

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
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F17a

ADDENDUM

DATE: October 3, 2022
TO: Coastal Commissioners and Interested Parties
FROM: South Coast District Staff
SUBJECT: **ADDENDUM TO ITEM F17A, CDP 5-21-0640 FOR THE COMMISSION MEETING ON FRIDAY, OCTOBER 14, 2022**

I. CHANGES TO STAFF REPORT

The Commission is changing the staff report and exhibits dated September 30, 2022 to add the following exhibit. Commission staff is still evaluating whether any changes to the staff recommended findings and conditions are needed, and if so, those would be addressed in a forthcoming addendum.

a) Correct page 8 of the staff report as follows:

Exhibit 6 — Clean Water Act Section 401 Water Quality Certification and Order for the Lower Newport Bay Confined Aquatic Disposal Construction Project (SARWQCB WDID # 302021-09)

b) Add the Exhibit 6 to the Exhibits packet.



Santa Ana Regional Water Quality Control Board

September 30, 2022

Chris Miller
City of Newport Beach Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

Email: Cmiller@newportbeachca.gov

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER FOR THE LOWER NEWPORT BAY CONFINED AQUATIC DISPOSAL CONSTRUCTION PROJECT (SARWQCB WDID # 302021-09)

Dear Chris Miller:

Enclosed please find a Clean Water Act Section 401 Water Quality Certification and Order, authorized by Santa Ana Regional Water Quality Control Board Executive Officer, Jayne Joy. This Order is issued to you for Lower Newport Bay Confinement Aquatic Disposal Construction Project (Project). Attachments A through D of the Enclosure are also part of the Order.

This Order is issued in response to an application submitted by City of Newport Beach for the proposed Project discharge to waters of the State to ensure that the water quality standards for all waters of the State impacted by the Project are met. You may proceed with your Project according to the terms and conditions of the enclosed Order.

If you require further assistance, please contact me at Claudia.Tenorio@waterboards.ca.gov.

Sincerely,

Claudia Tenorio

Claudia Tenorio
Senior Environmental Scientist (Supervisory)
Regional Planning Programs Section
Santa Ana Regional Water Quality Control Board

Enclosures (1): Order for 302021-09 Lower Newport Bay Confinement Aquatic Disposal Construction Project

cc: [Via email only] (w/ enclosure):

U.S Army Corps of Engineers, Los Angeles District– Gerardo Salas –
Gerardo.Salas@usace.army.mil
U.S. Environmental Protection Agency, Region 9 – R9cwa401@epa.gov
U.S. Environmental Protection Agency, Region 9 – Allan Ota – Ota.Allan@epa.gov
U.S. Environmental Protection Agency, Region 9 – Melissa Scianni –
Scianni.Melissa@epa.gov
State Water Resource Control Board, Office of Chief Counsel – Katherine Bramble–
Katherine.Bramble@waterboards.ca.gov
State Water Resources Control Board, Division of Water Quality -- Water Quality
Certification Unit – Stateboard401@waterboards.ca.gov
Anchor QEA, LLC – Adam Gale – agale@anchoragea.com
California Coastal Commission – Mandy Revell – Mandy.Revell@coastal.ca.gov



Santa Ana Regional Water Quality Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: September 30, 2022	Reg. Meas. ID: 445141
Program Type: Dredging	Place ID: 876651
	SARWQCB WDID #: 302021-09
	USACE #: SPL-2021-00425

Project Type: Channel Construction and Maintenance

Project: Lower Newport Bay Confined Aquatic Disposal Construction Project (Project)

Federal Permit: United States Army Corps of Engineers (USACE) Individual Permit, File No. SPL-2021-00425

Permittee: City of Newport Beach

Permittee Contact: Chris Miller
City of Newport Beach Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660
Phone: (949) 644-3043
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Permittee's Agent: Adam Gale
Anchor QEA, LLC
9700 Research Drive
Irvine, CA 92618
Phone: (949) 334-9635
Email: agale@anchorgea.com

Water Board Staff: Claudia Tenorio
Senior Environmental Scientist (Supervisory)
3737 Main Street, Suite 500
Riverside, CA 92501
Email: Claudia.Tenorio@waterboards.ca.gov

Water Board Contact Person:

If you have any questions, please call Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) staff listed above or (951) 782-4130 and ask to speak with the Regional Planning Programs Section Supervisor.

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I. Order

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) is issued at the request of City of Newport Beach (Permittee) for the Lower Newport Bay Confined Aquatic Disposal Construction Project (Project). This Order is for the purpose described in the application and supplemental information submitted by the Permittee. The application was received on August 26, 2021. The application was deemed complete on December 31, 2021. Prior to receiving a complete application, Santa Ana Water Board staff issued a notice of incomplete application, and the Permittee responded to the request for application information as summarized in Table 1.

Table 1: Record of Notice(s) of Incomplete Application	
Date of Notice of Incomplete Application	Date Requested Information Received
9/24/2021	10/26/2021

Additionally, on April 25, 2022, Santa Ana Water Board staff requested additional information necessary to supplement the contents of the complete application, and the Permittee responded to the request on April 25, 2022.

II. Public Notice

The Santa Ana Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 on September 24, 2021. Due to public interest expressed relating to the Project, the Santa Ana Water Board posted a draft Order for public review and comment from September 2, 2022, to September 16, 2022. The Santa Ana Water Board considered all comments submitted during the respective public comment periods prior to issuing this Order.

III. Project Purpose

The Project's purpose is to construct a confined aquatic disposal (CAD) facility in the central portion of Lower Newport Bay. The Project would provide a permanent disposal (i.e. placement) location for contaminated sediment determined unsuitable for open ocean disposal from the Lower Newport Bay Federal Channels (Federal Channels), as well as sediment outside of the Federal Channels not permitted under the Permittee's Maintenance Dredging Program Regional General Permit 54 (RGP 54)¹. Additionally, dredged material generated from the construction of the CAD facility appropriate for beach nourishment would be placed along nearshore ocean beaches or disposed of at an approved open ocean disposal site.

IV. Project Description

Natural processes result in the movement and accumulation of sediment in Lower Newport Bay, which must be dredged periodically. The United States Army Corps of Engineers (USACE) is responsible for maintaining authorized channel depths for navigation in the Federal Channels, as part of the Federal Channels Maintenance Dredging Program. Sediment sampling conducted in 2018 and 2019 by the Permittee and USACE determined that most of the dredged material would be suitable for open ocean disposal at the permitted LA-3 Ocean Dredged Material Disposal Site (LA-3) or can be utilized for beach nourishment. However,

¹ RGP 54 authorizes small-scale maintenance dredging, the discharge of dredged material at adjacent beach sites (for beach nourishment), and disposal of dredged material at the LA-3 Ocean Dredged Material Disposal Site, nearshore ocean beaches, or an approved upland disposal site outside the coastal zone.

dredging in the following portions of the Federal Channels – Turning Basin, Main Channel North 1 (MCN-1), MCN-2, and Newport Channel 1 (see Attachment A) – would expose sediment deemed unsuitable for ocean disposal due to elevated concentrations of polychlorinated biphenyl (PCBs), mercury, and dichloro-diphenyl-trichloroethanes (DDTs), and therefore requires an alternate management location for the dredged sediment.

The Project would provide a permanent disposal location for contaminated sediment determined unsuitable for open ocean disposal dredged from the Federal Channels. Dredging of the Federal Channels is a separate project undertaken by the USACE as part of the Federal Channels Maintenance Dredging Program. The CAD facility would be constructed to accommodate a total of 199,500 cubic yards (CY) of sediment as described below:

- 106,900 CY of unsuitable dredged material from the Federal Channels;
- 50,000 CY of unsuitable dredged material from outside the Federal Channels;
- 9,000 CY of clean material, likely from the Newport Channel 3, for an interim cap to provide a containment layer designed at a thickness of one (1) foot; and
- 33,600 CY for a final cap layer consisting of clean material placed at a thickness of three (3) feet.

A mechanical dredge equipped with a clamshell bucket and bottom-dump barges would be utilized for construction of the CAD facility and placement of material. The CAD facility construction would take approximately six (6) months. The proposed size of the CAD facility is approximately 590 feet by 590 feet and would require dredging approximately 282,400 CY of sediment from the existing mudline. The dredged footprint for the CAD facility (cell) is approximately eight (8) acres (348,100 square feet).

The CAD facility's size and volume incorporates side slopes, final CAD facility elevation, and engineering design considerations to accommodate the material and ensure its stability. As a result, a greater volume of material is required to excavate the CAD facility (282,400 CYs) compared to the volume of material expected to be placed in the CAD facility (199,500 CYs). The top of slope for the CAD facility would range between -15 to -17 feet mean lower low water (MLLW)². The CAD facility would be constructed to accommodate the possibility of dredging the Bay Island area deeper in the future to match the authorized depth of -20 feet MLLW in the adjacent Main Channel 3. Thus, the final elevation of the final cap is designed to be at a depth of -22 feet MLLW elevation to accommodate future deepening to -20 feet MLLW and two (2) feet of allowable overdredge. The bottom of the CAD is designed to -45 feet MLLW plus one (1) foot of allowable overdredge.

Approximately two (2) years following dredging for construction of the CAD facility, the placement of material from the Federal Channels, and the installation of an interim cap, there would be one 6-month period for the Permittee and its residents to place up to 50,000 CY of dredged material from outside of the Federal Channels in the CAD, prioritizing material determined unsuitable for open ocean disposal. If there is remaining capacity (within this 50,000 CY allowance) after material determined unsuitable for open ocean disposal is placed in the CAD, and before the end of the 6-month period, the Permittee is proposing to allow its

² The average of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. For stations with shorter series, comparison of simultaneous observations with a control tide station is made to derive the equivalent datum of the National Tidal Datum Epoch. https://tidesandcurrents.noaa.gov/datum_options.html

residents to place material from the RGP 54 Plan Area determined suitable for open ocean disposal in the CAD facility. However, these activities would require separate approval and be permitted separately through an amendment or re-issuance of the Permittee's RGP 54 Order, or through the issuance of Individual Orders prior to placement into the CAD. If the 50,000 CYs of material is not achieved within the 6-month time period, the Permittee would close the CAD facility and place a 3-foot-thick, clean final cap, thus leaving the final elevation of the CAD facility lower than originally designed. The final elevation of the CAD facility would be restricted to an elevation that is at or below the water depths necessary for navigation within Lower Newport Bay.

