

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



F17a

SECOND ADDENDUM

DATE: October 12, 2022
TO: Coastal Commissioners and Interested Parties
FROM: South Coast District Staff
SUBJECT: **SECOND ADDENDUM TO ITEM F17A, CDP 5-21-0640 FOR THE COMMISSION MEETING ON FRIDAY, OCTOBER 14, 2022**

I. CHANGES TO STAFF REPORT

The Commission recommends changes to the staff report dated September 30, 2022 to add the following language to **Special Condition 3. CAD Maintenance and Monitoring** on page 10 of the staff report, which are shown in underline:

C. Interim Cap Bioturbation Monitoring: Every four months after the interim cap has been installed, the Permittee shall conduct visual bioturbation monitoring. If evidence of bioturbation is demonstrated during the 2-year period through visual assessment of the interim cap, the interim cap thickness shall be increased to 18 inches (1.5 feet) to provide adequate protection from resuspension and contaminant flux as a result of burrowing marine organisms.

D. Interim Cap Placement Plan. 60 days prior to interim cap placement, the Permittee shall submit an Interim Cap Placement Plan to the California Coastal Commission for review and approval. The Interim Cap Placement Plan shall include the following:

1. Sediment characterization data for material to be used for the interim cap layer to determine its suitability. The characterization data shall be representative of the volume of material being dredged for placement of the interim cap from each source location and must include chemistry (metals, including mercury, and organics, including at a minimum, total DDx, total PCBs, and current use pesticides such as pyrethroids), toxicity, total organic carbon, and grain size analysis.
2. Visual bioturbation monitoring, if placement of dredged material has not initiated within four months of the installation of the interim cap layer.

3. A map and GPS data for the source location(s) and the volume of material being sourced from each location.

4. Copies of the original chain-of-custody forms and analytical laboratory data sheets including QA data.

II. CORRESPONDENCE RECEIVED FROM THE PUBLIC

Since the publication of the staff report on September 30, 2022, the Commission staff has received hundreds of comments from members of the public mostly opposed, but some in favor of the project. Concerns raised by members of the public include: 1) the inadequacy of the City's alternatives analysis; 2) the inadequacy of the City's sediment sampling and analysis; 3) wrongfully characterizing the sediment as "harmless"; 4) potential negative impacts to water quality; 5) sufficiency of the 1-foot interim cap layer to contain contaminated material for two years; 6) the project is not compliant with CEQA; 7) Lower Newport Bay should be considered hazardous waste under state health and safety and fish and game codes; 8) the City lacks authority to construct the CAD because it will be located within state lands; 9) the City did not provide sufficient public notice or public engagement for the project; and 10) the potential for the "Z-layer", or the newly exposed bottom surface layer of sediment after dredge material is removed in contaminated areas to negatively impact water quality.

The City provided responses to substantive comments received, which are attached to this addendum. Commission staff concurs with the City's responses.



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949-644-3311
newportbeachca.gov/PublicWorks

October 10, 2022

Mandy Revell
California Coastal Commission
301 E. Ocean Blvd, STE 300
Long Beach, CA 90802

RE: City of Newport Beach's Response to Orange County Coastkeeper, Surfrider Foundation, and North Orange County Surfrider Foundation, re: Concerns Related to Lower Newport Bay Confined Aquatic Disposal Project, City of Newport Beach CDP App. No. 5-21-0640 (City of Newport Beach CAD Facility)

Dear Ms. Revell,

The City of Newport Beach ("City") is writing in response to correspondence dated October 6, 2022 regarding the City's proposed Confined Aquatic Disposal ("CAD") Project - Application #5-21-0640 Agenda F17a, to be considered at the October 14, 2022, California Coastal Commission hearing in San Diego. This response letter is presented based on key topics identified in the comment letter.

The City Wrongfully Characterizes the Sediment as Harmless

The letter from Orange County Coastkeeper and Surfrider Foundation indicates that the City wrongfully characterizes the sediment as harmless. The letter then cites exceedances of ERL and ERM values to justify their claim. The original intent of NOAA in developing ERL/ERMs was to create a ranking system for sediment site toxicity in order to compare one site to another. The unintended use of effects range values for individual pollutants as a measure of benthic impairment (toxicity and benthic alterations) in sediments is unsupported, as several studies have noted the lack of association between effects range values and chemically mediated impacts to the benthos in sediments. It is incorrectly assumed that ERL and ERM values are based on a cause-effect relationship, or one in which increasing concentrations of a measured chemical constituent cause increasing levels of a biological effect (e.g., an increase in toxicity). ERL and ERM values should be used as a sediment quality guideline to help evaluate if a contaminant is at a potential level of concern, but they are not a direct indication of toxicity, a threshold for ocean disposal, or a cleanup value. To determine if sediment is toxic or harmful to aquatic organisms, biological testing results should be used to provide a direct measurement of toxicity for the actual sediment that is being investigated, which are much more applicable than ERL and ERM values. For this project, benthic testing was performed with two species and elutriate testing was performed using three species. Based on results of biological testing of the actual material planned for removal, the sediments were not found to be toxic to aquatic organisms in that no adverse effects were observed in the tests.

The letter also cites bioaccumulation tissue concentrations above the reference as another reason why this material is not harmless. Although there were some tissue concentrations above the reference, this is not an indication of a toxic effect or impact to aquatic organisms. This letter fails to acknowledge that all tissue concentrations were below toxicity reference values (concentrations that have been shown to cause toxicity to marine invertebrates) that were approved by U.S. Environmental Protection Agency (“USEPA”). Tissue concentrations were also well below U.S. Food and Drug Administration Action or Tolerance Levels. These results further indicate that this material is not toxic. To say that there was some measured chemical accumulation is fair, but to state that this implies that it could result in a toxic response to the animal tested or one that might ingest it, is improper when the measured concentrations were all well below the regulatory thresholds. This was a statement that was made for effect, but not based on scientific data. The DMMT agencies all concurred with the City’s interpretation of the data.

The 1.0’ Interim Cap Does Not Account for Bioturbation

As described in the City’s Basis of Design Report (“BODR”; included as Appendix C to Draft Environmental Impact Report), and as previously responded, the results of the City’s chemical breakthrough modeling do not suggest that a cap greater than 1 foot in thickness is needed to prevent chemicals from migrating into the overlying water or to prevent propwash erosion. Chemical partitioning from sediment to pore water and then flux upward into a cap layer occurs over time and would not be expected to occur at any detectable level within the first 1-2 years following placement of the interim cap. As such, the purpose of the interim cap is solely for isolating the material from any potential prop wash or anchor scour during the period of time between the initial material placement and the subsequent placement of non-Federal material into the CAD. Any disturbances of the interim cap layer as a result of anchor penetration is not expected to be significant as material will quickly fill in any uneven surface depressions through natural sediment movement in the Bay. (Note: The existing anchorage will be closed while the interim cap layer is in place.) Consistent with Special Condition 3 of the staff report, this will be confirmed by conducting a bathymetric or side scan survey of the interim cap surface to look for any depressions greater than one foot in depth and then using a surface leveling technique such as beam dragging to restore surface smoothness until the final cap layer is installed.

