CALIFORNIA COASTAL COMMISSION

South Coast Area Office 301 E. Ocean Blvd., Suite 300 Long Beach, CA 90802-4302 (562) 590-5071



F17a

CDP 5-21-0640 (CITY OF NEWPORT BEACH) OCTOBER 5, 2022

EX PARTE FORMS

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Steve Padilla

1) Name or description of project: F17a: CDP Application #5-21-0640 (City of Newport Beach)

2) Date and time of receipt of communication: 10/4/22 at 3:30pm

3) Location of communication: Zoom (Vi rtual)

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication: Brent Mardian, Shana Conzelman, Kim Lewand Martin, Jennifer Novak

5) Identity of person(s) on whose behalf communication was made: Friends of Newport

6) Identity of persons(s) receiving communication: Steve Padilla, Ian Fregosi

7) Identity of all person(s) present during the communication: <u>Steve Padilla, Ian Fregosi,</u> Kim Lewand-Martin, Jennifer Novak, Shana Conzelman, Brent Mardian

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Agents discussed matters that have come up since the staff report on the CAD was written and indicated that they are requesting a time extention so the issues can be addressed. Their primary issue is the proximity to sensitive receptors/uses, which is unique to this CAD. Also, the inadequacy of necessary facts for CCC to make necessary findings could have resulted from overlooking ACE guidelines. The agents stated that they had just discovered that these procedural guidelines for testing the sediment were overlooked, and thus the material has not been sufficiently tested for its toxicity. They argue that without this information, Coastal staff does not know in fact what is being deposited into the CAD and the effects it will have on people living and recreating in Newport Harbor.

22

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Steve Padilla

1) Name or description of project: F17a: CDP Application #5-21-0640 (City of Newport Beach)

2) Date and time of receipt of communication: 10/4/22 at 1:30pm

3) Location of communication: Zoom (Virtual)

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.) Anne Blemker, 4) Identity of person(s) initiating communication:

5) Identity of person(s) on whose behalf communication was made: City of Newport Beach

6) Identity of persons(s) receiving communication: Steve Padilla, Ian Fregosi

7) Identity of all person(s) present during the communication: Steve Padilla, Ian Fregosi, Anne Blemker, Susan McCabe, Chris Miller

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Chris Miller, staff from City of Newport Beach, described the purpose of the CAD and responded to public comments in opposition to the project. He stressed that the material being disposed in the CAD is not toxic or hazardous, and the city is not mandated to move it. Mr. Miller also described alternatives proposed by opponents to dispose of sediment on land and why the city and coastal staff oppose this alternative. He indicated that the City of Newport Beach is fully supportive of Coastal staff's recommendation and all conditions required for approval

12022

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CDP 5-21-0640 LOWER NEWPORT BAY CONFINED AQUATIC DISPOSAL (CAD)

CITY OF NEWPORT BEACH OCTOBER 14, 2022 ITEM F17a

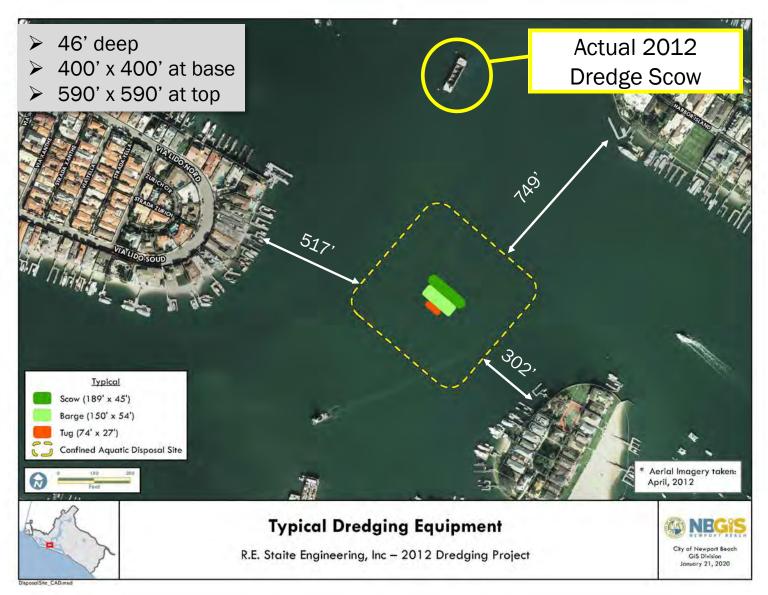
A copy of these materials has been provided to CCC District staff.