Following the 6-month period, a final cap layer would be placed to isolate the underlying contaminated sediment from the water column, burrowing organisms and biota, and Lower Newport Bay. The final cap layer has been designed to a thickness of 3 feet (33,600 CY) and may consist of dredged sediment under an amendment or re-issuance of the Permittee's RGP 54 Order. Additionally, the Permittee is proposing to utilize dredged material generated from maintenance dredging at the Santa Ana River as a contingency, or other sources available at the time for the final cap layer (both options to be permitted separately). Testing of the sediment during dredging would be required to determine suitability for the final cap layer.

The construction of the CAD facility would generate 282,400 CYs of dredged material. It is anticipated that most of this material would be suitable for nearshore ocean placement for beach nourishment purposes at predefined areas, prioritizing as shallow placement as feasible up to -13 feet MLLW (see Attachment A). The top two (2) feet of material may require disposal at LA-3. Sediment sampling during dredging of the CAD facility would be required to determine the acceptability of sediments for nearshore placement areas.

V. Project Location

The Project is located within the central portion of Lower Newport Bay between Bay Island, Lido Isle, and Harbor Island, as well as nearshore waters in Newport Beach, Orange County. The center of the CAD facility is approximately 33.609921° N / -117.905348° W. Maps showing the Project location and proposed nearshore placement areas are found in Attachment A of this Order.

VI. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the Santa Ana Water Board. Receiving waters potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent amendments (Basin Plan) and other plans and policies. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state (including waters of the United States), water quality objectives to protect those uses, and the state and federal antidegradation policies.

In 1996 and 1998, the Newport Bay and San Diego Creek watersheds were identified as water quality limited due to several toxic pollutants under section 303(d) of the CWA, and the United States Environmental Protection Agency (USEPA) designated the watershed as a high priority for the development of Total Maximum Daily Loads (TMDLs). Lower Newport Bay was identified as water quality impaired for the following pollutants: copper, lead, selenium, zinc, chlordane, dieldrin, DDT, and PCBs. In 2002, the USEPA addressed these impairments through *Total Maximum Daily Loads for Toxic Pollutants in San Diego Creek and Newport Bay, California* (Toxics TMDLs; USEPA 2002).

In 2011, the Santa Ana Water Board adopted TMDLs for organochlorine compounds for San Diego Creek and Newport Bay, which were subsequently approved by USEPA and replaced USEPA's Toxics TMDLs for chlordane, dieldrin, DDT, and PCBs. In 2017, the Santa Ana Water Board adopted TMDLs for selenium for San Diego Creek, Santa Ana-Delhi Channel, and Big Canyon Wash; no impairment to beneficial uses from selenium was found in Newport Bay. The USEPA approved the Board's selenium TMDLs, which then replaced USEPA's Toxics TMDLs for selenium.

Although Newport Bay has been delisted for lead and zinc, USEPA's Toxic TMDLs are still in effect until the Santa Ana Water Board adopts, and USEPA approves, revised TMDLs for these two metals. Newport Bay is still impaired for copper. Santa Ana Water Board staff have developed revised TMDLs for copper; however, until these copper TMDLs are adopted by the Santa Ana Water Board, and approved by USEPA, the Toxics TMDLs are still in effect for copper as well. The following Santa Ana Water Board Resolutions are applicable to Lower Newport Bay: R8-2011-0037, *Organochlorine Compounds Total Maximum Daily Loads for San Diego Creek, Upper and Lower Newport Bay* and *Investigative Order R8-2018-0075 Order Directing County of Orange and Dischargers to the Newport Bay Watershed Narrative Sediment Quality in Upper Newport Bay and Lower Newport Bay*.

Receiving Water:	Lower Newport Bay
Existing or Potential Beneficial Uses:	Navigation, Water Contact Recreation, Non-contact Water Recreation, Commercial and Sportfishing, Wildlife Habitat, Rare, Threatened, or Endangered Species, Spawning, Reproduction, and Development, Marine Habitat, Shellfish Harvesting

VII. Description of Direct Impacts to Waters of the United States

On behalf of the Permittee, Anchor QEA (Permittee's Agent), developed a set of scenarios to evaluate potential sediment dispersion patterns associated with the disposal operations for the CAD facility, and predict compliance with applicable water quality standards using the Short-Term Fate (STFATE) model³. Five scenarios were developed to represent various potential sediment sources that may be placed within the CAD. The scenarios included maximum expected current velocities during ebb and flood tide conditions, three grain size classes, and two placement locations. The analysis was reviewed and evaluated by the USACE's Engineering Research and Development Center (ERDC) and USEPA. Both ERDC and USEPA confirmed the use of the STFATE model and that its parameters were appropriate.

The California Toxics Rule (CTR) Saltwater Criterion Continuous Concentration (CCC; i.e., chronic water quality criterion) for dissolved copper (3.1 µg/L), dissolved mercury (0.94 µg/L), total PCBs (0.03 µg/L), and total DDT compounds, referred to as DDx, (0.001 µg/L) were used in the model to evaluate potential water quality impacts; the predicted results were compared to both the CTR CCC and the CTR Criterion Maximum Concentration (CMC; i.e., acute water quality criterion). The water quality criteria for dissolved copper, dissolved mercury, total PCBs, and total DDx did not exceed the CTR acute criteria (CMC). STFATE modeling indicates that DDx water column concentrations are predicted to exceed the chronic water

³ STFATE is a sediment transport model designed to evaluate the short-term fate of dredged material disposed in open water for prediction deposition and water quality effects. The model was developed by the USACE Engineering Research and Development Center (ERDC)
https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=REGION%2009&dirEntryID=17857

quality criterion (CCC) during some placement events; however, the STFATE modeling further indicates that the DDX concentrations would be similar to the ambient water column concentrations currently occurring in Lower Newport Bay.

Once the CAD facility is constructed and the final cap layer is placed, the potential for resuspension of contaminated sediments is considered minimal as the material would be physically isolated. Chemical isolation modeling was conducted to simulate the transport of mercury, DDX, and total PCBs through the final cap layer over a 100-year period. Concentrations six (6) inches below the surface of the final cap are predicted to remain below the porewater criteria (CTR) and sorbed phase criteria National Oceanic and Atmospheric Administration (NOAA) 2008 Screening Quick Reference Tables (SQiRTs) effects range medium (ERM) for marine sediments for more than 100 years.

The dredging activities for the CAD construction and capping activities would temporarily displace benthic habitat and infauna from the dredging footprint (348,100 square feet), making the benthic habitat and infauna unavailable for special-status species fish to forage. However, following completion of sediment-disturbing activities, (i.e., construction, dredged sediment disposal, final cap placement) benthic habitat in this area is expected to recolonize within approximately two years. To assess whether the recolonizing benthic infauna community are similar to or more diverse than the displaced fauna, the Permittee must provide an assessment of the current benthic community composition, diversity, and health for comparison to post-construction conditions to the Santa Ana Water Board for review and approval 60 days prior to the start of any bottom-disturbing activities within the Project site.

The Permittee proposes to nourish nearby beaches through nearshore placement of clean sand material. The beach nourishment activities have the potential to result in temporarily increased turbidity. These areas are expected to return to background turbidity levels after placement concludes.

Permanent impacts are categorized as those resulting in a physical loss in area and also those degrading ecological condition only. The Project is not anticipated to result in any permanent physical loss of waters of the United States or degradation of ecological condition.

VIII. Description of Indirect Impacts to Waters of the United States

The Santa Ana Water Board recognizes the potential for indirect impacts to waters of the United States associated with the Project. Dredging has the potential to result in accidental spills if equipment is improperly managed. Various materials used during construction could be introduced into the marine environment, including fuel oils, grease, or other petroleum products. These contaminants may be toxic to fish or cause altered oxygen diffusion rates and acute and chronic toxicity to aquatic organisms. Eelgrass and estuarine habitat may similarly be adversely affected by contaminants if introduced to the aquatic ecosystem.

IX. Avoidance and Minimization

The Permittee would implement best management practices (BMPs) throughout the CAD facility construction and during material placement. The following BMPs would be implemented:

- General construction BMPs, including removing floating debris, implementing a water quality monitoring plan, preventing barge overflow, adjusting dredge cycle time and bucket velocity as it is raised and lowered, modifying bucket size or type if necessary,

modifying the operation of the dredging equipment to minimize resuspension of sediment, and washing the bucket to remove cohesive sediment;

- During dredging and placement events, silt curtains would be used to reduce turbidity by isolating the active dredging site from the rest of Lower Newport Bay;
- To minimize the potential for material loss during dredging and placement activities, the Permittee would utilize beam leveling to pull or sweep all placement material that settles outside the CAD facility back to and within the CAD facility boundaries before a clean cover layer is placed or capping is conducted; and
- The final cap layer, using clean material, would be extended beyond the edges of the CAD facility to cover the newly settled material.

X. Compensatory Mitigation

No compensatory mitigation is currently required for the Project. The Project would not result in a net loss of physical area to waters of the United States. The final cap layer would be maintained to ensure long-term containment and chemical isolation of unsuitable dredged material. Moreover, benthic communities are expected to recolonize within approximately two (2) years following placement of the final cap layer. However, this Order requires the Permittee to conduct monitoring to compare pre-Project benthic community conditions to those post-construction. If degradation or loss of the benthic community is found post-construction, the Permittee shall mitigate this impact at a minimum of a 1:1 ratio and must submit a mitigation plan for review and approval by the Santa Ana Water Board. Additionally, eelgrass impacts are not anticipated to occur. However, if eelgrass is identified within the boundaries of the Project area, the Permittee must mitigate for eelgrass impacts at a minimum mitigation to impact ratio of 1.38:1 (mitigation: impact). Please see sections XIV.J (1) and (2) of the Order for other compensatory mitigation requirements.

XI. California Environmental Quality Act (CEQA)

On May 25, 2021, the Permittee, as lead agency under CEQA (Pub. Resources Code, § 21000 et seq.), certified an Environmental Impact Report (EIR) for the Project (State Clearinghouse No. 2019110340). The lead agency filed a Notice of Determination (NOD) with the Clerk of the Board of Supervisors, County of Orange on May 26, 2021.