As correctly noted in the City’s BODR, the interim cap does not account for bioturbation, but it does follow and is consistent with *Guidance for Subaqueous Capping of Dredged Material*¹ developed by U.S. Army Corps of Engineers (“USACE”) and referenced multiple times in the BODR. Section 7 of the guidance document includes a discussion on Considerations for Intermediate Caps (p. 78), as described below:

Some capping projects could be designed in the context of anticipated multiuse or multiuser applications. In such a case, one site (e.g., a subaqueous borrow pit) could be selected for placement of contaminated sediments from several projects. If several placements of contaminated sediments are to be placed with such frequency that the site could not effectively recolonize, there would be no pathway for bioaccumulation or benthic toxicity. Also, if the site is located in a sheltered area, or the energy from low-frequency events would not cause significant erosion, no placement of cap material or placement of a intermediate cap with a lesser thickness. That is, one that has a shorter

¹ Palermo, M.R., J.E. Clausner, M.P. Rollings, G.L. Williams, T.E. Myers, T.J. Fredette, and R. Randall, 1998a. *Guidance for Subaqueous Dredged Material Capping*. Technical Report DOER-1, U.S. Army Corps of Engineer Waterways Experiment Station, Vicksburg, Mississippi.

return period level of erosion protection or less capabilities for chemical or biological isolation than the full design cap could be considered. Determining an appropriate thickness for an intermediate cap would require an evaluation of the same processes as described above, but the design parameters (especially those for long-term flux, return periods for storms, etc.) should be selected to represent the time periods anticipated between dredged material and intermediate cap placement and final cap placement.

Interim caps are not intended to prevent bioturbation because they are only placed on the site for short period of time relative to the amount of time it takes to recolonize the surface of the cap with animals from adjacent areas. It should be noted that recruitment for the Newport CAD is expected to take longer than normal because all the areas around the CAD will also be dredged so the benthic infauna that were in close proximity of the CAD cell will have also been relocated.

In April 2020, the City provided a draft of the BODR to the USEPA for preliminary review. Through follow up review – and as presented in an USEPA Memorandum dated May 24, 2021 – USEPA noted the following:

EPA comments on the BODR were appropriately addressed and incorporated into the November 29, 2020 version included as Appendix C to the project’s Environmental Impact Report. The revised BODR provides a robust and appropriate technical analysis to support consideration of moving forward with permitting of the proposed CAD.

Based on the USEPA’s extensive experience overseeing design and implementation of CAD facilities on the West Coast (most recently at Port Hueneme in 2009), it was the City’s intent to request a focused review from the USEPA. The USEPA supported the City’s BODR for the Project noting that “the draft BODR and its appendices analyze issues associated with CAD in an appropriate manner, consistent with USEPA and USACE national technical design guidelines.”

More specifically, the letter from the USEPA was authored by Brian Ross, Dredging & Sediment Management Team USEPA, Region 9. Mr. Ross, now retired, was a member of the working group that contributed to the development of the *Guidance for Subaqueous Capping of Dredged Material*. The working group was comprised of individuals from Headquarters, field offices, and research laboratories of both agencies with scientific and/or programmatic experience related to dredged material disposal management. Mr. Ross is certainly qualified to review the BODR and confirm that the project complied with appropriate federal guidance documents.

Finally, Condition XIV(C) of the issued Water Quality Certification includes Interim Cap Bioturbation Monitoring: If placement of dredged material from outside the Federal Channel has not initiated within three (3) months of the installation of the interim cap layer, the Permittee shall conduct visual bioturbation monitoring. If recolonization of benthic communities occurs during the 3-month time period, the interim cap thickness shall be increased to 18 inches (1.5 feet) to provide adequate protection from resuspension and contaminant flux as a result of burrowing marine organisms.

The City Has Not Earnestly Analyzed Alternatives

The City Has Not Considered a Two-Step Process Involving Treatment First, then Disposal

As noted in the comment, the City did not consider a two-step process involving treatment first, then disposal in the CAD cell. The only value in treating the material before isolation in the CAD would be if the chemical flux analyses suggested that there was a potential for release of contaminants into the pore water and then upward into the overlying water column. That is not the case in Newport Bay with the material in question. The chemical flux models predict that the chemicals will remain tightly bound to the sediment particles and not diffuse into the water column. As such, treating the sediment before disposal would provide little or no scientific value to the project, but would add significant time and costs as sediment treatment is labor intensive and expensive. The value in treating material would be that you could hopefully reuse the material as “clean” after treatment.

The City Has Not Considered the Cost of Additional Permit Conditions in Comparing Alternatives

The City rejected the upland disposal alternative as described in the Certified EIR based on impacts that would result in significant and unavoidable impacts that would not result with the selected alternative. More specifically, while all impacts that would occur as part of the proposed Project would likely occur, several resource areas would likely have more impacts. Air and GHG emissions would increase because construction equipment uses and added emissions from truck trips would occur. Air emissions may also be located closer to sensitive receptors during upland construction elements and truck trips. Increased noise impacts may occur, and the staging area for dewatering and truck transfer may be located closer to residential and other sensitive receptors.

The project requires approval from multiple agencies, including USACE, the California Coastal Commission, and the Regional Water Quality Control Board (“RWQCB”). The only permit received to date is from the RWQCB. The City prepared – and has continued to update – project-related costs based on inflation and increase in construction costs, preliminary and agency-imposed conditions, and – as noted – the project has continued to evolve in meaningful ways. The cost estimates that have been used to date assume that standard dredging and disposal BMPs would be used which include silt curtains and other approaches already specified by the agencies.

The City Has Not Developed an Adequate Sediment Management Plan

An Operations, Management, and Monitoring Plan (“OMMP”) for the CAD facility has been developed for implementation by the City (Appendix H to the BODR). The OMMP describes the management and monitoring objectives for the CAD facility, a communications plan covering the entire CAD facility construction and sediment disposal process, construction monitoring and post-disposal monitoring plans, contingency plans, annual monitoring plans, and long-term management plans for the CAD facility once it has been capped.

As part of the regulatory agency permitting process, the RWQCB has incorporated several pre-, during, and post- water quality and sediment monitoring conditions. The City is committed to implementing those monitoring requirements as permitted, and any additional requirements following issuance of regulatory agency permits. Additionally, Best Management Practices (BMPs) will be implemented as proposed or as conditioned in the permits.

More specifically, Special Condition 5 requires development of a Construction and Operational Best Management Practices that lays out specific construction practices to minimize adverse environmental impacts and the unpermitted deposition, spill, or discharge of any liquid or solid into the sea.

The following are direct responses to the inquiries:

- 112,500 cy vs 106,900 cy. Which is correct?
 - The difference in volumes is based on direction from the USEPA to modify the delineation of the unsuitable material to allow for easier access and constructability (more box-shaped than round). The difference in volumes was approximately 5,600 cy – 106,900 as presented in the CDP application compared to 112,500 cy based on updates from the USACE.
- Coastkeeper has reason to believe 9,000 cy is an insufficient volume for a 1.0' cap across the 590' x 590' facility and requests confirmation of the requisite interim cap volume.
 - At the perimeter of the top of the CAD facility (-15 feet MLLW), the footprint is 590 feet by 590 feet. The elevation of the Interim Containment Cover Layer is at an approximate elevation between -30 feet and -31 feet MLLW. Because of the inward side-slopes of the CAD cell, the width of the CAD at a depth of -31 feet will be 509 feet which would require a volume of approximately 9,593 CY to create a 1-foot cap layer.
- Staff Report, page 20 outlines the CAD facility design to accommodate 199,500 cy of sediment, but 112,500 (unsuitable material from Federal Channels) + 50,000 (additional material from outside Federal Channels) + 9,000 (interim cap) + 33,600 (final cap) = 205,100 cy – i.e., greater than the 199,500 cy the CAD facility is designed to accommodate.
 - In response to the first bullet item, the USEPA requested slight modifications to the delineation of the unsuitable material to allow for easier access and constructability (more box-shaped than round). These updated volumes were negotiated between USEPA and the USACE (with City input) as part of the USEPA final sediment suitability concurrence this spring. As part of this effort, the USACE further acknowledged that they will again be updating the design to reflect annual harbor-wide bathymetry surveys being constructed by the USACE. The CAD has been designed with a 10% contingency, so the slight variation in volumes – with buffer – can be accommodated.
- Special Condition 2 requires the Permittee to submit a Final Cap Placement Plan 90 days prior to the installation of the interim cap. Should this be 90 days prior to the installation of the final cap? Will a similar placement plan be required for the interim cap?
 - The City agrees to the Special Conditions of the CDP Staff Report and will conduct all required monitoring and reporting.
- Special conditions such as silt curtain use and Caulerpa monitoring are appreciated and crucial. To the extent the City and its residents will place

additional material into the CAD during the 6-month window, how will these crucial conditions be ensured in forthcoming permits and carried out by individual residents?

