

**CALIFORNIA COASTAL COMMISSION**

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# W20b&21a

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## STAFF REPORT: REGULAR CALENDAR AND FEDERAL CONSISTENCY CERTIFICATION

**CDP Application No.:** 5-19-1296

**Consistency Certification No.:** CC-0007-21

**Applicant:** City of Newport Beach

**Agent:** Anchor QEA, Adam Gale

**Project Location:** Dredging & Beach Replenishment in Newport Bay (Orange County): between the shoreline and project lines, on beaches and within bay waters, at street ends and in front of bulkheads in Lower Newport Bay, and within Upper Newport Bay in the bulkheaded areas of Dover Shores, Bayside Village, and existing docks at Shellmaker Island;

And offshore open-ocean EPA-approved disposal site known as LA-3 located approximately five miles south of the entrance to Newport Harbor in Orange County.

**Project Description:** Consistency Certification CC-0007-21: Maintenance dredging around existing docks and off-shore disposal of up to 75,000 cubic yards per year, for a term of six years,

of suitable dredged material, including proposed Eelgrass Protection and Mitigation Plan for eelgrass impacts; and

Coastal Development Permit 5-19-1296: Beach replenishment of up to 75,000 cubic yards per year, for a term of six years, of suitable dredged material, including Eelgrass Protection and Mitigation Plan for eelgrass impacts.

**Staff Recommendation:**

CDP: Approval with conditions

CC: Conditional Concurrence

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## SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach proposes to continue its dredging and beach replenishment/ocean disposal program within the urbanized harbor areas of Newport Bay. There are approximately 1,200 small docks along the shoreline of Newport Bay where sediment occasionally shoals and renders such docks of limited or no use. The proposed program would continue to authorize dredging under and around these small docks, as necessary, to assure their continued usefulness, and the use of suitable dredge material to replenish beaches in front of bulkheads and at street end beaches throughout the bay. Dredge material unsuitable for beach replenishment would be disposed of at the existing authorized ocean disposal site (LA-3), at an inland facility, or at a Commission approved Confined Aquatic Disposal site (CAD). The program would also authorize the City to conduct "Beach Maintenance Activities" using mechanized equipment to move sand from the surf zone up the beach to maintain beach profiles beneficial to public recreation. The proposed dredging and disposal program is a reauthorization of the program previously approved by the Commission under Coastal Development Permit No. 5-14-0200 and Consistency Certification No. CC-0002-15. Key elements proposed that are consistent with the Commission-approved 2015 project include an annual limit of 75,000 cubic yards of dredging and disposal (including sediment characterization requirements for each project), an 8,000 cubic yard cap on the size of each individual dredging and disposal event, and eelgrass (*Zostera spp.*) and invasive algae (*Caulerpa sp.*) survey requirements. The program would be authorized for six years.

New elements of the proposed project include Commission authorization to: 1) allow the City to conduct routine bay beach maintenance projects that would not be included in the 75,000 cubic yard annual cap; 2) conduct small dredging projects of less than 2,500 cubic yards with minimal or no impacts to eelgrass without the need for Executive Director review prior to dredging activities for each project; and 3) allow dredging deeper than the authorized design depth of -12 feet (-10 feet mean lower low water (MLLW) with a 2-foot allowable overdraft) on a limited basis in specific locations solely to remove enough sediment to meet water quality thresholds imposed by the Regional Water Quality Control Board (RWQCB).

The proposed dredging program would permit impacts to eelgrass in Newport Bay subject to an established Eelgrass Protection and Mitigation Plan developed by the applicant in consultation with the National Marine Fisheries Service, California Department of Fish and Wildlife, and Commission staff, entitled: *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Based Management Program* (“Eelgrass Plan”). This plan was reviewed as part of the previous six-year permit approved by the Commission in 2015.

Since 2003, the City of Newport Beach has funded studies to document the distribution and abundance of eelgrass within the harbor and to understand the factors affecting its recruitment and growth. The City used the results of those studies as a basis for developing a plan that enables the routine maintenance dredging that is typically undertaken by individual dock owners to be carried out without triggering the standard mitigation measures. Under the Eelgrass Plan, the maximum amount of allowable temporary impacts to eelgrass within the RGP 54<sup>1</sup> Plan Area is limited to a fixed percentage of each zone per year. Since the mitigation and monitoring plan was implemented in 2015, the City has submitted three biennial surveys (2016, 2018, and 2020), which have been reviewed by Commission staff’s Senior Ecologist, Dr. Jonna Engel, and the results demonstrate the mitigation plan has been successful. The City is proposing to continue the implementation of the Eelgrass Plan with this RGP 54 reauthorization.

The “plan area” continues to encompass the portions of the harbor defined as: “The bulkhead to pierhead line plus 20 feet bayward, including those exceptions for structures that extend beyond this boundary as of 2013 in conformance with harbor development regulations defined by Chapter 17.35 of the Newport Beach Municipal Code.” The RGP 54 is also limited to areas where the sediment has been characterized according to the guidelines established by the Southern California Dredged Material Management Team (SC-DMMT). Based on recent sampling, certain areas of the harbor require additional confirmatory sampling for both the dredge cut and predicted resulting Z-layer before material can be determined suitable for open-ocean disposal or beach nourishment.<sup>2</sup> This sediment characterization and dredging depths are presented in [Exhibit 2](#).

In RGP 54 areas flagged for exceedances of either mercury and/or polychlorinated biphenyls (PCBs), dredged material is proposed to be disposed at either an upland location or at a Commission-certified CAD facility (areas depicted in light blue, green, or red [on Exhibit 2](#)). The City is proposing to dredge no deeper than authorized design depth in order to achieve a clean Z-layer for these areas.

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<sup>1</sup> ‘Regional General Permit 54’ or ‘RGP 54’ is terminology used by the U.S. Army Corps of Engineers to describe a programmatic approval within a defined geographic area of an activity that needs Corps authorization. Over time ‘RGP 54’ has become a moniker used by all the agencies involved, including the CCC, to describe the City’s dredging program for slips in Newport Harbor. Both the Army Corps and Commission approvals require periodic reauthorization.

<sup>2</sup> The Z-layer is the remaining surface that is exposed after the sediment is removed.

Areas flagged for DDT to a depth of -12 feet MLLW, which are depicted in orange on [Exhibit 2](#), are authorized by the EPA for open ocean disposal at the LA-3 open ocean facility; however, the RWQCB requires that the remaining Z-layer not exceed the 18ppb threshold for DDT to comply with the Total Maximum Daily Load (TMDL) for Newport Bay. For these areas, the City is seeking authorization to dredge deeper than the authorized design depth of -10 feet MLLW (plus two feet over dredge) solely for the purpose of removing enough material to achieve a Z-layer with DDT concentrations that are below the 18ppb threshold. The City is proposing that the dredge cut below -12 feet MLLW also be disposed of at the LA-3 open ocean facility if approved by the EPA on a case-by-case basis as more fully described below, as any materials in this area dredged below -12 feet MLLW have not yet undergone full Ocean Testing Manual Tier III Testing and are not yet authorized for open ocean disposal.

Dredging depths are predetermined by the USACE as the depth allowed for safe boat navigation in that harbor. Dredging deeper than the authorized design depth could potentially undermine the structural integrity of surrounding structures, i.e. seawalls and bulkheads, piers and pilings, or adjacent infrastructure. In Newport Harbor, where eelgrass is present, dredging deeper than the depth at which eelgrass can grow could negatively impact eelgrass habitat.

Based on the City's Eelgrass Plan, in areas where the City proposes to dredge deeper than -12 feet, eelgrass grows between +1 foot and -15 feet MLLW. The Commission's staff senior ecologist has determined that -15 feet is a depth at which eelgrass may still grow under the conditions present in Newport Bay, so in order to allow the City to dredge deeper than the previously authorized design depth of approximately -12 feet while maintaining the substrate depth necessary for eelgrass growth, **Special Condition 1** limits dredging in the area depicted in orange on [Exhibit 2](#) to -15 feet MLLW. Applicants seeking to dredge deeper than this limit must apply for a separate coastal development permit to address potential eelgrass impacts and/or any engineering constraints of surrounding development that could be potentially undermined by deeper dredging (i.e. bulkheads, pier pilings, etc.), depending on the configuration of the site.

*Caulerpa* comprises a group of highly invasive green algae that poses a substantial threat to marine ecosystems in California, particularly to areas with extensive eelgrass meadows and other benthic ecosystems that make coastal waters such a rich and productive environment. Since the recent discovery of *Caulerpa* in Newport Harbor in April 2021, all dredging projects have been on hold pending direction from the National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife, the Coastal Commission, and other resource agencies with regard to appropriate protocol and procedure for dredging projects in infested systems. **Special Condition 3** outlines the updated protocol for surveying and reporting guidelines that the City of Newport Beach must follow for individual dredging projects associated with this authorization.

In order to facilitate Commission review of these items, both the coastal development permit application and the federal consistency certification will be heard at the same time. Special conditions are recommended to define the approved program including annual limitations of

75,000 cubic yards of dredging and 8,000 cubic yards per dredging/disposal event, requirements for comprehensive biennial eelgrass surveys, sediment testing and reporting standards, construction BMPs, assumption of risk, and final analysis and mitigation of eelgrass impacts. Commission staff recommends that the Commission **APPROVE** Coastal Development Permit application 5-19-1296 and Consistency Determination CC-0007-21, as conditioned. The motions are on page 6.

The City of Newport Beach LCP was effectively certified on January 13, 2017.

Development within the harbor is located within the Commission’s permitting jurisdiction because it includes tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time and consequently, the standard of review is Chapter 3 of the Coastal Act. Newport Beach’s certified LCP serves as guidance.

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PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency, California Assembly Bill 361, and the Governor’s Executive Orders N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

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**APPENDIX A – Substantive File Documents**

**EXHIBITS**

Exhibit 1 – Vicinity Map and Plan Overview

Exhibit 2 – Permit Application Supplement: Proposed Regional General Permit 54 (September 2021)

Exhibit 3 – Eelgrass Protection and Mitigation Plan (March 2015)

Exhibit 4 – Memo from Coastal Commission Senior Staff Ecologist Dr. Jonna Engel

Exhibit 5 – Proposed Beach Maintenance Locations

Exhibit 6 – EPA Sampling Results for LA-3 (2015)

**I. MOTIONS AND RESOLUTIONS**

**Motion I:**

I move that the Commission approve Coastal Development Permit No. 5-19-1296 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

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

**Resolution I:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**Motion II:**

I move that the Commission concur with consistency certification CC-0007-21 on the grounds that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

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

**Resolution II:**

The Commission hereby concurs in the consistency certification on the grounds that, if modified in accordance with the Special Conditions, the project described therein would be consistent with the enforceable policies of the California Coastal Management Program (CCMP) and would be conducted in a manner consistent with that program.

## **II. STANDARD CONDITIONS**

This permit is granted subject to the following 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 applicants 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 on which the Commission voted on the application. 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicants to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

**1. Final Revised Regional General Permit 54 Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a document, subject to the review and written approval of the Executive Director, detailing the final Regional General Permit 54 program as approved by the Coastal Commission. The format of the document shall substantially conform to the preliminary program titled "Permit Application Supplement: Proposed Regional General Permit 54," submitted 9/24/21, and included as [Exhibit 2](#) in the staff report dated 12/2/21, but shall be amended to reflect the following changes:

- A. The demolition, repair and in-kind replacement of docks (including piers, gangways, floats, and piles), bulkheads, and piles with similar structures are excluded from the current Regional General Permit 54 program. These activities shall require a separate coastal development permit from the California Coastal Commission.
- B. The Nearshore Ocean Beach disposal option is excluded from the current Regional General Permit 54 Program.
- C. For disposal of sediments containing Dichlorodiphenyltrichloroethane (DDT) delineated in orange on Exhibit 2 that are dredged below -12 feet MLLW to achieve a z-layer with DDT concentrations that are below the 18ppb threshold, the applicant will be required to collect samples at the following intervals:
  1. Authorized design z-layer depth (between -12 to -12.5 feet MLLW). This sample would be tested to demonstrate whether the z-layer meets the DDT thresholds.
  2. If the z-layer does not meet the DDT threshold, deeper 0.5-foot intervals would be separately collected and tested to find the new z-layer that meets the threshold (total DDT less than 18 ppb).
  3. A vertical composite of the full core length from -12 feet MLLW to the new z-layer would be created and submitted for full confirmatory chemistry to demonstrate suitability of material for ocean disposal



based on Tier 1 evaluation as defined by the EPA's Ocean Testing Manual.