The Santa Ana Water Board is a responsible agency under CEQA for the purposes of issuing this Order. As a responsible agency, the Santa Ana Water Board is “responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve.” (Pub. Resources Code, § 21002.1(d).) In issuing this Order, the Santa Ana Water Board has considered the EIR certified by the lead agency, and in making its determinations and findings, must presume that the EIR comports with the requirements of CEQA and is valid (see Pub. Resources Code, §§ 21080.1(a), 21167.2). More specifically, the Santa Ana Water Board considered those sections of the EIR pertaining to potential impacts to water quality. When implemented in accordance with the mitigation measures required in the EIR and the Conditions set forth in this Order, potentially adverse impacts to water quality from the Project should be reduced to a less-than-significant level and beneficial uses of waters of the United States protected.

XII. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Resources Control Board (State Water Board) to reconsider this Order in accordance with California Code of

Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within thirty (30) calendar days of the issuance of this Order.

XIII. Fees Received

An application fee of \$2,066 was received on August 26, 2021. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category B - Dredging Discharges (fee code 86) with the dredge and fill fee calculator. Under Category B, additional Project fees would be billed annually based on the quantity of material dredged during the previous fiscal year.

XIV. Conditions

The Santa Ana Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watershed of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

A. Authorization.

- a. Facility Footprint:** The dredge footprint of the CAD facility shall not exceed 8 acres. The total dredged material to be placed within the CAD shall not exceed 199,500 CY of sediment as described below:

- 106,900 CY of unsuitable dredged material from the Federal Channels;
- 50,000 CY of unsuitable dredged material from outside the Federal Channels;
- 9,000 CY of clean material, likely from the Newport Channel 3, for an interim cap to provide a containment layer designed at a thickness of one (1) foot; and
- 33,600 CY for a final cap layer consisting of clean material placed at a thickness of three (3) feet.

Anchoring or any other bottom disturbing activities not associated with the Project activities are prohibited within the CAD footprint until the final cap layer has been placed.

- b. Invasive Alga, Caulerpa:** Prior to initiating any bottom disturbing activity, the Permittee shall survey the Project area for the invasive alga *Caulerpa* (*Caulerpa* spp.) in accordance with the most current *Caulerpa* Control Protocol established by the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NOAA Fisheries) and in compliance with federal and state protocols for an Infested System⁴. If *Caulerpa* is found, the Permittee shall notify the Southern California *Caulerpa* Action Team (SCCAT), in writing via email or other verifiable means within 24 hours of discovery. In the event that *Caulerpa* is detected, construction activities shall not be conducted until the infestation has been isolated,

⁴ Any bay, harbor, estuary, lagoon, or ecological unit in which *Caulerpa* has been identified, regardless of where the infestation occurs geographically within the system, unless determined otherwise by NOAA's National Marine Fisheries Service (NOAA Fisheries) and California Department of Fish and Wildlife (CDFW).

and treated, or the risk of spread from the construction activities is eliminated and the SCCAT has concurred in writing.

- c. Eelgrass: Thirty (30) days prior to initiating any bottom disturbing activities, the Permittee shall survey the Project area for eelgrass. If eelgrass is located, a post-construction survey shall also be performed by the Permittee within thirty (30) days following completion of final cap placement to evaluate any immediate effects to eelgrass habitat. The eelgrass survey shall be consistent with the Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Based Management Program (City of Newport Beach; October 14, 2015) (Newport Bay Eelgrass Protection and Mitigation Plan) and conform to the latest California Eelgrass Mitigation Policy (CEMP) procedures established by the NOAA Fisheries.
 - i. Prior to commencement of any bottom disturbing activity authorized under this Order, 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.
 - ii. 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.
 - iii. 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.

B. Bathymetric Surveys: The Permittee shall conduct the following bathymetric surveys and submit within 14 days of survey completion to Santa Ana Water Board staff for review.

- a. A bathymetric survey of the CAD facility shall be conducted within 30 days of initiation disposal operations to ensure the CAD facility has been constructed to meet the design specifications as outlined as part of the Basis of Design Report (BODR, Anchor QEA 2022) and in this Order.
- b. A bathymetric survey of the CAD facility shall be conducted within 14 days after the sediments unsuitable for open ocean disposal have been placed within the CAD facility to ensure that the material has been placed evenly within the CAD facility.
- c. A bathymetric survey of the CAD facility shall be conducted within 14 days after the interim cover containment layer is constructed to ensure that the material has been placed evenly and at the proper depth within the CAD facility.
- d. A bathymetric survey of the CAD facility shall be conducted within 14 days after the final cap is constructed to ensure that the material has been placed evenly and at the proper depth within the CAD facility.

C. 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.

D. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment B, including specifications for photo and map documentation during the Project construction. Written reports and notifications shall be submitted using the *Reporting and Notification Cover Sheet* located in Attachment B and signed by the Permittee or an authorized representative.

1. Project Reporting:

- a. Annual Reporting.** The Permittee shall submit an Annual Report each year on the anniversary of the effective date of this Order. Annual reporting shall continue until a *Notice of Project Complete Letter* is issued to the Permittee. The Annual Report shall include documentation of compliance with all required conditions, monitoring, and applicable water quality standards.

2. Project Status Notifications:

- a. Commencement of Construction.** The Permittee shall submit a *Commencement of Construction Report* at least seven (7) days prior to start of initial bottom disturbing activities.
- b. Interim Cap Placement.** The Permittee shall submit a *Notice of Interim Cap Placement* following completion of interim cap placement. This notice shall be submitted to Santa Ana Water Board staff within 14 days following interim cap placement and include results of the bathymetric survey.
- c. Final Cap Placement.** The Permittee shall submit a *Notice of Final Cap Placement* following completion of final cap placement. This notice shall be submitted to Santa Ana Water Board staff within 14 days following final cap placement and include results of the bathymetric survey.
- d. Request for Notice of Completion of Discharges Letter.** The Permittee shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and Permittee-responsible mitigation. This request shall be submitted to Santa Ana Water Board staff within 30 days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the Permittee a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
- e. Request for Notice of Project Complete Letter.** The Permittee shall submit a *Request for Notice of Project Complete Letter* when construction and any required

post-construction monitoring is complete⁵ and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within 30 days following completion of all Project activities. Upon approval of the request, the Santa Ana Water Board staff will issue to the Permittee a *Notice of Project Complete Letter*, which will end the post-construction monitoring period and associated annual fees, if applicable.

- 3. Conditional Notifications and Reports:** The following notifications and reports are required as appropriate.
- a. Accidental Discharges of Hazardous Materials.**⁶ Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):
- i. As soon as (A) the Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures, then the Permittee shall:
 - first call – 911 (to notify local response agency)
 - then call – Office of Emergency Services (OES) State Warning Center at (800) 852-7550 or (916) 845-8911
 - lastly, follow the required OES procedures as set forth in the *California Hazardous Materials Spill / Release Notification Guidance*
 - ii. Following notification to OES, the Permittee shall notify the Santa Ana Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, email, delivered written notice, or other verifiable means.
 - iii. Within five (5) working days of notification to the Santa Ana Water Board, the Permittee shall submit an *Accidental Discharge of Hazardous Material Report*.
- b. Violation of Compliance with Water Quality Standards.** The Permittee shall notify the Santa Ana Water Board of any event causing a violation of compliance with water quality objectives. Notification may be via telephone, email, delivered written notice, or other verifiable means.
- i. Examples of noncompliance events include, but not limited to, a lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the United States, or exceedances in water column contaminant levels.
 - ii. If an exceedance of a water quality contaminant level does occur, the Permittee must conduct additional sampling to confirm the exceedance. If the exceedance

⁵ Completion of post-construction monitoring will be determined by Santa Ana Water Board staff and will be contingent on successful attainment of restoration and mitigation performance criteria.

⁶ "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Safety Code, § 25501.)

is confirmed by the additional sampling, then the Permittee will be required to investigate and remediate the cause of the exceedance, submit a corrective action plan to the Santa Ana Water Board within seven (7) days of the exceedance, and submit a report with the results of the investigation including analytical and QA/QC data within 30 days of the exceedance.

- iii. This notification shall be followed within three (3) working days by submission of a *Violation of Compliance with Water Quality Standards Report* to the Santa Ana Water Board.
- c. **Modifications to Project.** Project modifications may require an amendment of this Order. The Permittee shall give advance notice to Santa Ana Water Board staff by submitting a *Modifications to Project Report*, if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state, or federal regulatory authority. The Permittee shall inform Santa Ana Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order. Notification may be made in accordance with conditions in the Certification Deviation section of this Order.
- d. **Transfer of Property Ownership.** This Order is not transferable in its entirety or in part to any person or organization except after notice to the Santa Ana Water Board in accordance with the following terms:
 - i. The Permittee shall notify the Santa Ana Water Board by submitting a *Transfer of Property Ownership Report* of any change in ownership or interest in ownership of the Project area. The Permittee and purchaser shall sign and date the notification and provide such notification to the Santa Ana Water Board at least ten (10) days prior to the transfer of ownership. The purchaser shall also submit a written request to the Santa Ana Water Board to be named as the permittee in a revised order.
 - ii. Until such time as this Order has been modified to name the purchaser as the new permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.
- e. **Transfer of Long-Term Best Management Practices (BMPs) Maintenance.** If maintenance responsibility for post-construction BMPs is legally transferred, the Permittee shall submit to the Santa Ana Water Board a copy of such documentation and shall provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Permittee shall provide such notification to the Santa Ana Water Board with a *Transfer of Long-Term BMP Maintenance Report* at least 10 days prior to the transfer of BMP maintenance responsibility.

E. Monitoring and Reporting Program

1. **General Monitoring Provisions:** California Water Code sections 13267 and 13383 authorize the Regional Water Quality Control Boards to require technical and monitoring reports. The monitoring and reporting requirements contained herein are necessary to demonstrate compliance with this Order. The burden, including costs, of these

requirements bears a reasonable relationship to the need for the information and the benefits to be obtained from that information.