- Placement of the additional 50,000 cy by the City or its residents will be conducted in a manner that is consistent with the permits and approvals authorized as part of the CAD project – this will be conditioned either through an Individual Permit or through an amendment to the City’s RGP 54.
- We appreciate staff’s inclusion of Special Condition 10 regarding cultural monitoring. While we defer to indigenous leaders to best represent their nations and communities, we lament that the USACE denied the Regional Board the opportunity to complete tribal consultations by deeming their 401 review waived for the dredging of material to go into the CAD.
 - The City has no opinion on this topic.
- Staff Report, page 29 quotes the OMMP that “silt curtains may be required to reduce turbidity . . .” We request the OMMP be updated to reflect mandatory silt curtain use.
 - Per Special Condition 5 of the Staff Report, the City will prepare a BMP plan that includes use of silt curtains.

We hope this response addresses all the concerns. If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Chris Miller
Public Works Manager



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949-644-3311
newportbeachca.gov/PublicWorks

October 10, 2022

Mandy Revell
California Coastal Commission
301 E. Ocean Blvd, STE 300
Long Beach, CA 90802

RE: City of Newport Beach's Response to Brent Mardian, Pi Environmental, LLC, re:
Concerns Related to Lower Newport Bay Confined Aquatic Disposal Project, City of
Newport Beach File #302021-09 dated October 7, 2022

Dear Ms. Revell,

The City of Newport Beach ("City") is writing to respond to the subject comments regarding the City's proposed Confined Aquatic Disposal ("CAD") Project - Application #5-21-0640 Agenda F17a, to be considered at the October 14, 2022, California Coastal Commission hearing in San Diego. This response letter is presented based on key topics identified in the comment letter as that was more efficient than trying to respond to each item individually.

Responses to claims that the City environmental data were flawed, inadequate and not representative of site conditions

The Lower Newport Bay project is a federal navigation maintenance dredging project, authorized under the Rivers and Harbors Act of 1937 (maintenance) and 1945, modified by the Water Resources Development Act of 1986, and subject to Clean Water Action provisions. This is important to recognize because there are very specific policies developed that govern how potential dredge materials are tested to determine the appropriate disposal options that are available. Each region of the county has a dredge materials management group that is comprised of representatives from state and federal regulatory and resource agencies responsible for reviewing applications and issuing permits for the work to be conducted. Here in southern California that group is called the Dredge Materials Management Team or DMMT. It is their responsibility to ensure that all dredging and disposal projects be subjected to the same nationally accepted sampling and testing procedures that have been developed by the U.S. Army Corps of Engineers ("USACE") U.S. Environmental Protection Agency ("USEPA"). As per protocol, this project was brought forward to the DMMT for review and approval prior to collecting any samples, after the initial samples were collected so that we could review the results with the participants, and again after additional samples were collected at the DMMT member's request so that they could determine which materials were acceptable for offshore disposal and which materials must be managed in another manner.

The City trusted the process and fully complied with all information requests over an almost two year testing and development period. The end result of this process was an agreement on which areas would require some form of additional management. One of the factors that weighs into these decisions is the potential for risk as a result of what might have been missed during

sampling as it is impossible to test every square foot of the area to be dredged. One has to rely on spaced out samples and composites to form an opinion of what the material looks like. In the end, the areas that were denied approval for ocean disposal contain highly variable results with the potential for high concentrations of mercury and PCBs.

Mr. Mardian decided to go out to two of these areas that were denied ocean disposal status and collect additional core samples of the proposed dredge cut to try and show that with additional samples he could prove that part of the area was actually clean, and if the layers could be separated that it would reduce the “unsuitable” volume and perhaps make some of the management alternatives that were previously discounted due to project size look more favorable. Unfortunately, his data proved exactly why the City and the DMMT did not feel that these areas could be considered for ocean disposal. Mercury concentrations were shown to be even more variable than the City’s data suggested which proves why the agencies would never consider this material for ocean placement.

Additionally, while his data did show some layering to the mercury concentrations with cleaner material at the bottom of the planned dredge cut, this information is not new and matches what the City has experienced during previous testing. The reason that the City did not propose to separate these layers is because it would require a contractor to be able to remove discreet layers as small as two feet in depth. That is simply not possible using a mechanical dredge bucket that is about the size of a large SUV. These dredge buckets can sink into the mud about four feet just from lowering them to the bottom. The probability that a contractor could successfully separate a two-foot layer located 20 feet underwater is too low to risk placing high concentrations of mercury and PCBs onto the beach or in the ocean disposal area.

It should also be noted that that Mr. Mardian’s sample collection was done without the approval or review oversight of the DMMT. We have no way of verifying that the samples were collected appropriately or even where they were actually collected because only a map was provided and not actual sample station coordinates. We have to assume they were collected appropriately. Regardless, the data does not provide any new information and, instead, further supports the assessment that the City and DMMT made of the original data.

As stated in the letter, samples were collected to the bottom of the dredge design, including 2-ft overdredge allowance. Samples were then divided into dredge material (to design depth) and overdredge. With no field logs or elevation data, the representativeness of these samples is very difficult to confirm. As shown in Table 1, overdredge samples range in thickness from 0.6 to 2.5 feet thick, so much less or greater than the 2-foot overdredge allowance for this project. They also did not collect any Z-layer samples, which is the 0.5-ft interval directly below the overdredge allowance. The Z-layer should be sampled independently and not combined with upper maintenance material; therefore, these samples are not representative of Z-layer conditions.

Regardless, as required in the Issued Water Quality Certification, Section XIV, Conditions (E)2 includes a discussion on pre-construction monitoring, and requires:

- A draft SAP for surficial sampling within the footprint of the CAD facility and within the 75-foot dispersal area around the CAD;
- Samples to be analyzed for contaminants of concern (metals, including mercury, and organics, including at a minimum, total DDx, total PCBs, and current use pesticides such as pyrethroids), toxicity, total organic carbon, and grain size; and

- An assessment of the current benthic community composition, diversity, and health for comparison to post-construction conditions.