4. Confirmatory chemistry results would be compared against the composite samples for Area 3 as presented in the 2018 Sampling and Analysis Report prepared for the City of Newport Beach by Anchor QEA in June 2018. If confirmatory sample chemistry results are within the range of the composite sample found to be suitable for ocean disposal based on the full Tier III testing program, then material below -12 feet MLLW would be recommended as suitable for ocean disposal based on a Tier 1 analysis.
  5. The City (representing the applicant) would submit a brief memo to the EPA presenting the proposed project and include a comparison of confirmatory chemistry results to what was determined suitable in 2018. If the EPA approves the Tier 1 analysis, then the results memo and correspondence with EPA would be included as part of the RGP 54 application submitted to the Coastal Commission's South Coast office.
- D. The areas depicted in orange on Exhibit 2 may be dredged to no more than -15 feet MLLW subject to **Special Condition 5**.
- E. The City shall submit a pre-construction notification to the Executive Director for all proposed dredging, disposal, and beach maintenance activities and must receive a written authorization from the Executive Director prior to any dredging or disposal event undertaken by the City or by anyone with a legal right to dredge or dispose of dredged material in excess of 2,500 cubic yards. A written authorization from the Executive Director shall be required for any dredging activity of any amount of sediment (including an amount less than 2,500 cy) in RGP 54 areas flagged for exceedances of mercury, polychlorinated biphenyls, or DDT. The City shall submit pre-construction notifications in batches and shall submit no more than one batch per calendar month. The Executive Director shall notify the City within 60 days indicating whether a proposed dredging or disposal event qualifies under the confines of the Regional General Permit 54 program or whether a separate coastal development permit/federal consistency certification is required from the Commission.
- F. The City of Newport Beach Tidelands Administrator shall be the primary Point of Contact (POC) for applicants seeking authorization under Coastal Development Permit No. 5-19-1296 and Federal Consistency Certification No. CC-0007-21 (CDP/CC). Once the POC has determined an application meets the conditions of the subject CDP/CC, the POC will forward the application to the Executive Director of the Commission along with a written certification for the Executive Director's review and approval. The POC may submit one batch of applications to the Executive Director for review and approval once per calendar month. This certification shall include the following information:

1. Certification letter from the City of Newport Beach Tidelands Administrator confirming the proposed application meets the terms and conditions of the CDP/CC, with special emphasis on the presence or absence of eelgrass and any contaminated sediments.
2. Maps of the project site including location within the harbor, site address, site assessor's parcel number, site latitude and longitude coordinates (decimal degree format), as well as to-scale drawings of the proposed action (plan view and cross-section view of proposed activity), including the boundaries of any proposed sediment dredging and/or disposal work, the location and physical dimensions of any existing docks, floats, piers, pilings and bulkheads (and general outline of same that is present on adjacent sites), the location of the bulkhead, project and pierhead lines, and the specific location of any eelgrass beds within or near the work area (based on the most recent comprehensive eelgrass survey required pursuant to Special Condition No. 2).
3. The proposed area of temporary impacts to coastal waters (in acres), proposed dredge and/or disposal quantities (in cubic yards), including a detailed estimate of how much material has been dredged from or discharged onto the site through previous activities.
4. The results of invasive algae (*Caulerpa sp.*) surveys consistent with **Special Condition 3**.
5. Photos (a minimum of five) of the beach area and the low tide line (i.e., prior to any work), with special emphasis on any areas of eelgrass.
6. Evidence of California State Lands Commission approval for any work upon land that is not within the City of Newport Beach tidelands grant, which shall consist of (a) a copy of a permit issued by the California State Lands Commission, or (b) letter of permission, or (c) evidence that no permit or permission is required for the development to occur at the proposed site. The City 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 permittee obtains a Commission amendment to this coastal development permit or a new coastal development permit, and, if applicable, a new consistency certification unless the Executive Director determines that no amendment or new permit and consistency certification is legally required. This may be a one-time requirement so long as the approval covers the entire geographic area and time period covered under this CDP/CC.

7. Evidence of the permittee's legal ability to undertake the proposed development, as conditioned herein, on any land that is not owned in fee title by the City of Newport Beach or County of Orange or upon any land granted to the City or County pursuant to a State Tidelands grant under which said grant does not specifically authorize the grantee to undertake the proposed activity. Such evidence shall include written documentation demonstrating that the permittee has the legal ability to undertake the proposed development as conditioned herein. The permittee shall inform the Executive Director of any changes to the project required in obtaining such legal ability. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit and, if applicable, a new consistency certification, unless the Executive Director determines that no amendment or consistency certification is legally required. This may be a one-time requirement so long as the approval covers the entire geographic area and time period covered under this CDP/CC.
- G. Reporting: The City of Newport Beach shall submit annual reports for the life of the subject CDP/CC to the South Coast District Office (Long Beach) of the California Coastal Commission documenting activities authorized under this CDP/CC. Each annual report shall include a cumulative ledger documenting all activities conducted to date under the subject CDP/CC. The annual report shall be submitted no later than January 1 of each year. Annual reports from the City shall include:
1. A summary of dredging operations including location (coordinates and address) of each dredging operation, areas, and volumes of material dredged (in cubic yards and acres);
  2. Disposal location(s) (coordinates and address) and volumes for each method used (i.e., beach disposal, LA-3, or inland site);
  3. An estimate of the total acreage of coastal waters impacted for each activity type;
  4. Summary of any direct and indirect eelgrass impacts for each activity type, and the on-site or off-site eelgrass mitigation completed or in progress;
  5. An updated, to-scale map showing the locations of all activities conducted using this coastal development permit and consistency certification to date.
  6. Confirmation of compliance with all special conditions, or a detailed explanation of any special conditions not complied with.

The City and anyone with a legal right to dredge or dispose of dredged material shall undertake development in accordance with the approved final Regional General Permit 54 program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit (and, if applicable, a new consistency certification) unless the Executive Director determines that no amendment is legally required.

**2. Compliance with October 2015 Final Eelgrass Protection and Mitigation**

**Plan.** The applicant shall comply with the Final Eelgrass Protection and Mitigation Plan approved by the Executive Director in October 2015, including:

- A. Term of Authorization and Requirement for Eelgrass Monitoring and Biennial Surveys: During the six (6) year period for which the applicant is authorized to dredge and dispose of suitable material at an approved ocean or beach disposal site under this CDP/CC (subject to the requirements of Special Condition 1), the applicant shall conduct a minimum of three (3) comprehensive eelgrass surveys of the Plan Area as specified in the Eelgrass Protection and Mitigation Plan. The second of the three surveys shall not be limited to the areas where dredging and beach replenishment are permitted under this permit, but shall cover the entire Newport Harbor. The surveys shall occur once every two years, beginning no later than one year after the issuance of this permit, unless the Executive Director grants additional time for good cause.
- B. If eelgrass was present within a dredging footprint during the previous biennial survey, its presence at the time of dredging must be assumed and the size of the presumed eelgrass loss documented. That area shall be examined specifically during all following biennial surveys and the distribution and cover of eelgrass documented to determine recovery time.
- C. Restoration undertaken by the City and Orange County Coastkeeper (with funding from the City) under Tier 1 and Tier 2 of the existing Eelgrass Plan, and restoration undertaken by dock owners under Tier 2, shall be documented and reported annually, including time and duration of restoration activities and types of activities undertaken. If Orange County Coastkeeper restoration activities are funded through sources in addition to the City, annual reporting shall document these additional funds and sources and include an estimate of the proportion of total restoration that can be attributed entirely to funding provided by the City. The annual reports shall also evaluate the success of the restoration in terms of eelgrass bed size, cover, and turion density.

- D. The City shall submit an annual evaluation of the RGP 54 and Eelgrass Protection and Mitigation Plan, which shall include: (a) estimates of the time required for eelgrass recovery with and without on-site restoration activities, (b) estimates of the total temporal loss of eelgrass due to dredging (acres and acre-years), (c) estimates of the total area of off-site eelgrass restoration accomplished, and (d) the net mitigation accomplished.
- E. The Eelgrass Plan does not permit eelgrass impacts as a result of beach maintenance, beach replenishment, or disposal of dredged material in front of an existing bulkhead where eelgrass is present. If an unexpected impact to eelgrass occurs during beach maintenance or disposal of dredged material, such impact shall be documented and reported to the Executive Director in the same manner that dredging impacts on eelgrass are documented and reported. If an impact was detected (as defined above), the report will include a summary of how the California Eelgrass Mitigation Policy will be complied with. Implementation of mitigation shall require a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. The following implementation measures shall be applied:
1. No dredging, disposal, or movement of sediment to shape the beach profile shall occur within 15 feet of eelgrass.
  2. If eelgrass was present within 15 feet (in any direction) of a potential beach maintenance or dredged material disposal site (in any direction) at the time of the most recent comprehensive eelgrass survey, that site shall be assumed to support eelgrass and a site-specific survey during the period of active eelgrass growth shall be required prior to any beach maintenance or dredged material disposal activities.
  3. The City and anyone with a legal right to dredge or dispose of dredged material shall undertake development in accordance with the approved final Eelgrass Protection and Mitigation Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit and new consistency certification unless the Executive Director determines that no amendment and consistency certification is legally required.

### **3. Caulerpa Surveys Within Infected Systems.**

- A. The following survey conditions shall apply to any permitted Bottom Disturbing Activity within Infected Systems:

1. Prior to initiation of any permitted Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project Area of Potential Effect (APE). The first survey shall be conducted using High Intensity Level techniques (more intensive survey using a systematic sub-sampling of the entire APE during which at least 50% of the bottom is inspected). Surveys may be accomplished using a diver or remote camera transects. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries, CDFW, and the Executive Director) and the second survey shall be conducted using Eradication Area Level techniques (most intensive survey using a systematic and comprehensive survey of the entire APE during which 100% of the bottom is inspected). Surveys must be accomplished using divers moving at a rate appropriate to the site conditions to ensure that all areas are comprehensively searched irrespective of site conditions which may complicate surveys. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries, CDFW, and the Executive Director). Both surveys shall be conducted within the same High Growth Period, unless otherwise approved by NOAA Fisheries, CDFW, and the Executive Director.
2. At least one survey shall be conducted within 45 days of initiation of a permitted Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/ CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.
3. If the Bottom Disturbing Activity extends for over 90 calendar days, the portions of the APE that would be expected to be impacted by a Bottom Disturbing Activity within the subsequent 90 days must be re-surveyed at a High Intensity Level. This subsequent survey must be conducted within 15 days following the first 90 days. Prolonged activities would require a repetition of this phased survey requirement.
4. If dredged material is removed from the APE and placed elsewhere in the marine environment, then no sooner than 60 days after placement of the dredged materials and during the next High Growth Period, the applicant shall conduct a Surveillance Level survey at all disposal areas except where material is disposed of within an existing U.S. EPA designated deep ocean disposal site. The specific survey requirements shall be determined by NOAA Fisheries and CDFW on a case-by-case basis.