- i. All sampling, sample preservation, and analytical procedures shall be in accordance with the current approved edition of "*Standard Methods for the Examination of Water and Wastewater*" (American Public Health Association) and/or 40 Code of Federal Regulations part 136 approved methods, unless otherwise specified by the Executive Officer of the Santa Ana Water Board.
 - ii. Unless otherwise approved by the Regional Water Board's Executive Officer, all analyses shall be conducted by a laboratory accredited by [State Water Board's Environmental Laboratory Accreditation Program](#).
 - iii. The Permittee shall have and implement an acceptable written quality assurance (QA) plan for laboratory analyses and contracted laboratories. Duplicate chemical analyses shall be conducted on a minimum of ten percent (10%) of the samples.
 - iv. All monitoring instruments and devices used by the Permittee to fulfill the prescribed monitoring program shall be properly maintained and calibrated as necessary to ensure their continued accuracy. In the event that continuous monitoring equipment is out of service for greater than a 24-hour period, the Permittee shall obtain a representative grab sample each day the equipment is out of service. The Permittee shall correct the cause(s) of failure of the continuous monitoring equipment as soon as practicable. In the annual report, the Permittee shall specify the period(s) during which the equipment was out of service, and if the problem has not been corrected, shall identify the steps which the Permittee is taking or proposes to take to bring the equipment back into service and the schedule for these actions.
- 2. Pre-Construction Monitoring:** 60 days prior to start of bottom disturbing activities, the Permittee shall submit a Sampling and Analysis Plan (SAP) to the Santa Ana Water Board for review and approval. At a minimum, the SAP shall include the following:
- a. A representative number of randomly placed (using a numeric model) surficial sediment samples both within the footprint of the CAD facility and within the 75-foot dispersal area around the CAD both prior to the start of the CAD construction.
 - b. A map and GPS data for the source location(s) and the volume of material being sourced from each location.
 - c. Samples shall 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.
 - d. Provide an assessment of the current benthic community composition, diversity, and health for comparison to post-construction conditions.
 - e. Copies of the original chain-of-custody forms and analytical laboratory data sheets including QA data.

- 3. Construction Water Quality Monitoring:** 60 days prior to start of any bottom disturbing activities, the Permittee shall submit a *Water Quality Monitoring and Reporting Plan* to the Santa Ana Water Board for review and approval. The Project activities shall not proceed until the *Water Quality Monitoring and Reporting Plan* has been approved by Santa Ana Water Board. At a minimum, the plan shall include the following:
- a. Water column monitoring shall occur at set distances from the bottom disturbing activities and disposal activities. The proposed down current sampling distances for each new bottom disturbing or disposal activity shall be at a minimum of 150, 200, and 250 feet, and the samples shall be collected at controlled locations, within 15 minutes of the disposal event. In addition, one up current station located within 150 feet of the Project area shall also be monitored as a reference location for comparison with the down current locations.
 - b. At each controlled location, continuous depth profiles shall be collected a minimum of three times per week at the following depths, three (3) feet below the water surface, one (1) foot above the ocean bottom, and the midway point between the previous depths.
 - c. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - d. Monitoring and reporting shall be required more frequently or adjusted from the initial approved frequency based on review of data collected, as determined by the Santa Ana Water Board Executive Officer, to maintain, compliance with this Order and/or as specified in this Order. The results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual report.
 - e. The Permittee shall conform to the following water column quality objectives when initiating any bottom disturbing activities, including construction of the Project and during dredge material placement activities within the Project footprint:
 - i. **Oil and Grease.** Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations that result in a visible film or in coating objects in the water, or that cause a nuisance or adversely affect beneficial uses.
 - ii. **Dissolved Oxygen.** The dissolved oxygen content of enclosed bays and estuaries shall not be depressed to levels that adversely affect beneficial uses as a result of controllable water quality factors. Dissolved oxygen levels shall not be depressed below 5.0 mg/L outside of the Project site.
 - iii. **pH.** The pH of bay or estuary waters shall not be raised above 8.6 or depressed below 7.0 as a result of controllable water quality factors; ambient pH levels shall not be changed by more than 0.2 unit.
 - iv. **Light Transmissivity.** Monitoring of light transmissivity shall occur within the sampling water column, throughout the Project footprint. Averaged light transmissivity shall not decrease more than 40 percent within the cumulative average of samples collected and analyzed. Monitoring areas shall be the same as for turbidity.

- v. **Turbidity.** Increases in turbidity that result from controllable water quality factors shall comply with the following: where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20 percent; where natural turbidity is between 50 and 100 NTU, increases shall not exceed 10 NTU; and where natural turbidity is greater than 100 NTU, increases shall not exceed 10 percent. Changes in turbidity shall not adversely affect beneficial uses.
- vi. **Total Suspended Solids.** Enclosed bays and estuaries shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors.
- vii. **Total PCBs.** Monitoring of total PCBs concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 0.014 µg/L according to the CTR, shall be used as an acute toxicity concentration.
- viii. **Total DDx.** Monitoring of total DDx concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 1.1 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- ix. **Chlordane.** Monitoring of total chlordane concentrations shall occur within the sampling water column, through the Project footprint. The CMC value of 2.4 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- x. **Dieldrin.** Monitoring of dieldrin concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 0.24 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- xi. **Toxaphene.** Monitoring of toxaphene concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 0.73 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- xii. **Arsenic.** Monitoring of arsenic concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 69.0 µg/L, according to the California Toxics Rule, shall be used as an acute toxicity concentration.
- xiii. **Copper.** Monitoring of copper concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 4.8 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- xiv. **Chromium.** Monitoring of chromium (VI) concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 1,100 µg/L, according to the CTR, shall be used as an acute toxicity concentration.
- xv. **Lead.** Monitoring of lead concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 210 µg/L, according to the California Toxics Rule, shall be used as an acute toxicity concentration.

- xvi. Nickel.** Monitoring of nickel concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 74 µg/L, according to the California Toxics Rule, shall be used as an acute toxicity concentration.
- xvii. Zinc.** Monitoring of zinc concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 90 µg/L, according to the California Toxics Rule, shall be used as an acute toxicity concentration.
- xviii. Mercury.** Monitoring of mercury concentrations shall occur within the sampling water column, throughout the Project footprint. The Instantaneous Maximum water quality objective of 0.4 µg/L, according to the [2015 California Ocean Plan](#), shall be used as an acute toxicity concentration.
- xix. Tributyltin.** Monitoring of tributyltin (TBT) concentrations shall occur within the sampling water column, throughout the Project footprint. The CMC value of 0.42 µg/L, according to the USEPA's 2021, Ambient Aquatic Life Water Quality Criteria for Tributyltin (TBT), shall be used as an acute toxicity concentration.

Sampling shall be conducted in accordance with Table 2 sampling parameters⁷.

⁷ Parameters shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, a description of the method to be used must be submitted to the Santa Ana Water Board staff for approval. A hand-held field meter may be used, provided the meter utilizes a U.S. Environmental Protection Agency-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

Table 2: Parameter, Acute Toxicity Criterion, Sample Type and Frequency Requirements

Parameter	Acute Toxicity Criterion	Unit of Measurement	Type of Sample	Minimum Frequency
Oil and Grease	N/A	N/A	Visual	Continuous
Dissolved Oxygen	>5.0 mg/L	mg/L & % saturation	Grab ⁸	Three times per week
pH	N/A	Standard Units	Grab	Three times per week
Turbidity	N/A	NTU	Grab	Continuous
Total Suspended Solids	N/A	mg/L & ppm	Grab	Three times per week
PCBs	0.014	µg/L	Grab	Three times per week
DDx (total DDTs)	1.1	µg/L	Grab	Three times per week
Chlordane	2.4	µg/L	Grab	Three times per week
Dieldrin	0.24	µg/L	Grab	Three times per week
Toxaphene	0.73	µg/L	Grab	Three times per week
Arsenic	69	µg/L	Grab	Three times per week
Copper	4.8	µg/L	Grab	Three times per week
Chromium	1100	µg/L	Grab	Three times per week
Lead	210	µg/L	Grab	Three times per week
Nickel	74	µg/L	Grab	Three times per week
Zinc	90	µg/L	Grab	Three times per week
Mercury	0.4	µg/L	Grab	Three times per week
Tributyltin (TBT)	0.42	µg/L	Grab	Three times per week

- f. If continuous turbidity monitoring demonstrates turbidity greater than the allowed percentage of increase above natural turbidity levels, the sampling frequency for all other parameters shall increase to continuous monitoring.
- g. The Permittee shall comply with the numeric receiving water limitations specified in Table 3. Samples shall be collected at a minimum of four sampling locations, at a distance of no more than 300 feet from the Project boundary, including a sample from the perimeter of the Project boundary, and a sample from within the Project boundary. The Permittee may use the Permittee's most recent eelgrass survey to determine whether eelgrass is present within 300 feet of a project site.
- i. **Light Transmissivity.** Monitoring of light transmissivity shall occur within the sampling water column, throughout the Project footprint. Averaged light transmissivity shall not decrease more than 40 percent within the cumulative average of samples collected and analyzed. Light transmissivity shall not decrease more than 38% where eelgrass is present within 300 feet. Light transmissivity shall not decrease more than 16% where no eelgrass is present within 300 feet. Monitoring areas shall be the same as for turbidity.
- ii. **Turbidity.** Increases in turbidity that result from controllable water quality factors shall comply with the following: where eelgrass is present within 300 feet, increases shall not exceed 16 NTU; where no eelgrass is present within 300 feet,

⁸ A "grab" sample is defined as any individual sample collected in less than fifteen (15) minutes

increases shall not exceed 47 NTU. Changes in turbidity shall not adversely affect beneficial uses.

Table 3: Numeric Receiving Water Limitations		
Parameter	Receiving Water Limitation	
	Eelgrass Present within 300 ft	No Eelgrass Present within 300 ft
Light Transmissivity	38%	16%
Turbidity	16 NTU	47 NTU
pH	7 > pH < 8.6 < 0.2 change from ambient	
Dissolved Oxygen	> 5 mg/L	

4. **Interim Cap Placement Plan.** 60 days prior to interim cap placement, the Permittee shall submit an *Interim Cap Placement Plan* to Santa Ana Water Board for review and approval. The *Interim Cap Placement Plan* shall include the following:
 - a. 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.
 - b. Visual bioturbation monitoring, if placement of dredged material has not initiated within three (3) months of the installation of the interim cap layer.
 - c. A map and GPS data for the source location(s) and the volume of material being sourced from each location.
 - d. Copies of the original chain-of-custody forms and analytical laboratory data sheets including QA data.