Furthermore, as required in the Issued Water Quality Certification, Section XIV, Conditions (E)8 requires the City to monitoring the “for fifteen (15) years after the final cap has been placed to ensure excessive erosion, CAD facility instability, or other water quality pollution or degradation is not occurring as a result of the Project activities.” The specific post-construction monitoring conditions are described below:

- d) At year two (2) and five (5), the Permittee shall implement the Inland Surface Waters, Enclosed Bays, and Estuaries Water Quality Control Plan - Sediment Quality Provisions using the sediment quality objectives (SQOs) method, which requires analysis of sediment chemistry, toxicity, and benthic community health to determine whether there are impacts to the benthic community within the Project site. The sample locations must be randomized using a numeric model and must be representative of the Project site, including the 75-foot dispersal area.
- e) The Permittee shall submit a plan of implementation for the Sediment Quality Provisions to the Santa Ana Water Board for review and approval within one (1) year following final cap placement. The sediment quality method weight of evidence approach as specified in the Sediment Quality Provisions (2018) must be used.
- f) If any samples are found to not meet the SQOs (i.e., are possibly, likely, or clearly impacted), additional remediation of the Project site may be necessary as determined by the Santa Ana Water Board. Sample analyses and SQO calculations shall also be compared to pre-Project conditions. If water quality pollution or degradation is occurring, contact the Santa Ana Water Board staff member overseeing the Project within three (3) working days. The Santa Ana Water Board may require the submission of a Violation of Compliance with Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

Table 1, as well as data collected in 2019, shows that mercury concentrations in Main Channel are highly variable. Because of this heterogeneity, you cannot attempt to surgically remove small cuts of clean material without the risk of potentially placing contaminated material in the aquatic environment. Sampling and testing following federal and regional guidance in coordination with the DMMT demonstrates that this material should be managed in its entirety as contaminated material, which provides a conservative level of protection for the environment.

Mercury results in Table 1 confirms why Newport Channel has consistently been determined to be unsuitable for ocean disposal based on historical testing as well most recently testing in 2019. This also confirms why a “dual management option” in this area is not possible. The letter discusses the high concentration of sand in this area and opportunity to beneficially reuse. Based on the mercury concentrations shown in Table 1 and measured in 2019, it is not recommended that sediment from Newport Channel be placed on a beach, nor would regulators accept this. This would be highly irresponsible. The 0.6-foot interval of over dredge that is shown to have low mercury, which provides an indication that a clean surface that would be left following dredging, but not something you could surgically remove and place on a beach. This is not logistically feasible using standard mechanical dredge equipment.

Potential for Water Quality Impacts

Similar to recent correspondence, the letter opines that USACE guidance was not followed for the evaluation of the proposed CAD site, contaminated material was not tested by itself, and elutriate data are needed to estimate potential effects on water quality. *Guidance for Subaqueous Capping of Dredged Material*¹ developed by USACE was followed for the evaluation of the CAD and referenced multiple times in the Basis of Design Report (“BODR”; included as Appendix C to Draft Environmental Impact Report) and in the Final EIR in response to public comments. Multiple scientific studies were conducted and referenced as part of the BODR to evaluate and design the proposed CAD facility in accordance with this guidance manual.

As noted in previous correspondence, the sediment evaluation of the federal channels included direct toxicity testing to a sensitive species at a critical life stage using actual elutriate which is an even better assessment of potential risk and that this testing fully complies with the USACE guidance; however, to further evaluate water column impacts during placement, a USACE developed model (i.e., STFATE) was also used to predict compliance with applicable water quality criteria. This model is discussed in *Guidance for Subaqueous Capping of Dredged Material* for evaluating water column impacts, as well as detailed in Appendix D of this USACE document. As part of the CAD evaluation – and as requested by the USEPA and USACE – the U.S. Army Engineer Research and Development Center (ERDC) reviewed the City's STFATE model and assumptions on the approach and appropriateness of the model to assess short-term impacts to water quality. ERDC concluded that:

The application of the STFATE model is appropriate to evaluate the short-term losses during the placement operations at the proposed Lower Newport Bay CAD site. Applying the STFATE model for a CAD site would generate rather conservative estimates of losses until the CAD cell is nearly full. The model input, scenarios, application, and assumptions are appropriate to provide a conservative picture of the potential solids losses from the placement operations. (ERDC Memorandum dated May 16, 2022, re: STFATE Model).

Therefore, STFATE modeling is applicable, was properly conducted as part of this project, and results are environmentally sound.

Brian Ross, Dredging & Sediment Management Team USEPA, Region 9, was a key member of the DMMT and involved in the project since 2017. Mr. Ross provided substantive reviews on multiple occasions through the design and development of the BODR. Mr. Ross was a member of the working group that contributed to the review of *Guidance for Subaqueous Capping of Dredged Material*. The working group is comprised of individuals from Headquarters, field offices, and research laboratories of both agencies with scientific and/or programmatic experience related to dredged material disposal management. Mr. Ross is certainly qualified to review the BODR and confirm that the project complied with appropriate federal guidance documents.

¹ Palermo, M.R., J.E. Clausner, M.P. Rollings, G.L. Williams, T.E. Myers, T.J. Fredette, and R. Randall, 1998a. *Guidance for Subaqueous Dredged Material Capping*. Technical Report DOER-1, U.S. Army Corps of Engineer Waterways Experiment Station, Vicksburg, Mississippi.

The process used for designing the Newport CAD cell are identical to the procedures used by Anchor QEA for the development of the Hueneme and Long Beach CADs and by USEPA for the design of the New Bedford Harbor CAD.

We hope this response addresses all the concerns. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Miller". The signature is fluid and cursive, with a large initial "C" and "M".

Chris Miller
Public Works Manager



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3311 | 949 644-3308 FAX
newportbeachca.gov/PublicWorks

October 11, 2022

Jennifer F. Novak
Law Office of Jennifer F. Novak
Counsel for Friends of Newport Harbor
500 Silver Spur Road, Suite 206
Rancho Palos Verdes, CA 90275

Re: Response to Request for Denial (or, Alternatively Postponement) of October
Agenda Item F (17)(a) CDP Application NO. 5-21-0640

Dear Ms. Novak:

The City of Newport Beach (“City”) is writing in response to the correspondence from the Law Office of Jennifer Novak, on behalf of the Friends of Newport Harbor, LLC, expressing concerns regarding the California Coastal Commission (“CCC”) issuance of the Coastal Development Permit for the Lower Newport Bay Confined Aquatic Disposal Project (“Project”). After a thorough review of the letter, the City is confident that all the concerns raised in the letter are adequately addressed by the CCC Staff Report, the City’s Draft Environmental Impact Report (“DEIR”), and the Final Environmental Impact Report (“FEIR”) certified by the Newport Beach City Council on May 25, 2021. The following further supports the CCC’s authority to issue the Coastal Development Permit for the Project.

1. The Coastal Commission Should Deny The City’s Application For Failure to Fully Analyze the Proposed Dredge Material or, Alternatively, Ask The City to Extend Its Application For 90 Days.

The CCC staff report statement that says: “*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*” is accurate.

Similar to recent correspondence, the letter opines that U.S. Army Corps of Engineers (“USACE”) guidance was not followed for the evaluation of the proposed CAD site, contaminated material was not tested by itself, and elutriate data are needed to estimate potential effects on water quality. *Guidance for Subaqueous Capping of Dredged Material*¹ developed by USACE was followed for the evaluation of the CAD and referenced multiple times in the Basis of Design Report (“BODR”; included as Appendix

¹ Palermo, M.R., J.E. Clausner, M.P. Rollings, G.L. Williams, T.E. Myers, T.J. Fredette, and R. Randall, 1998a. *Guidance for Subaqueous Dredged Material Capping*. Technical Report DOER-1, U.S. Army Corps of Engineer Waterways Experiment Station, Vicksburg, Mississippi.

C to DEIR) and in the FEIR in response to public comments. Multiple scientific studies were conducted and referenced as part of the BODR to evaluate and design the proposed CAD facility in accordance with this guidance manual.

