

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
 200 Oceangate, Suite 1000  
 Newport Beach, CA 90802-4302  
 (562) 590-5071

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 Staff Report: February 24, 2000  
 Hearing Date: March 14-17, 2000  
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-99-282

**APPLICANT:** City of Newport Beach

**AGENT:** Tony Mellum, Deputy Chief Marine Environmental Division, City of Newport Beach

**PROJECT LOCATION:** On beaches at 150 public street ends within Newport Harbor and in front of bulkheads on individual properties fronting Newport Bay, City of Newport Beach, Orange County.

**PROJECT DESCRIPTION:** Beach nourishment using up to 20,000 cubic yards a year of suitable dredged material from dock areas between the bulkhead line and project line in Newport Bay.

**LOCAL APPROVAL:** City of Newport Beach, Fire and Marine Department, Approval in Concept, July 26, 1999.

**SUMMARY OF STAFF RECOMMENDATION:**

The City of Newport Beach 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. This coastal development permit is only for the deposition of suitable dredged material for beach nourishment. The actual dredging activity, although regulated by the U.S. Army Corps of Engineers and the California Regional Water Quality Control Board, is exempt from coastal development permit requirements because it is required for the maintenance of existing navigational channels and would involve less than 100,000 cubic yards in one year. Pursuant to Section 30610(d) of the Coastal Act and Section 13252(a)(2)(A) of Title 14 of the California Code of Regulations, maintenance dredging less than 100,000 cubic yards in one year is exempt from coastal development permit requirements. A coastal development permit is required from the Commission for the proposed beach nourishment project because this activity is a non-exempt form of development given the use of mechanized equipment on a public 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 requirements for a consistency certification. The City has submitted both a permit application, 5-99-282, and a consistency certification to the Commission. 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.

Staff is recommending that the Commission grant a coastal development permit for the proposed project with conditions regarding compatibility of the dredged material with the deposition sites, requirement to supply pre-disposal eelgrass surveys, a requirement to supply revised plans, a limitation on the term of the approval, a requirement to submit evidence of California State Lands Commission approval, and assumption of risk.

**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Newport Beach Certified Land Use Plan
2. *Physical and Chemical Sediment Testing Associated with the Regional General Permit for Dredging in Newport Harbor* by MBC Applied Environmental Services of Costa Mesa, California dated August 1999.
3. Proposed Regional General Permit (RGP) No. 54, U.S. Army Corps of Engineers Permit Application No. 98-00296-SDM.
4. California Department of Fish & Game comment letters: September 29, 1999.
5. U.S. Fish & Wildlife Service comment letter: April 20, 1999 .
6. U.S. National Marine Fisheries Service comment letter: November 23, 1998.
7. California Regional Water Quality Control Board Waiver of Waste Discharge Requirements dated August 26, 1999.
8. Coastal Development Permit 5-89-259 (City of Newport Beach).
9. Coastal Development Permit 5-86-130 (City of Newport Beach).
10. Coastal Development Permit 5-85-729 (City of Newport Beach).
11. *Response to Coastal Commission staff comments Newport Harbor 10-year maintenance permit renewal, Eelgrass (Zostera marina) habitats, Newport Bay, California* prepared by Rick Ware of Coastal Resource Management.
12. *Lower Newport Harbor Eelgrass Restoration Project Field Reconnaissance Report* prepared by Chambers Group, Inc. of Irvine, California, and Coastal Resources Management of Corona del Mar, California dated August 1999.
13. *Draft Environmental Assessment for Lower Newport Bay Eelgrass Restoration Project, Lower Newport Bay, Newport Beach, California* prepared by the U.S. Army Corps of Engineers dated January 2000.

## **I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL.**

Staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the permit application with special conditions.

### **MOTION**

*I move that the Commission approve CDP #5-99-282 pursuant to the staff recommendation.*

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

### **RESOLUTION OF APPROVAL WITH CONDITIONS**

The Commission hereby GRANTS a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies of the Coastal Act, 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 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

## **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 this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. 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.
7. 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 Conditions**

#### **1. SUITABILITY OF MATERIALS**

- A. Prior to each dredging and beach disposal episode at each individual dredging and beach disposal location, the permittee shall sample the material to be dredged for the purpose of determining the physical and chemical characteristics of the material. Testing shall be performed 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. The grain size test shall be conducted on a composite of at least 3 cores taken at different locations within the proposed dredging area for each project and upon at least 1 core from the receiving beach for each project. 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. Only materials that contain 80% or more sand may be utilized for beach nourishment. In addition, the material utilized for beach nourishment shall have a sand content that is within 10% of the sand content of the receiver beach. Furthermore, chemical contaminant levels, if any, of any materials utilized for beach nourishment shall not exceed the levels contained within the document titled *Evaluation of Dredge Material Proposed for Discharge in the Waters of the United States – Testing Manual, Inland Test Manual*, dated February 1998 prepared by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.
- B. Prior to commencement of beach nourishment at a site, the results of each sampling episode, sediment characterization, and beach nourishment compatibility test shall be submitted for the review and approval of the Executive Director. Dredged material deemed suitable may be deposited at the approved deposition sites only after the Executive Director has concurred with a City determination that the materials to be dredged have been deemed "suitable" using the standards in Special Condition 1.A. above. All dredged material deemed "unsuitable" shall be disposed of at an approved location according to all federal, state and local regulations. If the disposal site is located in the coastal zone, a separate coastal development permit application shall be filed for the disposal of the "unsuitable" material. All contracts involving the subject project shall include the above stated condition of approval.

#### **2. EELGRASS BEDS**

Prior to placement of any sand or deposition of any dredged material below the mean high tide line (MHTL), the permittee shall:

- a) Survey and map any eelgrass (*Zostera marina*) beds, kelp beds or clam beds which may exist within the proposed deposition area. The eelgrass survey shall be done in accordance with the *Southern California Eelgrass Mitigation Policy*, adopted July 31, 1991, as amended.
- b) Submit the map and survey of each proposed deposition area to the Executive Director demonstrating that the proposed beach nourishment is 50 or more feet away from any eelgrass bed (*Zostera marina*).

The placement of any sand or deposition of any dredged material below the mean high tide line (MHTL) shall be permitted consistent with Special Condition 5 and only with a determination by the Executive Director, in consultation with the California Department of Fish and Game, that the proposed beach deposition is 50 or more feet away from eelgrass (*Zostera marina*) beds and that there will be no negative impact to eelgrass (*Zostera marina*) beds.

**3. REVISED PLANS CONDITION**

**A. AT LEAST 15 BUSINESS DAYS PRIOR TO EACH BEACH DEPOSITION**

**EPISODE**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall show the following:

1. A vicinity map showing *the exact* location of the individual beach disposal site;
2. A site plan drawn to scale showing the pre-disposal and post-disposal contour of the beach. The plan shall indicate the quantity of material to be disposed at the beach. The site plan shall also include details regarding property lines, existing structures including but not limited to bulkheads, piers, ramps, and floats, and the location of the bulkhead line, pierhead line, and project line;
3. Results of an eelgrass survey to determine the presence of eelgrass within or adjacent to the proposed beach disposal area that could be affected directly or indirectly by the proposed activity. The results of the survey shall show how the proposed beach restoration will not occur within 50 feet of any eelgrass bed. 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;
4. A schedule showing when the individual dredging project is proposed to begin and to end.

**B.** The permittee shall undertake development in accordance with the approval 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 required.

4. **SCOPE AND TERM OF PERMIT APPROVAL**

The development authorized by this coastal development permit is limited to beach nourishment using only suitable material dredged pursuant to Consistency Determination CC-078-99 and U.S. Army Corps of Engineers Permit No. 98-00296-SDM. Coastal development permit 5-99-282 does not authorize any repair, modification, or in-alignment replacement of any boat dock structures (i.e. piers, docks, gangways, and floats) or bulkheads, as described in U.S. Army Corps of Engineers Permit No. 98-00296-SDM. No more than 500 cubic yards of suitable dredge material may be deposited for beach nourishment during any single beach nourishment event. The development authorized by this permit shall expire 5 years from the date of Commission approval.

5. **CALIFORNIA STATE LANDS COMMISSION APPROVAL**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, applicant shall provide to the Executive Director written evidence from the California State Lands Commission that the proposed development is consistent with the terms and conditions of the City of Newport Beach tidelands grant contained within Assembly Bill 1422 approved by the Governor on April 6, 1978 and filed with the Secretary of State April 7, 1978. The applicant shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

6. **ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT BY PUBLIC ENTITY**

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (a) of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. PROJECT DESCRIPTION**

The City of Newport Beach proposes to nourish its public beaches at the 150 street ends which surround Newport Bay using material dredged from the maintenance of individual boat slips (Exhibit 1 and 2). The City's maintenance dredging operation, under review by the U.S. Army Corps of Engineers as Permit No. 98-00296-SDM, would yield up to 20,000 cubic yards of material each year using a hydraulic suction dredge. The U.S. Army Corps of Engineers pending approval allows no more than 20,000 cubic yards of material to be dredged in each one-year dredge season. Only dredged material deemed suitable using U.S. Army Corps of Engineers standards is proposed to be used for beach nourishment. The applicant is requesting that the subject permit authorize beach nourishment activity for a period of 5 years at 20,000 cubic yards of beach nourishment per year.

This coastal development permit is only for the deposition of suitable dredged material for beach nourishment. The beach nourishment is a non-exempt form of development given the attendant use of mechanized equipment on a public beach. The actual dredging activity, which is required for the maintenance of existing navigational channels, is exempt from coastal development permit requirements. Pursuant to Section 30610(d) of the Coastal Act, maintenance dredging less than 100,000 cubic yards in one year is exempt from coastal development permit requirements. The dredging activities that will provide the beach nourishment material have been conceptually approved by the U.S. Army Corps of Engineers under Proposed Regional General Permit No. 54 (Permit No. 98-00296-SDM). According to the City, all dredging will be done on an as needed basis. This dredging activity is the subject of the companion consistency certification CC-078-99.

Suitable material is proposed to be pumped from the hydraulic suction dredge via pipeline to deposition sites on the City's beaches which occur at the street ends which face upon Newport Bay. In addition, suitable dredged material will be deposited in front of the bulkhead at the residential property where dredging will occur. As proposed, suitable dredged material will be deposited for beach nourishment in the near shore area, or above the mean high tide line. Specifically, the proposed deposition area is upon the beach within the public right-of-way at each street end facing upon Newport Bay and on the beach in front of the bulkhead at the site where the dredging will occur. The site where dredging will occur is defined as the area between the bayward extension of the property lines, the bulkhead line and the pierhead line or project line (Exhibit 2, Page 4). This area is typically 30 feet wide by 80 to 100 feet long. There are 150 street ends and approximately 1,200 residential bulkheads where beach nourishment would occur. Where necessary, the sand will be spread mechanically to evenly distribute the sand over the deposition area. The maximum quantity of material that would be disposed at any one time and any single site would be 500 cubic yards. In addition, the City will not conduct any disposal activities within 50 feet of any eelgrass bed.

The applicant provided a baseline evaluation of the suitability of the dredge materials for beach disposal. This evaluation is contained within the report titled *Physical and Chemical Sediment*

*Testing Associated with the Regional General Permit for Dredging in Newport Harbor* by MBC Applied Environmental Services of Costa Mesa, California, dated August 1999. This report generally indicates that dredge materials within Newport Bay are suitable for beach disposal. However, several areas located at Lido Island, Bay Front, Linda Isle, and areas north of the Pacific Coast Highway bridge showed elevated contaminant levels which, depending on the results of further analysis, may or may not be suitable for beach and/or ocean disposal. Accordingly, the City has proposed to exclude the use of sediment from these areas for purposes of beach nourishment. These areas have also been excluded from the applicant's federal consistency certification application. Accordingly, neither dredging nor use of dredge spoils from these areas for beach nourishment are authorized under the companion consistency certification or this coastal development permit. Dredging or use of dredge spoils from these areas for beach nourishment requires a separate consistency determination and coastal development permit.

In order to ensure that the materials planned for beach disposal are suitable for such use, the applicant is proposing to have physical testing conducted on a composite of at least three cores taken at different locations within the proposed dredging area for each project. Additionally, 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. The City is proposing to use all non-contaminated sediment that is equal to or greater than 80% sand retained on a standard #200 sieve for beach nourishment.

