefore, to ensure that the dredging projects authorized by this consistency certification do not affect the terns, the Service recommended, and the City agreed, to limit this general approval to dredging projects in lower Newport Bay, south of the Pacific Coast Highway bridge.

Additionally, the resource agencies recommended avoiding impacts to eelgrass habitat. Specifically, these agencies recommend a buffer zone between the dredging or disposal activity and any eelgrass beds. In response to this concern, the City agreed to restrict dredging within 50 feet of any eelgrass bed. With this buffer zone and the small size of the dredging projects, the activities approved by this consistency certification will not affect this resource.

In conclusion, the proposed project will avoid impacts to the least tern and eelgrass beds. Therefore, the Commission finds that the proposed project is consistent with the habitat policies of the CCMP.

C. Sand Supply. The Coastal Act encourages the use of suitable dredge material for beach replenishment purposes. Section 30233(b) of the Coastal Act provides, in part, that:

(b).... Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

The City modified its consistency certification to address concerns about loss of sand resources. The modification will limit ocean disposal, outside of the littoral system, of dredge material to sediment that is less than 80% sand retained on standard #200 sieve. Because of its fine grain size, such material is not suitable for beach replenishment. With this limitation, the proposed project will protect sand resources. Therefore, the Commission finds that the proposed project is consistent with the sand supply policy of the CCMP.

D. Dredging. The Coastal Act provides for the protection of estuarine and marine waters. Section 30233(a) provides 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(b) provides, in part, that:

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. ...

The shoreline of lower Newport Bay is developed with marinas and houses that have boat-berthing facilities adjacent to them. In order to continue to use these facilities for recreational boating, they require occasional dredging. Section 30233(a) of the Coastal Act allows for this dredging, if it is for the purpose of maintaining existing vessel berthing and boat-launch areas. The City has limited its consistency certification to maintenance dredging activities. In order to ensure that only maintenance dredging is conducted pursuant to this consistency certification, the City will provide the Commission staff with pre-dredging notice of any project authorized by this consistency certification. As part of that notice, the City will provide evidence that the purpose of the proposed dredging is to maintain the existing depth of the vessel berthing or boat-launch area. With this modification, the purpose of the proposed project is to maintain existing boating areas, and therefore, the project is an allowable use pursuant to Section 30233(a) of the Coastal Act.

Section 30233(a) of the Coastal Act also requires that dredging and ocean disposal activities be the least environmentally damaging feasible alternative and include feasible mitigation. Additionally, Section 30233(b) of the Coastal Act requires that dredging projects avoid significant impacts to marine habitat. As described above, the City has modified its project to prevent any authorized dredging activity from having significant effects on sand supply, water quality, and sensitive habitat resources. Additionally, the City has modified the scope of the authorized dredging projects to limit them to 1,000 cubic yards for ocean disposal per project, and 500 cubic yards for beach disposal per project, with a maximum total of 20,000 cubic yards per year. By limiting the scope of these

dredging projects, the City's proposal will not have significant impacts on marine or estuarine waters. Therefore, the Commission finds that the proposed activity is the least environmentally damaging feasible alternative and does not require any additional mitigation.