5. The final survey shall be submitted for the review and written approval of the Executive Director prior to commencement of any dredging activities in infested systems.
6. Area of Potential Effect (APE) is the area surrounding an authorized project site that could be affected by a Bottom Disturbing Activity related to the implementation of the project work. This includes the project footprint, areas where equipment is stored or moored, areas where vessel prop-wash could occur in association with work, or in-water disposal areas used by the project. It does not include U.S. Environmental Protection Agency (EPA) designated deep-ocean disposal sites.

B. If *Caulerpa* is Found:

1. If *Caulerpa* is found, then the NOAA Fisheries/CDFW Contacts shall be notified within 24 hours of the discovery. The Bottom Disturbing Activity shall not be conducted until such time as the infestation has been isolated, treated or the risk of spread from the project is eliminated.
2. All *Caulerpa* assessment and treatment shall be conducted under the auspices of the CDFW and NOAA Fisheries as the state and federal lead agencies for implementation of *Caulerpa* eradication in California.
3. Within seven days of notification, NOAA Fisheries and CDFW will coordinate with the Southern California *Caulerpa* Action Team (SCCAT) and relevant permitting and resource agencies (and project proponent, as warranted) to fully document the extent of the *Caulerpa* infestation within the project APE. *Caulerpa* eradication activities, which are subject to review and approval by NOAA Fisheries and CDFW, in coordination with the SCCAT and relevant permitting and resource agencies, shall be undertaken using the best available technologies at the time and will depend upon the specific circumstances of the infestation. This activity may include in situ treatment using contained chlorine applications, mechanical removal, or other appropriate methods. The eradication technique is subject to change at the discretion of NOAA Fisheries and CDFW and as technologies are refined.
4. The efficacy of treatment shall be determined prior to proceeding with permitted activities. To determine effectiveness of the treatment efforts, a written Survey Plan shall be prepared. The plan shall be developed in conjunction with the CDFW and NOAA Fisheries and shall be approved by these agencies and the Executive Director prior to implementation.
5. This policy does not vacate any additional restrictions on the handling, transport, or disposal of *Caulerpa* that may apply at the time of permit



issuance or in the future. It is incumbent upon the permittee to comply with any other applicable State or Federal regulations, restrictions, or changes to the Protocol that may be in effect at the time of initiation of permitted activities.

- C. In non-infected systems, prior to initiation of any permitted Bottom Disturbing Activity, a minimum of one survey shall be conducted using Surveillance Level techniques (general survey coverage providing a systematic subsampling of the entire APE during which at least 20% of the bottom). Surveys may be accomplished using diver transects, remote cameras, and acoustic surveys with visual ground truthing. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries and CDFW and the Executive Director.

**4. Construction and Operational Best Management Practices.** In order to minimize adverse environmental impacts and the unpermitted deposition, spill or discharge of any liquid or solid into the sea, the applicant and anyone with a legal right to dredge or dispose of dredged material subject to the program and plan approved by this CDP/CC shall implement the following construction-related and operational best management practices (BMPs), in addition to those construction best management practices proposed by the applicant's preliminary program (titled "Permit Application Supplement: Proposed Regional General Permit 54," submitted December 2019, and included as Exhibit 2 in the staff report dated 11/25/2021) and the applicant's Eelgrass Protection and Mitigation Plan (most recently updated March 2015 and included as Exhibit 3 in the staff report dated 11/25/2021):

- A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow.
- B. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction.
- C. No machinery or construction materials not essential for project implementation shall be allowed at any time in the intertidal zone or in the harbor.
- D. Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity.
- E. If turbid conditions are generated during construction a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.
- F. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

- G. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- H. The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited.
- I. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- J. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- K. Prior to commencement of any activity authorized under this CDP/CC, the boundaries of any eelgrass meadow within 30 feet of the activity shall be marked with buoys so that equipment and vessel operators avoid damage to eelgrass meadows.
- L. Barges and other vessels shall be anchored a minimum of 15 feet from any eelgrass bed. Anchors and anchor chains shall not encroach into any eelgrass bed.
- M. Barges and other vessels shall avoid transit over any eelgrass meadow to the maximum extent practicable. Where transit over eelgrass beds is unavoidable such transit shall only occur during high tides when grounding and potential damage to eelgrass can be avoided.

The applicant and anyone with a legal right to dredge or dispose of dredged material subject to the program and plan approved by this CDP/CC shall include the requirements of this condition (including those BMPs proposed in the Regional General Permit 54 and the Eelgrass Protection and Mitigation Plan) on all plans and contracts issued for development subject to program and plan approved by this CDP/CC.

5. **Dredging and Dredged Material Disposal Requirements.** For this CDP/CC, the term “dredging operations” shall mean navigation of a dredging vessel at a dredging site, excavation of dredged material within the project boundaries, and placement of dredged material into a hopper dredge or disposal barge or scow. The following requirements shall apply, in addition to those proposed by the applicant’s revised preliminary program titled “Permit Application Supplement: Proposed Regional General Permit 54” (submitted September 2021, and included as Exhibit 2 in the staff report dated 9/30/21) and the applicant’s Eelgrass Protection and Mitigation Plan (most recently updated March 2015 and included as Exhibit 3 in the staff report dated 9/30/21):

- A. Dredging Activities.

1. Under this CDP/CC, dredging operations are limited to -10 feet MLLW with a 2-foot allowable overdraft (1 foot paid, 1 foot unpaid) or -7 feet MLLW with 1-foot allowable overdraft) in areas depicted in green in [Exhibit 2](#).
2. Under this CDP/CC, dredging operations are limited to -15 MLLW (with no allowable overdraft) in areas depicted in orange in Exhibit 2.
3. Sediment Testing Requirements. The permittee is prohibited from dredging and disposing material in coastal waters that has not been tested and determined by the Commission, in consultation with the Army Corps of Engineers and with the Environmental Protection Agency Region IX (EPA), to be both clean and suitable for ocean disposal or beach replenishment. Prior to each dredging episode at each individual dredging location the sediment must be tested according to the standard above. Prior to beach replenishment at each replenishment location, the permittee shall sample the material to be placed and any beach-receiver location 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 one core per one-quarter (1/4) acre area to be dredged and/or at least one core per site for each project, as well as at least one core per receiver beach location. 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.
4. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the permittee shall send a dredging and disposal operations plan to USACE, EPA, and CCC with the following information:
  - i. A list of the names, addresses and telephone numbers of the permittee's project manager, the contractor's project manager, the dredging operations inspector, the disposal operations inspector and the captain of each tug boat, hopper dredge or other form of vehicle used to transport dredged material to the designated disposal site.
  - ii. A list of all vessels, major dredging equipment and electronic positioning systems or navigation equipment that will be used for dredging and disposal operations, including the capacity, load

level and acceptable operating sea conditions for each hopper dredge or disposal barge or scow to assure compliance with special conditions on dredging and disposal operations.

- iii. A detailed description of the dredging and disposal operations authorized by this permit. Description of the dredging and disposal operations should include, at a minimum:
  - a. Dredging and disposal procedures for the dredged material determined by the USACE and EPA Region IX to be unsuitable for ocean disposal, including areas of the harbor requiring additional confirmatory sampling. Sampling for the site shall be submitted.
  - b. Dredging and disposal procedures for the material to be dredged from the proposed site.
  - c. A schedule showing when the dredging project is planned to begin and end.
5. A pre-dredging bathymetric condition survey, taken within 30 days of the dredge start date. The survey may be taken via lead line, sounding disc, or sounding pole techniques according to Chapter 8 (Manual Depth Measurement Techniques) from USACE Engineering and Design - Hydrographic Surveying manual (EM 1110-2-1003, published 01 Jan 2002). Each individual project survey using this method will include a minimum of three sounding points (adjusted for tide) per individual dock.

The pre-dredge survey shall be accurate to 0.5-foot with the exact location of all soundings clearly defined on the survey chart. The pre-dredge survey chart shall be prepared showing the following information:

- a. The entire dredging area, the toe and top of all side-slopes and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the pre-dredge condition survey should cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered.
- b. The dredging design depth, overdredge depth and the side-slope ratio.
- c. The total quantity of dredged material to be removed from the dredging areas and the side-slope areas.
- d. Areas shallower than the dredging design depth shall be shaded green, areas between the dredging

- design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue.
- e. The pre-dredging survey chart shall be signed by the permittee to certify that the data are accurate and that the survey was completed within 30 days of the proposed dredging start date.
  - f. A debris management plan to prevent disposal of large debris at all disposal locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.
6. The permittee shall not commence individual dredging operations greater than 2,500 cubic yards unless and until the permittee receives a written authorization to proceed from the Executive Director of the Commission to commence work, subject to the terms of Special Condition 1(F).
7. The City shall require applicants to submit a post-dredging completion report, which shall be compiled by the City and submitted to the Executive Director in an annual report. The report shall include all information collected by the permittee, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:
- a. Permit and project number.
  - b. Start date and completion date of dredging and disposal operations.
  - c. Total cubic yards disposed at the authorized disposal site(s).
  - d. Mode of dredging.
  - e. Mode of transportation.
  - f. Form of dredged material.
  - g. Frequency of disposal and plots of all trips to the authorized disposal site(s).
  - h. Tug boat or other disposal vessel logs documenting contact with the USCG before each trip to the authorized ocean disposal site.
  - i. Percent sand, silt and clay in dredged material: for this CDP/CC only, see sediment testing requirements above.
  - j. A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
  - k. Pre-dredging hydrographic survey.

- I. A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredged depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the predredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the predredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate.

B. Beach disposal (beach replenishment)

1. Beach disposal (replenishment) shall be the preferred disposal method under the program. All sediment removed from the harbor which is suitable for beach replenishment (subject to the following testing and disposal requirements) shall be disposed of on beaches in front of bulkheads and at street end beaches throughout the bay, subject to the approval of the landowner, Tidelands administrator, and the Executive Director.
2. Grain Size Criteria: Material utilized for beach replenishment shall have a sand content that is either i) greater than 80% sand; or ii) at least 75% sand and within 10% of the sand content of the receiver beach. Any material that meets the requirements outlined above for beach replenishment and consists of less than 80% sand shall only be placed upon submerged beach areas (i.e. below the water line).
3. Prior to commencement of beach replenishment at a site, the results of each sampling episode and beach replenishment compatibility test described above shall be submitted for the review and approval of the Executive Director. Dredged material deemed suitable for beach replenishment 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 these special conditions. All dredged material deemed "unsuitable" for beach replenishment shall be disposed of at an approved location according to all federal, state and local regulations. If the disposal site is not within an approved ocean disposal site, but 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.

4. In no case will beach disposal be authorized with material dredged below the sediment testing characterization depth for any particular site.
5. A detailed description of the transport and discharge operations authorized by this permit will be submitted to the Executive Director of the Commission for review and approval at least 15 calendar days prior to work in coastal waters. Description of the transport and discharge operations shall include:
6. Transport and discharge procedures for all sediment, including all material unsuitable for beach replenishment discharge.
7. A schedule showing when the beach replenishment project is planned to begin and end.
  - i. A debris management plan to prevent disposal of large debris at all beach discharge locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.
  - ii. The volume of material to be excavated and discharged.
  - iii. A list of previous discharges by site, date, and volume, as well as the total volume of material which has been excavated and discharged to date using this CDP/CC.
8. The City must submit a pre-construction notification and must receive a written authorization to proceed from the Executive Director of the Commission before the permittee may commence any work, except Executive Director review is not required for dredging events of 2,500 cubic yards or less in areas where sediment is not known to exceed thresholds for mercury, polychlorinated biphenyls, or DDT.
9. The permittee shall send one copy of a beach disposal post-discharge report to the Executive Director documenting compliance with all general and special conditions defined in this permit. The post-discharge report shall be sent within 30 calendar days after completion of the discharge operations authorized in this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall include:
  - i. CDP/CC number.
  - ii. Identify source of material.
  - iii. Total cubic yards disposed at each beach disposal site.



