

**CALIFORNIA COASTAL COMMISSION**

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 Staff Report: April 20, 2000  
 Hearing Date: May 9-12, 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-project eelgrass surveys and post project surveys where necessary, 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.

**STAFF NOTE:**

The subject application was placed on the March 14, 2000 agenda. Prior to taking the matter up on March 14, 2000, the applicant requested a postponement pursuant to Section 13073 of the California Code of Regulations.

Also, the subject application was filed on December 6, 1999. The 180<sup>th</sup> day is June 3, 2000. Since there is not another Commission hearing prior to June 3, 2000, the Commission must act on the subject application at this hearing (May 2000) or obtain an *Agreement for Extension of Time for Decision on Coastal Development Permit* from the applicant.

As of the date of this staff report, Commission staff understand the applicant is in disagreement with staff's recommendations. Specifically, the applicant disagrees with the requirements for sediment grain size analysis testing as well as with staff's recommendation regarding the requirement that materials used for beach nourishment be either at least 80% sand or be within 10% of the sand content of the receiver beach.

**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 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. The grain size test shall also be conducted on at least 1 core from the receiving beach for each project if the dredge material to be placed on the beach is less than 80% sand. 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. The material utilized for beach nourishment shall have a sand content that is either i) equal to or greater than 80% sand; or ii) within 10% of the sand content of the receiver beach.
- B. Prior to commencement of beach nourishment at a site, the results of each sampling episode 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**

- A. Pre-Beach-Nourishment Eelgrass Survey. Not more than one hundred twenty (120) days prior to commencement of each beach nourishment event, the applicant shall undertake a survey of the project area to determine the existence of eelgrass. The survey shall be prepared in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit each eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than ten (15) business days prior to commencement of each beach nourishment event. The survey shall demonstrate to the Executive Director that the proposed beach nourishment is 15 or more feet away from any eelgrass bed (*Zostera marina*). If the survey identifies any eelgrass within 15 feet of the beach nourishment site, the beach nourishment shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. 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 3 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 15 or more feet away from eelgrass (*Zostera marina*) beds and that there will be no negative impact to eelgrass (*Zostera marina*) beds.
- C. Post-Beach-Nourishment Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in Special Condition 2.A. above, within one month after the conclusion of beach nourishment at each site, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-beach-nourishment eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a 1.2:1 ratio on-site in accordance with the Southern California Eelgrass Mitigation Policy.

**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 15 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 15 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 (Exhibit 5). 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 15 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 there are 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 (Exhibit 5). 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 15 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 characteristics of the materials. In order to ensure that such testing adequately characterizes and evaluates the physical 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. The core depth shall be equivalent to the proposed dredging depth plus any over-dredging. Also, grain size data shall be reported to the nearest 1% for sand, silt, and clay consistent with the above referenced document. Since the grain size of bay sediments can vary over even a small area, the Commission finds that at least 3 cores are necessary to adequately characterize the grain size of the sediments being used for beach nourishment. In addition, Special Condition 1 requires the applicant to obtain and test the sediment grain size from at least 1 core from the receiver beach when the material which will be used for beach nourishment is less than 80% sand.

In order to ensure that only beach quality materials are used to nourish the beaches, Special Condition 1 requires that material utilized for beach nourishment shall have a sand content that is either equal to or greater than 80% sand or be within 10% of the sand content of the receiver beach. Normally, the Commission has required that beach nourishment materials have an 80% or more sand content. Special Condition 1 allows the placement of beach nourishment materials having an 80% or more sand content without the need to test the grain size of the receiver beach. However, Special Condition 1 also allows the placement of beach nourishment materials having less than an 80% sand content on a beach if the nourishment material and receiver beach have a sand content that is within 10% of one another. A

receiver beach core sample and grain size analysis is necessary to confirm that the nourishment falls within these parameters. While allowing the use of this 10% deviation is not the Commission's standard practice, in this instance, the beach nourishment sites are harbor locations and there is expected to be a higher component of "fines" in the dredge materials and receiver beach sites. Therefore, in this instance, a match of the dredge and receiver sites within a 10% deviation is acceptable.

Furthermore, the Commission is accepting the chemical testing and analysis completed to date for the proposed project. As part of the application process, the City completed a detailed sampling of the harbor and excluded certain areas (see Exhibit 5) from the project description where contaminants were identified. In this proposal, given the absence of industrial development in the area, the representative sampling is being accepted as sufficient without further investigation being required at individual sites. It is expected that the source of any additional pollutants would be from non-point sources and such urban runoff constituents would not be expected to significantly change over the course of the five year permit.

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 (Exhibits 4 and 6). 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 reduce indirect impacts to eelgrass due to turbidity. In response to this concern, the City agreed to restrict dredging and beach nourishment within 15 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 15 foot buffer, the proposed beach nourishment projects is not anticipated to have any indirect impacts, such as turbidity impacts, upon any eelgrass. However, the National Marine Fisheries Service has recommended that pre-project and post-project eelgrass surveys document that no inadvertent impacts to eelgrass beds have occurred (Exhibit 6). 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 prior to placement of any sand or deposition of any dredged material. Special Condition 2 requires that not more than one hundred twenty (120) days prior to commencement of each beach nourishment event, the applicant undertake a survey of the project area to determine the existence of eelgrass. The survey shall be prepared in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" (SCEMP) (Exhibit 7) adopted by the National Marina Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. As defined in SCEMP, the survey area is to include both the areas directly affected by the development as well as areas adjacent to the project which have the potential to be indirectly or inadvertently impacted. The applicant shall submit each eelgrass survey for the review and



approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than ten (15) business days prior to commencement of each beach nourishment event. The survey shall demonstrate to the Executive Director that the proposed beach nourishment is 15 or more feet away from any eelgrass bed (*Zostera marina*). If the survey identifies any eelgrass within 15 feet of the beach nourishment site, the beach nourishment shall require an amendment to this permit from the Coastal Commission or a new coastal development permit. Special Condition 2 also requires that 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 3 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 15 or more feet away from eelgrass (*Zostera marina*) beds and that there will be no negative impact to eelgrass (*Zostera marina*) beds. Finally, if any eelgrass is identified in the project area by the pre-project survey, Special Condition 2 requires that within one month after the conclusion of beach nourishment at each site, the applicant survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with SCEMP. The applicant shall submit the post-beach-nourishment eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a 1.2:1 ratio on-site in accordance with the Southern California Eelgrass Mitigation Policy. 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 15 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.

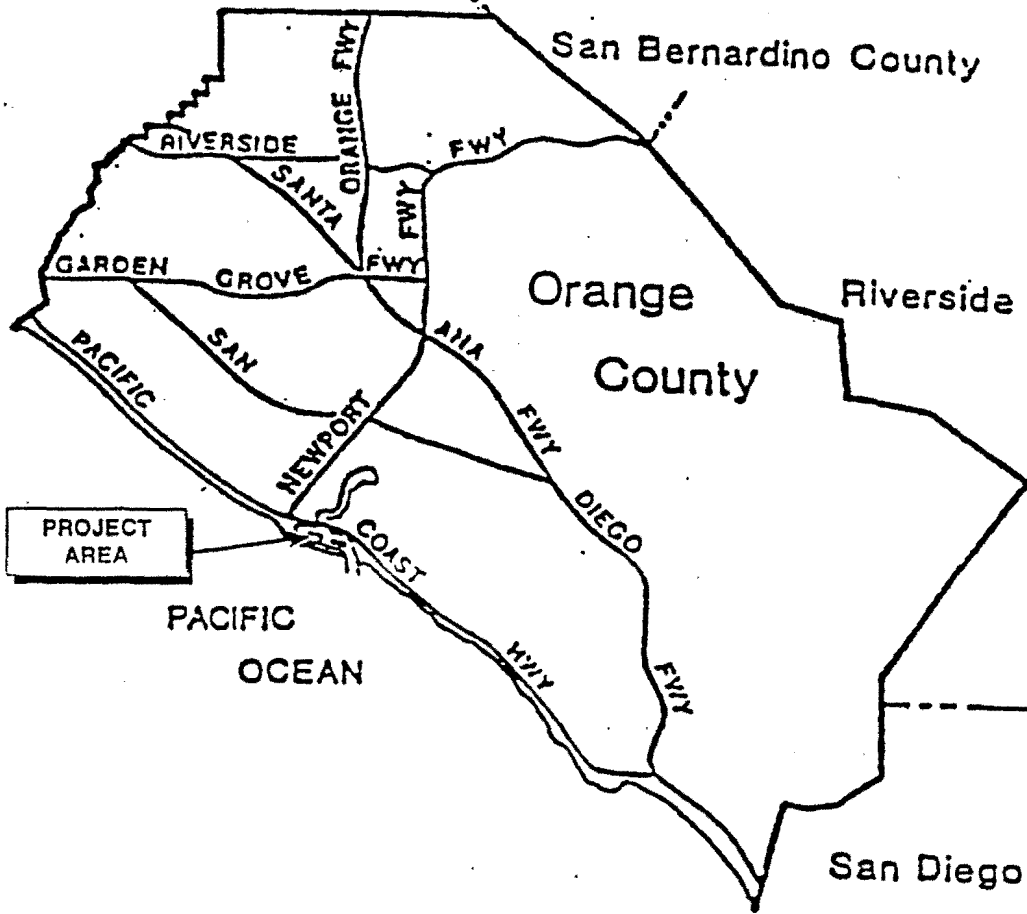
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may 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