In order to ensure that beach disposal at each beach disposal location conforms with the proposed project, the consistency certification and the terms and conditions of the coastal development permit the City is proposing to provide Commission staff with notice of each individual dredge and disposal event at least 15 business days before commencement of any dredging or beach disposal project. The 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 demonstrating that the proposed beach nourishment is 50 or more feet away from any eelgrass bed. 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, at least one core from the receiving beach. The core depth shall be equivalent to the proposed dredging depth plus any proposed over-dredging; (4) A detailed description of the dredging and disposal work at each location. 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. Evidence showing that the area proposed for dredging has been previously dredged at depths similar to the proposed project, and therefore, the proposed project constitutes maintenance dredging. 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.



The applicant is also proposing to prevent water or dredged material placed in a disposal barge or scow from flowing 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.

The City will submit a post-dredging and disposal report to Commission staff for each completed dredging and disposal project. The 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.

This coastal development permit is a companion to Consistency Certification CC-078-99. CC-078-99 relates to the proposed dredging and any necessary off-shore disposal of dredge materials. The activity authorized by CC-078-99 is more thoroughly described in the staff report for the March 14, 2000 Commission meeting. However, for reference the following is a description of the activity authorized. Note, the U.S. Army Corps of Engineers announcement for proposed Regional General Permit (RGP) No. 54 permit application No. 98-00296-SDM, includes reference to repair, minor modification, and in-alignment replacement of private docks, floats, pier, and bulkheads. These items have been specifically excluded by the City of Newport Beach from the project description of this application for coastal development permit. In addition, Special Condition 4 specifically excludes these activities from this coastal development permit. Separate coastal development permits are required for these activities.

Consistency Certification CC-078-99 authorizes maintenance dredging of navigation channels to pre-existing dredge depths. Pursuant to CC-078-99, maintenance dredging of up to 1,000 cubic yards of material per event may be dredged from under private, public, and commercial piers, docks, and floats between the U.S. Bulkhead Line and the U.S. Pierhead Line. The City states that the typical individual dredge project is 100 to 500 cubic yards, averaging 200 cubic yards, and occurs within an area approximately 30 feet wide and 80 to 100 feet long. Dredge material not suitable for beach nourishment but which is suitable for ocean disposal will be deposited at EPA off-shore disposal sites LA-2 or LA-3. A maximum of 20,000 cubic yards of suitable dredge materials will be disposed off shore with no more than 1,000 cubic yards of ocean disposed material from any single dredge site. The total amount of dredging and disposal authorized between CC-078-99 and CDP 5-99-282 shall not exceed a total of 20,000 cubic yards of dredging per year and a cumulative total of 20,000 cubic yards of disposal between beaches or off-shore per year. Any materials not suitable for beach nourishment or ocean disposal would require land disposal. Neither CC-078-99 nor CDP 5-99-282 authorizes land disposal. Any land disposal would require a separate consistency determination and/or coastal development permit, as appropriate.

**B. MARINE RESOURCES AND SHORELINE PROTECTION**

The proposed beach nourishment project includes the placement of dredged material on the beach and below the mean high tide line (MHTL). The placement of any material below the MHTL is fill as defined by Section 30108.2 of the Coastal Act. Section 30233 of the Coastal Act allows filling of coastal waters or wetlands only where feasible mitigation measures have been provided to minimize adverse environmental effects, and for only the eight uses listed in Section 30233 of the Coastal Act, as follows:

*(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 wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision*

*(b) Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*

*(4) 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.*

*(5) 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.*

*(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

*(7) Restoration purposes.*

*(8) 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.*

In this case, the proposed fill would result from the restoration of beaches where erosion has narrowed the prior width of the beach. The proposed development requests the placement of up to 20,000 cubic yards of beach suitable material per year upon the beaches in front of the bulkheads and at public street end beaches facing upon Newport Bay. No more than 500 cubic yards of

material is proposed to be disposed on the beach at any single location. This proposed fill is an allowable use pursuant to Section 30233(a)(7) and 30233(b) of the Coastal Act.

Section 30233 of the Coastal Act also requires that the proposed fill be the least environmentally-damaging feasible alternative including the use of feasible mitigation measures to reduce adverse environmental effects. The City has proposed measures to ensure that the proposed project is the least environmentally-damaging feasible alternative and has included mitigation measures to avoid adverse effects on the marine environment.

The City considered at least three options for disposal of beach suitable material. The first option was the no project alternative. Under the no project alternative, no disposal would occur. Without a site to dispose of dredge material, dredging within Newport Bay could not occur. Without dredging boat slips within the harbor would become silted and unusable. Silting of boat slips within the harbor would decrease the usefulness of the harbor for recreation oriented boating. Accordingly, the no project alternative would have an adverse impact upon boating related uses of coastal waters. In addition, without dredging, public beaches within the harbor could not be nourished with needed beach quality sand.

The second option was to dispose of all dredge spoils at an upland location. Disposing beach quality dredge materials at an upland location would remove those materials from the shoreline sand supply. Therefore, this alternative would have an adverse impact on shoreline sand supply.

The third option is the proposed project which results in the use of beach quality dredge material for beach nourishment purposes. This option would avoid any adverse impacts upon shoreline sand supply by re-contributing beach suitable material toward beach nourishment projects. Under this alternative, the applicant is proposing several mitigation measures to mitigate any adverse effects the project may have upon water quality and sensitive marine resources. These measures include avoiding the use of sediment dredged from areas where sediment testing indicates elevated contaminant levels. These areas to be avoided include on the south side of Lido Island, the west Lido Channel, the Rhine Channel, the south side of Balboa Island, Linda Isle and any area north of the Pacific Coast Highway (HWY 1) bridge. Avoiding the use of these materials will prevent the release of contaminants to the water column. In addition, avoiding activities in Upper Newport Bay will prevent impacts upon the California least tern which forages and nests in Upper Newport Bay. In addition, the City is proposing to avoid any disposal activities within 50 feet of any eelgrass bed. Accordingly, impacts to eelgrass will be avoided. The City is also proposing to conduct testing of any sediments planned for beach disposal to ensure compatibility of that sediment for beach nourishment purposes. These measures will avoid impacts to sand supply, water quality, and sensitive habitat resources. Additionally, the City has limited beach disposal to 500 cubic yards per project, with a maximum total of 20,000 cubic yards of beach disposal per year. By limiting the scope of this beach nourishment project, the City's proposal will not have significant impacts on marine or estuarine waters. The Commission finds that the proposed project is an allowable use and is the least environmentally-damaging feasible alternative which includes feasible mitigation measures. Therefore, the Commission finds the proposed project is consistent with Section 30233(a) of the Coastal Act.

In regards to beach replenishment, Section 30233(b) of the Coastal Act requires that suitable dredge materials be transported to appropriate beaches for such purposes.

Section 30233(b) of the Coastal Act states:

*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 applicant is proposing to use all beach suitable dredge material for beach nourishment purposes. In order to ensure that the materials proposed for beach nourishment are suitable for such purposes, the applicant has proposed to perform sediment testing to evaluate the physical and chemical characteristics of the materials. In order to ensure that such testing adequately characterizes and evaluates the physical and chemical characteristics of the proposed beach nourishment materials, the Commission imposes Special Condition 1. Special Condition 1 requires the applicant to perform testing consistent with testing methods previously approved by the Commission contained within the document "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. Special Condition 1 also requires that grain size tests be conducted on a composite of at least 3 cores taken at different locations within the proposed dredging area for each project and for the receiving beach, if beach disposal is proposed. 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 the above referenced document. In order to ensure that only beach quality materials are used to nourish the beaches, Special Condition 1 requires that only materials that contain 80% or more sand may be utilized for beach nourishment. In addition, the material utilized for beach nourishment shall have a sand content that is within 10% of the sand content of the receiver beach. Furthermore, in order to ensure that marine resources are protected, chemical contaminant levels, if any, of any materials utilized for beach nourishment shall not exceed the levels contained within the document titled *Evaluation of Dredge Material Proposed for Discharge in the Waters of the United States – Testing Manual, Inland Test Manual*, dated February 1998 prepared by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers. The Commission notes that these standards are consistent with U.S. Army Corps of Engineers standards for beach disposal of dredge materials.

The proposed use of dredged material for beach nourishment will partially mitigate the ongoing erosion of the City's harbor beaches, helping to protect recreational use of the beach and existing structures along the beach. Section 30233(b) of the Coastal Act encourages the use of dredged material for beach replenishment. As conditioned, the proposed project will not have any adverse impacts on local sand supply. Therefore, the proposed project is consistent with Section 30233(b) of the Coastal Act.

Section 30230 of the Coastal Act requires that marine resources shall be maintained, enhanced, and where feasible, restored. 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 30230 of the Coastal Act requires that marine resources be protected and that the use of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The proposed deposition of material above and below the mean high tide line may

impact marine resources. Therefore, mitigation measures are necessary to protect the biological productivity of coastal waters.

In addition, Section 30240 of the Coastal Act requires avoidance of impacts to environmentally sensitive habitat areas. Section 30240 of the Coastal Act states:

*Section 30240.*

*(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.*

Section 30107.5 defines environmentally sensitive habitat area as:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The applicant has submitted information prepared by Rick Ware of Coastal Resource Management indicating that eelgrass (*Zostera marina*) is present within Newport Bay. Eelgrass typically occurs at depths ranging from 0 feet to -15 feet Mean Lower Low Water. However, in some areas of Newport Harbor, such as along Balboa Island, eelgrass occurs at shallower depths. Eelgrass is generally found along the bulkheads and along sandy shorelines within the harbor. However, in those locations where the bottom is shaded such as under docks and beneath moored vessels, eelgrass does not grow due to inadequate light levels.

Within the project area, there are eelgrass beds which have been identified (Exhibit 3). These eelgrass beds are located within the bay on the south side of Balboa Island between Diamond Avenue and Jade Avenue and on the west side of Balboa Island between south Bay Front Avenue and North Bay Front Avenue. Eelgrass beds have also been identified in the Carnation Cove area of Newport Bay along the bay adjacent to Bayside Drive, between Carnation Avenue and Angelita Drive. Finally, eelgrass beds have been identified on the south side of Harbor Island (See Exhibit 3).

Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

Eelgrass beds and foraging California least tern can be adversely affected from increased turbidity in the water column caused by the proposed beach nourishment project. 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 beach deposition may adversely affect eelgrass habitat. The potential impacts include direct loss of eelgrass beds by beach nourishment within that habitat and degrading the quality of that resource by increasing turbidity in the water column. The increase in suspended sediments caused by beach nourishment 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 (Exhibit 4). These agencies have recommended measures to avoid impacts to tern habitat and eelgrass. These measures include limiting the dredging and beach disposal 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 and beach disposal in the upper bay during the nesting season may affect tern foraging. Therefore, to ensure that the beach nourishment projects authorized by this coastal development permit do not affect the terns, the Service recommended, and the City agreed, to limit beach nourishment projects to the area in lower Newport Bay, south of the Pacific Coast Highway bridge.

The proposed small beach nourishment projects are proposed to occur in lower Newport Bay. These small projects are limited to individual events no more than 500 cubic yards in size. Such projects will only require a single day to accomplish. Due to the distance from upper Newport Bay, small size and short duration of the projects, turbidity as a result of the beach nourishment will not have any adverse effect on foraging least terns in the upper Newport Bay nesting areas.

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. The buffer zone would prevent any direct impacts upon eelgrass due to beach nourishment. Also a buffer would prevent indirect impacts to eelgrass due to turbidity. In response to this concern, the City agreed to restrict dredging and beach nourishment within 50 feet of any eelgrass bed. With this buffer zone, the activities approved by this coastal development permit will not have any direct impact upon this resource. In addition, due to the small size, short duration (a single day) and proposed 50 foot buffer, the proposed beach nourishment projects will not have any indirect impacts, such as turbidity impacts, upon any eelgrass. In order to assure that turbidity impacts are eliminated, Special Condition 4 requires that no more than 500 cubic yards of material be deposited for beach nourishment purposes during any single beach nourishment event.

While the applicant is proposing to perform eelgrass surveys prior to each beach nourishment project, the Commission finds that the proposed eelgrass survey must be a requirement in order to ensure that no eelgrass is impacted by the proposed development. Therefore, the permit is conditioned (Special Condition 2) to require that the City survey and map the proposed beach nourishment areas located below the MHTL prior to placement of any sand or deposition of any dredged material. The surveys shall determine whether any eelgrass (*Zostera marina*) beds exist within the proposed deposition area. The map and survey of each proposed deposition area shall be submitted to the Executive Director and the California Department of Fish and Game to confirm that the proposed project is at least 50 feet away from eelgrass beds, as proposed, and that the proposed deposition would not negatively impact any eelgrass (*Zostera marina*) beds. The

condition of approval states that placement of any sand or deposition of any dredged material below the mean high tide line (MHTL) shall be permitted only with a determination by the Executive Director, in consultation with the California Department of Fish and Game, that there will be no negative impact to eelgrass (*Zostera marina*) beds. Only as conditioned is the proposed project consistent with the marine resource and sensitive habitat policies of the Coastal Act.