- iv. Modes of transportation and discharge.
  - v. Actual start date and completion date of transport and discharge operations.
10. The permittee shall implement all appropriate, standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive eroded materials do not enter coastal waters due to beach replenishment operations. Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity. If turbid conditions are generated during construction a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.
  11. The permittee will establish a safety flag perimeter of the beach replenishment area during disposal activities, and monitor the premises to protect the general public from construction hazards and equipment.
  12. No maintenance, storage, or fueling of heavy tracked equipment or vehicles will occur within 500 feet of the high tide line of waters of the United States.

C. Offshore (ocean) disposal

1. All of the sediments dredged from within the Plan Area that are deemed unsuitable for beach replenishment are suitable for ocean disposal, with the exceptions as identified in the RGP 54 program and this CDP/CC.
2. Prior to commencement of ocean disposal, the results of each sampling episode described above shall be submitted for the review and approval of the Executive Director. Dredged material deemed unsuitable for beach disposal/replenishment may be deposited at the approved ocean disposal sites only after the Executive Director has concurred with a City determination that the materials to be dredged have been deemed unsuitable for beach replenishment and are suitable for ocean disposal using the standards in these special conditions. All dredged material deemed unsuitable for beach replenishment shall be disposed of at an approved location according to all federal, state and local regulations. If the disposal site is not located at an approved ocean disposal site or Commission-approved CAD and is located in the coastal zone, a separate coastal development permit

application shall be filed for the disposal of the material. All contracts involving the subject project shall include the above stated condition of approval.

3. For this permit, the phrase "ocean disposal operations" shall mean: the transportation of dredged material from the dredging site to the ocean disposal site, proper disposal of dredged material at the central disposal area within the ocean disposal site, and transportation of the hopper dredge or disposal barge or scow back to the dredging site.
4. The approved ocean disposal site is LA-3, effective October 2005: 33 degrees 31.00 minutes North Latitude, 117 degrees 53.30 minutes West Longitude (NAD 1983), circular site with radius of 3,000 feet.
5. In no case will offshore (ocean) or beach disposal be authorized for material dredged below the sediment testing characterization depth for any particular site.
6. No more than 8,000 cubic yards of dredged material excavated for an individual dredging project authorized under this CDP/CC are authorized for disposal at the LA-3 ocean disposal site.
7. The permittee shall ensure dredged material is not leaked or spilled from the disposal vessel(s) during transit to the ocean disposal site. The permittee shall transport dredged material to the ocean disposal site only when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak or other loss of dredged material during transit. No disposal vessel trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete disposal operations.

D. Inland disposal

1. If neither offshore disposal nor beach disposal are available for an individual project proposed under this CDP/CC, material may be disposed of at an inland facility, subject to the review and approval of the Executive Director. A separate coastal development permit application shall be submitted for the disposal of the material.

E. Confined Aquatic Disposal (CAD)

1. If dredge material unsuitable for beach replenishment is unsuitable for disposal at the existing authorized ocean disposal

site (LA-3) or at an inland facility, the dredge material may be disposed of at a Commission approved Confined Aquatic Disposal site (CAD).

## **6. Final Report and Eelgrass Mitigation Requirement at End of Six-Year Period**

The final report for the six-year period of the Regional General Permit 54 program and Eelgrass Protection and Mitigation Plan shall assess the net effect of dredging and restoration activities on the presence of eelgrass within the Plan Area in the context of natural trends. The City, using the biennial survey data and reference sites within the Plan Area that have not been affected by maintenance dredging or replenishment, shall report on the trends in eelgrass abundance over the permit period. Should reference sites indicate a decline in overall eelgrass abundance at the end of six years, the City, the California Coastal Commission, the California Department of Fish and Wildlife, and the National Marine Fisheries Service will evaluate the causes of such decline and use that information in assessing the success of restoration efforts undertaken by the City during the period of the Plan.

During Tier 3, applicants would be required to provide mitigation pursuant to the California Eelgrass Mitigation Policy including meeting the success criteria after five years based on applicant sponsored annual monitoring. The City would not be responsible for providing additional mitigation during Tier 3 years for any shortcomings presented in the six-year summary report. Any changes to the eelgrass in the Plan Area will be compared to reference sites using procedures adopted in the California Eelgrass Mitigation to be described in the Final Plan.

If, relative to the reference sites, there is a net loss in eelgrass in the impacted areas of Newport Bay at the end of the six years, the City, the California Coastal Commission, and the National Marine Fisheries Service will evaluate the success of the mitigation efforts by the City and by dock owners throughout the bay. If, through these discussions, the Executive Director determines that there is a shortfall in the necessary mitigation to offset temporal or permanent losses of eelgrass, a revised Eelgrass Mitigation and Monitoring Plan shall be prepared by the City to provide the necessary additional eelgrass mitigation. The revised Eelgrass Mitigation and Monitoring Plan shall require separate review and approval by the Commission through the regular coastal development permit/consistency certification process.

**6. Conformance with the Requirements of the Resource Agencies.** The applicant shall comply with all permit requirements and mitigation measures of the National Marine Fisheries Service, the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, the U.S. Environmental Protection Agency, the California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. Any

changes to the approved project which are required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

- 7. Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the sites may be subject to hazards from slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; (ii) to assume the risks to the permittee and the properties that are 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; (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; (v) that sea level rise could render it difficult or impossible to provide services to the sites (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the sites; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, and structures may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that structures may be required to be removed or relocated and the site(s) restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Location and Description**

The development proposed by this application is located in Newport Harbor, a highly urbanized area of Newport Bay where the shoreline is nearly completely developed with residential and commercial structures. There is a high density of piers, docks and wharfs associated with private residences and commercial marinas, both along the edge of the bay and on several constructed islands. The City of Newport Beach proposes a reauthorization of the Regional General Permit 54 approved by the Commission in June of 2015 to allow the City to continue as the primary permitting entity for small maintenance dredging projects with the designated plan area ([Exhibit 1](#)).

Suitable dredge material is used to replenish beaches in front of bulkheads and at street-end beaches throughout the bay. Dredge material unsuitable for beach replenishment is disposed at the existing EPA and Commission authorized ocean disposal site LA-3, located

approximately five miles southwest of the entrance to Newport Harbor. ([Exhibit 1](#)). Dredge material unsuitable for open ocean disposal at LA-3 must be disposed of at an approved upland disposal site or at a Commission-approved Confined Aquatic Disposal site (CAD).

As a result of continuous sedimentation, there is a periodic need to dredge both the navigational channels and the shallow areas where the piers are located. Whereas the City in cooperation with the Army Corps of Engineers is responsible for maintaining navigable waters, the owners of private piers and docks are responsible for their own maintenance activities, including the periodic dredging necessary to accommodate the mooring of vessels.

The proposed dredging and disposal program is an expanded version of the programs previously approved by the Commission under Coastal Development Permit No. 5-14-0200, as amended, and Consistency Certification CC-0002-15, which were also expansions of Coastal Development Permit Nos. 5-99-282 and 5-06-117, as amended, and Consistency Certification Nos. CC-078-99, CC-077-01, and CC-0310-06. Project elements consistent with the most recent Commission-approved RGP 54 are the yearly limit of 75,000 cubic yards of dredging and disposal with physical sediment characterization requirements for each project, an 8,000 cubic yard cap on the size of each individual dredging and ocean/beach disposal event, and continued eelgrass (*Zostera spp.*) and invasive algae (*Caulerpa sp.*) survey requirements, including required avoidance measures. The proposed dredging program would permit impacts to eelgrass in Newport Bay subject to an Eelgrass Protection and Mitigation Plan developed by the applicant in consultation with the National Marine Fisheries Service, California Department of Fish and Wildlife, and the Commission's Staff Ecologist. The proposed dredging program would be authorized for a period of six years.

New elements of the proposed expansion include Commission authorization to: 1) allow the City to conduct routine bay beach maintenance projects that would not be included in the 75,000 cubic yard annual cap; 2) conduct small dredging projects of less than 2,500 cubic yards with minimal or no temporary impacts to eelgrass without the need for Executive Director authorization for each project; and 3) allow dredging deeper than the authorized design depth of -12 feet (-10 feet MLLW with a 2-foot allowable overdraft) on a limited basis in specific locations solely to remove enough sediment to meet water quality thresholds for DDT imposed by the Regional Water Quality Control Board. These aspects of the projects are more fully described below.

The coastal development permit is only for the deposition of suitable dredged material for beach replenishment beach maintenance activities (moving sand around with mechanized equipment to maintain beach profiles), the scientific activities subject to the Eelgrass Protection and Mitigation Plan, and any associated eelgrass restoration/mitigation activities undertaken by the City or dock owners within the harbor. The beach replenishment and beach maintenance activities are non-exempt development given the attendant use of mechanized equipment on a 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, but still may require federal consistency review.

The subject coastal development permit application is a companion to Consistency Certification CC-0007-21 that requests authorization for the dredging and any necessary off-shore disposal of dredge materials, including the disposal of sediment dredged from the harbor that exceeds concentrations of 18ppb of DDT if approved by the EPA on a case-by-case basis that includes testing and evaluation of contaminant types and concentrations as well as physical, chemical, and biological sediment characteristics. The requested federal consistency certification would also include the proposed Eelgrass Protection and Mitigation Plan for eelgrass impacts, which will be applied to dredging activity and temporal eelgrass impacts in Newport Harbor, subject to the special conditions of this permit and consistency certification.

The proposed dredging would occur from the bulkhead to the pierhead line plus 20 feet bayward, including those exceptions for structures that extend beyond this boundary in conformance with harbor development regulations or policy. Disposal of suitable material (non-toxic, appropriate sediment composition and grain size) would be permitted on beaches in front of bulkheads and adjacent to street ends in Lower Newport Bay; and within Upper Newport Bay in the bulkheaded areas of Dover Shores, Bayside Village and existing docks at Shellmaker Island. The RGP 54 program boundaries are shown in detail in [Exhibit 2, pg. 2](#) and the Eelgrass Protection and Mitigation Plan in [Exhibit 3](#) - Pages 34-44.

There are parts of Newport Bay that are not in the scope of this coastal development permit and consistency certification. For instance, areas of the harbor where there are no bulkheads and/or docks, such as the shoreline in Upper Newport Bay adjacent to Castaways Park, the marina and sandy beach surrounding the cove at Newport Dunes, areas adjacent to Shellmaker Island and the area within the Upper Newport Bay Ecological Reserve, are not proposed for dredging or beach replenishment.

The proposed project includes areas of the harbor which are Tidelands granted either to the City of Newport Beach or the County of Orange by the California State Lands Commission. The City of Newport Beach is the applicant. The County of Orange has authorized the City to act on its behalf. The proposal also includes some submerged lands that are privately owned such as those lands within the coves at Dover Shores and the interior cove and part of the surrounding channel of Linda Isle. These private lands are owned by homeowners' associations that have authorized the City to act on their behalf.

The City of Newport Beach has submitted a consistency certification for maintenance dredging and ocean disposal of suitable material. In CC-0007-21, the City proposes maintenance dredging of navigation channels to pre-existing dredge depths of up to 8,000 cubic yards of material per event may be dredged from under private, public, and commercial piers, docks, and floats between the Bulkhead Line and the Pierhead Line within the areas identified in [Exhibits 2 and 3](#). Typical individual dredge projects are between 1,000-8,000 cubic yards and impacts eelgrass around the edges of an existing dock, which typically recovers in a period of one to two years. Prior to any dredging event,



the dock owner or contractor must submit an application package to the City of Newport Beach Tidelands Administrator, subject to the requirements of **Special Condition 1**, which include maps of the proposed dredging area, photos of the area, a plan for disposal of the dredged material, and a construction plan.