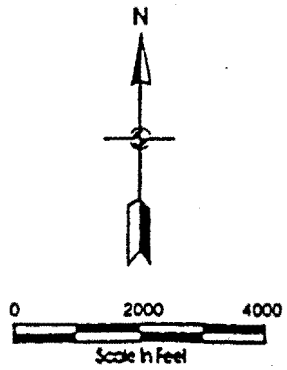
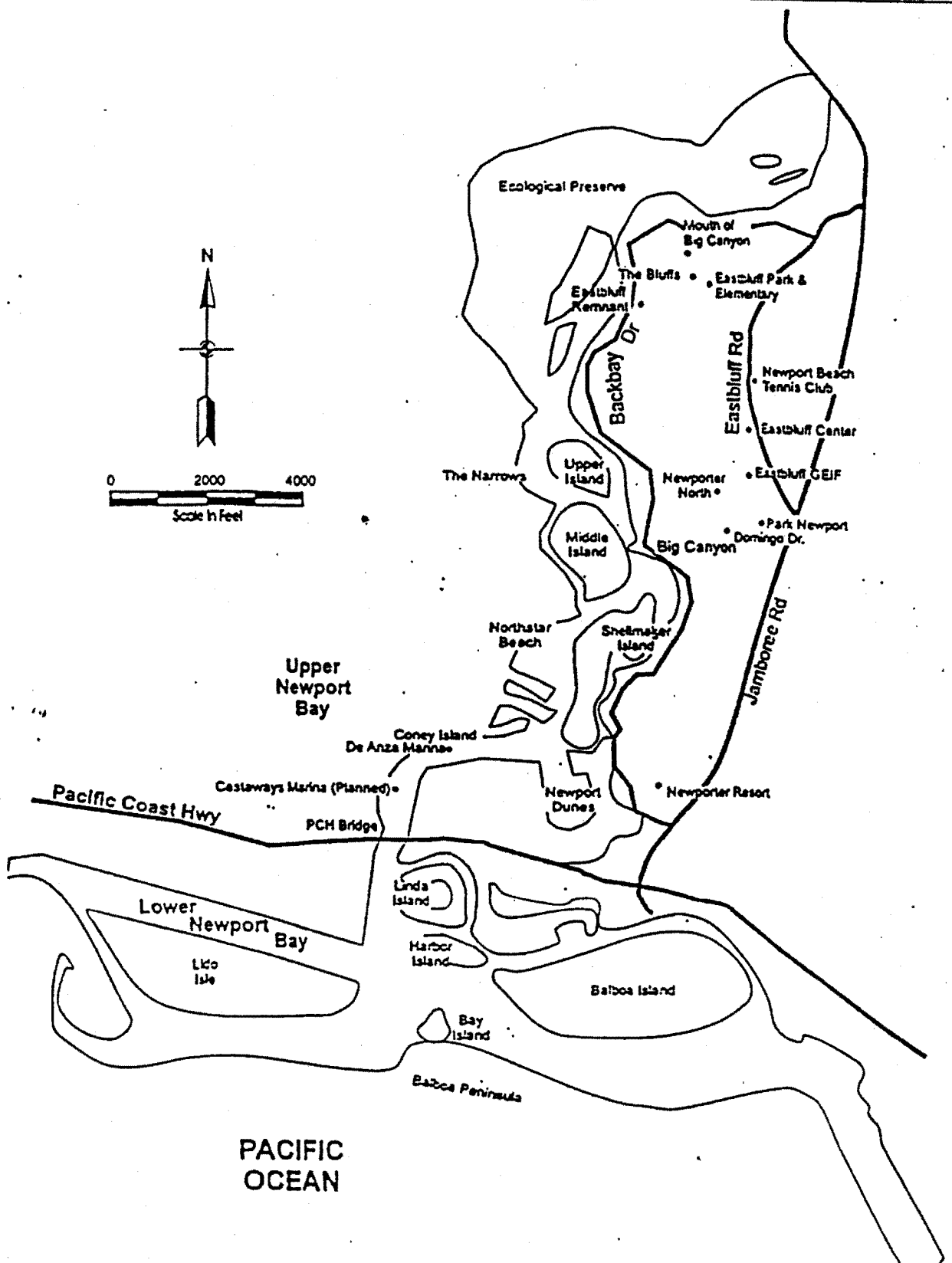
PROJECT AREA