5. **Final Cap Placement Plan.** 90 days prior to the placement of the interim cap layer, the Permittee shall submit a *Final Cap Placement Plan* to Santa Ana Water Board staff for review and approval. The placement of the interim cap shall not occur until the *Final Cap Placement Plan* has been approved by the Santa Ana Water Board Executive Officer. The *Final Cap Placement Plan* shall include the following:
 - a. Final design of the final cap layer, including a thickness of no less than 3 feet;
 - i. If the 50,000 CYs of material is not achieved within the 6-month time period, the Permittee would close the CAD facility and place a 3-foot-thick, clean final cap, thus leaving the final elevation of the CAD facility lower than originally designed. The final elevation of the CAD facility must be restricted to an elevation that is at or below the water depths necessary for navigation within Lower Newport Bay;
 - b. The source(s) of the final cap material including a map and GPS location(s);

- c. Characterization data and testing results of the material intended to be used for the final cap layer, and confirmation that the sourced material meets the performance criteria of sediment tested and modelled as part of the Basis of Design Report (BODR, Anchor QEA 2022). Characterization data shall include chemistry (metals, including mercury, and organics, including at a minimum, DDTs, PCBs, and current use pesticides such as pyrethroids), toxicity, total organic carbon, and grain size analysis;
 - d. The number of samples to be analyzed per volume of fill material used in the final cap layer. In addition, the location(s) of the fill source(s) shall be documented and the volume of fill from each location recorded and tracked; and
 - e. Copies of the original chain-of-custody forms and analytical laboratory data sheets including QA/QC data.
 6. **Nearshore Sand Placement Plan:** 30 days prior to nearshore placement activities, the Permittee shall submit a *Nearshore Placement Plan* to the Santa Ana Water Board for review and approval. The *Nearshore Placement Plan* shall include the following:
 - a. Framework for the Permittee to monitor, record, and report the location and depth of sand placement events to verify material has been placed as shallow as possible.
 - b. Sediment characterization data for material to be used for nearshore placement to determine its suitability. The characterization data shall 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.
 - i. Only clean sand material composed of greater than 80% sands shall be placed along nearshore placement areas outlined in Attachment A.
 - c. A map and GPS data for the source location(s) and the volume of material being sourced from each location.
 - d. Copies of the original chain-of-custody forms and analytical laboratory data sheets including QA data.
 7. **Accidental Discharges/Noncompliance:** Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, Santa Ana Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.
 8. **Post-Construction:** The Permittee shall monitor the Project site 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. Post-construction monitoring shall include the following:
 - a. Bathymetry surveys using multi-beam sonar immediately following construction and final cap placement, after three (3) months, six (6) months, twelve (12) months, five (5) years, and ten (10) years.
-

- b. Porewater concentrations shall be monitored for metals and total PCBs using in-situ sediment probes one (1) year following construction, five (5) years following construction, and fifteen (15) years following construction.
- c. At (1) year, five (5) years, ten (10), and fifteen (15) years following completion of final cap placement, the Permittee shall conduct sediment coring to provide information on the physical characteristics of the final cap layer and underlying sediment (i.e., final cap thickness, horizontal coverage, and extent of mixing between layers) and the chemical characteristics of the final cap layer for comparison to baseline data collected immediately after final cap placement. Core chemistry data will be collected at a minimum of five locations distributed across the CAD facility to establish a profile of chemicals in various layers of the final cap and in the underlying sediment.
- 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.
- g. At a minimum, visual bioturbation and benthic community monitoring shall be conducted annually within the Project footprint for no less than 5 years after construction of the final cap has been completed. Photographic documentation including number and types of burrows, should be included in the Permittees Annual Report for the Project as well as documentation that demonstrates that the benthic community that recolonized the Project site is equivalent to or in better condition than that which existed prior to the Project. Any differences in benthic community composition, abundance, density, and diversity shall be documented and explained in the Annual Report.
- h. Nearshore Biological Monitoring. One (1) year post sand placement, a nearshore biological survey shall be conducted following the exact methods employed by Coastal Resources Management, Inc. and documented in their January 26, 2022, (City of Newport Beach, Lower Newport Harbor CAD) Newport Beach Nearshore

Marine Biological Survey. The post-Project report shall compare the pre- and post-survey results and draw conclusions regarding any potential adverse impacts of the Project on the nearshore marine benthos and potential recommendations to improve future deposition events. The final report shall be submitted within 90 days of the final survey.

F. Standards

1. This Order will expire if Project activities do not commence within five (5) years from the effective date of the Order. Any request for extension of the expiration date must be approved in writing by the Santa Ana Water Board.
2. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, chapter 28, article 6 commencing with sections 3867-3869, inclusive. Additionally, the Santa Ana Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Permittee, if the Santa Ana Water Board determines that the Project fails to comply with any of the conditions of this Order; or when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). For purposes of Clean Water Act section 401(d), the condition constitutes a limitation necessary to assure compliance with water quality standards and appropriate requirements of state law.
3. This Order is not intended to and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
4. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Permittee.
5. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, processes, or sanctions as provided for under state and federal law. For purposes of Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

G. General Compliance

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability including but not limited to pursuant to Water Code section 13385.

2. If the conditions of this Order are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Santa Ana Water Board may require that the Permittee submit a Report of Waste Discharge and obtain Waste Discharge Requirements.
3. Permitted actions shall not cause a violation of any applicable water quality standards and the state antidegradation policy, including impairment of designated beneficial uses for receiving waters, as adopted in the Basin Plan and any subsequent Basin Plan amendments or in any applicable State Water Board water quality control plan or policy. The source of any such discharge shall be eliminated as soon as practicable.
4. In response to a suspected violation of any condition of this Order, the Santa Ana Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Santa Ana Water Board deems appropriate, provided that the burden, including costs, of the reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
5. The Permittee shall, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Permittee submittals.
6. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project. For purposes of Clean Water Act section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.

H. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment C of this Order.
2. This Order does not authorize any act that results in the taking of a threatened, endangered, or candidate species, or any act that is now prohibited or becomes prohibited in the future under either the California Endangered Species Act (Fish & Game Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a "take" will result from any act authorized under this Order held by the Permittee, the Permittee shall obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
3. The Permittee shall grant Santa Ana Water Board staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:

- a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept;
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order;
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order;
 - d. Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
 5. A copy of this Order shall be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

I. Construction

1. **Construction and Operational Best Management Practices (BMPs):** The following BMPs shall be implemented:
 - a. If nearshore sand placement is to be conducted during nighttime hours; nights with predicted grunion runs as identified by the CDFW must be avoided(<https://wildlife.ca.gov/Fishing/Ocean/Grunion>).
 - b. Operational BMPs, such as reduction in dredging rate, modification of clamshell operation, use of favorable tidal conditions to minimize spread of turbidity plumes, and temporary suspension of dredging, shall be employed, as necessary. Other general construction BMPs, including removing floating debris, preventing barge overflow, adjusting dredge cycle time and bucket velocity as it is raised and lowered, modifying bucket size or type when necessary, modifying the operation of the dredging equipment to minimize resuspension of sediment, and washing the bucket to remove cohesive sediment, shall be implemented as necessary.
 - c. To minimize the potential for material loss during dredging and placement activities, the Permittee would utilize beam leveling to pull or sweep all placement material that settles outside the CAD facility back to and within the CAD facility boundaries before a clean cover layer is placed or capping is conducted; and
 - d. During dredging and placement events, monitoring buoys that provide continuous and real-time information on turbidity levels shall be deployed and maintained both up and down current of the Project area. Turbidity monitoring buoys should be placed 150 feet up current of the Project Area and at 150, 200, and 250 feet down current of the Project Area.

- e. Silt curtains shall be utilized during dredging and material placement activities to reduce turbidity by isolating the active dredging site from the rest of Lower Newport Bay. Additionally, a floating boom shall be maintained around the Project area.
 - i. The silt curtains must be comprised of Type 3 impermeable (heavy duty) geotextile material.
 - ii. The silt curtains must be maintained as a full turbidity enclosure. The silt curtains must be supported by floating debris booms in open water areas and include bottom connectors, ballast chains, and tension cables to fully secure and minimize movement of the silt curtains.
 - iii. Silt curtains must be continuously monitored for damage, dislocation, or gaps and must be immediately repaired where it is no longer continuous or where it has loosened.
- f. Material placement must take place outside tidal extremes. Material placement activities should be limited to neap and non-peak tides, defined as plus or minus 2 hours from slack tide, to limit the horizontal distribution of dredged or fill material placed in the CAD facility due to reduced current speeds. In addition, placement activities should be conducted during a non-peak flood tide. These measures would limit the loss of dredged or fill material outside the CAD facility during placement operations.
- g. All materials generated from the Project activities shall be managed appropriately. The Permittee shall identify all potential pollution sources associated with the Project and incorporate all necessary pollution prevention BMPs for each potential pollution source identified. Any and all debris resulting from construction activities shall be removed from the site within ten (10) days of completion of construction.
- h. Sediment for nearshore placement shall be placed, not dumped, using means to minimize turbidity and disturbance to Lower Newport Bay sediments.
- i. BMPs for effective perimeter control shall be in place at all times to control the discharge of pollutants from the Project site during CAD construction and material placement. Chemical, fuel, and lubricant containers shall be kept closed and protected from damage or upset at all times, unless being actively used.
- b. Substances resulting from Project-related activities and that could be harmful to aquatic life shall not be discharged to waters of the United States. These substances include but are not limited to petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, Portland cement concrete or asphalt concrete, and washings and cuttings thereof.
- c. Motorized equipment shall not be maintained or parked in such manner that petroleum products or other pollutants from the equipment might enter waters of the United States. Equipment shall not be operated on-site in waters of the United States, except as necessary to complete the proposed Project.

2. **Hazardous Materials:** During construction activities, the Permittee shall comply with local, state, and federal laws and regulations regarding the handling and storage of hazardous substances.
- J. Compensatory Mitigation:** No permanent degradation of ecological condition is expected from the Project; however, the Permittee shall comply with the following mitigation requirements if degradation is subsequently identified:
1. **Benthic Impacts.** If post-construction degradation or loss of the benthic community within the Project site is found (after completion of post-construction monitoring for this potential impact in year five (5) following placement of the final cap layer), the Permittee shall mitigate this impact at a minimum of a 1:1 ratio. However, if recolonization of benthic communities occurs between placement of the interim cap and final cap layer the Permittee shall mitigate those impacts at a ratio greater than 1:1, up to a 2:1 ratio. The Permittee must submit a mitigation plan with all of the elements required by the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* for review and approval by the Santa Ana Water Board.
 2. **Eelgrass Impacts.** If eelgrass has been identified within the boundaries of the Project area, the Permittee shall mitigate for eelgrass impacts at a minimum mitigation to impact ratio of 1.38:1. If eelgrass is found during the pre-dredging survey, a post-dredging survey must be performed within 30 days following Project completion to quantify any unanticipated losses to eelgrass habitat. Impacts must then be determined from a comparison of pre- and post-dredging survey results. Impacts to eelgrass, if any, must be mitigated through conformance with the CEMP, which defines the mitigation ratio and other requirements to achieve mitigation for significant eelgrass impacts. If required following the post-dredging survey, the CEMP defined mitigation plan must be developed, submitted to and approved by the Santa Ana Water Board, and implemented to offset eelgrass impacts. If compensatory mitigation cannot be completed onsite, the Permittee shall mitigate for at least a 3:1 mitigation ratio.