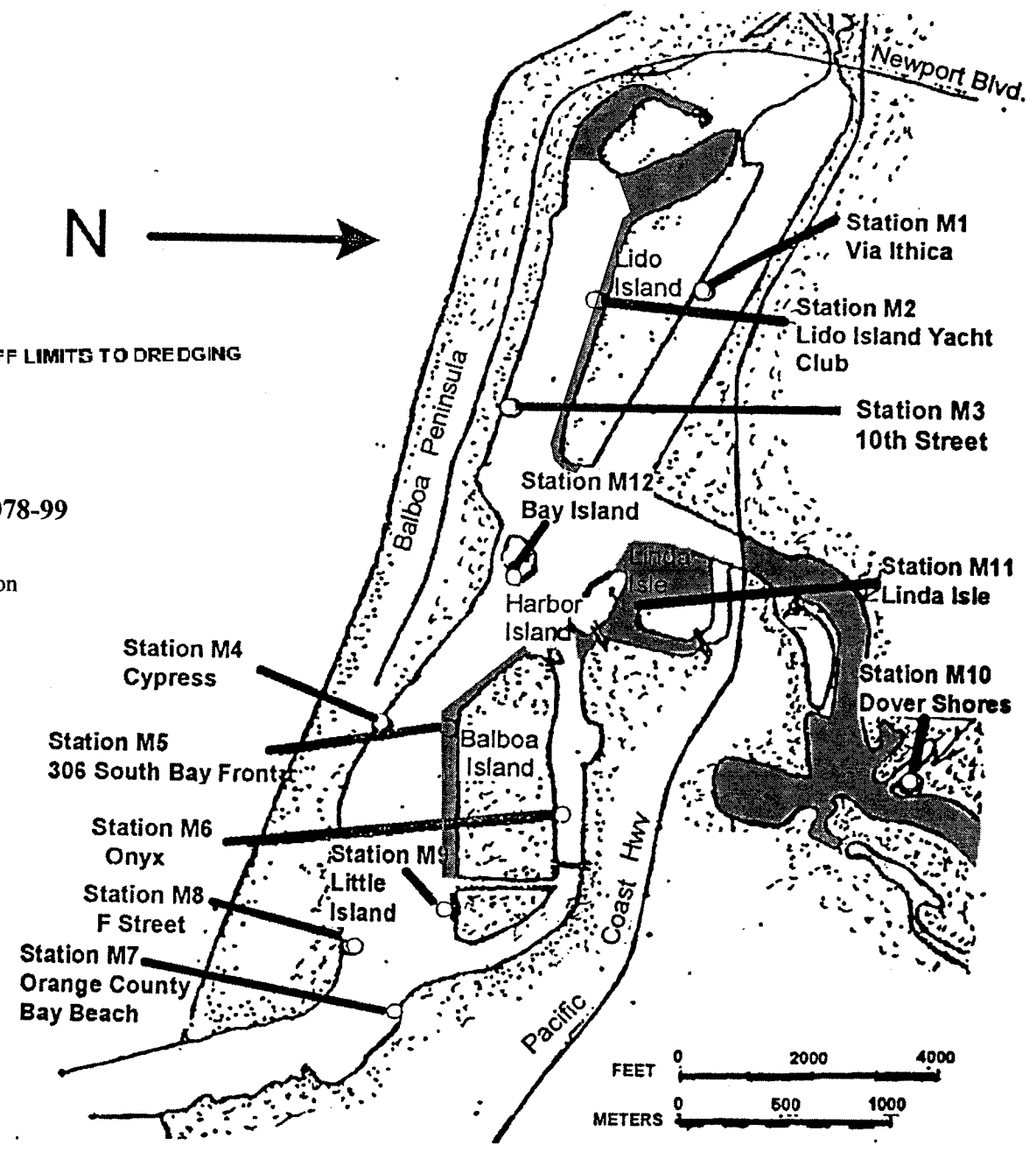
In conclusion, the Commission finds that the proposed project is consistent with the dredging policies of the CCMP.



☐ AREAS OFF LIMITS TO DREDGING

EXHIBIT NO. 1
APPLICATION NO. CC-078-99

California Coastal Commission





NEWPORT BEACH FIRE AND MARINE DEPARTMENT

February 24, 2000

Mr. James Raives
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105-2219
Fax - 415-904-5200

Mr. Carl Schwing
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
562-590-5071

Re: Amendment to Coastal Application 5-99-282

Dear Sirs:

The City of Newport Beach is requesting an amendment to Coastal Application 5-99-282, the Federal Consistency Certification and the Army Corp of Engineers Permit. Those amendments will include the items listed in the attached letter from James Raives. The City has agreed to these changes and would like to consider them as part of our amended application.

Sincerely,

A handwritten signature in black ink that reads "Tony Melum".

Tony Melum
Deputy Chief Marine Environmental Division

Cc: Spencer Mc Neal
Army Corps of Engineers

Attachments

EXHIBIT NO. 2

APPLICATION NO. CC-078-99

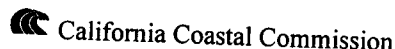
CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



EXHIBIT NO. 3

APPLICATION NO. CC-078-99



February 23, 2000

Tony Melum
Newport Beach Fire and Marine Department
Operations Division
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Newport Bay dredging

Dear Mr. Melum;

As we discussed on the phone the other day (February 16, 2000), the Commission staff has some resource and procedural concerns with the consistency certification and permit application for the proposed dredging program. The staff believes that these issues can be resolved through modifications of both the permit and consistency certification. In order to meet the requirements of the California Coastal Management Program (CCMP), the City must also modify the Corps permit so that it is consistent with the consistency certification and permit application. For your information, this item is tentatively scheduled for the Commission's March agenda. The City will need to modify the consistency certification and permit application or otherwise resolve the following concerns before the Commission staff can recommend concurrence with the City's consistency certification and approval of the coastal development permit.

I. **APPLICANT.** Although the City has informed the Commission staff that it is the applicant and project proponent for the purposes of processing a coastal development permit, the City also needs to modify the federal consistency certification and Corps permit to clarify its responsibilities.

II. **SEDIMENT QUALITY.** There are several areas where chemical data indicates that there are elevated levels of more than one heavy metal. The areas of concern are Lido Island, Bay Front, Linda Isle, and any area north of the Pacific Coast Highway bridge. (These areas were fully described at the meeting of February 23, 2000, with the Commission staff, City staff, Corps, EPA, and Fish and Wildlife Service.) The City should modify the Corps permit, consistency certification, and coastal development permit to remove these areas from the proposed project.

III. **SAND SUPPLY.** The Commission staff believes that it is inconsistent with the Coastal Act to dispose of beach-suitable material at the ocean sites, unless beach disposal is infeasible. The City should amend its consistency certification and Corps permit to limit the general permit to exclude ocean disposal of any dredge material

that is greater than 80% sand. If beach disposal of suitable material is not feasible, that activity would require an individual consistency review.