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

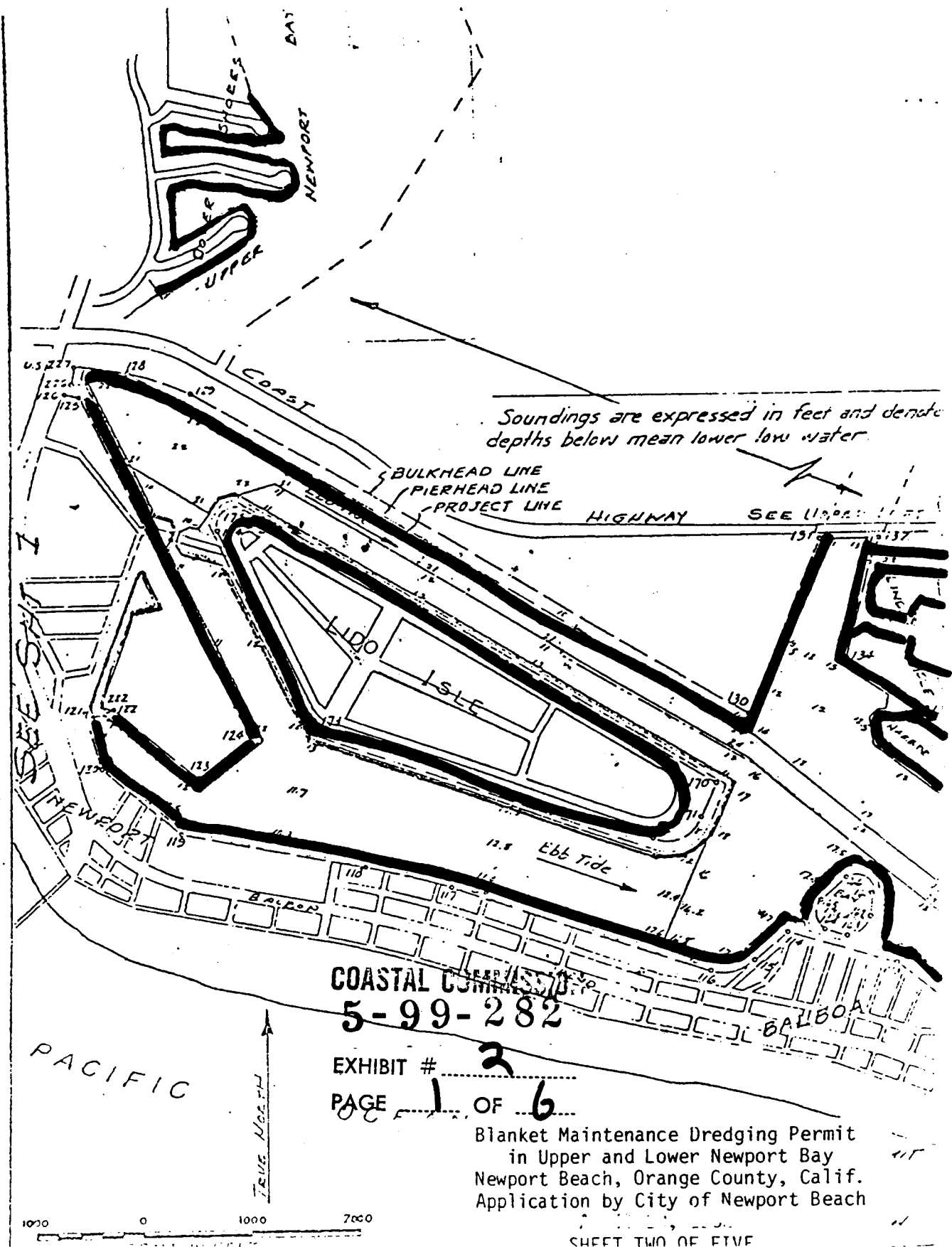
SOURCE: CORPS 1992

COASTAL COMMISSION

5-99-282

EXHIBIT # 1

PAGE 2 OF 2



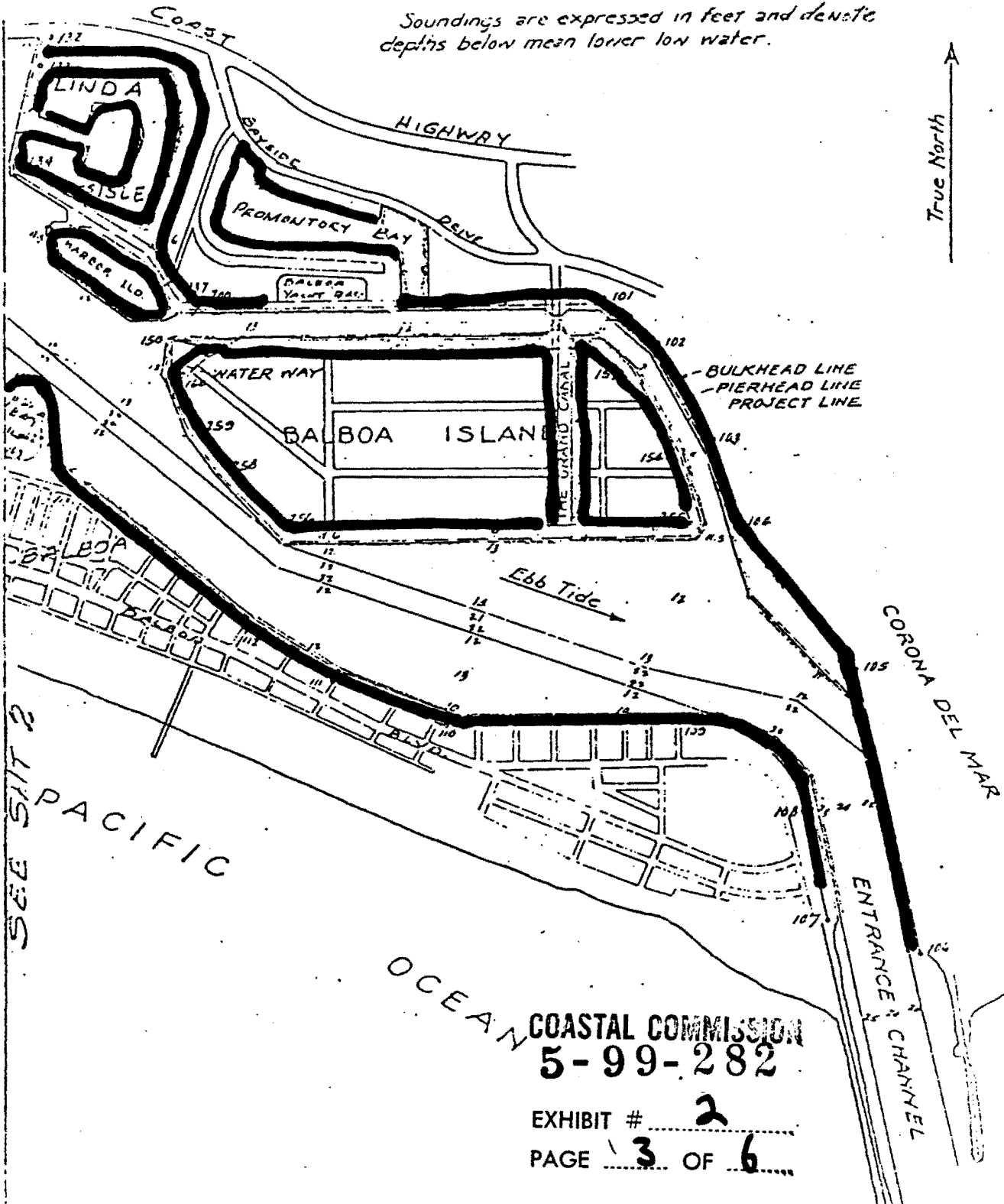
Soundings are expressed in feet and denote depths below mean lower low water.

COASTAL COMMISSION  
 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







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

True North ↑

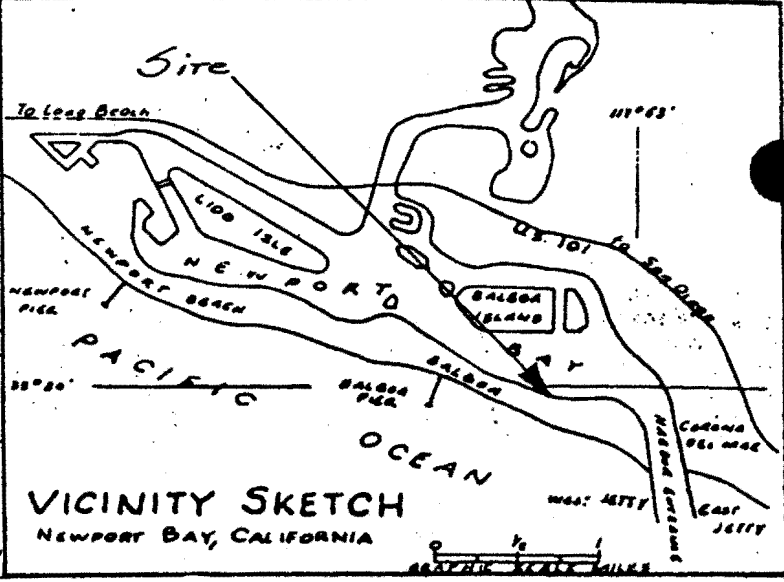
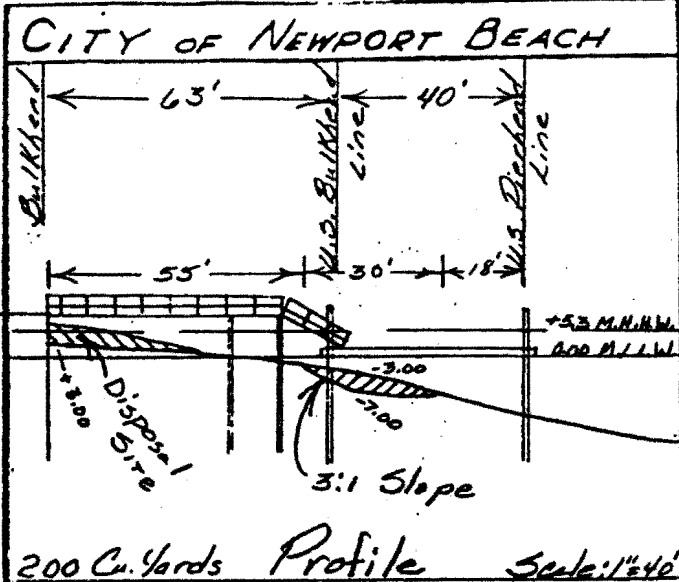
SEE SHEET 2