XV. Certification Deviation

Minor modifications of Project locations or predicted impacts may be necessary as a result of unforeseen field conditions, necessary engineering re-design, construction concerns, or similar reasons. Some of these prospective Project modifications may have impacts on water resources. For purposes of this Certification, a *Certification Deviation* is a Project locational or impact modification that does not require an immediate amendment of the Order because the Santa Ana Water Board has determined that any potential water resource impacts that may result from the change are sufficiently addressed by the Order conditions and the CEQA findings. After the termination of construction, this Order will be formally amended to reflect all authorized Certification Deviations and any resulting adjustments to the amount of water resource impacts and required compensatory mitigation amounts.

A Project modification shall not be granted a *Certification Deviation* if it warrants or necessitates changes that are not addressed by the Order conditions such that the Project impacts are not addressed in the Project's environmental document or the conditions of this Order. In this case, a supplemental environmental review and different Order will be required.

XVI. Water Quality Certification

I hereby issue the Order (SARWQCB WDID # 302021-09) for the Lower Newport Bay Confined Aquatic Disposal Construction Project. This Order certifies that any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), as long as all of the conditions listed in the Order are met.

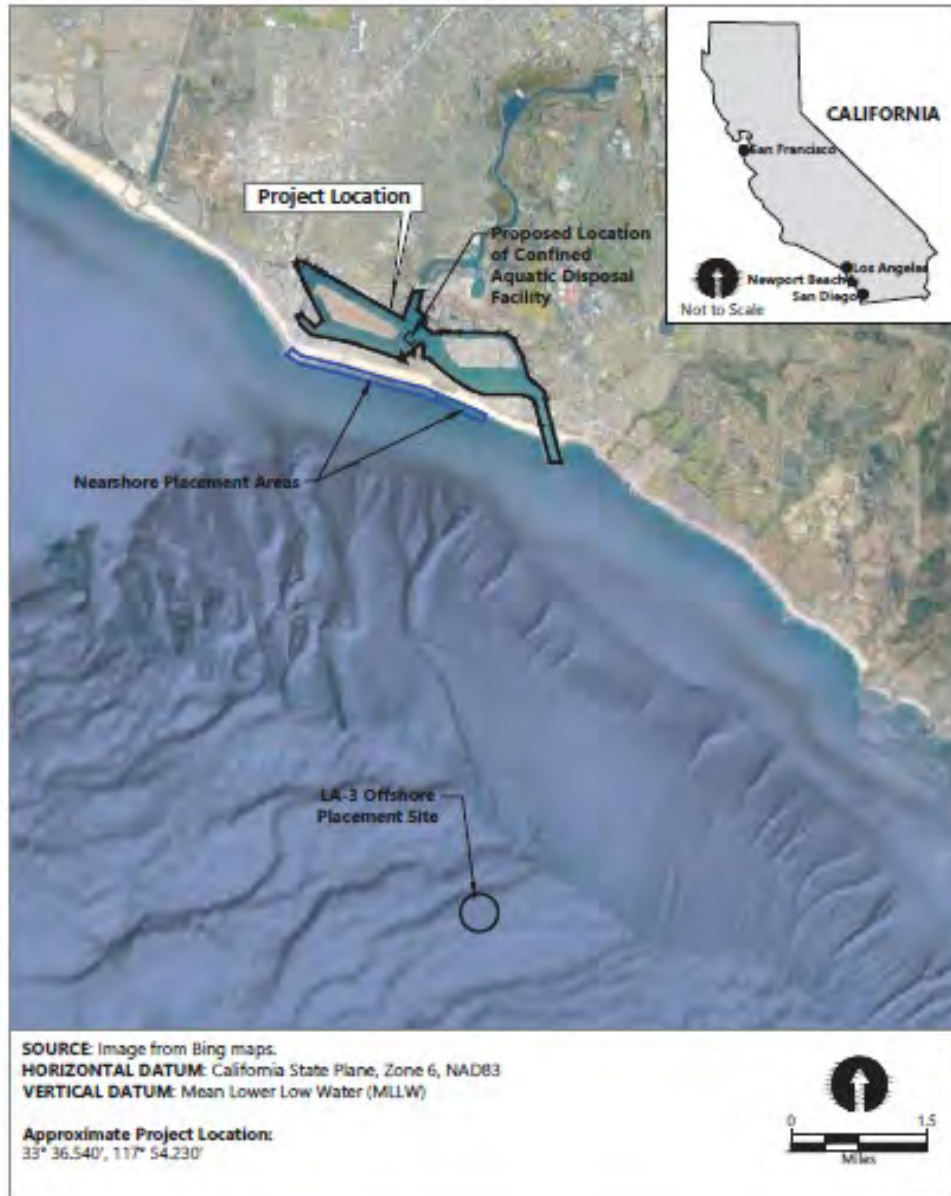
This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited, and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and (b) compliance with all applicable requirements of statewide Water Quality Control Plans and Policies and the Santa Ana Water Board's Basin Plan and Policies.

Jayne Joy P.E.
Executive Officer
Santa Ana Regional Water Quality Control Board

Date

- Attachment A** Project Maps
- Attachment B** Report and Notification Requirements
- Attachment C** Signatory Requirements
- Attachment D** 40 CFR Part 121.7 Compliance



Publsh Date: 2020/05/06 9:06 AM | User: bhury
FilePath: K:\Projects\0243-City of Newport Beach\Federal Channel\0243-024 BR VIC MAP.dwg Figure ES-1



Figure 1
Project Site and Vicinity

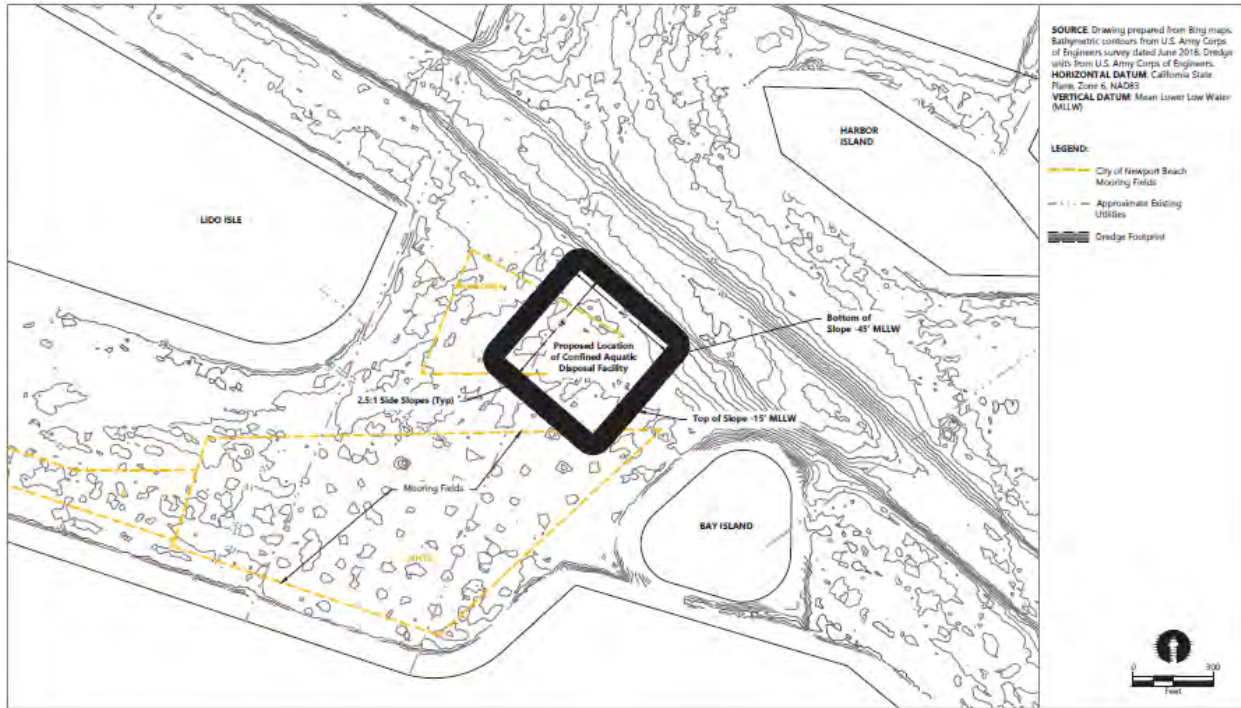
Supplement
Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project



Public Date: 2/28/2019 10:52 AM (User: Admin)
Project: E:\Projects\GIS\2019_City of Newport Beach\Federal_Channel\2019_RP-021_DR_H038-021_A01071.dwg Figure 3-1



Figure 1-2
Federal Channels Maintenance Dredging Sediment Suitability Map
Final Environmental Impact Report
Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project (PA2019-008)