Presently, the applicant has submitted plans showing the location where beach nourishment would occur. These areas are located at street ends and in front of bulkheads where dredging under CC-078-99 would occur. However, this map does not show detailed scale of each deposition location. Since dredging of the boat mooring areas occurs on an as needed basis and is confined to individual sites typically 30 feet wide and 80 to 100 feet deep, rather than larger areas typical of dredging and beach nourishment projects, such detail for the entire project area would require mapping miles of bayfront. However, dredging and beach nourishment is not anticipated to occur at every property on the bay. Instead, when individual dredging and beach disposal events are needed, the applicant is proposing to supply revised plans detailing the project location to demonstrate that each individual beach deposition event conforms with the terms and conditions of this approval. The Commission finds that such detail must be provided to ensure that the proposed beach disposal events conform with the terms and conditions of this approval. Therefore, the Commission imposes Special Condition 3 which requires the applicant to supply revised plans for each beach deposition episode at least 15 business days prior to each deposition event. The plans shall include A vicinity map showing *the exact* location of the individual beach disposal site; a site plan drawn to scale showing the pre-disposal and post-disposal contour of the beach. The plan shall indicate the quantity of material to be disposed at the beach. The site plan shall also include details regarding property lines, existing structures including but not limited to bulkheads, piers, ramps, and floats, and the location of the bulkhead line, pierhead line, and project line. The revised plans shall also include results of an eelgrass survey to determine the presence of eelgrass within or adjacent to the proposed beach disposal area that could be affected directly or indirectly by the proposed activity. The results of the survey shall show whether the proposed beach restoration will occur within 50 feet of any eelgrass bed. 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. Finally, the plans shall include a schedule showing when the individual dredging project is proposed to begin and to end. These measures shall ensure that the proposed beach disposal events conform with the terms and conditions of this approval.

The applicant has proposed a 5 year term of development approval. In order to ensure that the proposed project will not have any adverse impacts upon coastal resources, and to ensure that any changed circumstances are subject to Commission review, Special Condition 4 authorizes the approved development for 5 years only. In addition, Special Condition 4 clarifies that material for beach nourishment approved under this permit is limited to that obtained pursuant to Consistency Certification CC-078-99. This provision will ensure that dredge material from locations not approved by the Commission are not utilized for beach nourishment under this coastal development permit. Therefore, only as conditioned to mitigate and avoid impacts to marine resources does the Commission find the proposed project to be consistent with Sections 30230, 30233 and 30235 of the Coastal Act.

**C. RECREATION AND PUBLIC ACCESS**

The proposed project is consistent with the following Coastal Act policies which encourage public access and recreational use of coastal areas.

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.*

The proposed project will mitigate beach erosion and provide for the continuing and increased recreational use of the City street end beaches by the public. The proposed beach replenishment will increase the size of the beach and will provide a larger area for recreational use.

The typical street end and bulkhead-fronting beach is 30 feet wide and does not provide a lot of space for recreational users to utilize the beach. The project will temporarily impact the use of some street end and bulkhead-fronting beaches during the deposition of the dredged material. However, the disposal activity will typically not exceed a single day. In addition, street end and bulkhead-fronting beaches on Newport Bay are not the primary recreational beaches. Instead, the wide sandy beaches on the ocean front are more heavily used for this purpose. Also, for those users choosing to use street end or bulkhead-fronting beaches, alternative street end and bulkhead-fronting beaches are typically 300 to 500 feet away.

The proposed project will occur upon tidelands which are held in trust for the people of the State of California. Administration of Newport Bay was granted to the City of Newport Beach through a tidelands grant contained within AB1422 approved by the Governor of California on April 6, 1978 and filed with the Secretary of State on April 7, 1978. Certain uses of tidelands are specified within the tidelands grant. Among those uses are those for "recreational purposes". The proposed beach nourishment would allow increased recreational use of street end and bulkhead-fronting beaches. However, the California State Lands Commission is responsible for determining whether certain uses conform with the tidelands grant. Therefore, the Commission imposes Special Condition 5, which requires the applicant, prior to issuance of the coastal development permit, to provide evidence from the California State Lands Commission that the proposed project is consistent with the terms and conditions of the City of Newport Beach tidelands grant contained



within Assembly Bill 1422 approved by the Governor on April 6, 1978 and filed with the Secretary of State April 7, 1978. The applicant shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

Since the proposed project will result in temporary, very short duration impacts to access to street end beaches, and since alternative beaches are nearby, the Commission finds the proposed project will not adversely impact public access. In addition, Special Condition 5 ensures that the proposed project is consistent with terms and conditions of the City of Newport Beach tidelands grants. Therefore, the Commission finds that the proposed project is consistent with Sections 30210, 30213 and 30221 of the Coastal Act.

**D. HAZARDS**

Section 30253 of the Coastal Act states, in part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

The proposed development is located in an area subject to tidal action. The tidal environment is dynamic and there are risks associated with development in such areas. For instance, erosion has occurred at the subject beach ends and in front of the bulkheads where beach nourishment is proposed. The fact that the applicant is proposing beach nourishment to restore pre-existing beaches indicates that erosion does occur. However, the applicant is not proposing to increase erosion hazards by increasing the size of beaches beyond pre-existing conditions. Therefore, the proposed project minimizes this hazard.

Given that the applicants have chosen to implement the project despite these risks, the applicant must assume the risks. Therefore, the Commission imposes Special Condition 6. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

**E. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan and with the Chapter 3 policies of the Coastal Act. 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).

**F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application 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.

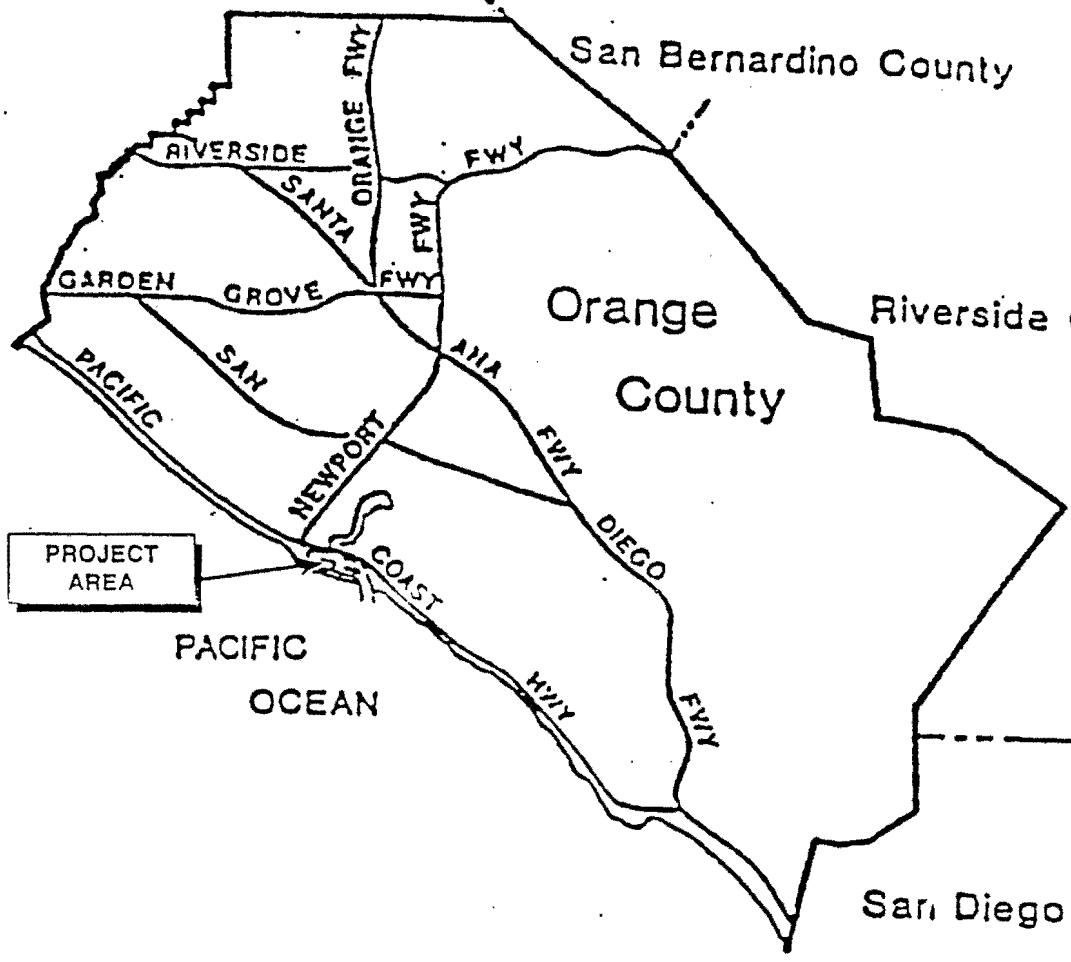
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



Los Angeles County

Orange County

San Bernardino County



Riverside County

Orange County

San Diego County

PROJECT AREA

PACIFIC OCEAN

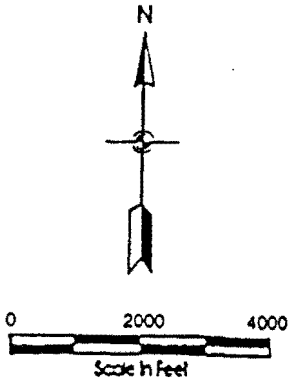
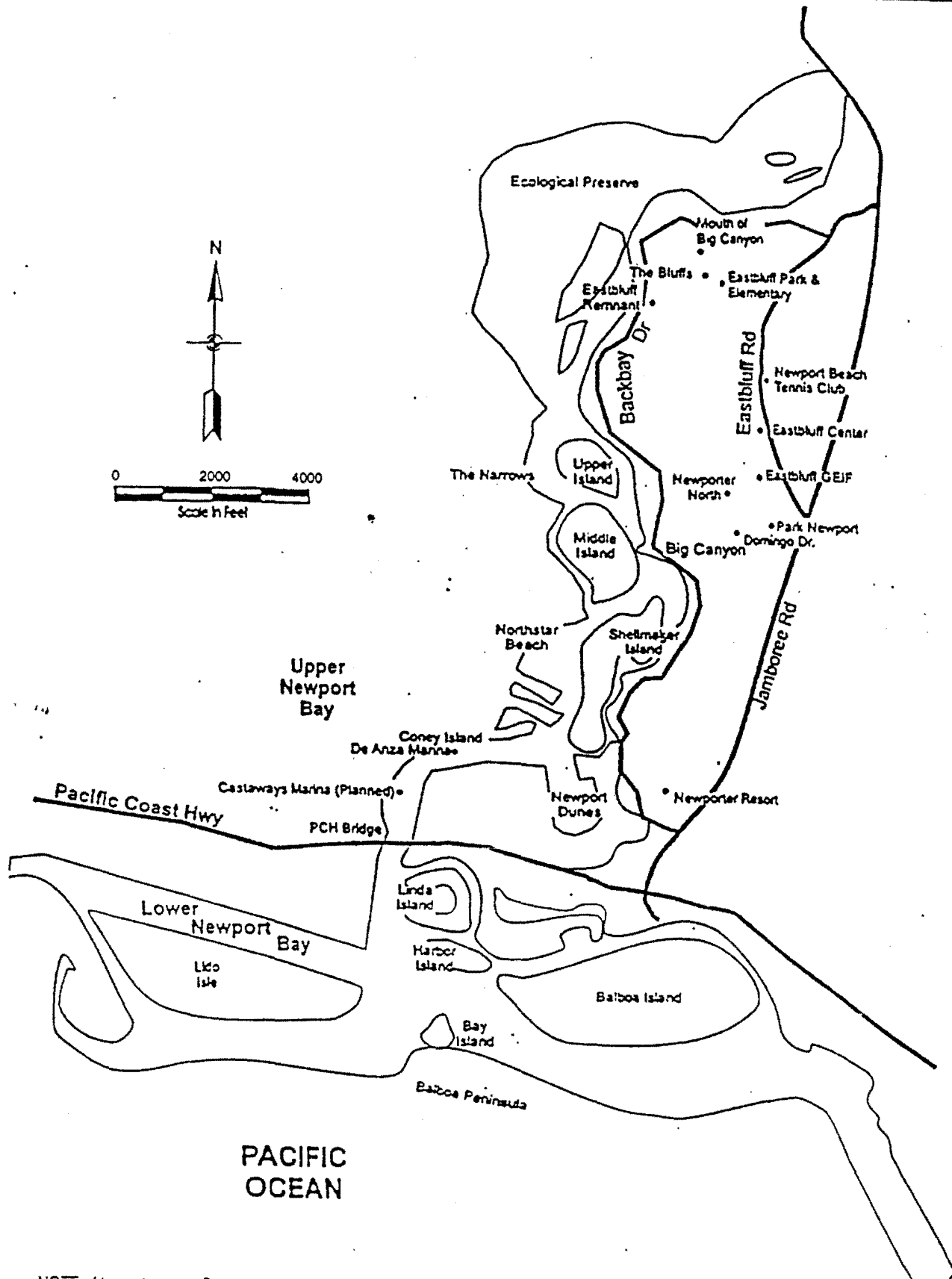
COASTAL COMMISSION