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

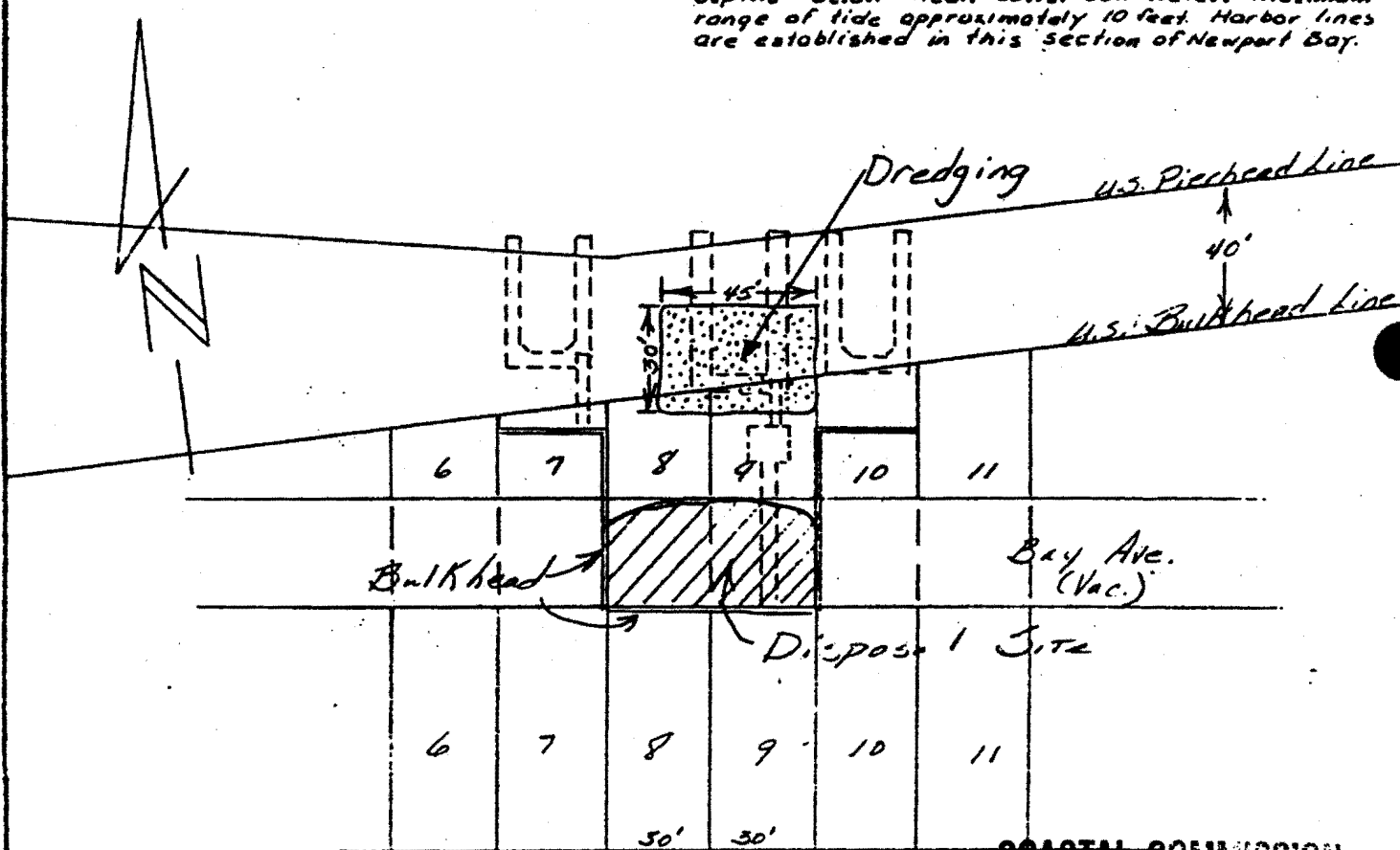
EXHIBIT # 2  
PAGE 3 OF 6

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

1000 0 1000 2000



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.



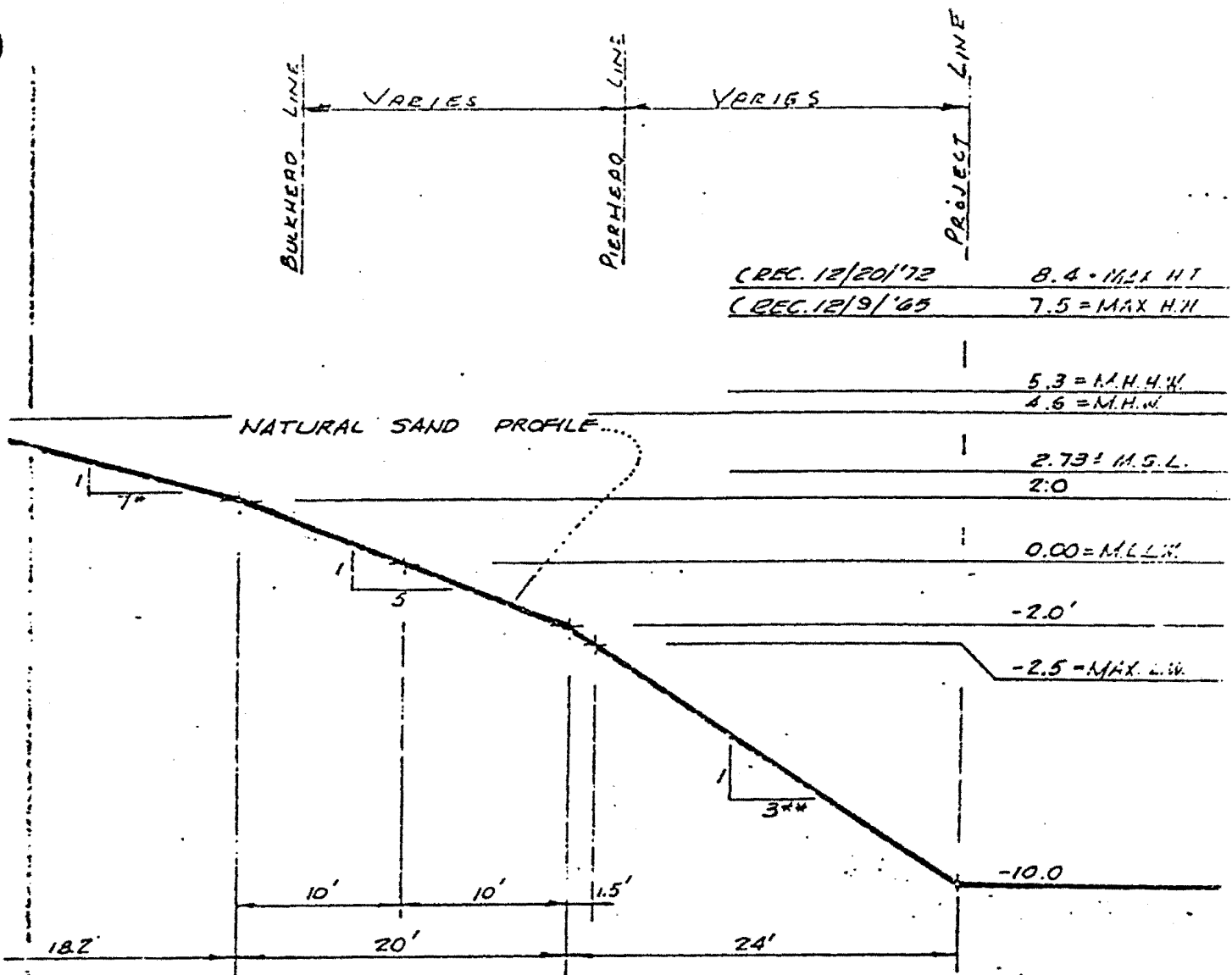
TYPICAL

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

APPLICANTS NAME: [REDACTED] LOT 849 Bayfront Sect. East side of East Blvd. BLK. K-17 TRACT 10