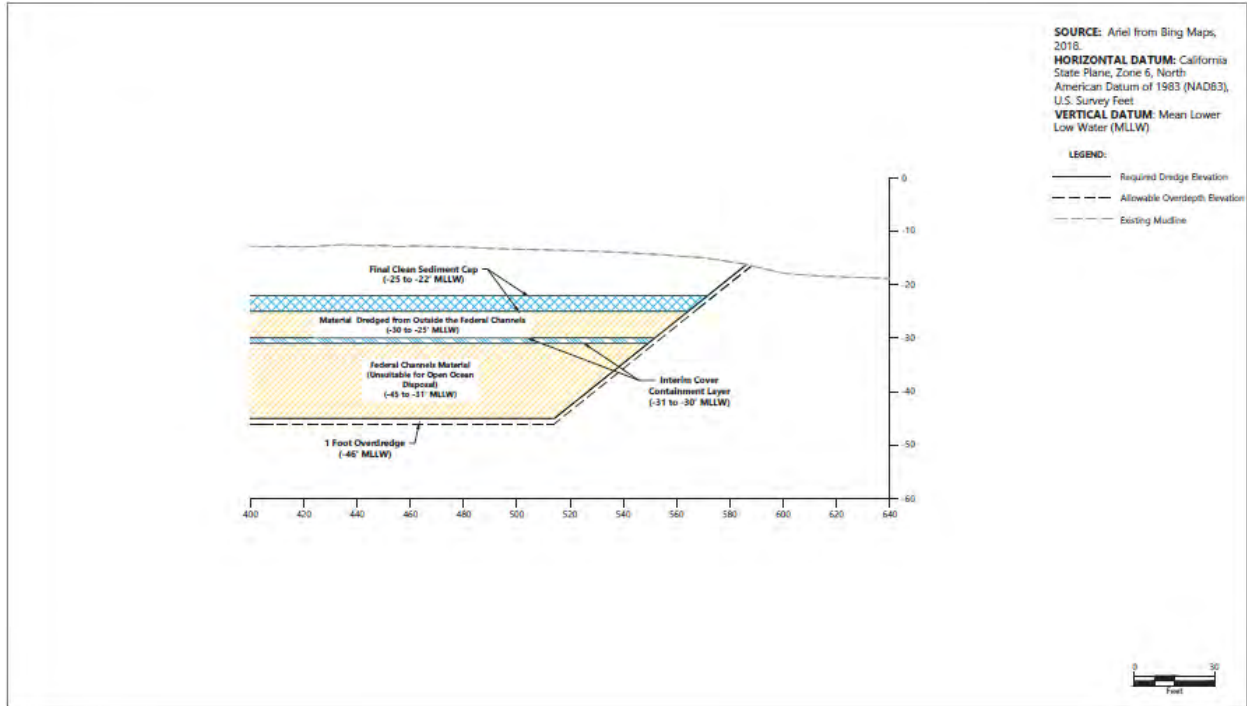


Project Name: 2021WQCB 445 141 Lower Newport Bay
Project Number: SARWQCB 302021-09



Figure 3
Plan View of CAD Facility

Supplement
Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project



Project Date: 2/20/2020 6:58 AM (1:00:45 PM)
 Project: 10-Project/02000-City of Newport Bay/General Channel/0243-09-03-Cross Section View/View 1-Long/Sheet 1 of 2



Figure 4
Cross Section of CAD Facility

Supplement
Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project

Copies of this Form

In order to identify your Project, it is necessary to include a copy of the Project-specific Cover Sheet below with your report (see page 3). Please retain for your records.

Report and Summary Submittal Instructions

1. Check the box on the *Report and Notification Cover Sheet* next to the report or notification you are submitting.
2. Sign the *Report and Notification Cover Sheet* and attach all information requested for the Report Type.
3. **Electronic Report Submittal Instructions:**
 - Submit signed *Report and Notification Cover Sheet* and required information via email to: RB8-401Reporting@waterboards.ca.gov
 - Include in the subject line of the email:
Subject: 302021-09 Lower Newport Bay CAD Project and [Report Type]

Definition of Reporting Terms

1. **Active Discharge Period:** The active discharge period begins with the effective date of this Order and ends on the date that the Permittee receives a *Notice of Completion of Discharges Letter* or, if no post-construction monitoring is required, a *Notice of Project Complete Letter*. The Active Discharge Period includes all elements of the Project, including site construction and restoration, and any Permittee responsible compensatory mitigation construction.
2. **Request for Notice of Completion of Discharges Letter:** This request by the Permittee to the Santa Ana Water Board staff pertains to projects that have post construction monitoring requirements (e.g., if site restoration were required to be monitored for five (5) years following construction). Santa Ana Water Board staff will review the request and send a *Completion of Discharges Letter* to the Permittee upon approval. This letter will initiate the post-discharge monitoring period and a change in fees from the annual active discharge fee to the annual post-discharge monitoring fee.
3. **Request for Notice of Project Complete Letter:** This request by the Permittee to the Santa Ana Water Board staff pertains to projects that either have completed post-construction monitoring and achieved performance standards or have no post-construction monitoring requirements and no further Project activities are planned. Santa Ana Water Board staff will review the request and send a *Project Complete Letter* to the Permittee upon approval. Termination of annual invoicing of fees will correspond with the date of this letter.
4. **Post-Discharge Monitoring Period:** The post-discharge monitoring period begins on the date of the *Notice of Completion of Discharges Letter* and ends on the date of the *Notice of Project Complete Letter* issued by the Santa Ana Water Board staff. The Post-Discharge Monitoring Period includes continued water quality monitoring or compensatory mitigation monitoring.
5. **Effective Date:** September 30, 2022

Map/Photo Documentation Information

When submitting maps or photos, please use the following formats.

1. Map Format Information:

Preferred map formats of at least 1:24000 (1" = 2000') detail (listed in order of preference):

- GIS shapefiles: The shapefiles shall depict the boundaries of all Project areas and extent of aquatic resources impacted. Each shape should be attributed with the extent/type of aquatic resources impacted. Features and boundaries should be accurate to within 33 feet (10 meters). Identify datum/projection used and, if possible, provide map with a North American Datum of 1983 (NAD83) in the California Teale Albers projection in feet.
- Google KML files saved from Google Maps: My Maps or Google Earth Pro. Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. Include URL(s) of maps. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
- Other electronic format (CAD or illustration format) that provides a context for location (inclusion of landmarks, known structures, geographic coordinates, or USGS DRG or DOQQ). Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
- Aquatic resource maps marked on paper USGS 7.5-minute topographic maps or Digital Orthophoto Quarter Quads (DOQQ) printouts. Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.

- ### 2. Photo-Documentation:
- Include a unique identifier, date stamp, written description of photo details, and latitude/longitude (in decimal degrees) or map indicating location of photo. Successive photos should be taken from the same vantage point to compare pre/post construction conditions.

REPORT AND NOTIFICATION COVER SHEET	
Project:	Lower Newport Bay Confined Aquatic Disposal Construction Project
Permittee:	City of Newport Beach
SARWQCB WDID:	302021-09
Reg. Meas. ID:	445141
Place ID:	876651
Order Effective Date:	September 30, 2024

Report and Survey Type Submittal	
Report Type 1	<input type="checkbox"/> Caulerpa Survey
Report Type 2	<input type="checkbox"/> Eelgrass Survey
Report Type 3	<input type="checkbox"/> Bathymetric Surveys
Report Type 4	<input type="checkbox"/> Annual Report
Report Type 5	<input type="checkbox"/> Commencement of Construction
Report Type 6	<input type="checkbox"/> Interim Cap Placement
Report Type 7	<input type="checkbox"/> Final Cap Placement
Report Type 8	<input type="checkbox"/> Request for Notice of Completion of Discharges Letter
Report Type 9	<input type="checkbox"/> Request for Notice of Project Complete Letter
Report Type 10	<input type="checkbox"/> Accidental Discharge of Hazardous Material Report
Report Type 11	<input type="checkbox"/> Violation of Compliance with Water Quality Standards Report
Report Type 12	<input type="checkbox"/> Modifications to Project Report
Report Type 13	<input type="checkbox"/> Transfer of Property Ownership
Report Type 14	<input type="checkbox"/> Transfer of Long-Term Best Management Practices (BMPs) Maintenance Report
Report Type 15	<input type="checkbox"/> Sampling and Analysis Plan
Report Type 16	<input type="checkbox"/> Water Quality Monitoring Plan
Report Type 17	<input type="checkbox"/> Interim Cap Placement Plan
Report Type 18	<input type="checkbox"/> Final Cap Placement Plan
Report Type 19	<input type="checkbox"/> Nearshore Sand Placement Plan

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Print Name ¹

Affiliation and Job Title

Signature

Date

¹STATEMENT OF AUTHORIZATION (include if authorization has changed since application was submitted)

I hereby authorize _____ to act in my behalf as my representative in the submittal of this report, and to furnish upon request supplemental information in support of this submittal.

Permittee's Signature

Date

***This Report and Notification Cover Sheet must be signed by the Permittee or a duly authorized representative and included with all written submittals.**

Report Type	When to Submit
Report Type 1 – Caulerpa Survey	30 days prior to initiating any bottom disturbing activities.
Report Type 2 – Eelgrass Survey	30 days prior to initiating any bottom disturbing activities, and 30 days post-construction.
Report Type 3 – Bathymetric Surveys	Within 14 days of survey completion.
Report Type 4 – Annual Report	Each year by the effective date of the Order. Annual reports shall continue until a <i>Notice of Project Complete Letter</i> is issued to the Permittee.
Report Type 5 – Commencement of Construction	Seven (7) days prior to the start of Project activities.
Report Type 6 – Interim Cap Placement	Within 14 days following interim cap placement.
Report Type 7 – Final Cap Placement	Within 14 days following final cap placement
Report Type 8 -- Request for Notice of Completion of Discharges Letter	Within 30 days following completion of Project construction activities. Notify that post-construction monitoring is required and would end the active discharge period.
Report Type 9 – Request for Notice of Project Complete Letter	Within 30 days following completion of all Project construction activities, including all required post-construction monitoring and mitigation.
Report Type 10 – Accidental Discharge of Hazardous Material Report	Within five (5) working days following the date of an accidental discharge. Continue reporting as required by Santa Ana Water Board staff.
Report Type 11 – Violation of Compliance with Water Quality Standards Report	Within three (3) working days of the noncompliance event notification to Santa Ana Water Board staff.
Report Type 12 – Modifications to Project Report	If Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, State, or federal regulatory authority
Report Type 13 – Transfer of Property Ownership	At least ten (10) working days prior to the transfer of ownership.
Report Type 14 – Transfer of Long-Term Best Management Practices (BMPs) Maintenance Report	At least ten (10) working days prior to the transfer of BMPs maintenance responsibility.
Report Type 15 – Sampling and Analysis Plan	60 days prior to start of bottom disturbing activities.
Report Type 16 – Water Quality Monitoring Plan	60 days prior to start of bottom disturbing activities
Report Type 17 – Interim Cap Placement Plan	60 days prior to interim cap placement.
Report Type 18 – Final Cap Placement Plan	90 days prior to the placement of the interim cap layer.
Report Type 19 – Nearshore Sand Placement Plan	30 days prior to nearshore placement activities

SARWQCB WDID # 3031021-09

SIGNATORY REQUIREMENTS

*All Documents Submitted In Compliance With This Order
Shall Meet The Following Signatory Requirements:*

1. All applications, reports, or information submitted to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) shall be signed and certified as follows:
 - a) For a corporation, by a responsible corporate officer of at least the level of vice-president.
 - b) For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
 - c) For a municipality, or a State, federal, or other public agency, by either a principal executive officer or ranking elected official.
2. A duly authorized representative of a person designated in items 1.a through 1.c above may sign documents if:
 - a) The authorization is made in writing by a person described in items 1.a through 1.c above.
 - b) The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c) The written authorization is submitted to the Santa Ana Water Board staff contact prior to submitting any documents listed in item 1 above.
3. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Compliance with 40 Code of Federal Regulations section 121.7d)

The purpose of Attachment D is to comply with 40 Code of Federal Regulations (CFR) section 121.7(d)(1), which requires an explanation of why a condition is necessary to assure that the authorized discharge will comply with water quality requirements, and a citation to federal, state, or tribal law that authorizes the condition.