As noted in previous correspondence, the sediment evaluation of the federal channels included direct toxicity testing to a sensitive species at a critical life stage using actual elutriate which is an even better assessment of potential risk and shows that this testing fully complies with the USACE guidance. However, to further evaluate water column impacts during placement, a USACE developed model (i.e., STFATE) was also used to predict compliance with applicable water quality criteria. This model is discussed in *Guidance for Subaqueous Capping of Dredged Material* for evaluating water column impacts, as well as detailed in Appendix D of this same USACE document. As part of the CAD evaluation – and as requested by the USEPA and USACE – the U.S. Army Engineer Research and Development Center (ERDC) reviewed the City's STFATE model and assumptions on the approach and appropriateness of the model to assess short-term impacts to water quality. ERDC concluded that:

The application of the STFATE model is appropriate to evaluate the short-term losses during the placement operations at the proposed Lower Newport Bay CAD site. Applying the STFATE model for a CAD site would generate rather conservative estimates of losses until the CAD cell is nearly full. The model input, scenarios, application, and assumptions are appropriate to provide a conservative picture of the potential solids losses from the placement operations. (ERDC Memorandum dated May 16, 2022, re: STFATE Model).

Therefore, STFATE modeling is applicable, was properly conducted as part of this project, and results are environmentally sound.

Brian Ross, Dredging & Sediment Management Team USEPA, Region 9, was a key member of the Dredged Material Management Team and involved in the project since 2017. Mr. Ross provided substantive reviews on multiple occasions through the design and development of the BODR. Mr. Ross was a member of the working group that contributed to the review of *Guidance for Subaqueous Capping of Dredged Material*. The working group was comprised of individuals from Headquarters, field offices, and research laboratories of both agencies with scientific and/or programmatic experience related to dredged material disposal management. Mr. Ross is certainly qualified to review the BODR and confirm that the project complied with appropriate federal guidance documents.

The process used for designing the Newport CAD cell is identical to the procedures used by Anchor QEA for the development of the Hueneme and Long Beach CADs and by USEPA for the design of the New Bedford Harbor CAD.

The Lower Newport Bay project is a federal navigation maintenance dredging project, authorized under the Rivers and Harbors Act of 1937 (maintenance) and 1945, modified by the Water Resources Development Act of 1986, and subject to Clean Water Action provisions. This is important to recognize because there are very specific policies developed that govern how potential dredge materials are tested to determine the appropriate disposal options that are available. Each region of the country has a dredge materials management group that is comprised of representatives from state and federal regulatory and resource agencies responsible for reviewing applications and issuing

permits for the work to be conducted. Here in southern California that group is called the Dredge Materials Management Team or DMMT. It is their responsibility to ensure that all dredging and disposal projects be subjected to the same nationally accepted sampling and testing procedures that have been developed by USACE and U.S. Environmental Protection Agency (“USEPA”). As per protocol, this project was brought forward to the DMMT for review and approval prior to collecting any samples, after the initial samples were collected so that we could review the results with the participants, and again after additional samples were collected at the DMMT member’s request so that they could determine which materials were acceptable for offshore disposal and which materials must be managed in another manner.

The City trusted the process and fully complied with all information requests over an almost two year testing and development period. The end result of this process was an agreement on which areas would require some form of additional management. One of the factors that weighs into these decisions is the potential for risk as a result of what might have been missed during sampling as it is impossible to test every square foot of the area to be dredged. One has to rely on spaced out samples and composites to form an opinion of what the material looks like. In the end, the areas that were denied approval for ocean disposal contain highly variable results with the potential for high concentrations of mercury and PCBs.

As noted in the letter, Mr. Mardian decided to go out to two of these areas that were denied ocean disposal status and collect additional core samples of the proposed dredge cut to try and show that with additional samples he could prove that part of the area was actually clean, and if the layers could be separated then it would reduce the “unsuitable” volume and perhaps make some of the management alternatives that were previously discounted due to project size look more favorable. Unfortunately, his data proved exactly why the City and the DMMT did not feel that these areas could be considered for ocean disposal. Mercury concentrations were shown to be even more variable than the City’s data suggested which proves why the agencies would never consider this material for ocean placement.

Additionally, while his data did show some layering to the mercury concentrations with cleaner material at the bottom of the planned dredge cut, this information is not new and matches what the City has experienced during previous testing. The reason that the City did not propose to separate these layers is because it would require a contractor to be able to remove discreet layers as small as two feet in depth. That is simply not possible using a mechanical dredge bucket that is about the size of a large SUV. These dredge buckets can sink into the mud about four feet just from lowering them to the bottom. The probability that a contractor could successfully separate a two-foot layer located 20 feet underwater is too low to risk placing high concentrations of mercury and PCBs onto the beach or in the ocean disposal area.

It should also be noted that that Mr. Mardian’s sample collection was done without the approval or review oversight of the DMMT. We have no way of verifying that the samples were collected appropriately or even where they were actually collected because only a map was provided and not actual sample station coordinates. We have to assume they were collected appropriately. Regardless, the data does not provide any new information and, instead, further supports the assessment that the City and DMMT made of the original data.

Therefore, based on historical data, site history, and sediment sampling as part of the federal channels program, additional sampling and testing was not warranted and would not result in more material being suitable for ocean disposal. In sum, environmental sampling and testing were performed in accordance with the USACE Subaqueous Capping Technical Guidance and provide sufficient and adequate information to support environmental permitting review, including CCC's review.

2. Alternative Methods Other Than In-Harbor Disposal (the CAD) Have NOT Been – And Should Be - Fully Considered.

The City prepared an Alternatives Analysis as part of the EIR in compliance with the California Environmental Quality Act (CEQA). The City certified the EIR on May 25, 2021, concluding that the CAD facility was the preferred alternative and the least environmentally damaging practicable alternative. During the City Council meeting (and earlier April 2021 Harbor Commission meeting), private citizens provided commentary and offered to privately fund and accept all the dredged material determined unsuitable for open ocean disposal. The City Council proceeded with certification of the EIR and directed staff to proceed with the regulatory permitting process. The City Council also directed the Harbor Commission to continue to explore the privately funded option or other alternatives within 90 days, and to make a recommendation to the City Council regarding the alternative(s).

The privately funded group requested an extension of 60 days and presented to the Harbor Commission on October 13, 2021, at a publicly noticed and open meeting. Rather than identifying privately held upland locations outside of the City where dredged material could be accepted at no cost to the City, several alternatives were proposed to either mechanically or hydraulically dredge the unsuitable sediment, and to stockpile the unsuitable dredged sediment on both public and private parcels fronting the Marine Protected Area and Upper Newport Bay. The City responded that the proposals were not permissible, had already been contemplated in the EIR, and would violate the Coastal Act. One of the suggested locations was a mapped wetland area that was created as mitigation for another development project on the north end of the Upper Bay. A second location is privately held and in the final stages of permitting for a hotel development project that has been in preparation for almost 20 years. The third location is the only undeveloped waterfront property that the City currently owns and is located adjacent to several easements, including a Marine Protected Area. The Harbor Commission recommended (7-0 vote) to “disband the subcommittee exploring the CAD alternatives and recommend to City Council that the Harbor Commission believes that the CAD is the most viable and cost-effective solution with the most sufficient timeline of getting the project done, and that the Harbor Commission recommends that the City Council not consider the alternatives analysis that includes to stop the funding for the CAD.”

Subsequently, the project was agenized during a City Council meeting on January 25, 2022. While the City Council agreed to disband the subcommittee exploring the CAD alternatives, they further recommended that a third party review the Lower Castaways site as a viable alternative. In response, the City retained Moffatt & Nichol who prepared a feasibility study. The report summarized serious concerns regarding impacts to public access, ability to permit, significant cost increases which would render the project infeasible, and project scheduling impacts with the existing Federal Channels effort. Consistent with the City's position, use of the Lower Castaways site conflicts with City's LCP with significant impacts to public access, ESHA, coastal bluffs, visual quality, and

public views. Therefore, the analyses of alternatives have been sufficiently analyzed through the CEQA process.