JOB ADDRESS: 1114 E. Balboa Blvd. CONTRACTOR Newport Dry Dock DATE 5/11/45

Scale: 1"=50'



**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

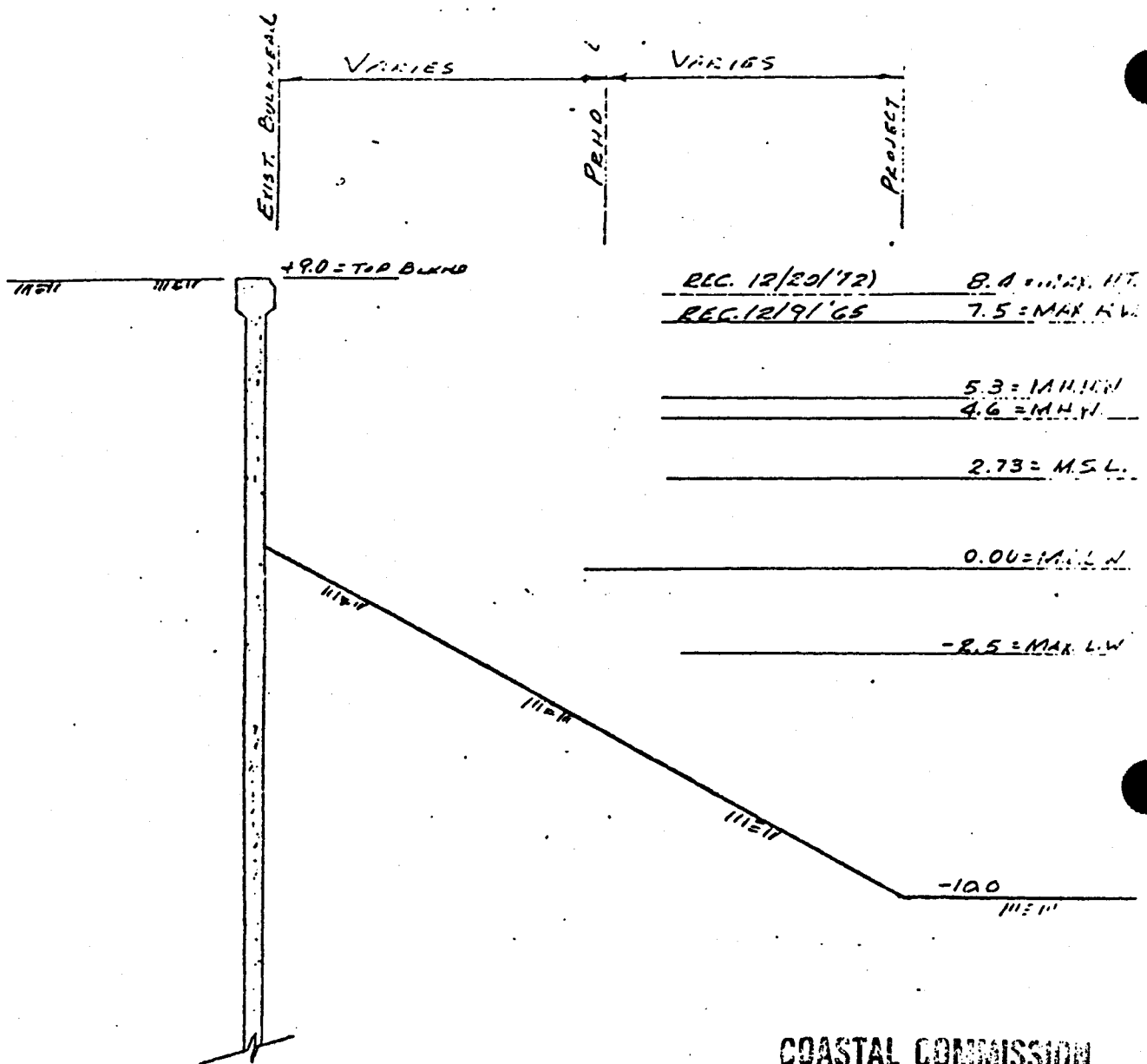
CITY OF NEWPORT BEACH

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 1965

APPROVED *J.T. DeLeon*  
ASST. PUBLIC WORKS DIRECTOR

DRAWING NO. SHEET FIVE OF FIVE



**PROFILE**  
 HOR. 1" = 10'  
 VER. 1" = 2'

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

TYPICAL AREA  
 WITH BULKHEAD

<b>CITY OF NEWPORT BEACH</b> 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 <u>G.E.H.</u> DATE <u>7-1-77</u>
	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

3300 Newport Blvd.  
P.O. Box 1768

Newport Beach, CA 92658-8915

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

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,

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.

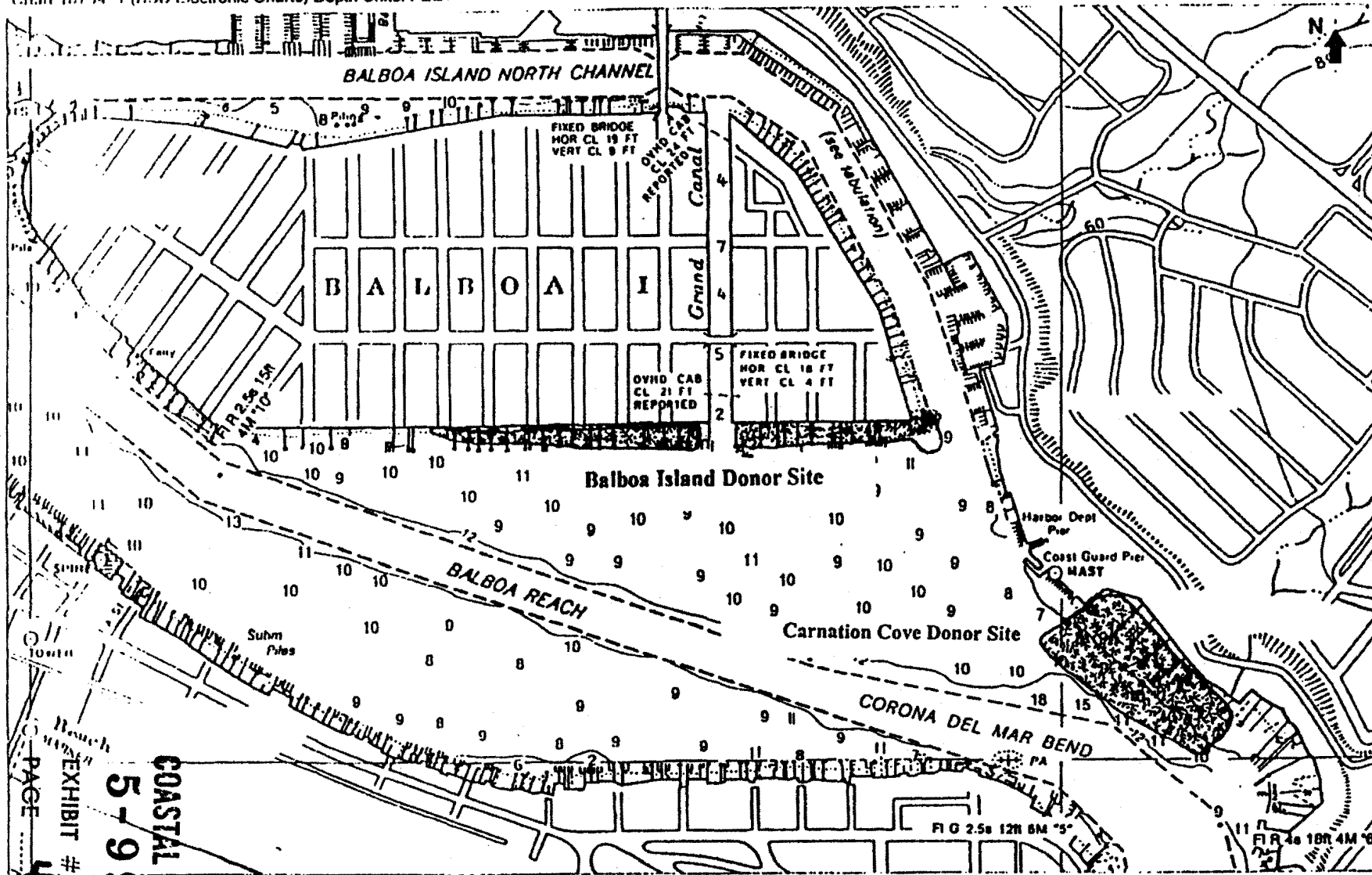
Hoffman, Robert. 1986. Fishery utilization of eelgrass (*Zostera marina*) beds and non-vegetated shallow waters areas in San Diego Bay. NMFS, SWR Admin. Report SWR-86-4.