Attachment D uses a similar organizational structure as the *Conditions* Section, and the statements below correspond with the conditions set forth in the *Conditions* Section. The Sections preceding the *Conditions* Section are not “conditions” as used in 40 CFR section 121.7(d).

Attachment D includes citations to some sources of authority that are applicable to all conditions. These sources are specifically identified where they are most relevant but are also generally applicable to the conditions below. These conditions are generally required to comply with the state’s Statement of Policy with respect to Maintaining High Quality of Waters in California (“Antidegradation Policy,” State Water Board Resolution No. 68-16), which requires that for any “activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the State will be maintained.” All Regional Board Water Quality Control Plans incorporate California’s Antidegradation Policy by reference. The state Antidegradation Policy incorporates the federal Antidegradation Policy (40 CFR § 131.12), which requires “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” According to U.S. EPA, dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA’s section 404(b)(1) Guidelines. The State Water Board adopted a modified version of U.S. EPA’s section 404(b)(1) Guidelines, also referred to as the “State Supplemental Guidelines,” in the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Dredge or Fill Procedures).

The State Water Board adopted the Dredge or Fill Procedures on April 2, 2019, which became effective on May 28, 2020. The Dredge or Fill Procedures were adopted pursuant to the State Water Board’s authority under Water Code section 13140 (state policy for water quality control) and 13170 (water quality control plan), and accordingly have regulatory effect. Consistent with Government Code section 11353, a clear and concise summary of the Dredge or Fill Procedures is available in California Code of Regulations, title 23, section 3013. Under the Dredge or Fill Procedures, the permitting authority may only approve a project if the demonstrations set forth in Section IV.B.1 have been made. The information required by Section IV.A is necessary to ensure compliance with Section IV.B.1. Additionally, California Code of Regulations, title 23, chapter 28 sets forth regulations pertaining to water quality certifications. Section 3856 of title 23 identifies information that must be included in water quality certification requests, including a description of steps that have or must be taken to avoid, minimize, and compensate for impacts to waters of the state/United States.

In addition, the conditions within the Order are generally required pursuant to the Santa Ana Water Board's Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), and where applicable, statewide water quality control plans and policies including, but not limited to, the California Ocean Plan, California Thermal Plan, Enclosed Bays and Estuaries Plan, Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) Plan, Plan for California's Nonpoint Source Pollution Control Program, Statement of Policy with Respect to Maintaining High Quality of Waters in California, Cannabis Cultivation Policy, Water Quality Control Policy for the Enclosed Bays and Estuaries of California, Water Quality Control Policy for Addressing Impaired Waters, Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List, Municipal Solid Waste Policy, Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program, Recycled Water Policy, Supplemental Environmental Projects Policy (SEP), State of California Executive Order W-59-93 (Wetlands "No Net Loss" Policy), and Water Reclamation Policy, which were adopted and are periodically revised pursuant to Water Code section 13240. The Basin Plan and other applicable statewide plans and policies include water quality standards, which consist of existing and potential beneficial uses of waters of the state/United States, water quality objectives to protect those uses, and the state and federal antidegradation policies. For instance, the Basin Plan includes water quality objectives for, oil and grease, pH, dissolved oxygen, temperature, toxic substances, solid, suspended or settleable materials, floating material, turbidity, color, and taste and odor, which ensure protection of beneficial uses.

Conditions

Authorization

Authorization under this Order is granted based on the Clean Water Act Section 401 Water Quality Certification Application (application) information submitted. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

Reporting and Notification Requirements

The reports confirm that the best management practices required under this Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges are taken as soon as possible. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, bears a reasonable relationship to the need for the reports, and the benefits to be obtained from the reports.

Authorization under this Order is granted based on the application information submitted, including the legally responsible party. Conditions regarding transfers are necessary to confirm whether the new owner wishes to assume legal responsibility for compliance with this Order. If not, the original Permittee remains responsible for compliance with this Order. Confirmation is also necessary to confirm whether liability for long-term best management practices maintenance is accepted by another entity. If not, the original Permittee remains responsible for compliance with this Order. Water Code section 13264 prohibits any discharge that is not specifically

authorized in this Order.

Monitoring and Reporting Program

Consistent with the Dredge or Fill Procedures, Section IV.A.2.c, water quality monitoring plans are required for any in-water work. Water quality monitoring and reporting is required to assure that 1) the authorized discharge of dredge/fill material will not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; 2) the discharge will comply with all applicable water quality objectives; and 3) treatment and control of the discharge will be implemented to assure that pollution and nuisance will not occur and the highest water quality is maintained. Accordingly, these conditions require implementation of best practicable treatments and controls to prevent pollution and nuisance, and to maintain water quality standards at the project site. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state/United States under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, bears a reasonable relationship to the need for, and benefits of, the reports.

Standard Conditions

“This Order is subject to modification or revocation ...”

“This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility ...”

“This Order is conditioned upon total payment of any fee ...”

These conditions are necessary to assure that any discharge authorized will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, chapter 28 sets forth regulations pertaining to water quality certifications for point source discharges to waters of the United States. These conditions were included to comply with section 3860 of title 23, which sets forth conditions that must be included in all water quality certifications.

General Compliance

“Permitted actions must not cause a violation of any applicable water quality standards ...”

Permitted actions may not cause a violation of applicable water quality standards. This condition related to compliance with water quality objectives and designated beneficial uses is required pursuant to the Santa Ana Water Board’s Basin Plan and/or other applicable statewide plans and policies. The Basin Plan’s water quality standards consist of existing and potential beneficial uses of waters of the state/United States, water quality objectives to protect those uses, and the state and federal antidegradation policies. The Antidegradation Policy requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained.

Applicable beneficial uses (Basin Plan, Chapter 3, Tables 3-1 and 3-2) and water quality objectives (Basin Plan, Chapter 4, Table 4-1) to protect those uses include the designated

beneficial uses and a) color (Basin Plan, pages 4-3, 4-14, & 4-23), floating materials (Basin Plan, pages 4-3 & 4-10), Oil and Grease (Basin Plan, pages 4-3, 4-14, & 4-24), dissolved oxygen (Basin Plan, pages 4-4 & 4-14), pH (Basin Plan, pages 4-4, 4-18, & 4-24), solid, suspended and settleable material (Basin Plan, pages 4-5 & 4-19), taste and odor (Basin Plan, pages 4-4, 4-19, & 4-25), temperature (Basin Plan, pages 4-6 & 4-20), toxic substances (Basin Plan, pages 4-6, 4-20, & 4-26), and turbidity (Basin Plan, pages 4-6 & 4-20) water quality objectives.

“The Permittee must, at all times, fully comply with engineering plans, specifications, and technical reports...”

Authorization under this Order is granted based on the application information submitted, including engineering plans, specifications, and technical reports. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

Administrative

“Signatory requirements for all document submittals...”

Conditions related to signatory requirements are also authorized by Water Code sections 13383 and 13267, which requires any person discharging waste that could affect the quality of waters to provide to the Water Boards, under penalty of perjury, any technical or monitoring program reports as required by the Water Boards. The signatory requirements are consistent with 40 CFR section 122.22.

“The Permittee shall grant Santa Ana Water Board staff ...”

Conditions related to site access requirements are authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the state under Water Code sections 13383 and 13267. Water Code section 13267(c) provides that “the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with.”

“A copy of this Order shall be provided to any consultants, contractors, and subcontractors ...”

“A copy of this Order must be available at the Project site(s) during construction...”

These conditions require site personnel and agencies to be familiar with the content of the Order and mandate availability of the document at the Project site. This condition is required to assure that any authorized discharge will comply with the terms and conditions of the Order.

Construction

Best Management Practices

All the conditions related to best management practices are consistent with the Water Boards' authority to establish, “[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area” pursuant to Water Code section 13241(c). The activities authorized under this Order have the potential to result in a discharge that exceeds water quality objectives and work in waters of the state must not cause an exceedance of water quality objectives. As required by Water Code section 13369, all Water Quality Control Plans incentivize the use of best management practices to prevent prohibited discharges into waters of the state.

These conditions are necessary to prevent violation of state discharge prohibitions that protect water quality objectives. For instance, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to waters of the state in violation of water quality standards, including the floating material and toxic substances. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

Hazardous Materials

These conditions are required pursuant to the Basin Plan (toxic substances objective, pages 4-6, 4-20, & 4-26) and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), which prohibit the discharge of substances in concentrations toxic to human, plant, animal, or aquatic life. Toxic compounds can impair the beneficial uses of cold freshwater habitat, estuarine habitat, marine habitat, preservation of rare and endangered species, fish migration, fish spawning, warm freshwater habitat, and wildlife habitat. Conditions related to toxic and hazardous materials are necessary to assure that discharges comply with any water quality objectives adopted or approved under Water Code sections 13170 or 13245.

Conditions related to concrete/cement are required pursuant to the Basin Plan, to ensure that discharges to waters do not adversely raise or lower pH levels.

Mitigation for Permanent Impacts

Conditions related to mitigation requirements are required by the Dredge or Fill Procedures, Section IV.A.2.b. In addition, Section IV.B.1.a of the Dredge or Fill Procedures require that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. (See also State Supplemental Guidelines, § 230.10, [restrictions on discharge]; Cal. Code of Regs., tit. 23, § 3856(h) [requiring submittal of proposed mitigation and description of steps taken to avoid, minimize, or compensate].) Accordingly, compensatory mitigation may be required for projects that would result in permanent impacts.

Conditions regarding compensatory mitigation are necessary to ensure compliance with the state and federal Antidegradation Policies. Compensatory mitigation conditions are consistent with Executive Order W59-93, commonly referred to as California's "no net loss" policy for wetlands. Compensatory mitigation requirements are also authorized by Water Code section 13263, which requires the imposition of requirements that implement water quality control plans, takes into consideration the beneficial uses to be protected, and the need to prevent nuisance.