Under the existing RGP 54 program, suitable dredged material has been pumped from a hydraulic suction dredge via flexible pipelines to deposition sites on the City's beaches along the shoreline of Lower Newport Bay. Subject to the review of the Executive Director, as outlined in **Special Condition 1**, dredged material may also be transported and deposited by other means. As proposed, suitable dredged material will be deposited for beach replenishment in the near-shore area, or above the mean high tide line. There are 150 street ends and approximately 1,200 residential bulkheads where beach replenishment could occur. Where necessary, the sand will be spread mechanically to evenly distribute the sand over the deposition area. The maximum quantity of material disposed at any one time at any single site would be 8,000 cubic yards. Subject to **Special Condition 2**, the City cannot conduct any beach maintenance or disposal activities within 15 feet of any eelgrass bed and mitigation is required if impacts to eelgrass are determined to have occurred as a result of beach maintenance or disposal.

The applicant has provided a baseline evaluation of the suitability of the dredge materials for beach replenishment ([Exhibit 2](#)). This report generally indicates that dredge materials within Newport Bay in the proposed project area are suitable for beach replenishment from a grain size suitability and chemical standpoint. **Special Condition 4** requires the applicant to conduct specific grain size analyses of both donor and receiver sites prior to any disposal activity of dredged sediment on a beach. Beach disposal is the preferred disposal method under the program; material which is not suitable for beach nourishment will be disposed offshore at LA-3, at an inland disposal site, or at a Commission-approved Confined Aquatic Disposal site (CAD).

### **Bay Beach Maintenance Projects**

To minimize beach sand accretion into the nearshore zone, the City is seeking authorization to conduct routine bay beach maintenance projects for beaches on Balboa Island, Beacon Bay, publicly owned street-end beaches, and other locations depicted in **Exhibit 5**. Beach maintenance or sand movement along ocean beaches is not proposed under the subject program or authorized by this permit. As proposed, the City would relocate sloughed sand from the low tide line (-1 foot MLLW) to the high tide line along 25,000 linear feet of shoreline in Newport Harbor during low tide only. The beach width would be approximately 10 feet wide, requiring excavation of approximately 1 foot below natural beach grade throughout the proposed area and reaching a maximum depth of -1 foot MLLW in any of the locations shown in **Exhibit 5**. Sand would be relocated utilizing small tractor (a.k.a. bobcat) during low tide. As proposed, this element of the RGP 54 would not exceed annual volume of 9,500 cubic yards over six acres, but would not be included in the annual limit of 75,000 cubic yards. The permittee would review, track, and approve these projects as is done with other routine maintenance dredging activities under the RGP 54, and documentation of these projects



would be included in the RGP 54 annual reports as more specifically described in **Special Condition 1**.

Proposed beach maintenance projects would conform to the City's *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Based Management Program* (City of Newport Beach; October 14, 2015). To ensure no direct impacts to eelgrass occur, as addressed in **Special Condition 2**, any beach maintenance activities within 15 feet of eelgrass requires monitoring, and mitigation if impacts to eelgrass are determined to have occurred.

### **Small Dredging Projects Less than 2,500 cubic yards**

Through its 2015 approval of dredging activities subject to the RGP 54, the Commission required the City to submit for the Executive Director's review and written approval, pre-construction notification for all projects. Through the subject application for a CDP/CC, the City is requesting that this requirement be waived for dredging up to 2,500 cubic yards of material with temporary or no potential impacts to eelgrass, in areas where contaminants have not been identified. In an effort to streamline the regulatory process for routine small dredging projects, **Special Condition 1** requires the City to submit pre-authorization packages for all dredging, disposal, and beach maintenance activities no more than one time per month. In addition, any pre-authorization package resulting in dredging that exceeds 2,500 cubic yards, as well as small dredging activities in areas known to contain contaminants, continues to require 60-day review and written approval by the Executive Director.

### **Dredging Deeper to Remove Contaminated Sediment and Achieve a Clean Z-Layer**

Dredging, disposal, and long-term management of contaminated sediments in Orange County are overseen by the Southern California Dredged Materials Management Team (SC DMMT)<sup>3</sup>. Based on sampling conducted in 2017 and 2018 and through consultation with the SC DMMT, certain areas of the harbor are flagged due to known or likely exceedances of mercury, PCBs, or DDT, and require additional confirmatory sampling of both the dredge cut (the sediment removed from a specific area) and the Z-layer prior to beach replenishment or open-water disposal. For areas flagged for exceedances of either mercury or PCBs, dredged material is proposed to be disposed at either an upland location or at a Commission-approved CAD facility. These areas are shown in the sediment suitability map

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<sup>3</sup> The SC-DMMT is an interagency team that includes representatives from the United States Army Corps of Engineers (USACE), United States Environmental Protection Agency (USEPA), the National Marine Fisheries Services (NMFS), the Regional Water Quality Control Board (RWQCB), the California Department of Fish and Wildlife (CDFW), and Coastal Commission staff. This group is responsible for reviewing sampling plans, analyzing results, and making sediment suitability determinations for dredging projects in Southern California.

in light blue, green, or red ([Exhibit 2](#)). The proposal to dredge beyond the -10 MLLW design depth to achieve a clean Z-layer does not apply to these areas.

The focus of the proposal to dredge more deeply to achieve a clean Z-layer is on areas shown in the sediment suitability map in orange, which represents sediment flagged for DDT contamination. Although this sediment to a depth of -12 feet MLLW has been tested and approved by the EPA for disposal at LA-3, the Regional Water Quality Control Board (RWQCB) requires that Z-layer concentrations of DDT not exceed 18 parts per billion (ppb) to be in compliance with the RWQCB Total Maximum Daily Load (TMDL) for Newport Bay. In other words, the sediment exposed at the completion of dredging must not exceed the TMDL. Currently, if an individual applicant cannot meet that threshold within the authorized design depth of approximately -12 feet (-10 feet mean lower low water [MLLW] plus 2 feet overdredge), they would not qualify for dredging pursuant to the RGP 54.

The City is proposing to modify the RGP 54 to allow for dredging deeper than the authorized design depth solely for the purpose of removing enough material to achieve a Z-layer with DDT concentrations that are below the TMDL threshold for DDT of 18 ppb. In these instances, the applicant would be required to collect sampling at deeper 6-inch intervals which would be collected separately and tested to find the depth at which the Z-layer meets the threshold of total DDT less than 18 ppb. If approved by EPA based on the results of that testing, the material would then be transported offshore for disposal at the LA-3 dredge material disposal site. Although the City has indicated that it believes the deepest levels where a “clean” Z-layer will be located is approximately -24 feet MLLW, it does not propose a depth limit on this dredging because clean Z-layer depths vary depending on the location.

According to the City’s Eelgrass Plan, existing eelgrass grows between +1 foot and -15 feet MLLW around the docks of Linda Isle, Newport Harbor Island, Bayside Village Marina and Dover Shores (where sediment is flagged for DDT). In order to allow property owners and their contractors to dredge deeper than the authorized design depth of approximately -12 feet while maintaining the lower limit of substrate depth necessary for eelgrass growth, **Special Condition 1** limits dredging in the area depicted in orange [on Exhibit 2](#) to -15 feet under this permit authorization. Applicants seeking to dredge deeper than this limit must apply for a separate coastal development permit to address engineering constraints of surrounding development (i.e. bulkheads, pier pilings, etc.), and potentially mitigate separately for eelgrass impacts depending on the configuration of the site.

As stated, the applicant based some of the parameters of the RGP 54 on consultation with the Southern California Dredged Material Management Team, including representatives from the USACE, California Department of Fish and Wildlife, Regional Water Quality Control Board, National Marine Fisheries Service, Port of Long Beach, Coastal Commission staff, and project consultants. The Eelgrass Protection and Mitigation Plan was designed with input from the National Marine Fisheries Service, Coastal Commission staff, and project consultants. The applicant has received a Section 401 Water Quality Certification from the Regional Water Quality Control Board on December 18, 2020. The Department of the Army Regional General Permit 54 was issued with contingent authorization on December 21, 2020. In order to ensure that the applicant complies with the requirements of such permits

over the six-year authorization of the program, **Special Condition 7** requires the applicant to comply with the requirements of the resource agencies.

## **B. Standard of Review**

The City of Newport Beach LCP was effectively certified on January 13, 2017. Development within the harbor is located within the Commission's permitting jurisdiction because it includes tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time and consequently, the standard of review is Chapter 3 of the Coastal Act. Newport Beach's certified LCP serves as guidance.

## **C. Biological Resources and Water Quality**

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states:

(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 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.

(4) 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.

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

(6) Restoration purposes.

(7) 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 longshore current systems.

The Newport Beach LCP contains multiple policies implementing the referenced Coastal Act sections, including LUP Policies 4.1.4, 4.2.3, 4.2.4 and 4.2.5.

Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained to maintain optimum populations of marine organisms and protect human health. Section 30230 of the Coastal Act requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Newport Bay contains habitat for a diverse variety of wildlife. Upper Newport Bay is characterized by mudflat, salt marsh, freshwater marsh, riparian, and upland habitats. Most of this area is primarily a salt marsh system with freshwater influence. The lower one-third of Upper Newport Bay has undergone dredging and filling for housing development, marinas, a boat launch, and recreational swimming. The Newport Bay watershed is bounded by the Newport Mesa bluffs to the west and the San Joaquin Terrace to the east, which drain toward the Pacific Ocean via Upper Newport Bay. The watershed is a major contributor of suspended sediments, nutrients, and other pollutants into the Bay ecosystem.

In addition, several sensitive and endangered bird species nest, breed, and forage in these habitat areas. Upper Newport Bay is especially rich with sensitive habitat and wildlife. For instance, California least tern, Belding savannah sparrow, and light-footed clapper rail nest

and breed in the Upper Newport Bay and forage in the upper and lower bay. Newport Harbor also supports a significant population of eelgrass (*Zostera* spp.) that currently covers about 112 acres of bay bottom, much of it in the shallow waters around piers (74.44 acres of shallow water eelgrass habitat (SWEH) and 37.94 acres of deep water eelgrass habitat (DWEH)). Submerged aquatic vegetation such as eelgrass provides many important ecosystem services such as providing habitat for fish egg laying, juvenile fish rearing, and waterfowl foraging grounds. Eelgrass has suffered widespread losses and degradation due to human activities, and its conservation is of worldwide concern.

The National Marine Fisheries Service (NMFS) identifies eelgrass beds as Essential Fish Habitat and supports a policy of no net loss of this habitat. To that end, NMFS developed the California Eelgrass Mitigation Policy and Implementing Guidelines (dated October 2014) that covers the whole state of California. This mitigation policy includes detailed mapping and monitoring of eelgrass at reference sites, at sites of potential impacts from development, and at mitigation sites where eelgrass is restored by seeding or planting. These restoration and monitoring procedures often require trained professionals, are technically difficult, and can be expensive.

### **Eelgrass Impacts and Proposed Mitigation Plan**

Eelgrass tends to grow along the edges of piers and docks in Newport Harbor. Due to the negative effects of shading, eelgrass usually does not occupy the area directly under the pier and dock and is often sparse or absent within the actual boat slip if the vessel is generally present. As a result, maintenance dredging around a pier or dock removes a relatively small area of eelgrass and the eelgrass tends to recolonize the area relatively rapidly. However, mitigating those small losses requires costly procedures similar to those required for large impacts and dock owners tend to avoid dredging even when it is needed. As a part of Coastal Development Permit 5-14-0200, the City developed an Eelgrass Protection and Mitigation Plan entitled *Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Based Management Program* (City of Newport Beach; October 14, 2015) that allowed it to assume the responsibility for monitoring and maintaining eelgrass within the harbor to simplify the mitigation requirements of individual dock owners. Based on the success of the mitigation plan, the City is proposing to implement the same plan for the next six years.