5-99-282

EXHIBIT # 1

PAGE 1 OF 2

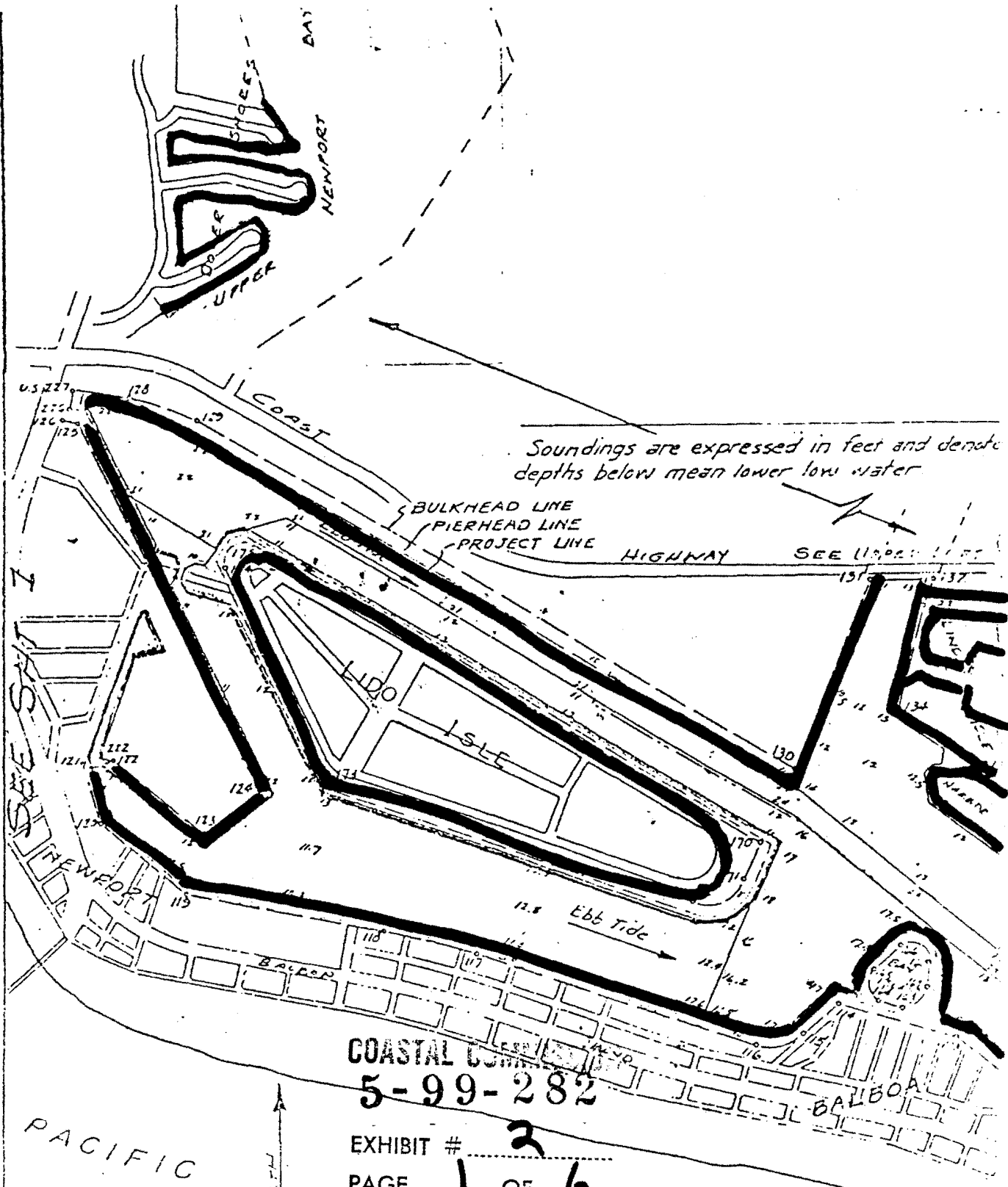
SOURCE: CORPS 1993  
NOT TO SCALE



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

**COASTAL COMMISSION**  
**5-99-282**

EXHIBIT # 1  
 PAGE 2 OF 2

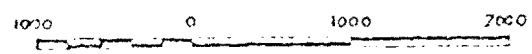


Soundings are expressed in feet and denote depths below mean lower low water.

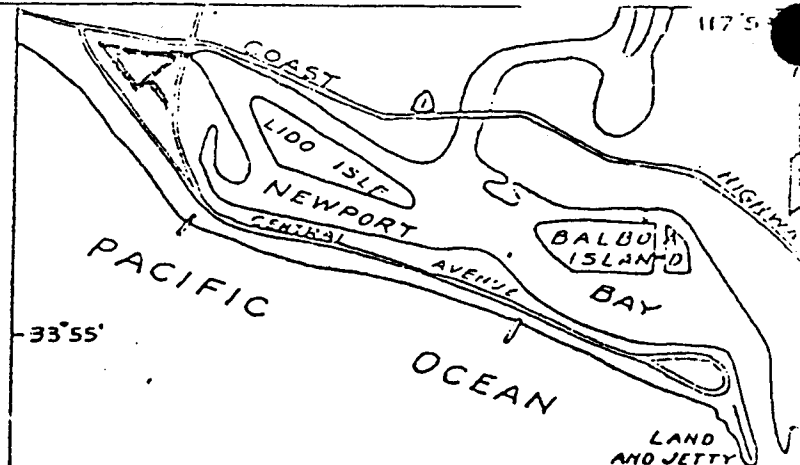
COASTAL COMMUNITY  
 5-99-282

EXHIBIT # 2  
 PAGE 1 OF 6

Blanket Maintenance Dredging Permit  
 in Upper and Lower Newport Bay  
 Newport Beach, Orange County, Calif.  
 Application by City of Newport Beach



TRUE NORTH

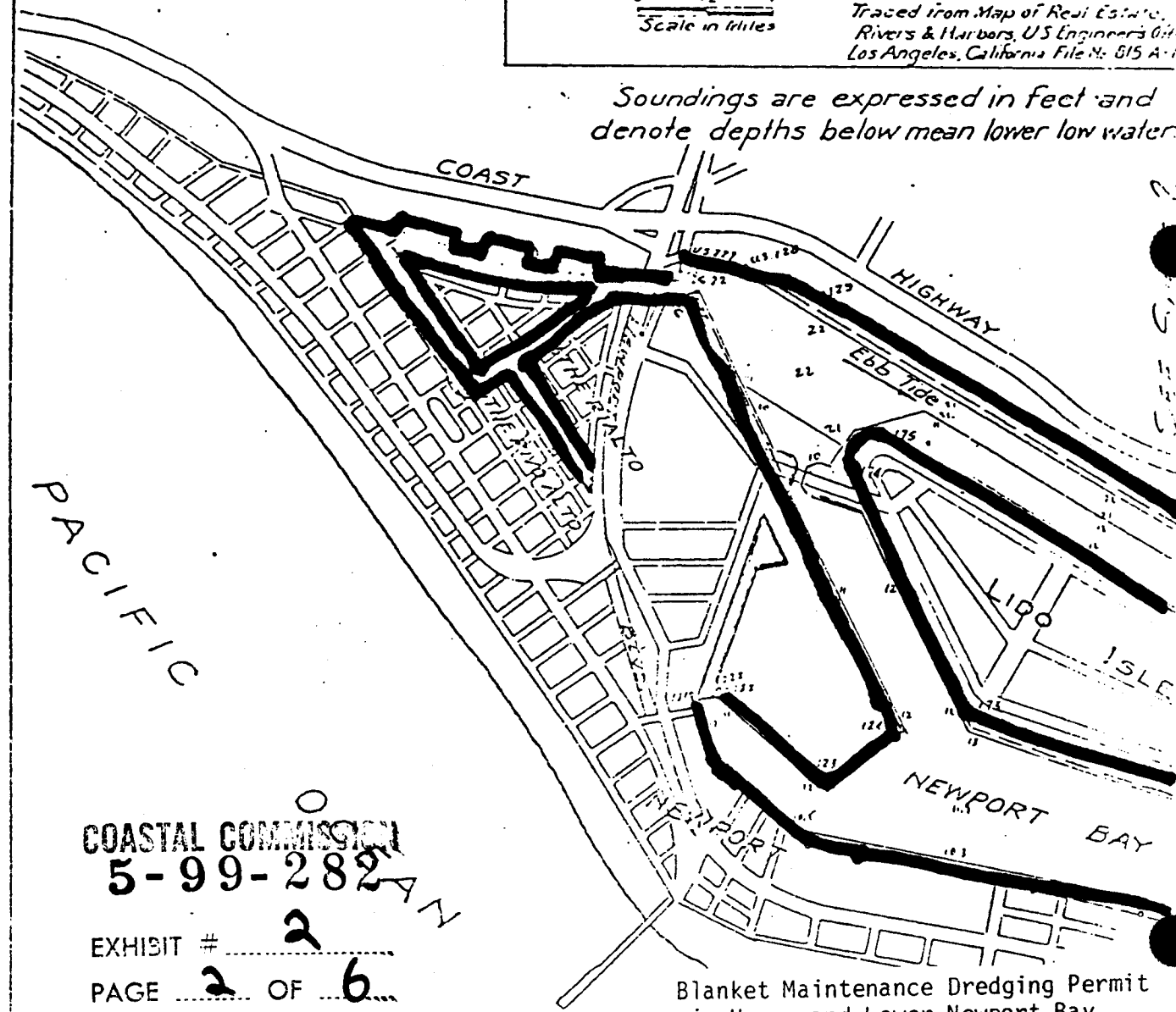


VICINITY SKETCH  
NEWPORT BAY

Traced from Map of Real Estate,  
Rivers & Harbors, US Engineers Office  
Los Angeles, California File No. 615 A-1

0 1/2 1  
Scale in fathoms

Soundings are expressed in feet and  
denote depths below mean lower low water.