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.

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

NEWPORT BAY  
Chart 18/54-1 (NSD Electronic Charts) Depth Units: FEET



DO NOT USE FOR NAVIGATION PURPOSES

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

COASTAL COMMISSION  
 5-99-282  
 EXHIBIT # 3  
 PAGE 4 OF 6

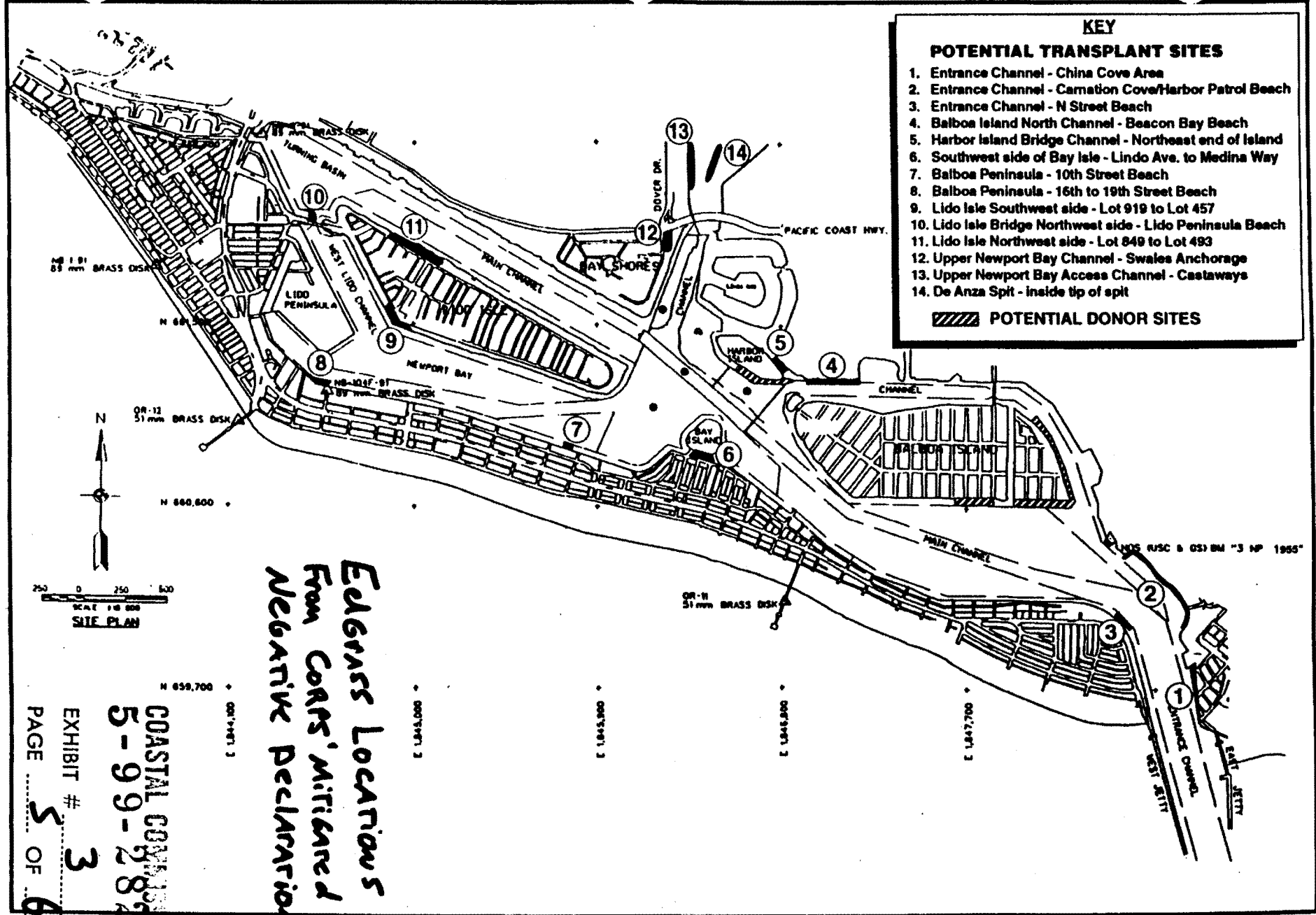


**KEY**

**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 483
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*

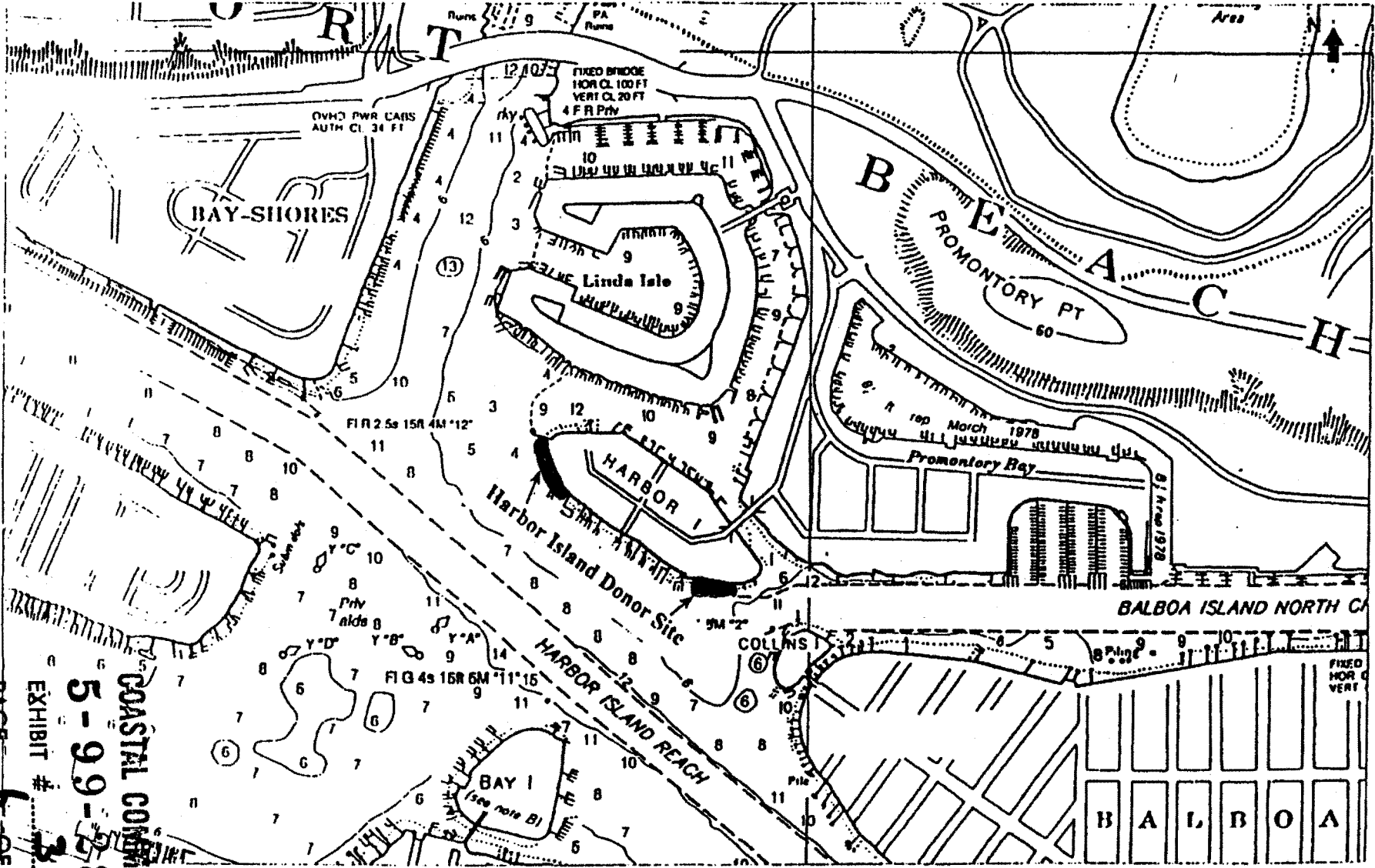
COASTAL COMMUNITY  
5-99-282

EXHIBIT # 3  
PAGE 5 OF 6

SOURCE CORPS

**POTENTIAL EELGRASS TRANSPLANT SITES**  
Figure 3

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



COASTAL COMMISSION  
 5-99-2292  
 EXHIBIT # 3  
 PAGE 6 OF 6

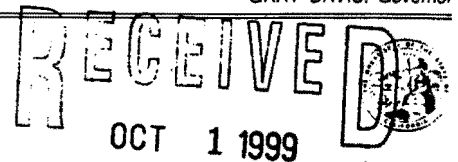
DO NOT USE FOR NAVIGATION PURPOSES

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

Nautical Miles  
0.00 0.10 0.20

**DEPARTMENT OF FISH AND GAME**

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



CALIFORNIA  
COASTAL COMMISSION

**M e m o r a n d u m**

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,

A handwritten signature in cursive script that reads "Robert N. Tasto".

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

COASTAL COMMISSION  
5-99-282

EXHIBIT # 4  
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

RECEIVED

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

COASTAL COMMISSION

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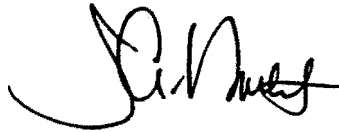
Colonel John P. Carroll

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



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

Gray Davis  
Governor

August 26, 1999

RECEIVED  
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.

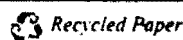