IV. EELGRASS. The City should modify its Corps permit, coastal development permit, and consistency certification to exclude any dredging or beach disposal within 50 feet of any eelgrass bed.

V. PERMIT DURATION. In light of evidence of increasing contamination concerns, continued problems with non-point source pollution, and changing eelgrass habitat, the Commission staff believes that the requested permit duration is too long to incorporate changing circumstances. The City should modify the Corps permit, consistency certification, and coastal development permit to limit the project to a duration of five years.

VI. DREDGING VOLUME. The consistency certification includes a maximum volume of 20,000 cubic yards per year. However, the public notice did not specify a maximum volume of dredging. If it is not currently specified, the Corps permit should be modified to include the same limitation.

VII. PROJECT NOTICE. The City should modify its consistency certification and the coastal development permit application to provide the Commission notice of the proposed project at least 15 business days before commencement of any dredging project. This notice shall include the following:

- A. A vicinity map showing *the exact* location, including latitude and longitude coordinates, of the individual dredging project and the maximum dredging depth. If beach disposal is proposed, the vicinity map shall show the area of the beach to be replenished and detailed site plans for dredging and disposal areas. All vicinity maps shall be drawn to scale.
- B. Results of a survey to determine the presence of eelgrass within or adjacent to the proposed dredging area that could be affected directly or indirectly by the proposed activity. The results of the eelgrass survey shall include the person conducting the survey, when and how the survey was conducted, and the results of the survey. The eelgrass survey shall be done in accordance with the *Southern California Eelgrass Mitigation Policy*, adopted July 31, 1991, as amended.
- C. Results of a grain size test conducted on a composite of at least 3 cores taken at different locations within the proposed dredging area for each project and at least one core from the receiving beach, if appropriate. The core depth shall be equivalent to the proposed dredging depth plus any over-dredging. Grain size data shall be reported to the nearest 1% for sand, silt, and clay consistent with procedures defined in: "Procedures for Handling and Chemical Analysis of Sediment and Water Samples," by Russell H. Plumb (1981), Corps Technical Report EPA/CE-81-1, pages 3-28 to 3-47.
- D. A detailed description of the dredging work at each location authorized by this permit. Description of the dredging work shall include description of the

dredging and disposal procedures for all material proposed for either beach replenishment or ocean disposal.

- E. A schedule showing when the individual dredging project is proposed to begin and to end.
- F. Evidence showing that the area proposed for dredging has been previously dredged to depths similar to the proposed project, and therefore, the proposed project constitutes maintenance dredging.

VIII. DREDGING COMMENCEMENT. The City should modify its coastal development permit and consistency certification to state that dredging shall not commence until the City receives a notice from the Coastal Commission staff that states that the activity is consistent with the approved coastal development permit and consistency certification.

IX. DREDGE OVERFLOW. The City should modify its consistency certification to state that no water or dredged material placed in a disposal barge or scow shall be allowed to flow over the sides or hinge points of such vessels during dredging or disposal operations. Water may only flow over the hinge points, if filter fabric is installed across the hinge to minimize the introduction of sediment into Newport Bay. The City shall determine the level that a disposal barge or scow can be filled to prevent any dredged material or water from spilling over the sides at the dredging site or during transit from the dredging site to the disposal site. No disposal barge or scow shall be filled above this predetermined level.

X. OCEAN DISPOSAL. The City should modify its consistency certification to provide that the dredged material may only be disposed at the LA-3 or LA-2 ocean disposal sites without further testing if:

- A. The dredged material meets the exclusionary criteria at 40 CFR 227.13(b)(1), (2), or (3).
- B. The volume of dredged material that is proposed for ocean disposal does not exceed 1,000 cubic yards for a completed individual dredging project.
- C. There are no known existing or historical sources of pollution that may have caused the proposed dredged material to be contaminated.

XI. POST-DREDGING REPORT. The City should modify the coastal development permit application and consistency certification to include the submittal of a post-dredging report for each completed dredging project to the Commission documenting compliance with all of the requirements of the coastal development permit and consistency certification. The post-dredging report shall be sent within 45 days after completion of the each individual dredging project authorized in these actions. The post-dredging report shall include the following information for the complete individual dredging project:

- A. Permit and project number.

- B. Start date and completion date.
- C. Location and total volume of dredged material disposed at LA-3, LA 2, a beach replenishment site, and/or an approved inland disposal site.
- D. Mode of dredging and transportation, and method and frequency of disposal.
- E. Form of dredged material (i.e., slurry or cohesive).
- F. Procedure and location where the disposal barge or scow was washed.

I hope this letter adequately explains the modifications that the Commission staff is requesting. I am certainly will to discuss these issues further and can be reached at (415) 904-5292. Thank you for your cooperation on this matter.

Sincerely,



James R. Raives
Federal Consistency Coordinator

cc: Mark Delaplaine
Karl Schwing
Steven John
Spencer MacNeil
David Zoutendyk