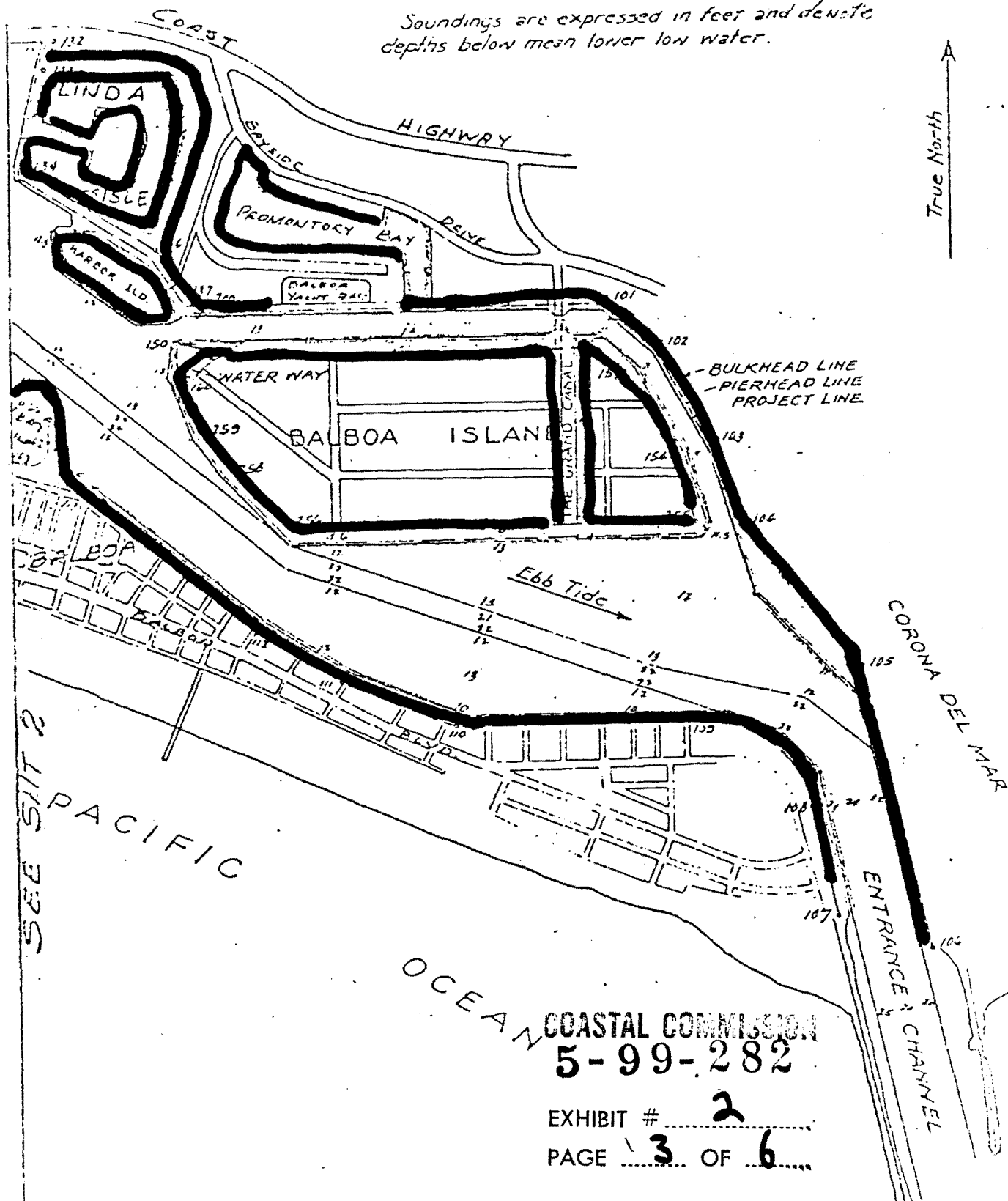
COASTAL COMMISSION  
5-99-282

EXHIBIT # 2  
PAGE 2 OF 6

Blanket Maintenance Dredging Permit  
in Upper and Lower Newport Bay  
Newport Beach, Orange County, Calif.  
Application by City of Newport Beach



Soundings are expressed in feet and denote depths below mean lower low water.



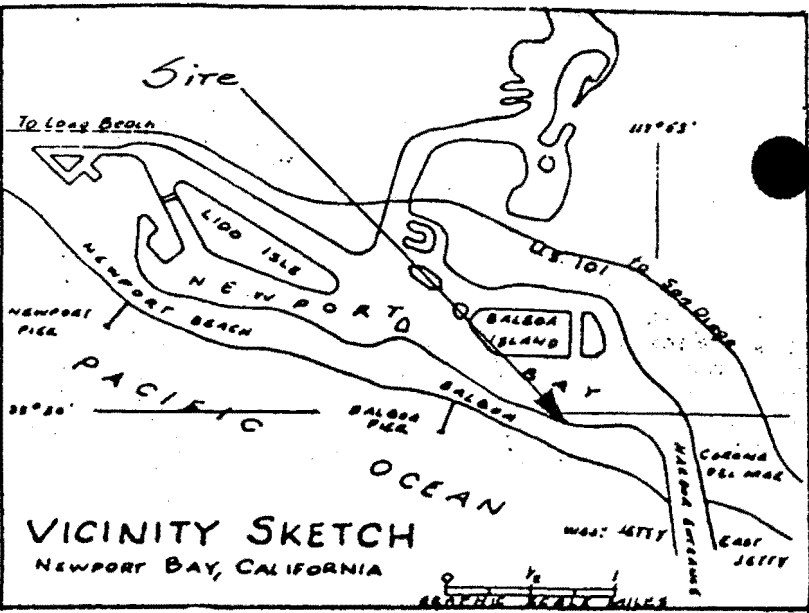
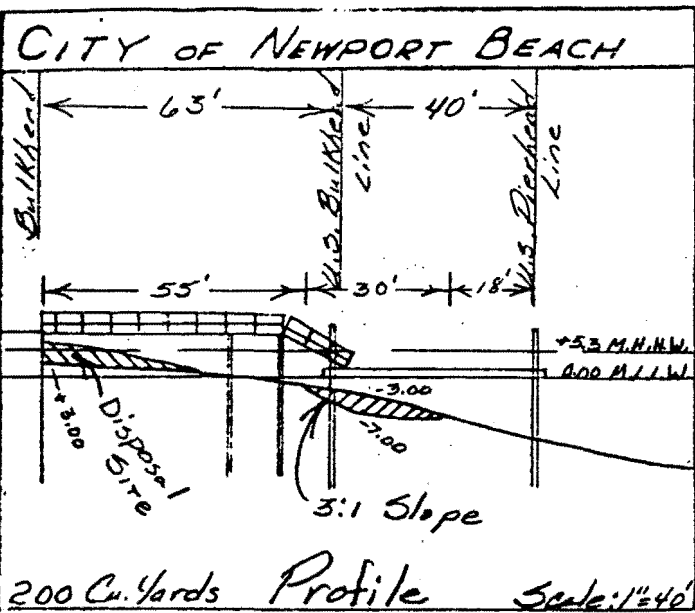
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5-99-282

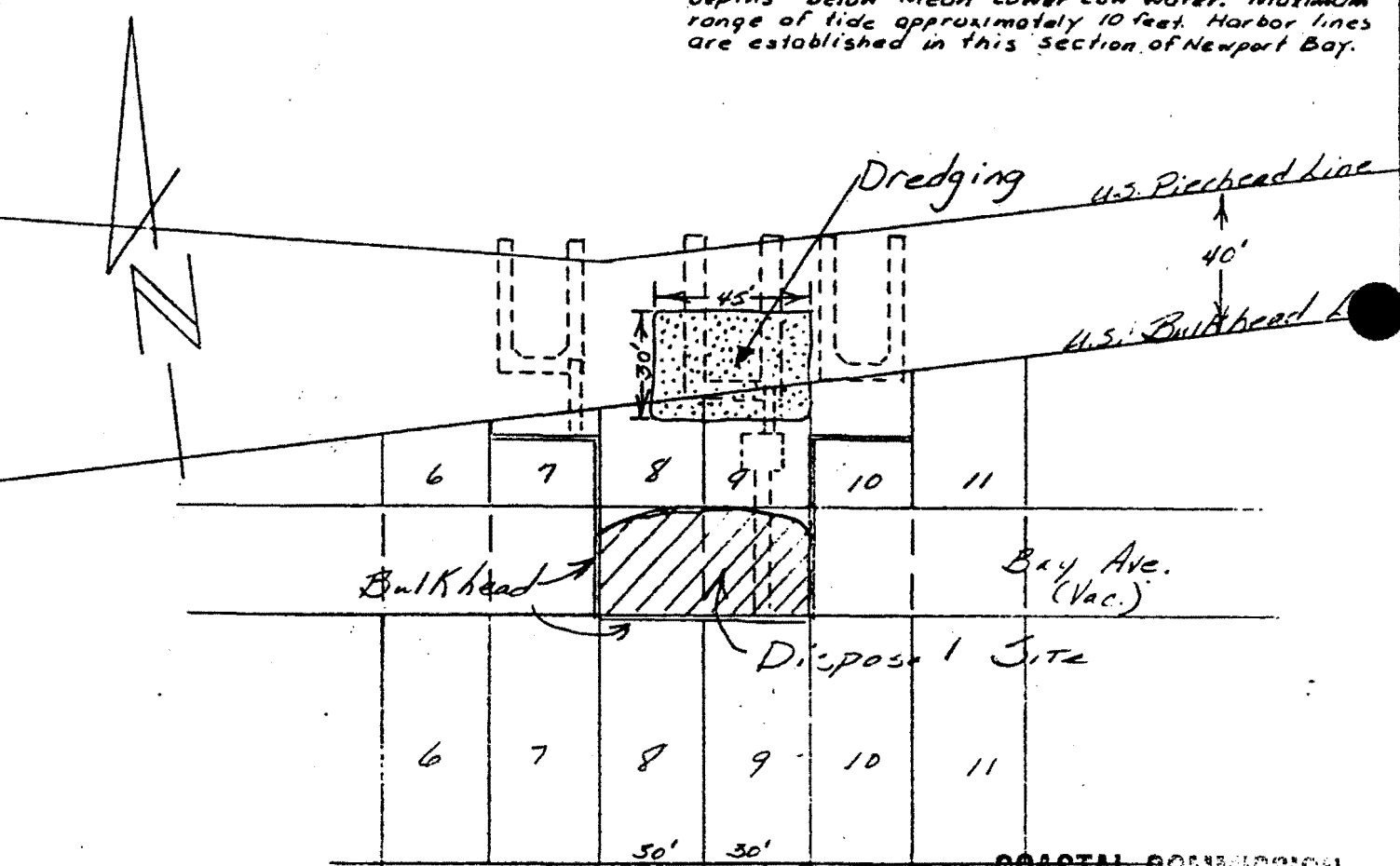
EXHIBIT # 2

PAGE 3 OF 6

Blanket Maintenance Dredging Permit  
in Upper and Lower Newport Bay  
Newport Beach, Orange County, Calif.  
Application by City of Newport Beach



Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.



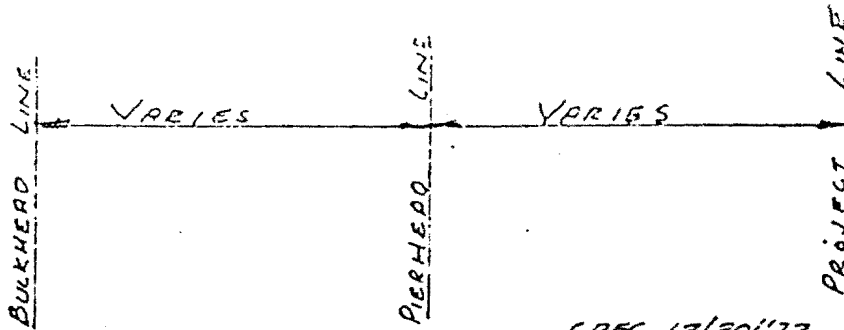
COASTAL COMMISSION  
5-99-282  
EXHIBIT # 2  
PAGE 4 OF 6

Scale: 1"=50'

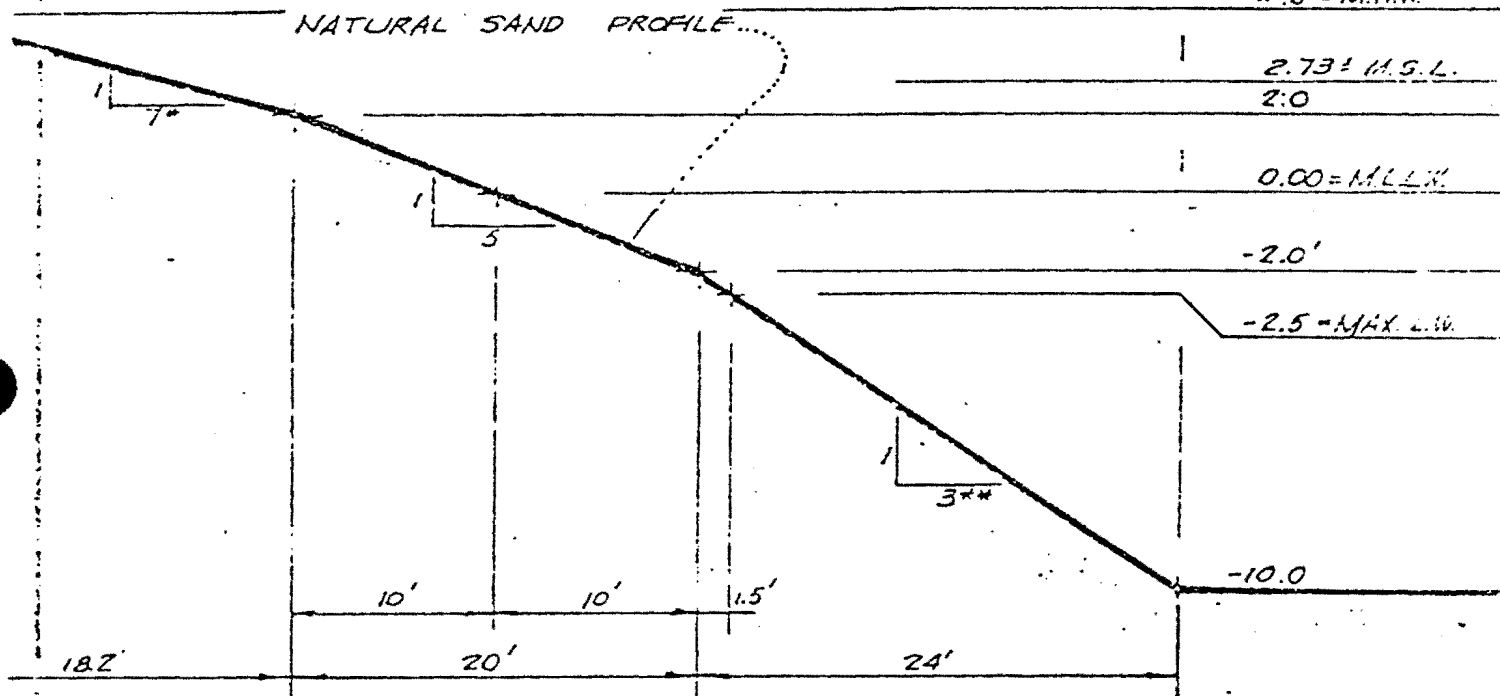
APPLICANTS NAME: [REDACTED] LOT 819 Bayfront Sect. East side of Bay Blvd.