Eelgrass currently covers about 112 acres of bay bottom, of which most is located in the shallow waters around piers (74.44 acres of shallow water eelgrass habitat (SWEH) and 37.94 acres of deepwater eelgrass habitat (DWEH)). Based on eelgrass studies undertaken since 2003, the plan area is divided into a “stable zone” where eelgrass is relatively abundant and does not fluctuate much from year to year, and a “transitional zone” where eelgrass tends to be sparse, patchy, and temporally variable. Within each zone, three abundance “tiers” have been defined. Larger impacts (up to 5% of eelgrass in the zone) are allowed annually when eelgrass is abundant (Tier 1).



The critical assumption underlying the plan is that dredging impacts to shallow water ( $\leq$  12 ft) eelgrass within the defined Plan area are “temporary and minimal.” The amount of permissible impact is related to the size of the eelgrass population, with greater impact allowed when eelgrass is abundant, and less impact allowed when the eelgrass population is more sparse.

When eelgrass is in Tier 1, the dock owner has no mitigation responsibilities but the City institutes offsite eelgrass seeding and planting activities proportional to the amount of routine maintenance dredging undertaken by the dock owners and pursues an educational program to increase the understanding of the ecological importance of eelgrass and encourage practices that contribute to eelgrass health. Under Tier 2, in addition to the activities of Tier 1, dock owners who have dredged must deploy seed bags or plant eelgrass within the dredged footprint to reduce the temporal loss. The Plan is only operational when eelgrass is relatively abundant. When eelgrass abundance falls below Tier 3 levels, mitigation as required by the California Eelgrass Mitigation Policy is the responsibility of the dock owner. The heart of the plan is mapping and estimating the density of eelgrass every two years in the shallow waters where piers are found and every four years throughout the harbor.

Since the City adopted and implemented the Commission-approved plan in 2015, three biennial eelgrass surveys and reports (2016, 2018, and 2020) have been completed that mapped and estimated the density of eelgrass in both shallow and deep waters throughout the harbor. The shallow water eelgrass habitat (SWEH) mapped from 0.5 to -15' mean low low water (MLLW) has steadily increased according to the last four survey reports that document the following acreages: 42.35 (2014), 53 (2016), 58.18 (2018), and 74.44 (2020).

In 2016, 37.04 acres of eelgrass was mapped in the stable zone and 15.88 acres in the transition zone. In 2018, 29.95 acres of eelgrass was mapped in the stable zone and 28.10 acres of eelgrass was mapped in the transition zone. In 2020, 32.27 acres of eelgrass was mapped in the stable zone and 42.02 acres was mapped in the transition zone. In all three years, eelgrass acreages in both the stable zone and the transition zone clearly exceeded the amount required for Tier 1 (stable zone - greater than or equal to 17.2 acres; transition zone - greater than or equal to 4.5 ac) where up to 5% of eelgrass in the stable and transition zones can be dredged in a year. The Eelgrass Plan, biennial eelgrass surveys, and materials for this application have been thoroughly reviewed by the Commission's Senior Ecologist, Dr. Jonna Engel, who recommends the Commission renew the SWEH eelgrass plan as submitted. Her memo is attached as [Exhibit 4](#).

**Special Condition 5** requires the City to submit a final report for the next six years of the Regional General Permit 54 program and Eelgrass Protection and Mitigation Plan, which shall continue to assess the net effect of dredging and restoration activities on the presence of eelgrass within the Plan Area in the context of natural trends. If, relative to the reference sites, there is a decline in eelgrass in the impacted areas of Newport Bay at the end of the six years, the City, the California Coastal Commission, California Department of Fish and



Wildlife, and the National Marine Fisheries Service will evaluate the success of the mitigation efforts by the City and by dock owners throughout the bay. If, through these discussions, the Executive Director determines that there is a shortfall in the necessary mitigation to offset temporal or permanent losses of eelgrass, an Eelgrass Mitigation and Monitoring Plan shall be prepared by the City to provide the necessary additional eelgrass mitigation. In order to make sure enough data is collected to evaluate the effects of the Plan, **Special Condition 1 and Special Condition 2** require the applicant to collect detailed data and prepare annual reports detailing the eelgrass impacts due to dredging and the relative success of revegetation efforts by the City and by private dock owners. In order to ensure the eelgrass mitigation plan continues to be successful, **Special Condition 2** requires the City to continue to conduct biennial surveys of eelgrass within the Plan Area and periodic comprehensive eelgrass surveys throughout Newport Harbor, including deep areas. As conditioned, the City will be required to conduct a minimum of three such surveys during the course of the six-year authorized maintenance dredging program.

### **Dredging, Disposal, Contaminants and Water Quality**

As stated, Lower Newport Bay is highly developed, and the rich history of agricultural and industrial activities in the watershed has resulted in a legacy of sediment contamination in Newport Bay. The contamination is a result of historical industry and storm drains adjacent to the bay, as well as ongoing runoff from the surrounding watershed. One of the potential adverse effects from dredging, ocean disposal, and beach replenishment activities in this location is the re-suspension and relocation of contaminants. Dredge material can contain contaminants of concern including metals, pesticides, and PCBs. These contaminants usually are bound to finer grain material such as clay and silt. Pursuant to the requirements of the Army Corps of Engineers and under the direction of the U.S. Environmental Protection Agency (EPA), the applicant conducted physical, chemical, and biological tests on the sediments within the proposed dredging areas of Newport Bay. In some cases, the sediment chemistry may fall into a range where it may or may not be suitable for ocean disposal or beach replenishment purposes. In those situations, federal dredging testing protocols require the applicant to conduct bioassay and bioaccumulation tests.

In September and October 2017, sediment core sampling was conducted at 54 stations within 5 areas and samples were subjected to a comprehensive suite of physical, chemical and biological (toxicity and bioaccumulation) tests as reported in the Sediment Management Plan, Newport Beach California (November 24, 2020). The sampling was limited to sediments above -12 feet MLLW (the harbor's design depth of -10 feet MLLW plus an additional depth of two feet). The report provides information to determine the suitability of dredged material from these specific areas of Newport Bay for aquatic disposal at the federally-approved ocean disposal site LA-3 or for beach replenishment within Newport Bay. The results are addressed in the Sediment Management Plan prepared for the City of Newport Beach by Anchor QEA on November 24, 2020.

Individual core samples to a depth of -12 feet MLLW were analyzed for mercury and PCBs, as requested by USEPA. Based on results of chemical and biological analyses

and negotiations with the SC DMMT, the RGP 54 boundaries for the sediment suitability renewal are presented in [Exhibit 2](#). Much of the material was determined to be suitable for unconfined aquatic disposal; however, certain areas of the harbor require additional confirmatory sampling for both the dredge cut and/or predicted Z-layer prior to beneficial reuse (beach nourishment) or open-water disposal. If confirmatory testing exceeds allowable thresholds, sediments will require alternative disposal and would not qualify under RGP 54. Promontory Bay, Balboa Yacht Basin, and Rhine Channel were not tested as part of this investigation due to historical contamination and are excluded from RGP 54.

As illustrated in [Exhibit 2](#), areas identified in yellow on the map are not authorized under RGP 54. For all other areas, grain size analysis is required prior to discharge of sediment to verify compatibility with beach or open ocean disposal. The areas delineated in dark blue do not require additional confirmatory sampling to a depth of -12 feet MLLW and are suitable for unrestricted disposal at LA-3 or for beach nourishment.

The areas delineated in green, light blue, and red are flagged for exceedances of either mercury and/or PCBs and dredged material in these locations would either be disposed of at an upland location, or at a Commission-approved confined aquatic disposal facility (CAD) which does not include open ocean disposal. In these locations, if confirmatory sampling results, including Z-layer sampling, exceed the thresholds for exceedances of either mercury or PCBs, then individual applicants cannot apply under the City's RGP 54. The City is not proposing to dredge deeper than authorized design depth in order to achieve a clean Z-layer for these areas.

Areas flagged for DDT contamination, which are depicted in orange on [Exhibit 2](#), are authorized by the EPA down to -12 feet MLLW for open ocean disposal at LA-3, as those areas have been tested to a depth of -12 feet MLLW and determined to be suitable for open ocean disposal based on a full Tier III evaluation.<sup>4</sup> However, the RWQCB requires that the "Z-layer" exposed after the completion of dredging not exceed the 18 ppb threshold for DDT established by the RWQCB's Total Maximum Daily Load (TMDL) for Newport Bay. For these areas, the City is seeking authorization to dredge deeper than the authorized design depth of approximately -12 feet MLLW (-10 feet mean lower low water (MLLW) plus two feet overdredge) solely for the purpose of removing enough material to achieve a Z-layer with DDT concentrations that are below the TMDL threshold of 18 ppb. The EPA has not yet authorized sediment deeper than -12 feet MLLW for open ocean disposal because it has not undergone full Tier III testing and the type and concentration of contaminants within it is unknown. Therefore,

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<sup>4</sup> Tier III testing is the full suite of physical, chemical, and biological tests (7 bioassays in total) that assesses the impact of contaminants in the dredged material on appropriate sensitive organisms to determine if there is potential for the dredged material to have an unacceptable impact. The Tier III assessment methods are bioassays and bioaccumulation tests.

sediment below -12 feet MLLW needs additional testing and has to be approved for LA-3 by the EPA on a case-by-case basis based on the results of that testing.

In these areas, the applicant would be required to collect samples every six inches beyond the design depth of -12 feet MLLW to demonstrate whether a Z-layer can be found that meets the RWQCB's TMDL DDT threshold of 18ppb as shown in [Exhibit 2, p. 7 of 13](#). Sediment from the 6-inch interval cores would be separately collected and tested to find the new Z-layer that meets the threshold. As proposed by the City, a vertical composite core sample from -12 feet MLLW to the new qualifying Z-layer would be created and submitted for full confirmatory chemistry testing to demonstrate the suitability of the material for open ocean disposal based on a Tier I evaluation,<sup>5</sup> as authorized by the EPA. The core sample would then be submitted for confirmatory sample chemistry analysis, and if determined by the EPA to be within the range that is suitable for open ocean disposal, then the EPA approval would be submitted to the CCC as part of the RGP 54 application submitted to the agencies. This aspect of the project is memorialized in **Special Condition 1**.

As stated, dredging depths are predetermined by the USACE which is the depth allowed for safe navigation of boats in that harbor. Dredging deeper than the authorized design depth could potentially undermine the structural integrity of surrounding structures, i.e. seawalls and bulkheads, piers and pilings, or adjacent infrastructure. In Newport Harbor, where eelgrass is present, dredging deeper than the depth at which eelgrass can grow could negatively impact eelgrass habitat.

According to the City's Eelgrass Plan, eelgrass is present around the docks of Linda Isle, Newport Harbor Island, Bayside Village Marina and Dover Shores (in the same location where sediment is flagged for DDT, where the City proposes to dredge deeper than -12 feet). In this location, eelgrass grows between +1 foot and -15 feet MLLW. In locations where the bottom is heavily shaded by docks and moored vessels, eelgrass does not grow due to inadequate light levels. Therefore, if the bottom of the harbor where eelgrass is present is dredged beyond -15 feet MLLW beyond the maximum depth where eelgrass is currently growing because sunlight is unable to penetrate deep enough for eelgrass to grow, then eelgrass may be negatively impacted.

Therefore, in order to allow the City to dredge deeper than the authorized design depth of approximately -12 feet while maintaining the lower limit of substrate depth necessary for eelgrass growth, **Special Conditions 1** and **5** limit dredging in the area depicted in orange on [Exhibit 2](#) to -15 feet MLLW with this permit. Applicants seeking to dredge deeper than this limit must apply for a separate coastal development permit to address potential eelgrass impacts or any engineering constraints of surrounding development

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<sup>5</sup> Tier I is when the EPA uses existing information to make a determination on suitability for ocean disposal without full Tier III testing. Tier I with confirmatory chemistry is where the EPA asks for chemistry results as a first step to determine whether the material is suitable for open ocean disposal or if bioassays are needed.

that could be potentially undermined by deeper dredging (i.e. bulkheads, pier pilings, etc.), depending on the configuration of the site.