Another concern involves the reliance upon other locations where a CAD was deemed an acceptable means for sediment disposal to support construction of the proposed CAD. The BODR evaluated technical feasibility of the proposed Project, investigated key technical details associated with the proposed work, and evaluated necessary design features and a feasible construction approach. Based on the USEPA's extensive experience overseeing design and implementation of CAD facilities on the West Coast (most recently at Port Hueneme in 2009), it was the City's intent to request a focused review from the USEPA. The USEPA supported the City's BODR for the Project noting that "the draft BODR and its appendices analyze issues associated with CAD in an appropriate manner, consistent with USEPA and USACE national technical design guidelines." Additionally, the CCC requested that the City conduct a review of other CADs in California that would include information about permanent and interim cap thicknesses, buffer distances, monitoring results and modifications found to be needed during and post construction, and any lessons learned that informed subsequent CAD projects.

Regarding the example CADs that would be comparable to the Project, while some examples definitely occur within industrialized areas, the City disagrees with the statement that "all of these are highly industrialized areas" and "thus not comparable to Newport Harbor." While the CADs at Port Hueneme and Baltimore are sited further away from residential areas than the Newport CAD, and the CADs at Port Hueneme and Baltimore are located in an industrialized area, the New Bedford and Boston Harbor examples are sited at a similar distance from residential areas than the Newport CAD.

The New Bedford CAD is located 670 feet west of the closest residences, the Boston Harbor CAD is located 750 feet west of the closest residences, and the Newport CAD is sited 302 feet east of the closest residences. Additionally, as described in the Final Environmental Impact Report for the New Bedford Project², there are boaters using the Lower [New Bedford] Harbor for recreational purposes. As seen on the aerial figure attached to the letter, a few docks also exist within Lower Harbor. New Bedford Harbor is a superfund site managed by the EPA since it was first listed as such in 1983. The primary contamination is PCBs. The New Bedford Harbor CAD cell was selected for the disposal of 300,000 cubic yards of sediment containing between 50-190 ppm of PCBs. As a point of comparison, in Newport Harbor the highest individual core level (located in the Turning Basin) was 0.402 ppm which is magnitudes lower than what was observed in New Bedford.

The project requires approval from multiple agencies, including USACE, the CCC, and the Regional Water Quality Control Board ("RWQCB"). The only permit received to date is from the RWQCB. The City prepared – and has continued to update – project-related costs based on inflation and increase in construction costs as well as preliminary and agency-imposed conditions. The cost estimates that have been used to date assume that standard dredging and disposal BMPs would be used which include silt curtains and other approaches already specified by the agencies.

² <https://www.mass.gov/files/documents/2016/08/wq/feir-new-bedford-fairhaven.pdf>

With regards to environmental justice and upland disposal, the City disagrees with Friends of Newport Harbor statement that the land-based disposal sites would not create environmental justice issues. All landfill disposal sites are sited next to disadvantaged communities. By placing additional material in these landfills, environmental justice issues would be perpetuated. While the CAD is sited in a recreational area used by a diverse group of people, it is also sited next to communities that are not disadvantaged, as opposed to the suggested landfill sites. Therefore, in consideration of the landfill versus CAD alternative, the CAD alternative would be the alternative that is the most environmentally just.

And finally, there is a comment asserting the City did not contemplate any additional alternatives not already evaluated in the certified EIR or through the privately funded and third party evaluation. The EIR adequately evaluated alternative feasible analysis and the proposed CAD is the least environmentally damaging practicable alternative. CADs have been shown to be effective long-term management solutions for sediment that does not meet regulatory standards for open ocean disposal. CADs have been used in several other locations in Southern California and elsewhere in the United States and are widely accepted by the regulatory agencies as an environmentally safe approach for sediment management. Regulatory agencies such as the USEPA, CCC and the RWQCB have supported, and even encouraged, the CAD concept when evaluating the Harbor's sediment characterization.

3. As Proposed, The CAD Will Leave Contaminated Material Exposed And Vulnerable to Disturbance For Over Two Years.

After sediments unsuitable for open ocean disposal have been removed and placed within the CAD facility, a 1-foot-thick interim cover containment layer will be placed to provide physical protection of the underlying sediments from any erosive forces imposed from vessel uses above. The source of the interim layer will be from sediment dredged as part of the federal channels dredging project. As described in the City's BODR (Appendix C to DEIR), and as previously responded, the results of the City's chemical breakthrough modeling do not suggest that a cap greater than 1 foot in thickness is needed to prevent chemicals from migrating into the overlying water or to prevent propwash erosion. Chemical partitioning from sediment to pore water and then flux upward into a cap layer occurs over time and would not be expected to occur at any detectable level within the first 1-2 years following placement of the interim cap. As such, the purpose of the interim cap is solely for isolating the material from any potential prop wash or anchor scour during the period of time between the initial material placement and the subsequent placement of non-Federal material into the CAD. Any disturbances of the interim cap layer as a result of anchor penetration is not expected to be significant as material will quickly fill in any uneven surface depressions through natural sediment movement in the Bay. (Note: The existing anchorage will be closed while the interim cap layer is in place.) Consistent with Special Condition 3 of the staff report, this will be confirmed by conducting a bathymetric or side scan survey of the interim cap surface to look for any depressions greater than one foot in depth and then using a surface leveling technique such as beam dragging to restore surface smoothness until the final cap layer is installed.

The interim cap does not account for bioturbation, but it does follow and is consistent with *Guidance for Subaqueous Capping of Dredged Material*³ developed by U.S. Army Corps of Engineers (“USACE”) and referenced multiple times in the BODR. Section 7 of the guidance document includes a discussion on Considerations for Intermediate Caps (p. 78).

Interim caps are not intended to prevent bioturbation because they are only placed on the site for short period of time relative to the amount of time it takes to recolonize the surface of the cap with animals from adjacent areas. It should be noted that recruitment for the Newport CAD is expected to take longer than normal because all the areas around the CAD will also be dredged so the benthic infauna that were in close proximity of the CAD cell will have also been relocated.

Finally, special Condition 3 of the staff report (CAD maintenance and Monitoring) requires that the City conducts a bathymetric or side scan survey of the interim cap surface to look for any depressions greater than one foot in depth and then using a surface leveling technique such as beam dragging to restore surface smoothness until the final cap layer is installed. As stated in the CCC staff report, *“the existing boat anchorage over the proposed CAD location will be temporarily relocated to avoid anchor scour. However, if disturbances of the interim cap layer as a result of anchor penetration do occur, it is not expected to be significant as material will quickly fill in any uneven surface depressions through natural sediment movement in the Bay.”*

It is expected that the final cap layer could be sourced from various locations within Lower Newport Bay, including Newport Channel 3 and the Entrance Channel. As such, analyses were conducted using the physical and chemical characteristics at both locations, and each location was determined as a suitable source for the final cap layer. Other potential sources exist, including clean sediments dredged under the City’s RGP 54 program or future maintenance dredging efforts at Santa Ana River, though additional analyses would be required prior to approving these as appropriate cap sources. These specific analyses will be conducted pursuant to Special Condition 2 of the staff report (Final Cap Placement Plan). Testing results and source of material will be provided as part of this Final Cap Placement Plan. Sediment suitability has a longevity – generally 5 years in Newport Harbor – and therefore identifying the source of the Final CAP as part of the design process and even as part of the permit process was premature.