Job Address: 1114 E. Balboa Blvd. CONTRACTOR Newport Dredging DATE 5/1/53





(REC. 12/20/72) 8.4 = MAX HT  
 (REC. 12/9/65) 7.5 = MAX H.H.  
 5.3 = M.H.H.W.  
 4.6 = M.H.W.



# PROFILE

HOR. 1" = 10'  
 VER. 1" = 5'

\*USE 8 TO 1 FOR  
 TRAVELED BEACH AREAS  
 \*\*USE 4 TO 1 AROUND  
 NEWPORT ISLAND DUE  
 TO HIGH SILT CONTENT  
 BASED ON OBSERVATIONS  
 BY R. L. PATTERSON

COASTAL COMMISSION  
 5-99-282

EXHIBIT # 2  
 PAGE 5 OF 6

TYPICAL AREA  
 WITHOUT BULKHEAD

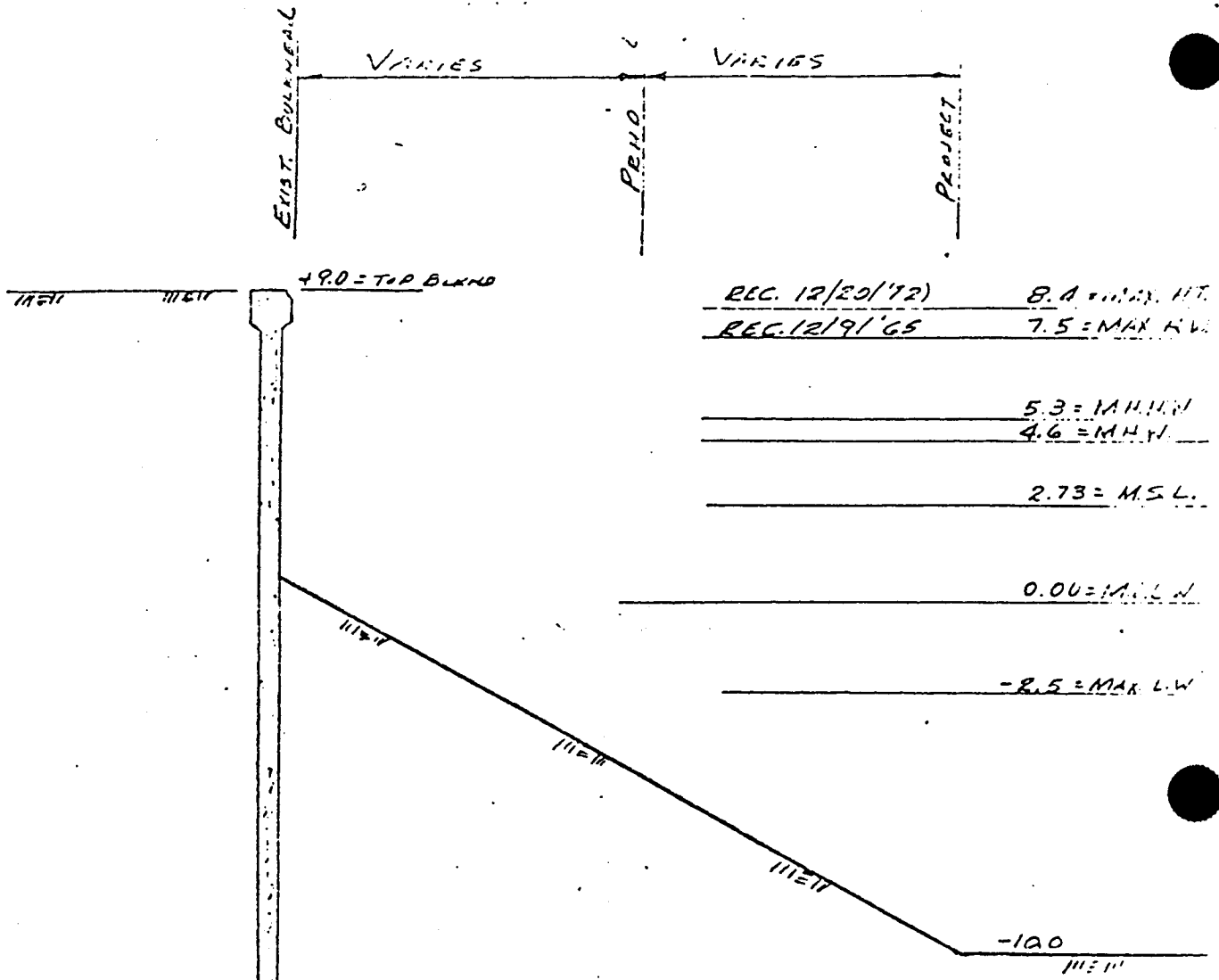
## CITY OF NEWPORT BEACH

Blanket Maintenance Dredging Permit  
 in Upper and Lower Newport Bay  
 Newport Beach, Orange County, Calif.  
 Application by City of Newport Beach

DRAWN W.P. DATE DEC 13 1972

APPROVED J.T. Reuben  
 ASST. PUBLIC WORKS DIRECTOR

DRAWING NO. SHEET FIVE OF FIVE



REC. 12/20/72) 8.0 = MAX. HT.  
 REC. 12/19/65 7.5 = MAX. H.W.  
 5.3 = M.H.W.  
 4.6 = M.H.V.  
 2.73 = M.S.L.  
 0.00 = M.L.L.W.  
 -2.5 = MAX. L.W.

**PROFILE**  
 HOR. 1" = 10'  
 VER. 1" = 5'

COASTAL COMMISSION  
**5-99-282**  
 EXHIBIT # 2  
 PAGE 6 OF 6

TYPICAL AREA  
 WITH BULKHEAD

**CITY OF NEWPORT BEACH**  
 PUBLIC WORKS DEPARTMENT  
 Blanket Maintenance Dredging Permit  
 in Upper and Lower Newport Bay  
 Newport Beach, Orange County, Calif.  
 Application by City of Newport Beach

DRAWN OBW DATE 7.12.72  
 APPROVED \_\_\_\_\_  
 PUBLIC WORKS DIRECTOR  
 R.E. NO. \_\_\_\_\_  
 DRAWING NO. SHEET FOUR OF FIVE



# NEWPORT BEACH FIRE AND MARINE DEPARTMENT

December 1, 1999

RECEIVED  
DEC 06 1999

CALIFORNIA  
COASTAL COMMISSION

Timothy Riley  
*Fire and Marine Chief*

California Coastal Commission  
Attn. Meg Vaughn  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

3300 Newport Blvd.  
P.O. Box 1768

Newport Beach, CA 92658-8915

Re: Coastal Development Permit Application #5-99-282

Dear Ms. Vaughn:

Attached for inclusion in our permit application is the response of Rick Ware from Coastal Resource Management. His report was commissioned as a result of a meeting between yourself and your supervisor several weeks ago regarding a need for a biological assessment of our project with an eye to any adverse impacts on environmentally sensitive habitat and/or species.

It is my understanding at this point that our application is now complete and we can be placed on the next available Coastal agenda. As I mentioned to you in our phone conversation of this date, we have been in this process for some time and have a large backup of dredging projects waiting to go forward as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Tony Melum".

Tony Melum  
Deputy Chief Marine Environmental Division

COASTAL COMMISSION  
5-99-282  
EXHIBIT # 3  
PAGE 1 OF 6

**RESPONSE TO COASTAL COMMISSION STAFF COMMENTS  
NEWPORT HARBOR 10-YEAR MAINTENANCE PERMIT RENEWAL**

**EELGRASS (*ZOSTERA MARINA*) HABITATS  
NEWPORT BAY, CALIFORNIA**

Eelgrass (*Zostera marina*) occurs in Lower Newport Bay (Newport Harbor) at depths between approximately 0.0 feet (ft) Mean Lower Low Water (MLLW) and as deep as -15 ft MLLW in the harbor Entrance Channel. However, its depth limit along Balboa Island, Harbor Island, and along Bay Shores is about -8 ft MLLW. It occurs along portions of the bulkheaded and sandy beach shorelines of these islands, and extends from the intertidal to the end of the piers and docks. (Chambers Group Inc. and Coastal Resources Management 1999). Eelgrass does not grow beneath the docks or underneath vessels moored at the docks due to inadequate light levels. Eelgrass meadows increase the ecological value of bays and estuaries, by providing increased relief and structure (vertical relief in the form of shoots, blades, and subsurface roots/rhizomes), adding organics to the detrital based food web, and increasing the functional complexity increasing the diversity of bay and estuarine fish and benthic communities Hoffman 1986, Ware, 1993, MBC Applied Environmental Sciences 1986.

**Question: What Federal or State Listed Species are found in Eelgrass Beds?**

There are no Federal or State of California listed species life histories' which are obligatory to eelgrass. However, California least terns (*Sterna albifrons browni*) which are both a State and Federally-listed Endangered Species, are known to forage on juvenile baitfish, primarily topmelt, which congregate amongst and above subsurface eelgrass vegetation (R. Ware, pers. obs.). California least terns are seasonal residents in Newport Bay from April through early September. Two man-made islands were constructed in the uppermost basin of Upper Newport Bay in the early 1990s to provide nesting habitat for least terns. Nesting has occurred on one of the islands. In 1990, the estimated population was 70 pairs and 85 fledglings. In 1995, approximately 38 pair nested with no productivity (Caffrey 1997). The low productivity was thought to be related to a reduced food supply. Least terns rebounded in 1997 with 82 nesting pair fledging 24 young, but in 1998 nesting was again down with only about 24 pair. California least terns forage throughout open waters of Newport Bay. (Chambers Group Inc. and Coastal Resources Management 1999).

Increased turbidity during maintenance dredging in Lower Newport Bay has a low potential to affect the foraging behavior of individual least terns if turbidity created by the dredging project precludes the birds from being able to sight their baitfish prey in the water.

In light of the facts that (1) maintenance dredging occurs randomly around a 26 mile perimeter of the harbor, (2) each individual dredging project is very small (under 200 cubic yards which

requires a single day of dredging, (3) the City requires dredging contractors to mitigate for potential adverse water quality impacts by employing Best Management Practices (BMPs) to reduce turbidity (equipment requirements and the use of siltation curtains), (4) 99% of the dredging is done in the Lower Bay which is nearly 3 miles from the least tern breeding site, and (5) no adverse impacts to least terns have occurred during the previous 10-Year Maintenance Dredging Permit, year-around maintenance dredging will not significantly affect populations of least terns in Newport Bay.

California halibut (*Paralichthys californicus*) and sand bass (*Paralabrax nebulifer*) which are important in the southern California sportsfish catch frequent eelgrass habitats for protection and foraging. Both of these species are also commonly found on soft bottom sediments in Lower Newport Harbor and in the lower reaches of Upper Newport Bay below Shellmaker Island and are not dependent upon eelgrass as a critical habitat for survival.

#### LITERATURE CITED

Caffrey, C. 1997. California least tern breeding survey, 1995 season. Calif. Dept. of Fish and Game Wildlife Management Division, Bird and Mammal Conservation Program. Report 97-6.

Chambers Group, Inc. and Coastal Resources Management 1999. Draft Environmental Restoration Report. Section 206. Environmental Restoration Lower Newport Bay (Newport Harbor). Eelgrass Restoration. Prepared for the U.S. Army Corps of Engineers. November 1999.