### **Open Ocean Disposal of DDT at LA-3**

As stated, the City proposes to deposit sediment flagged for DDT contamination, shown in orange on Exhibit 2, in the open ocean disposal area known as LA-3. These areas represent sediment previously determined suitable for open ocean disposal by the EPA and SC DMMT based on the EPA's full Tier III evaluation of sediment in these areas to -12 feet MLLW. However, dredging of these areas to a depth of -12 feet MLLW is expected to expose sediments at the base of the dredge prism (this newly exposed sediment surface is referred to as the "Z layer") that would have a DDT concentration of greater than 18 parts per billion (ppb). The Regional Water Quality Control Board (RWQCB) requires that Z-layer concentrations of DDT remain below 18 ppb to be in compliance with the RWQCB's Total Maximum Daily Load (TMDL) for Newport Bay. Consequently, the City proposes to dredge areas within the harbor that are flagged for DDT contamination to a depth below -12 feet MLLW in order to expose a "clean" Z-layer with a DDT concentration of less than 18 ppb. The City also proposes to dispose of that dredged sediment at LA-3 - if first approved by the EPA on a case-by-case basis as required in **Special Condition 1**. Additionally, the total dredged depth would be required not to exceed a depth of -15 feet MLLW to avoid eelgrass impacts as established through **Special Condition 1 and 5**

DDT was developed as the first of the modern synthetic insecticides used in agriculture in the 1940s. Although the United States banned the use of DDT in 1972, high levels of DDT remain in sediment and water and threaten the marine environment. DDT enters the food chain through worms and other invertebrates and microorganisms, which are consumed by other marine life. DDT and PCBs accumulate in fish tissue which can harm fish-eating birds, marine mammals, and birds of prey that feed on both. For people, eating DDT-contaminated fish can increase cancer risks, harm the liver, and affect the central nervous system. Nursing infants whose mothers regularly consume polluted fish are also at high risk. Historically, the waters of the Southern California Bight (the larger region that includes the LA-3 disposal site) have been used extensively by both sport and commercial fishers. Sport anglers fish from boats and beaches in the area. The waters are also used for swimming, windsurfing, surfing, scuba diving, snorkeling and shellfishing.

Since 1985, fish consumption advisories and health warnings have been posted in southern California because of elevated DDT levels. Bottom-feeding fish are particularly at risk for high contamination levels. In June 2009, the state Office of Environmental Health Hazard Assessment issued a new health advisory and safe eating guidelines for fish from coastal areas of Southern California. The advisory warns anglers against eating certain species of fish from specific locations between Ventura Harbor to San Mateo Point. The guidance advises against consumption of white croaker (also known as kingfish or tomcod), barred sand bass, and topsmelt caught from the coastal area between Santa Monica Pier and Seal Beach Pier, an area inshore of the LA-3 site.

Additionally, consumption of other fish from this area, including kelp bass, sardines and sculpin, should be limited.

Coastal Act Section 30231 requires that the biological productivity and quality of coastal waters be maintained to ensure optimum populations of marine organisms and protect human health. Coastal Act Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. DDT can potentially reduce the productivity and quality of coastal waters and harm marine organisms, their populations and ultimately human health through fish consumption. Allowing dredge spoils contaminated with elevated concentrations of DDT to be disposed of in the open ocean – particularly in a location where there is already known to be an unmitigated exceedance of such contaminants - could be inconsistent with Sections 30231 and 30230 of the Coastal Act without additional testing and oversight.

In order to more thoroughly evaluate the current contaminant levels of the sediments of LA-3, and to help Commission staff better understand the potential cumulative impacts that may occur as a result of the additional disposal of DDT contaminated material in this location, Commission staff consulted EPA staff for more information on historic and ongoing disposal activities at LA-3. As stated, the EPA manages and oversees all monitoring and approvals at the LA-3 open ocean disposal site. Its establishment was authorized by the Commission in 2005 through Consistency Determination No. CD-065-05. Instead of utilizing a numeric threshold for DDT to determine suitability for open ocean disposal, the EPA utilizes Tier III testing, which is a full suite of physical, chemical, and biological tests on marine organisms that measure the concentration or potency of a substance by its effect on living cells or tissues as required by the EPA's Ocean Testing Manual.

In response, EPA staff provided Commission staff with testing and monitoring data collected at LA-3 most recently in 2015, which demonstrates that sediments collected at LA-3 are generally cleaner than surrounding areas as shown in [Exhibit 6](#). Additionally, in order for the EPA to approve the City's proposed open ocean disposal of sediment below –12 feet MLLW in the orange hashed areas of Newport Bay at LA-3, the EPA is requiring full confirmatory chemistry testing. As enumerated in **Special Condition 1**, a "Tier I" request as defined by the EPA Ocean Testing Manual must be submitted to USEPA Region 9 with the chemistry results for any material in this area below –12 feet MLLW. Sediments in the hashed orange area below –12 feet MLLW are not subject to this reauthorization of the RGP 54 unless USEPA determines that the material is suitable for ocean disposal based on its evaluation of the test results. This evaluation would consider levels of DDT contamination in the materials proposed to be placed at LA-3 in comparison to previously placed materials and existing levels of DDT at the site to help ensure that adverse impacts to the marine environment do not occur. Further, the SC DMMT will be evaluating the City's proposed dredging and disposal of sediments below the –12 feet MLLW level and have an opportunity to request additional testing and other protective measures if deemed appropriate.



Commission staff is therefore recommending approval of this aspect of the project as conditioned by Special Condition 1 which requires the applicant to comply with the EPA protocol enumerated in **Special Condition 1**. If sediment does not pass confirmatory chemistry sampling as required by the EPA, then Special Condition 1 requires such sediment to be disposed of at an inland facility, which will require a separate CDP.

## **Inland Disposal**

Dredged sediment that does not qualify for beach nourishment or open ocean disposal may be disposed of inland at a landfill facility or at a Commission-certified Confined Aquatic Disposal Facility (CAD). According to the applicant, upland landfill disposal requires that the sediment be dewatered prior to transport. Dewatering is accomplished by utilizing mechanical dewatering devices such as centrifuges or presses, or passively by setting up a large containment area to hold the sediment until the water evaporates or drains. Both processes require a significant landside staging area adjacent to the harbor. Next, the sediment must be trucked or shipped via railcar to a landfill approved to accept contaminated sediment.

In the 2015 RGP 54 (Coastal Development Permit 5-14-0200) the Commission approved material to be disposed of at an inland facility subject to the review and approval of the Executive Director. If the disposal site was located in the coastal zone, a separate coastal development permit application was required for the disposal of the material.

Regardless of whether the landfill is located in the coastal zone, contaminated dredge spoils must be dewatered prior to transportation. Storing dredge spoils in a location adjacent to the harbor where such dewatering processes can occur is development in the coastal zone that would require a coastal development permit. There is potential for adverse water quality impacts related to the dewatering process and potential adverse impacts to coastal resources that would require a separate coastal development permit. As such, **Special Condition 5** requires a separate coastal development permit for all inland disposal of dredged sediment because temporary storage and dewatering adjacent to the harbor has the potential to adversely impact coastal resources, even if the dredging within the navigational harbor is exempt from CDP requirements under the Coastal Act or would otherwise be authorized by this permit.

## **Beach Nourishment**

The applicant is proposing to use dredged sediment for beach replenishment purposes where it has the appropriate sand content. The composition of beach replenishment material can affect the environment. Dredged and deposited sediments can be composed of sand as well as fine-grained material such as silt and clay. Replenishment efforts can introduce a grain size that is not already part of the receiver beach environment. Another concern is turbidity associated with fine grain sediments. Finally,



contaminants such as those found in Newport Bay are generally associated with sediments that are higher in silt or clay content and not associated with sand-sized material. Generally, this occurs because silt and clay particles have larger surface areas to which contaminants may attach.

In this case the applicant is proposing to use any sediment dredged from the approved dredging areas that is comprised of 75% or more sand for beach replenishment. Where the dredged sediment has a sand content between 75% and 80%, the applicant only proposes to use such material for replenishment if the sand content of the dredged sediment and receiver beach are within 10% of one another.

However, the suitability of these sediments for beach replenishment requires further analysis since the estuarine conditions differ from those at the ocean disposal sites. Based on the proposed beach replenishment requirements (more than 80% sand or more than 75% sand if the receiving beach is between 65% and 85% sand), dredged sediments used for beach replenishment will be similar in physical, chemical and biological properties to the beach sands and shallow subtidal sediments they will be supplementing. Dredged sediments with more than 75% sand (and subject to this permit) will only be found in areas of relatively high energy from tidal currents or small wind waves. Consequently, dredged sediments that may be placed on the beach will only be found directly adjacent to the beaches and will only have an incrementally higher percentage of silts and clays than the beaches.

Where core samples in potential dredging areas with moderately high sand content were subjected to toxicity and bioaccumulation testing, they showed no toxicity or significant bioaccumulation. The cores with much lower sand content (10 to 40%) resulted in toxicity levels that were not significantly different than that found at reference sites. Consequently, dredged sediments with more than 75% sand content are very unlikely to have adverse effects on estuarine aquatic organisms or to have an impact measurably different than the existing beach sands. In addition, the low levels of contaminants found in the sediment samples were well below human health screening levels published by the USEPA (USEPA Region IX Preliminary Remediation Goals, 2004).

Also, it should be noted that the sediment tests are very sensitive. The effects of exposure are measured by using organisms that live in and ingest the sediment. These tests have shown that mortality of these organisms exposed to sediments from the dredge sites is not statistically significantly different than the mortality of organisms exposed to a reference site. As is noted above, the EPA and the Army Corps of Engineers have found that the sediment to be dredged from the lower Newport Bay is suitable for ocean disposal. Given that the sediments are suitable for ocean disposal and understanding the sensitivity of the tests which determined that ocean disposal is acceptable, the use of the same sediments for beach replenishment will also not have significant adverse effects upon biological resources on the beach. **Special Condition 5** requires sediment testing and approval of the Executive Director prior to disposal of dredged material greater than 2,500 cubic yards on beaches. The Commission finds the

proposed project, as conditioned, consistent with Section 30231 of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not affect water quality resources of the coastal zone, and therefore, the project is consistent with the Water Quality policy of the CCMP.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind could result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition 4** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

### **Dredging, Disposal, and Consistency with Coastal Act Section 30233**

The proposed dredging, offshore disposal, and beach replenishment project includes the dredging of sediment from bay waters and either offshore aquatic disposal or 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.

In this case, the proposed dredging and offshore disposal would occur in order to maintain existing and/or restore previously dredged depths in existing navigational channels, turning basins, and vessel berthing and mooring areas consistent with the uses outlined in Section 30233(a)(2). Meanwhile, fill would result from the restoration of beaches where erosion has narrowed the prior width of the beach. The proposed development includes the dredging and either offshore disposal or beach replenishment of up to 75,000 cubic yards of sediment per year. The volume of dredged material that is proposed for ocean disposal would not exceed 8,000 cubic yards for a completed individual dredging project. In addition, no more than 8,000 cubic yards of material is proposed to be disposed on the beach at one time in any single location. This proposed dredging and fill is allowable pursuant to Sections 30233(a)(2), 30233(a)(5) and 30233(b) of the Coastal Act.

Section 30233 of the Coastal Act also requires that the proposed dredging and fill of coastal waters 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 proposed dredging would only occur in previously dredged areas to restore previously dredged depths except in areas where they would be dredging deeper to remove DDT contaminated sediments. There are no feasible alternatives to the proposed dredging which would restore the berthing areas at the subject sites and be less environmentally damaging. The proposed dredging would be capped at 8,000 cubic yards per dredging event. The applicant is proposing measures to minimize impacts from the dredging including and avoiding any development in the areas of Upper Newport Bay (i.e. within the Upper Newport Bay Ecological Reserve) that could potentially disturb the breeding activities of sensitive bird species. Therefore, the proposed dredging is the least environmentally damaging feasible alternative.