This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project described below will not violate State water quality standards:

### 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 are eligible for certification.

California Environmental Protection Agency



COASTAL COMMISSION

5-99-282

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

EXHIBIT # 4

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*California Environmental Protection Agency*

Mr. Tony Melum  
The City of Newport Beach

- 3 -

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

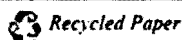
COASTAL COMMISSION

5-99-282

EXHIBIT # 4

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California Environmental Protection Agency





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DEC 01 1998  
**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

**RECEIVED**  
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

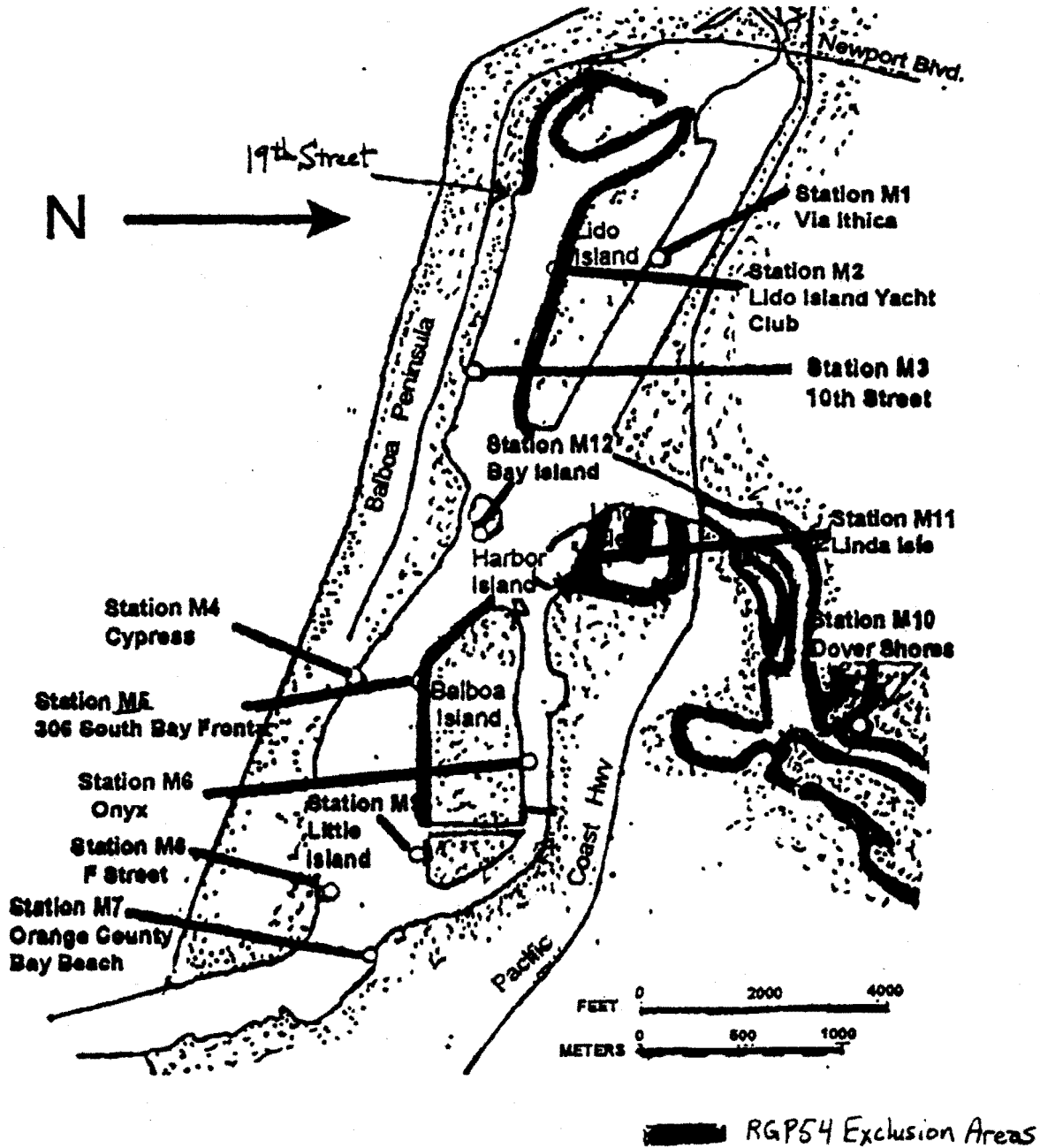
COASTAL COMMISSION  
5-99-282  
EXHIBIT # 4  
PAGE 7 OF 7



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Physical and Chemical Sediment Testing - Newport Harbor, 1999



MBC Applied Environmental Sciences, 3000 Redhill Avenue, Costa Mesa, CA 92626

**COASTAL COMMISSION**  
5-99-282

Areas Excluded From Permit

EXHIBIT # 5  
PAGE 1 OF 1



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

MAR 14 2000

F/SWR4:RSH

Tony Melum  
Deputy Chief Marine Environmental Division  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, California 92658-8915

Dear Mr Melum:

I have reviewed your letter of March 10, 2000, requesting our opinion on the proposed Special Conditions contained in the Coastal Commission Staff Report and Consistency Determination that would not allow beach disposal, under the General Permit, within 50 feet of an existing eelgrass bed.