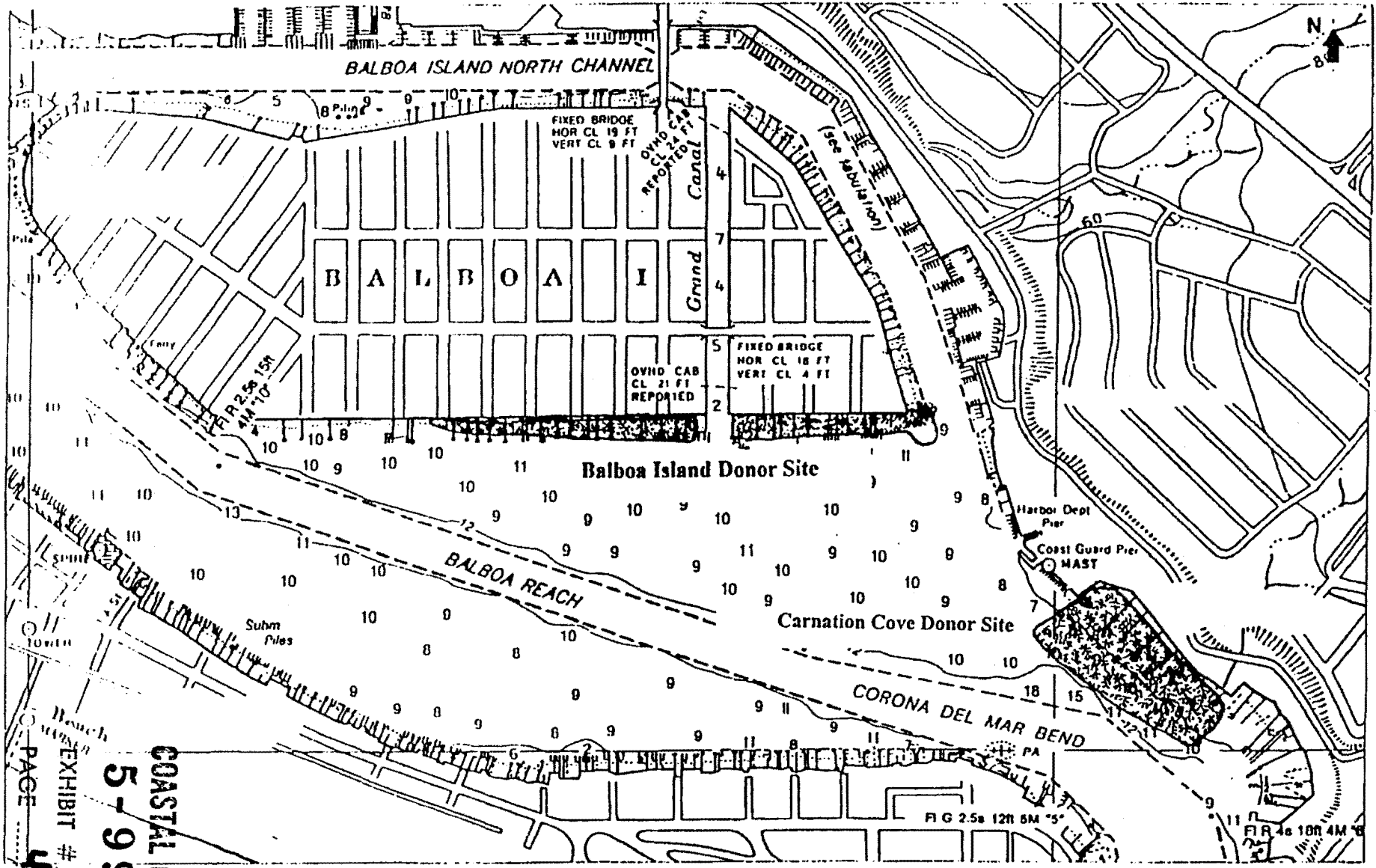
Hoffman, Robert. 1986. Fishery utilization of eelgrass (*Zostera marina*) beds and non-vegetated shallow waters areas in San Diego Bay. NMFS, SWR Admin. Report SWR-86-4.

MBC Applied Environmental Sciences. 1986. Infauna and epifauna associated with transplants of eelgrass (*Zostera marina*) in southern California. Prepared for Maguire Thomas Partners, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. 48 pp. March 1986.

Ware R. R. 1993. Eelgrass (*Zostera marina*) in southern California bays and wetlands with special emphasis on Orange County, California. Shore and Beach 61(3):20-30.

COASTAL COMMISSION  
5-99-282  
EXHIBIT # 3  
PAGE 3 OF 6

NEWPORT HAV  
Chart 118754 1 (DSB Electronic Charts) Depth Units: FEET



DO NOT USE FOR NAVIGATION PURPOSES

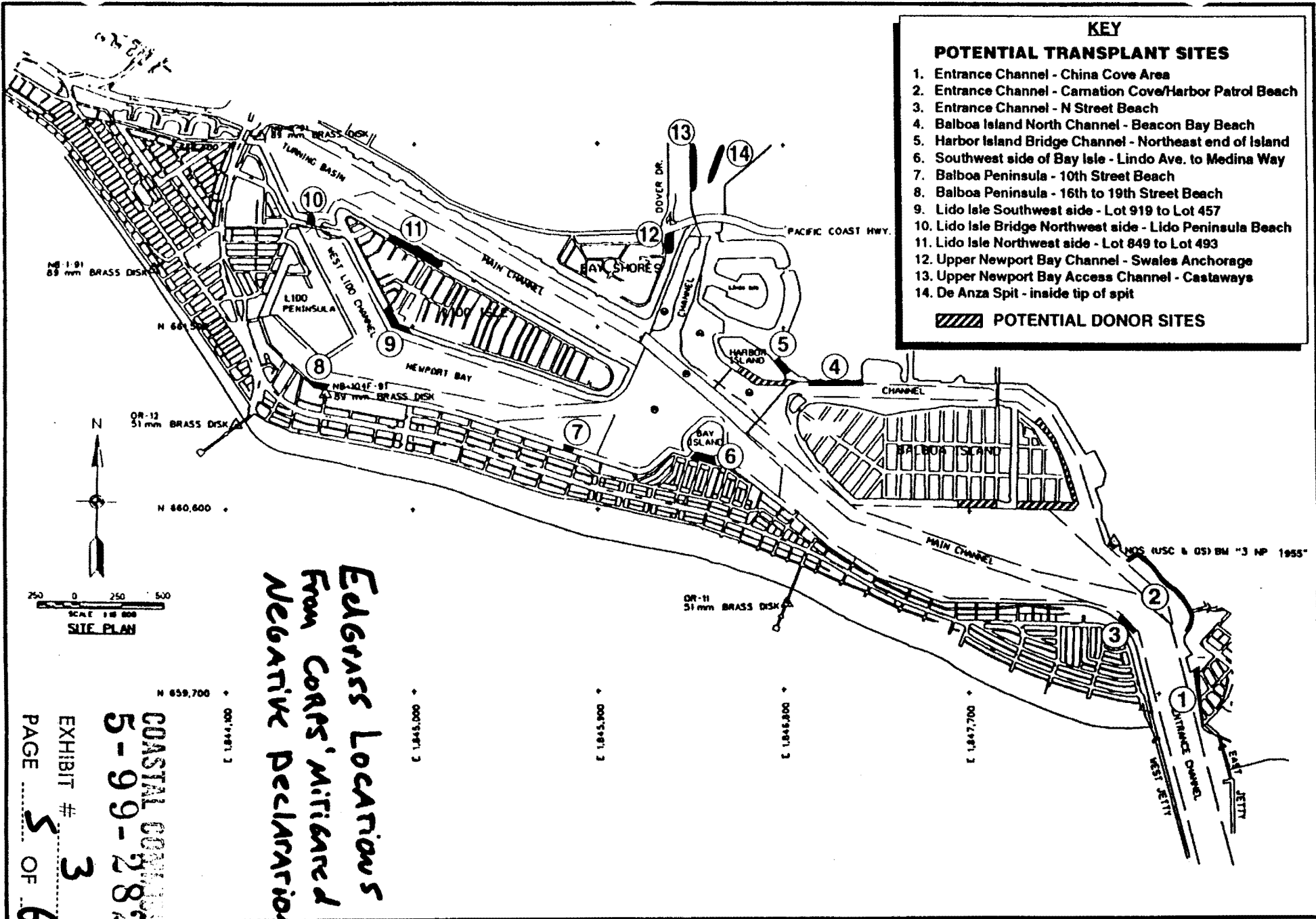
Figure 5. Location of Elgrass Bed Donor Sites – Carnation Cove and Balboa Island

COASTAL COMMISSION  
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 PAGE 4 OF 6

**KEY**  
**POTENTIAL TRANSPLANT SITES**

1. Entrance Channel - China Cove Area
2. Entrance Channel - Carnation Cove/Harbor Patrol Beach
3. Entrance Channel - N Street Beach
4. Balboa Island North Channel - Beacon Bay Beach
5. Harbor Island Bridge Channel - Northeast end of Island
6. Southwest side of Bay Isle - Lindo Ave. to Medina Way
7. Balboa Peninsula - 10th Street Beach
8. Balboa Peninsula - 16th to 19th Street Beach
9. Lido Isle Southwest side - Lot 919 to Lot 457
10. Lido Isle Bridge Northwest side - Lido Peninsula Beach
11. Lido Isle Northwest side - Lot 849 to Lot 493
12. Upper Newport Bay Channel - Swales Anchorage
13. Upper Newport Bay Access Channel - Castaways
14. De Anza Spit - inside tip of spit

**////// POTENTIAL DONOR SITES**



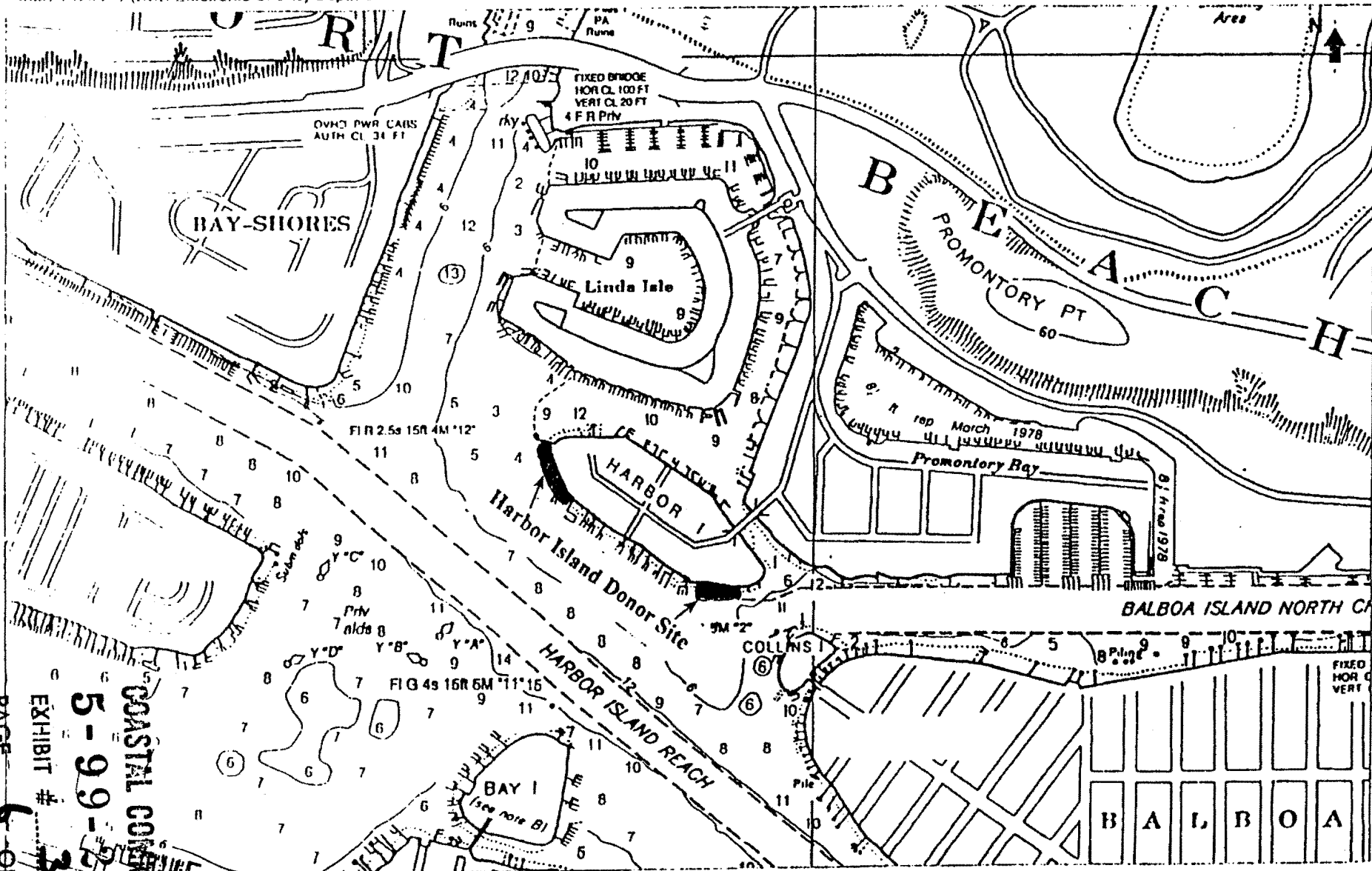
*Eelgrass Locations  
From CORPS' Mitigated  
Negative Declaration*