Following placement of the final CAP, the City will monitor the CAD facility during and post-construction, as outlined in the Basis of Design Report, as presented as Special Conditions of the CCC staff report, and as required by other agency permits and approvals (e.g., RWQCB). If sampling and surveys reveal that additional cap thickness is necessary, then that could be readily incorporated initially or in the future.

With regards to traffic, noise, and air quality impacts potentially resulting from the Project as a result of moving the cap material into the Harbor, the City certified the Project’s DEIR and FEIR which included placement of the interim and final cap layer as Project elements and were sufficiently analyzed as part of the California Environmental Quality Act review process. Specific impacts of the Project, including impacts of placing of the

³ Palermo, M.R., J.E. Clausner, M.P. Rollings, G.L. Williams, T.E. Myers, T.J. Fredette, and R. Randall, 1998a. *Guidance for Subaqueous Dredged Material Capping*. Technical Report DOER-1, U.S. Army Corps of Engineer Waterways Experiment Station, Vicksburg, Mississippi.

interim and final cap layer on noise and air quality, are discussed in Chapters 3.10 and 3.2 of the DEIR. As for transportation impacts, placement of the interim and final cap material will have no significant impact on the City's street transportation, including transit, roadway, bicycle, and pedestrian facilities.

Therefore, the City maintains the position that a plan has existed, and this has been consistent through the environmental review period to serve as the final cap. With adherence to special conditions of the Staff Report, the interim cap and final cap layers will provide adequate isolation from unsuitable material.

4. The Coastal Commission Cannot Meet its Burden to Show the proposed CAD project is compliant with CEQA

a. CEQA Requires Additional Environmental Review of the Changes to the Project that Increased the Size of the Project.

The application for Coastal Development Permit No. 5-21-0640 only contemplates construction of the CAD facility and placement of a final cap layer; maintenance dredging within the Federal Channels to re-establish safe navigation, including placement of unsuitable material in the CAD, is the responsibility of USACE and is not part of the proposed project.

Friends of Newport Harbor notes that the project increased in size by 5,600 cubic yards since the City analyzed the project under CEQA. The difference in volumes is based on direction from the USEPA to modify the delineation of the unsuitable material to allow for easier access and constructability (more box-shaped than round). These updated volumes were negotiated between USEPA and the USACE (with City input) as part of the USEPA final sediment suitability concurrence this spring. As noted in the BODR (included as Appendix C to DEIR), the CAD has been designed with a 10% contingency, so the slight variation in volumes – with buffer – can be accommodated, and therefore has been incorporated and considered as part of the CEQA analysis. It should be further noted that the USACE will again be updating the design to reflect annual harbor-wide bathymetry surveys being constructed by the USACE.

This small increase in additional material to be placed in the CAD would not change any of the resource topic conclusions in the CEQA document. As mentioned above, it has already been considered under the CEQA analysis. Additionally, this increase would result in approximately 1 to 3 additional days of construction, which is very minimal in comparison with the scale of CAD excavation (57 days) and the scale of placement of unsuitable material in the CAD (49 days). This is not a substantial change according to CEQA. Therefore, the Project's environmental documents adequately analyze environmental impacts of the Project and no subsequent CEQA document is required.

b. The Failure to Conduct Required Testing of Contaminated Sediment Undercuts the City's CEQA Analysis and the Commission's Findings.

As noted above, the *Guidance for Subaqueous Capping of Dredged Material* developed by USACE was followed for the evaluation of the CAD and referenced multiple times in the BODR (included as Appendix C to DEIR) and in the FEIR in response to public comments. Multiple scientific studies were conducted and referenced as part of the BODR to evaluate and design the proposed CAD facility in accordance with this

guidance manual. The sediment evaluation of the federal channels included direct toxicity testing to a sensitive species at a critical life stage using actual elutriate.

Based on the above facts, the argument that the City and the Commission failed to analyze the contaminated sediment as required by the USACE Subaqueous Capping Guidance Manual and that the Project undercuts the City's CEQA Analysis and the Commission's Findings cannot be sustained. The Project used the *Guidance for Subaqueous Capping of Dredged Material* document and adequately complies with CEQA and as noted in the CCC staff report, also complies with the Coastal Act.

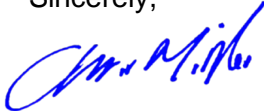
c. Environmental Review of the Dredging and CAD Projects Appears to Be Impermissibly Piecemealed.

In compliance with CEQA, the CEQA documents (DEIR and FEIR) contemplated the project as a whole, including both federal channel dredging and CAD construction. Therefore, the argument that the Project appears to be impermissibly piecemealed is not factual.

Therefore, this Project adequately complies with CEQA and as stated in the CCC staff report, also complies with the Coastal Act.

We hope that this response addressed all the concerns raised by Friends of Newport, LLC. If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Chris Miller
Public Works Manager



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949-644-3311
newportbeachca.gov/PublicWorks

October 11, 2022

Mandy Revell
California Coastal Commission
301 E. Ocean Blvd, STE 300
Long Beach, CA 90802

RE: City of Newport Beach's Response to Thomas Eugene Napoli, re: Comments on Application of City of Newport Beach to Construct Confined Aquatic Disposal Facility (CAD), application NO. 5-21-0640, dated October 6, 2022

Dear Ms. Revell,

The City of Newport Beach ("City") is writing to respond to the subject comments regarding the City's proposed Confined Aquatic Disposal ("CAD") Project - Application #5-21-0640 Agenda F17a, to be considered at the October 14, 2022, California Coastal Commission hearing in San Diego. This response letter is presented based on key topics identified in the comment letter as that was more efficient than trying to respond to each item individually.

Lower Newport Bay PCB concentrations should be considered hazardous waste under the criminal provision of the California Health and Safety State Code and California Fish and Game Code

The Lower Newport Bay project is a federal navigation maintenance dredging project, authorized under the Rivers and Harbors Act of 1937 (maintenance) and 1945, modified by the Water Resources Development Act of 1986, and subject to Clean Water Action provisions. This is important to recognize because there are very specific policies developed that govern how potential dredge materials are tested to determine the appropriate disposal options that are available. Each region of the country has a dredge materials management group that is comprised of representatives from state and federal regulatory and resource agencies responsible for reviewing applications and issuing permits for the work to be conducted. Here in southern California that group is called the Dredged Materials Management Team ("DMMT"). It is their responsibility to ensure that all dredging and disposal projects be subjected to the same nationally accepted sampling and testing procedures that have been developed by the U.S. Army Corps of Engineers ("USACE") and U.S. Environmental Protection Agency ("USEPA").

As per protocol, this project was brought forward to the DMMT for review and approval prior to collecting any samples, after the initial samples were collected so that we could review the results with the participants, and again after additional samples were collected at the DMMT member's request so that they could determine which materials were acceptable for offshore disposal and which materials must be managed in another manner. As such, the sampling and testing did comply with federal and regional requirements, which includes similar aspects of sampling and testing as SW 846 (i.e., quality control, sampling plan development and implementation, analysis of inorganic and organic constituents). These testing approaches have

been developed for more than 30 years and are constantly being refined to provide the best estimates of material suitability for the available disposal options. The TTLC numbers listed in the EIR section mentioned in the comments are a misprint. The correct TTLC threshold values presented in the comment were used in the DMMT evaluation of the sediment samples.

Dredge material evaluations under USEPA/USACE management and oversight use the bulk sediment TTLC values for determining hazardous waste designations. Occasionally, if the material is proposed to upland placement where leachate can form and leave the site, the evaluation would then shift to also include STLC or TCLP evaluations as well.