The City considered at least three options for disposal of beach suitable material. The first option is 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 replenished with needed beach-quality sand and would continue to erode.

The second option is 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, increasing erosion. 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 replenishment purposes. This option would avoid any adverse impacts upon shoreline sand supply by re-contributing beach suitable material toward beach replenishment projects. Under this alternative, the applicants are proposing several mitigation measures to mitigate any adverse effects the project may have upon water quality and sensitive marine resources. These measures include avoiding any disposal activities within 15 feet of any eelgrass bed (**Special Condition 2**). Accordingly, disposal impacts to eelgrass will be avoided. The applicant is also proposing to conduct testing of any sediment planned for beach replenishment to ensure compatibility of that sediment for beach replenishment purposes, subject to **Special Condition 5**. These measures will avoid impacts to sand supply and sensitive habitat resources. Additionally, the applicant has limited beach replenishment to 8,000 cubic yards per project, with a maximum total of 75,000 cubic yards of beach replenishment or offshore disposal per year. By limiting the scope of the project, the applicant's proposal will avoid significant impacts on marine or estuarine waters.

Consistent with Coastal Act Section 30233, actual mitigation for dredging impacts is required. The applicant asserts that all eelgrass impacts will be temporary, but if the dredging program causes impacts which are severe or permanent, additional mitigation will be required. Following the biennial eelgrass surveys, **Special Condition 2**

authorizes the Executive Director to require the applicant to apply for an amendment to this coastal development permit and a new federal consistency certification if the Executive Director determines that the development authorized by this CDP/CC is causing adverse impacts to habitat which are not being mitigated. **Special Condition 2** requires the City to submit a final report for the six-year period of the authorized dredging program and Eelgrass Protection and Mitigation Plan, which shall assess the net effect of dredging and restoration activities on the presence of eelgrass within the Plan Area in the context of natural trends. If, relative to the reference sites, there is a decline in eelgrass in the impacted areas of Newport Bay at the end of the six years, the City, the California Coastal Commission, and the National Marine Fisheries Service will evaluate the success of the mitigation efforts by the City and by dock owners throughout the bay. If, through these discussions, the Executive Director determines that there is a shortfall in the necessary mitigation to offset temporal or permanent losses of eelgrass, an Eelgrass Mitigation and Monitoring Plan shall be prepared by the City to provide the necessary additional eelgrass mitigation.

The Commission finds that the proposed dredging and fill associated with the proposal are associated with allowable uses and are the least environmentally-damaging feasible alternatives which includes feasible mitigation measures. Therefore, as conditioned to require biennial eelgrass surveys and reporting and to require additional mitigation if there is a shortfall in the necessary mitigation to offset temporal or permanent losses of eelgrass, the Commission finds the proposed development is consistent with Section 30233(a) of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

Section 30233(b) of the Coastal Act requires that suitable dredge materials be transported to appropriate beaches for such purposes:

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

The applicant is proposing to use all suitable dredged material for beach replenishment purposes. In order to ensure that the materials proposed for beach replenishment 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 replenishment materials, the Commission imposes **Special Condition 5**, which requires the applicant to perform testing consistent with approved testing methods. Special Condition 5 requires that grain size tests be conducted on at least one core taken from the dredging area and one core from the receiver beach (if beach disposal/replenishment will occur) 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 found that at least one core is necessary to adequately characterize the grain size of the sediments being used for beach replenishment. In addition, **Special Condition 5** requires the applicant to obtain and test the sediment grain size from at least one core from the receiver beach.

In order to ensure that only beach quality materials are used to replenish the beaches, **Special Condition 5** requires that material utilized for beach replenishment shall have a sand content that is either equal to or greater than 80% sand or be between 75% and 80% and within 10% of the sand content of the receiver beach. Normally, the Commission has required that beach replenishment materials contain equal to or greater than 80% sand. However, **Special Condition 5** also allows the placement of beach replenishment materials having less than an 80% sand content on a beach if the sand content of the replenishment material and receiver beach are within 10% of one another. A receiver beach core sample and grain size analysis is necessary to confirm that the replenishment material falls within these parameters. While allowing the use of this 10% deviation is not the Commission's standard practice, in this instance, the beach replenishment 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.

The applicant is proposing a six (6) year duration for the consistency certification and permit. It is expected that any pollutants that may be become deposited in the sediment during the proposed authorization period would be generated by non-point sources and such urban runoff. The concentration of pollutants would not be expected to significantly change over the course of the six-year authorization.

The proposed use of dredged material for beach replenishment 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 proposed and conditioned, the project will not have any adverse impacts on local sand supply. Therefore, the project is consistent with Section 30233(b) of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

### **Updated *Caulerpa* Survey Protocol**

*Caulerpa* comprises a group of highly invasive green algae that poses a substantial threat to marine ecosystems in California, particularly to areas with extensive eelgrass meadows and other benthic ecosystems that make coastal waters such a rich and productive environment. Infestations of two *Caulerpa* species, *C. taxifolia* and *C. prolifera*, have been detected in California. Both species can rapidly colonize new areas from small fragments and have the potential to cause substantial negative impacts on native ecosystems.



*Caulerpa taxifolia* had previously been detected in 2000, but was eradicated in two locations in Southern California. In March 2021, *Caulerpa prolifera* was discovered in Newport Bay. In response, the Southern California *Caulerpa* Action Team implemented eradication efforts shortly thereafter, and those efforts are ongoing. Other infestations of *Caulerpa* species may also exist but remain undetected.

In order to detect existing infestations as well as avoid the spread of these invasive species within other systems, new provisions have been established for California nearshore coastal and enclosed bays, estuaries, and harbors from Morro Bay to the U.S./Mexican border. **Special Condition 3** outlines the protocol for surveying and reporting guidelines that property owners, contractors, and the City of Newport Beach must follow for dredging projects associated with this permit. Because Newport Bay is defined as an infested system, two high-intensity surveys for *Caulerpa* must be conducted by a qualified diver and reported to the resource agencies prior to any dredging activities.

After *Caulerpa prolifera* was discovered in Newport Harbor in March 2021, the City submitted and the Executive Director reviewed several batches of dredging applications that were preauthorized under the 2015 RGP 54 (Coastal Development Permit 5-14-0200). However, consistent with the conditions of CDP 5-14-0200, the Executive Director declined to authorize dredging in an infested system while awaiting direction from the City, National Marine Fisheries Service (NMFS), and California Department of Fish and Wildlife regarding the harbor infestation. An eradication effort is underway and some *Caulerpa* has been removed from the harbor, but *Caulerpa* fragments have been observed drifting with the currents and the invasive species cannot be assumed to have been eradicated until multiple surveys of the entire harbor have been conducted and the invasive species has not been observed for a period of up to five years. To ensure that all dredging permits comply with the most current *Caulerpa* survey protocols moving forward, **Special Condition 3** requires all applicants to conduct a minimum of two *Caulerpa sp.* surveys during the period of active eelgrass growth and submit the final survey for the review and written approval of the Executive Director prior to dredging activities. Furthermore, all applications submitted since April 2021 under CDP 5-14-0200 must also submit two site-specific *Caulerpa* surveys consistent with **Special Condition 3**. Once the resource agencies determine that Newport Bay is no longer an infested system, **Special Condition 3** requires applicants to submit a minimum of one *Caulerpa* survey prior to dredging activities.

Therefore, only as conditioned is the proposed project consistent with Sections 30230, 30231 and 30233 of the Coastal Act.

## D. Public Access and Recreation

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 30220 of the Coastal Act states:

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

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.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The Newport Beach LCP contains multiple policies implementing the referenced Coastal Act sections, including, but not limited to LUP Policies 3.1.1-1, 3.1.1-27 and 3.2.1-1.

One of the basic goals of the Coastal Act and referenced in the certified Newport Beach LCP is to maximize public access and recreation to and along the coast. The proposed project conforms with the Coastal Act policies which protect and encourage public access and recreational use of coastal areas. The proposed project will temporarily 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 some beaches and will provide a larger area for recreational use. In addition, the proposed dredging components of the project will allow for continued use of coastal waters for recreational boating.

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. Not all street end and bulkhead beaches will be replenished at the same time and they are typically only 300 to 500 feet apart, so if one beach is temporarily closed, public access may be found nearby.

The proposed project will occur upon Tidelands which are held in trust for the people of the State of California. Administration of a portion 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. In general, the area granted consists of submerged and filled lands in the lower bay. Accordingly, the areas adjacent to Lido Isle, the Lido Peninsula, and Balboa Island are within the City's Tidelands grant. Certain uses of tidelands are specified within the tidelands grant. Among those uses are those for "recreational purposes." The proposed dredging and beach replenishment would maintain and improve recreational use of State Tidelands. Dredging and beach replenishment around recreational boating facilities are activities consistent with the City's Tidelands grant.

Some of the project area is located within State tidelands which were granted to the County of Orange (Statutes of 1919, chapter 526, page 1138). These areas are generally located around Harbor Isle, some portions of Linda Isle, and within the Upper Newport Bay. The tidelands grant to the County does not authorize the County to dredge or replenish beaches within the grant area without prior approval from the CSLC. Such approval has been granted through a tidelands lease from CSLC.

In addition, there are some submerged lands within the project area which are owned in fee title by private dock owner(s). These areas are located in some parts of the channel between Linda Isle and the mainland, the cove within Linda Isle, and the coves of the Dover Shores residential community. The private dock owners have given the City of Newport Beach permission to act on their behalf through the subject CDP/CC.

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210, 30213, 30220, 30221, and 30222 of the Coastal Act.

## **E. Coastal Hazards**

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction

of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in areas 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 replenishment is proposed. Beach nourishment can minimize risk to life and property by reducing the flooding risk during high tide events. The dredging within the harbor will not occur to an unsafe depth, will not destabilize existing seawalls and existing development, and limited by the conditions of approval. Therefore, the proposed project minimizes hazards. **Special Condition 7** requires the City to assume the risks of the development. With these measures, the proposed project will not adversely affect coastal resources, and therefore, the project is consistent with Coastal Act Section 30253.

## F. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Public beaches and State Tidelands within Newport Harbor are important coastal resources, including visual resources, which must be protected under the Coastal Act. Excessive disposal of sediment or disposal of contaminated sediment in these areas could negatively impact coastal resources, including by discouraging visitors to Newport Bay's beaches and waterways. Therefore, the Commission finds that, only as conditioned to (a) minimize dredging events to 8,000 cubic yards per event and (b) to require the permittee to test the dredged material for compatibility with any proposed disposal site, is the proposed project consistent with the visual resource protection policies of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified 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 approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City determined on November 7, 2019 that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 2 (Section 15302) Replacement and Reconstruction, and Class 4 (Section 15304), Minor Alterations to Land. The Commission finds that the project, as conditioned, is consistent with Coastal Act requirements and will not cause new adverse impacts to the environment. Feasible mitigation measures which will minimize all adverse environmental impacts have been required. Therefore, the Commission finds that the proposed project, as conditioned, complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A—SUBSTANTIVE FILE DOCUMENTS**

1. City of Newport Beach certified LCP
2. Coastal Development Permit Nos. 5-14-0200, 5-06-117, and 5-99-282 (Newport Beach Dredging and Dock Repair/Replacement Programs)
3. Federal Consistency Certification Nos. CC-078-99, CC-077-01, CC-0310-06 (City of Newport Beach Dredging and Dock Repair/Replacement Programs)
4. Federal Consistency Determination No. CD-065-05 (LA-3).
5. Sampling and Analysis Report, RGP 54 Sediment Characterization, prepared for the City of Newport Beach by Anchor QEA, dated June 2018.