I believe the 50-foot requirement may be too restrictive. Given the track record from previous projects, it appears that a 15-foot buffer would provide the necessary protection to this important marine resource. However, to ensure that no impacts to existing eelgrass resources occur, I would also recommend that detailed pre- and post-project surveys be conducted to demonstrate that impacts have not occurred.

Finally, should the recommended 15-foot buffer prove to be insufficient to protect eelgrass resources, I believe the Coastal Commission's Permit/Consistency Determination should provide for a mechanism to revise this requirement in the future.

Should you have any questions, please contact me at 562-980-4043.

Sincerely,

Robert S. Hoffman  
Southern California Environmental  
Coordinator

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COASTAL COMMISSION

EXHIBIT # 6  
PAGE 1 OF 1

**SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY**  
(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas function as important habitat for a variety of fish and other wildlife. In order to standardize and maintain a consistent policy regarding mitigating adverse impacts to eelgrass resources, the following policy has been developed by the Federal and State resource agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game). This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 8).

For clarity, the following definitions apply. "Project" refers to work performed on-site to accomplish the applicant's purpose. "Mitigation" refers to work performed to compensate for any adverse impacts caused by the "project". "Resource agencies" refers to National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

**1. Mitigation Need.** Eelgrass transplants shall be considered only after the normal provisions and policies regarding avoidance and minimization, as addressed in the Section 404 Mitigation Memorandum of Agreement between the Corps of Engineers and Environmental Protection Agency, have been pursued to the fullest extent possible prior to the development of any mitigation program.

**2. Mitigation Map.** The project applicant shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as areas having the proper depth and substrate requirements for eelgrass but which currently lack vegetation.

Protocol for mapping shall consist of the following format:

1) Coordinates

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11

Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

2) Units

Transects and grids in meters.

Area measurements in square meters/hectares.

All mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days from the date of surveys completed in August - October.

COASTAL COMMISSION

5-99-282

EXHIBIT # .....7.....  
PAGE .....1... OF ...5...

A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). After project construction, a post-project survey shall be completed within 30 days. The actual area of impact shall be determined from this survey.

**3. Mitigation Site.** The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

**4. Mitigation Size.** In the case of transplant mitigation activities that occur concurrent to the project that results in damage to the existing eelgrass resource, a ratio of 1.2 to 1 shall apply. That is, for each square meter adversely impacted, 1.2 square meters of new suitable habitat, vegetated with eelgrass, must be created. The rationale for this ratio is based on, 1) the time (i.e., generally three years) necessary for a mitigation site to reach full fishery utilization and 2) the need to offset any productivity losses during this recovery period within five years. An exception to the 1.2 to 1 requirement shall be allowed when the impact is temporary and the total area of impact is less than 100 square meters. Mitigation on a one-for-one basis shall be acceptable for projects that meet these requirements (see section 11 for projects impacting less than 10 square meters).

Transplant mitigation completed three years in advance of the impact (i.e., mitigation banks) will not incur the additional 20% requirement and, therefore, can be constructed on a one-for-one basis. However, all other annual monitoring requirements (see sections 8-9) remain the same irrespective of when the transplant is completed.

Project applicants should consider increasing the size of the required mitigation area by 20-30% to provide greater assurance that the success criteria, as specified in Section 9, will be met. In addition, alternative contingent mitigation must be specified, and included in any required permits, to address situation where performance standards (see section 9) are not met.

**5. Mitigation Technique.** Techniques for the construction and planting of the eelgrass mitigation site shall be consistent with the best available technology at the time of the project. Donor material shall be taken from the area of direct impact whenever possible, but also should include a minimum of two additional distinct sites to better ensure genetic diversity of the donor plants. No more than 10% of an existing bed shall be harvested for transplanting purposes. Plants harvested shall be taken in a manner to thin an existing bed without leaving any noticeable bare areas. Written permission to harvest donor plants must be obtained from the California Department of Fish and Game.

Plantings should consist of bare-root bundles consisting of 8-12 individual turions. Specific spacing of transplant units shall be at the discretion of the project applicant. However, it is understood that whatever techniques are employed, they must comply with the stated requirements and criteria.

**6. Mitigation Timing.** For off-site mitigation, transplanting should be started prior to or concurrent with the initiation of in-water construction resulting in the impact to the eelgrass bed. Any off-site mitigation project which fails to initiate transplanting work within 135 days following the initiation of the in-water construction resulting in impact to the eelgrass bed will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

**7. Mitigation Delay.** If, according to the construction schedule or because of any delays, mitigation cannot be started within 135 days of initiating in-water construction, the eelgrass replacement mitigation obligation shall increase at a rate of seven percent for each month of delay. This increase is necessary to ensure that all productivity losses incurred during this period are sufficiently offset within five years.

**8. Mitigation Monitoring.** Monitoring the success of eelgrass mitigation shall be required for a period of five years for most projects. Monitoring activities shall determine the area of eelgrass and density of plants at the transplant site and shall be conducted at 3, 6, 12, 24, 36, 48, and 60 months after completion of the transplant. All monitoring work must be conducted during the active vegetative growth period and shall avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 3 and 6 month surveys shall be allowed in order to ensure the work is completed during this active growth period. Additional monitoring beyond the 60 month period may be required in those instances where stability of the proposed transplant site is questionable or where other factors may influence the long-term success of transplant.

The monitoring of an adjacent or other acceptable control area (subject to the approval of the resource agencies) to account for any natural changes or fluctuations in bed width or density must be included as an element of the overall program.

A monitoring schedule that indicates when each of the required monitoring events will be completed shall be provided to the resource agencies prior to or concurrent with the initiation of the mitigation.

Monitoring reports shall be provided to the resource agencies within 30 days after the completion of each required monitoring period.

**9. Mitigation Success.** Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project and mitigation sites. Extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than one meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative

within the control or transplant bed. Specific criteria are as follows:

- a. a minimum of 70 percent area of eelgrass bed and 30 percent density after the first year.
- b. a minimum of 85 percent area of eelgrass bed and 70 percent density after the second year.
- c. a sustained 100 percent area of eelgrass bed and at least 85 percent density for the third, fourth and fifth years.

Should the required eelgrass transplant fail to meet the established criteria, then a Supplementary Transplant Area (STA) shall be constructed, if necessary, and planted. The size of this STA shall be determined by the following formula:

$$STA = MTA \times (|A_t + D_t| - |A_c + D_c|)$$

MTA = mitigation transplant area.

$A_t$  = transplant deficiency or excess in area of coverage criterion (%).

$D_t$  = transplant deficiency in density criterion (%).

$A_c$  = natural decline in area of control (%).

$D_c$  = natural decline in density of control (%).

Four conditions apply:

- 1) For years 2-5, an excess of only up to 30% in area of coverage over the stated criterion with a density of at least 60% as compared to the project area may be used to offset any deficiencies in the density criterion.
- 2) Only excesses in area criterion equal to or less than the deficiencies in density shall be entered into the STA formula.
- 3) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 4) Any required STA must be initiated within 120 days following the monitoring event that identifies a deficiency in meeting the success criteria. Any delays beyond 120 days in the implementation of the STA shall be subject to the penalties as described in Section 7.

10. **Mitigation Bank.** Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in section 9, may be considered as credit in a "mitigation bank". Establishment of any "mitigation bank" and use of any credits accrued from such a bank must be with the approval of the resource agencies and be consistent with the provisions stated in this policy. Monitoring of any approved mitigation bank shall be conducted on an annual basis until all credits are exhausted.

COASTAL COMMISSION  
5-99-282

EXHIBIT # 7  
PAGE 4 OF 5

**11. Exclusions.**

1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than ½ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed ½ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the ½ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.

2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

( last revised 2/2/99)

**COASTAL COMMISSION**

**5-99-282**

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