The City does not have the authority to construct the CAD due to ownership entitlements through the State Lands Commission

The California State Lands Commission is identified as a Trustee agency and was provided notification of the Notice of Preparation during the public scoping of the EIR. In response to the Notice of Preparation, the California State Lands Commission provided a letter citing Chapter 104, Statutes of 2013 (Assembly Bill 727, Stone), which “eliminated the requirement of a lease from the Commission for dredging on granted public trust lands where minerals are reserved to the State, if the dredged material is disposed at an approved on or offshore disposal site, is not sold, and is consistent with the proper management of the granted lands.”¹ The letter further noted that if a “project applicant desires to dredge on granted lands where minerals are reserved, they are required to notify the Commission of their intent to dredge in writing at least 120 days prior to dredging.”

Per Chapter 104, Statutes of 2013, the City will submit the Notice within 120 days from dredging commencement.

The City did not provide sufficient public notice, nor did they hold adequate public meetings.

The City has met, and exceeded, all legal requirements for public noticing and participation for the Project. As a backdrop, the City has devoted several years engaging the community along with federal, state, and local agencies to develop a dredging project that would meet all stakeholders’ needs. Specifically, outreach was initiated prior to the release of the Notice of Preparation (“NOP”) and continued throughout the development of the Draft Environmental Impact Report in accordance with the California Environmental Quality Act (“CEQA”) as set forth in the California Public Resources Code Section 21000 et seq.; Title 14 of the California Code of Regulations, Division 6, Chapter 3 (“CEQA Guidelines”); and Newport Beach City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act). Beginning in spring 2019, the City engaged the public to solicit input in development of the conceptual level design of the proposed project. This included in-person meetings with residents and stakeholders, presentations and updates at Harbor Commission meetings, and publications through various local and regional newspapers. Following the NOP scoping meeting on December 4, 2019, the City continued to engage the community and its residents through in-person meetings to discuss specific comments presented or submitted at or following the scoping meeting.

¹ California State Lands Commission, 2020. *Maintenance Dredging to Remove Up to 300,000 Cubic Yards Of Sediment, Within Lower Newport Harbor, Newport Beach, Orange County, California*. File Reference G 09-02.16. March 11, 2020.

The list of outreach meetings, presentations and newspaper articles is as follows:

- December 13, 2017: Southern California - DMMT Meeting
- June 27, 2018: DMMT Meeting
- July 25, 2018: Southern California - DMMT Meeting
- March 13, 2019: Harbor Commission
- May 22, 2019: DMMT Meeting
- August 28, 2019: DMMT Meeting
- September 30, 2019: Local stakeholders
- October 8, 2019: Local stakeholders
- October 16, 2019: Local stakeholders
- October 17, 2019: Local stakeholders
- November 7, 2019: Water Quality/Coastal Tidelands Committee
- October 17, 2019: Chamber of Commerce
- November 12, 2019: Mayor Dixon's Lido Town Hall
- November 13, 2019: Harbor Commission
- November 14, 2019: Local stakeholders
- November 15, 2019: Media article – Newport Beach Independent
- November 16, 2019: Media article – Daily Pilot
- November 18, 2019: Media article – Los Angeles Times
- November 18, 2019: Media article – City News Splash
- November 19, 2019: City Council – announcement (Duffield)
- November 20, 2019: Still Protecting Our Newport (SPON)
- November 21, 2019: Media article – City Manager Week in Review
- December 4, 2019: Local stakeholders
- December 4, 2019: Scoping meeting
- December 5, 2019: Water Quality/Coastal Tidelands Committee
- December 13, 2019: Local stakeholders
- January 31, 2020: Lido Isle Community Association Board
- February 3, 2020: Council Member Dixon's Town Hall
- February 19, 2020: Yachtsman's Luncheon
- March 11, 2020: Speak Up Newport
- June 10, 2020: Harbor Commission
- November 19, 2020: Juaneño Band of Mission Indians, Acjachemen Nation
- January 29, 2021: Media article – Stu News Newport
- February 9, 2021: Media article – Newport Navigator
- February 10, 2021: Mayor's State of the City Address
- February 12, 2021: Media article – City Manager Week in Review
- February 16, 2021: Media article – Stu News Newport
- March 9, 2021: City Council Meeting – Mayor Announcements (Entrance Channel)
- April 3, 2021: Email to previous responders
- April 4, 2021: Daily Pilot Public Notice
- May 21, 2021: Media article - Stu News Newport
- May 21, 2021: Media article – Insider's Guide
- May 25, 2021: Mayor Council announcements
- May 25, 2021: EIR certification
- May 27, 2021: Media article – Daily Pilot
- September 8, 2021: Harbor Commission update

- September 15, 2021: Newport Bay Executive Watershed Committee
- September 16, 2021: Speak Up Newport
- October 13, 2021: Harbor Commission
- October 29, 2021: Western Dredging Association conference
- December 30, 2021: Media article: Dredging Today
- January 21, 2022: City Week in Review
- January 25, 2022: City Council meeting
- January 28, 2022: Media article – Daily Pilot
- February 2, 2022: Media article – Stu News Newport
- February 7, 2022: Media article – Newport Beach Independent
- February 8, 2022: Media article – Stu News Newport
- March 8, 2022: Media article – Stu News Newport
- April 20, 2022: Amigo Viejos Luncheon
- May 24, 2022: City Council meeting
- July 22, 2022: Media article – Stu News Newport
- July 26, 2022: City Council meeting
- August 26, 2022: CCC Public Notice (website and Marina Park posting)
- August 28, 2022: CCC Public Notice – Daily Pilot
- September 1, 2022: Media article – OC Register
- September 16, 2022: City email blast
- September 20, 2022: Media article – Stu News Newport
- September 23, 2022: Media article – Stu News Newport
- September 27, 2022: (Friends of Newport Harbor media article) – Stu News Newport
- September 28, 2022: City Harbor Summit
- September 29, 2022 (anticipated): media article – Daily Pilot

The City did not conduct adequate CEQA analysis with regards to the following issues:

- **insufficient evaluation of chemical fate and effects,**
- **lack of consideration for potential bioaccumulation of PCBs in wildlife,**
- **loss of benthic habitat during construction of the CAD cell,**
- **lack of compensatory mitigation for loss of habitat for potential eelgrass losses.**

Lower Newport Bay sediments located in the Federal channels contain elevated concentrations of several chemicals such as PCBs, DDT, and Hg but have historically not shown any adverse responses when exposed to multiple toxicity tests with various species of benthic and water column organisms, including with animals at their most sensitive life stages. Likewise, sediments tested to determine the potential for bioaccumulation potential using benthic organisms important to the marine ecosystem (clams) showed insufficient levels of chemical accumulation to present either a wildlife risk or a human health risk. Because there is a lack of toxicity associated with the elevated chemicals and the low potential for wildlife, aquatic or human health risks, the sediments in Lower Newport Bay have not been recommended for any form of remediation under either a State or Federal mandate.

The proposed project is a maintenance dredging project to restore the Bay to its authorized navigation depths. The potential physical effects of that process has already been documented by the USACE under their Federal authority. That includes consideration for issues related to loss of benthic habitat due to sediment removal and compensatory mitigation of affected eelgrass habitat if it is determined to be present at the site prior to dredging. The current

application is for the construction of a CAD cell to contain the dredge materials that are unsuitable for ocean disposal. As stated earlier, this material has not been shown to cause either adverse direct effects or bioaccumulation potential to representative aquatic species. However, removing that material from the biologically active zone within the Bay, where it current resides, and relocating it to the bottom of a 45-foot-deep hole would pose an even lower risk to resident wildlife or the public. In the absence of constructing the CAD cell, this material will not be dredged and will continue to reside where it sits today.

We hope this response addresses all the concerns. If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Chris Miller
Public Works Manager