SCALE 1" = 500'  
SITE PLAN

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5-99-287

**POTENTIAL EELGRASS TRANSPLANT SITES**  
Figure 3

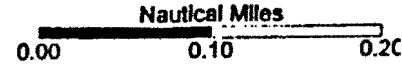
NEWPORT BAY  
Chart 18754-1 (NSB Electronic Charts) Depth Units: FEET



COASTAL COMMISSION  
 5-99-22  
 EXHIBIT # 3  
 PAGE 6 OF 6

DO NOT USE FOR NAVIGATION PURPOSES

Figure 4. Location of Eelgrass Bed Donor Site – Harbor Island





**DEPARTMENT OF FISH AND GAME**

MARINE REGION  
 411 BURGESS DRIVE  
 MENLO PARK, CA 94025  
 (650) 688-6340

**RECEIVED**  
 OCT 1 1999

CALIFORNIA  
 COASTAL COMMISSION

**Memorandum**

**To :** Ms. Meg Vaughn  
 California Coastal Commission  
 200 Oceangate Ave., Suite 1000  
 Long Beach, California 90802

**Date:** September 29, 1999

**From :** Department of Fish and Game

**Subject:** City of Newport Beach Blanket Dredge Permit Application

Department of Fish and Game (Department) personnel have reviewed the City of Newport Beach (City), California, Blanket Dredge Permit Application to the U.S. Army Corps of Engineers (PN 98-00296-SDM). The City is renewing its "blanket permit" to conduct repairs, minor modifications, and in-line replacements to private docks, floats, piers and bulkheads, and to conduct minor maintenance dredging at public, private, and commercial docks, floats and piers within Newport Bay, California. Dredged material would either be used for local beach replenishment, or it would be disposed of at the federally authorized LA-3 or LA-2 offshore disposal sites. The City is currently applying for a Coastal Development Permit for the described project (5-99-282).

The Department believes that the proposed project, as currently described, would not have a significant adverse effect on existing marine resources and habitats within the area. Therefore, the Department concurs with the issuance of a Coastal Development Permit for the proposed project provided the Proposed Special Conditions, as outlined in the subject Public Notice, are included in the permit.

As always, Department personnel are available to discuss our comments, concerns, and recommendations in greater detail. To arrange for a discussion, please contact Ms. Marilyn Fluharty, Environmental Specialist, California Department of Fish and Game, 4949 Viewridge Avenue, San Diego, CA 92123, telephone (619) 467-4231.

Sincerely,

*Robert N. Tasto*

Robert N. Tasto, Supervisor  
 Project Review and Water Quality Program  
 Marine Region

COASTAL COMMISSION

5-99-282

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 PAGE 1 OF 7

**COPY**



**United States Department of the Interior**  
**Fish and Wildlife Service**  
Ecological Services  
Carlsbad Fish and Wildlife Office  
2730 Loker Avenue West  
Carlsbad, California 92008



Colonel John P. Carroll  
District Engineer  
U.S. Army Corps of Engineers, Los Angeles District  
P.O. Box 532711  
Los Angeles, California 90053-2325

APR 20 1999

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AUG 16 1999

AUG 13 1999

CALIFORNIA  
COASTAL COMMISSION

Attn: Ms. Vicky White

Re: Maintenance Dredging Applications in Lower Newport Bay (129-2716, 172-739, 103-1601, 1011-4401, 171-921, 225-1008)

Dear Colonel Carroll:

We have reviewed the dredging applications listed above for various applicants to perform maintenance dredging for six projects ranging from 90 to 500 cubic yards each and the subsequent nourishment of eroded beaches adjacent to the dredging area or deep water disposal of dredged material. These projects are proposed to be authorized under the U.S. Army Corps of Engineers permit 89-211-GS issued to the City of Newport Beach on August 28, 1989. These comments have been prepared under the authority and in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401 as amended, 16 U.S.C. 661 *et seq.*) and other authorities that mandate Department of the Interior concern for fish, wildlife, plants, and other related environmental values.

We have no comments on the following projects: 129-2716, 172-739, 103-1601, 1011-4401, 171-921. We understand that project number 225-1008 has been temporarily withdrawn from review by the applicant. Due to the presence of eelgrass on project number 225-1008, we recommend that additional review be conducted when this project is resubmitted.

We are concerned about the potential destruction of eelgrass for several reasons. Eelgrass performs important ecological functions for fish and wildlife and is a valuable resource critical to the health and function of coastal waters. Tremendous losses of this habitat have occurred as a result of development within the coastal zone. According to area biologists (Bob Hoffman, National Marine Fisheries Service and Jack Fancher, Carlsbad Fish and Wildlife Office) eelgrass areas in the lower Newport Bay area are beginning to increase in size and distribution and are an important habitat component of this area.

We have enclosed a copy of the *Southern California Eelgrass Mitigation Policy*, which has been adopted by the Federal and State resource agencies (Service, National Marine Fisheries Service

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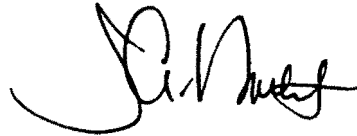
Colonel John P. Carroll

2

and California Department of Fish and Game). We recommend that this information be provided to the applicant and that the terms and conditions of the policy be adhered to by the applicant.

If you have any questions regarding these comments, please contact Carol Gorbics of my staff at (760) 431-9440. Thank you for the opportunity to comment on these projects.

Sincerely,



Jim A. Bartel  
Assistant Field Supervisor

attachment

cc: NMFS, Long Beach, CA (Attn: Bob Hoffman)  
CCC, Long Beach, CA (Attn: Jim Raives)  
CDFG, Marine Resources Division, Long Beach, CA

cc w/ attachment: Newport Beach Fire and Marine Department (Attn: Wes Armand)

COASTAL COMMISSION

5-99-282

EXHIBIT # 4

PAGE 3 OF 7



# California Regional Water Quality Control Board

## Santa Ana Region



Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov>  
3737 Main Street, Suite 500, Riverside, California 92501-3339  
Phone (909) 782-4130 • FAX (909) 781-6288

August 26, 1999

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AUG 31 1999

CALIFORNIA  
COASTAL COMMISSION

Mr. Tony Melum  
Tidelands Administrator  
City of Newport Beach  
Newport Beach, CA 92658-8915

### WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT, REGIONAL GENERAL PERMIT NO. 54, MAINTENANCE DREDGING OF SLIPS AND MINOR REPAIR AND MAINTENANCE OF DOCKS, FLOATS, AND PIERS WITHIN NEWPORT BAY, ORANGE COUNTY

Dear Mr. Melum:

On July 16, 1999 we received your transmittal dated July 6, 1999, providing an application for water quality certification for the above-referenced project. We received all requested materials for a complete application as of July 16, 1999.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project described below will not violate State water quality standards:

1. Project description:

The City of Newport Beach has applied to the U.S. Army Corps of Engineers, Los Angeles District, to reauthorize and expand the maintenance dredging activities currently authorized by Regional General Permit No. 18 (No. 89-00211-GS), which expires on August 29, 1999. Regional General Permit No. 54 will reauthorize activities permitted under Regional General Permit No. 18, and authorize several maintenance and structure replacement activities occurring within Newport Bay that result in minor individual cumulative impacts to waters of the State. General Permit No. 54 will allow for the routine maintenance and in-alignment replacement activities on private dock structures (i.e. piers, docks, gangways, and floats) and private bulkheads. Other authorized activities for previously authorized private, public, and commercial docks throughout Newport Bay include minor maintenance dredging, removal and replacement of pilings (including the addition of two pilings), modification of existing dock structures that do not extend seaward of the U.S. Pierhead line or result in an overall increase in area which would shade or directly impact existing eel grass.

Individual dredging projects will be less than 1000 cubic yards and the dredged material will either be discharged for beach replenishment at beaches within Newport Bay or discharged to the Pacific Ocean at ocean disposal sites LA-2 and LA-3. Regional General Permit No. 54 establishes the City of Newport Beach Tidelands Administrator as the primary point of contact for applicants seeking authorization under the general permit. The Tidelands Administrator will screen applications and determine if they

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5-99-282

California Environmental Protection Agency

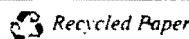


EXHIBIT # 4  
PAGE 4 OF 7

Mr. Tony Melum  
The City of Newport Beach

- 2 -

August 26, 1999

meet the specific requirements established by the general permit and qualify for authorization. Projects that do not meet the requirements of the general permit will be required to obtain an individual permit.

Regional General Permit No. 54 includes requirements that specify conditions projects must meet to qualify for authorization and requires the submittal of notices of project commencement and completion for each project. The general permit also requires the Tidelands Administrator to complete sediment testing to determine the suitability of dredge material for beach replenishment or ocean disposal.

2. Receiving water: Newport Bay and Pacific Ocean
3. Fill area: <12,000 cubic yards per year at LA-2 and LA-3
4. Dredge volume: <1000 cubic yards per project
5. Federal permit: Regional General Permit No. 54
6. Compensatory mitigation:

None. Project is to preserve existing navigational beneficial uses of Newport Bay.

The proposed project is not expected to impact state or federally-listed endangered or threatened species or their critical habitat.

You have submitted an application for a general permit to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act and have filed for a Streambed Alteration Agreement with the California Department of Fish and Game. The City of Newport Beach has determined that the project is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Resource Code.

Resolution No. 96-9 (copy enclosed) provides that waste discharge requirements for certain types of discharges are waived provided that criteria and conditions specified in the Resolution are met. Provided that the requirements of Regional General Permit No. 54 and the criteria and conditions for Minor Dredging Projects, specified on page 1 of Attachment "A" to the Resolution) and the general conditions specified on page 4 are met, waste discharge requirements are waived for this project.

Pursuant to California Code of Regulations Section 3857, this action is equivalent to waiver of water quality certification. We anticipate no further action on your application, however, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

COASTAL COMMISSION

5-99-282

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California Environmental Protection Agency

Mr. Tony Melum  
The City of Newport Beach

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August 26, 1999

Should there be any questions, please contact Hope Smythe at (909) 782-4493 or Ken Theisen at (909) 320-2028.

Sincerely,

  
GERARD J. THIBEAULT  
Executive Officer

Attachment Resolution No. 96-9

cc (w/out attachment):

U.S. Environmental Protection Agency, Wetlands and Sediment Management Section -  
Nancy Woo (W-3-3)  
U.S. Army Corps of Engineers - Lisa Morales / Spencer MacNeil  
U.S. Fish and Wildlife Service - Martin Kenney  
State Water Resources Control Board, DWQ-Nonpoint Source Certification and Loans  
Unit - William R. Campbell, Chief  
California Department of Fish and Game, Long Beach - Terri Dickerson  
California Department of Fish and Game, San Diego - Tim Dillingham [Newport Beach]  
California Coastal Commission - Meg Vaughn

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5-99-282

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California Environmental Protection Agency

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**REGULATORY BRANCH**



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

November 23, 1998

Colonel Robert L. Davis  
District Engineer  
Los Angeles District  
U.S. Army Corps of Engineers  
P.O. Box 532711  
Los Angeles, California 90053-2325

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SEP 14 1999

CALIFORNIA  
COASTAL COMMISSION

Dear Colonel Robinson:

The National Marine Fisheries Service has reviewed the following Public Notices and does not object to the issuance of a permit for the proposed activities:

98-20267-MAT-Department of the Navy  
98-00296-SDM-City of Newport Beach  
98-00654-SDM-Buie Communities  
99-00058-YJC-Nickel-Wight Architects

Sincerely,

Jim Slawson  
Assistant Regional Administrator  
for Habitat Conservation

USFWS  
EPA  
CDFG

COASTAL COMMISSION  
5-99-282  
EXHIBIT # 4  
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