Background and Project Need

- Lower Newport Harbor requires periodic maintenance dredging to remove accumulated sediment that impedes navigation and full use of harbor
- Army Corps (USACE) proposes "Federal Channels maintenance dredging program" in 2022-23
- Most of dredged sediment (90%) determined <u>suitable</u> for open ocean disposal
- Approx. 112,500 cy determined <u>unsuitable</u> for open ocean disposal and requires alternative disposal options
- City (local sponsor) responsible for identifying disposal options for unsuitable material:
 - Proposed confined aquatic disposal (CAD) facility in central portion of Lower Newport Harbor



CAD Description and Location



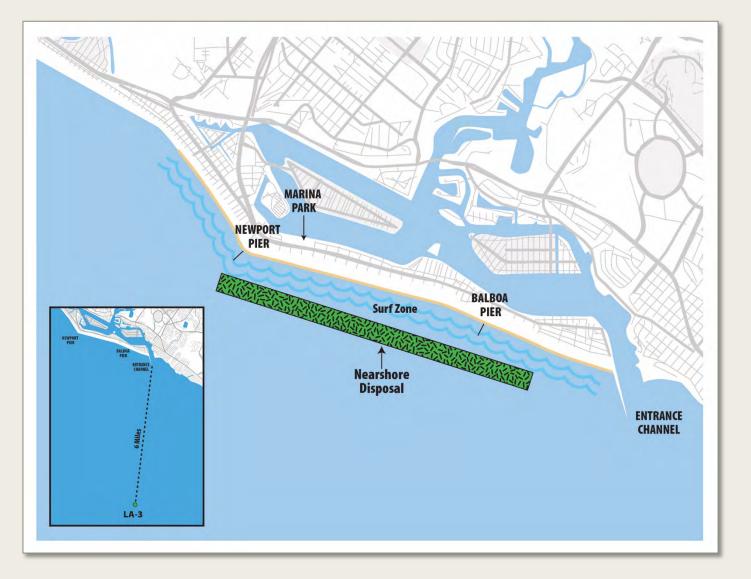
Confined Aquatic Disposal (CAD) facility is a depression in an aquatic seafloor used to contain and store sediment.

- CAD will accommodate unsuitable dredge material from Federal Channels dredging program.
- Proposed CAD site is centrally located within Newport Harbor.

Material Unsuitable for Ocean Disposal

NOT toxic

- NOT hazardous
- Currently on the harbor bottom Allowed to leave in place (<u>not required to</u> <u>be removed by City</u>)
- City is funding 50% of overall project (up to \$10M) allows USACE to dredge Federal Channels to full authorized depths.
- Plan supported by agencies including EPA, Dredged Material Management Team, etc.
 - Regional Water Board 401 Certification issued September 30, 2022



Disposal of Suitable Material

- Clean material excavated during construction of CAD facility will be beneficially reused/placed in the nearshore zone along the ocean beaches (natural replenishment).
- Dredge material deemed suitable for open-ocean disposal will be deposited at EPA managed site ("LA-3"), 6 miles from Newport Harbor.

Permitting and Project Responsibility

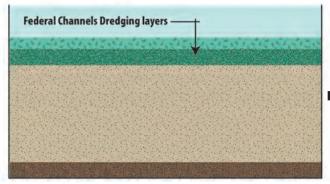
USACE dredging within <u>Federal Channels</u> to maintain navigation and authorized depths.

- USACE obtained CCC concurrence for maintenance dredging on May 27, 2022 (Negative Determination No. ND-0020-22)
- Likely last major federal dredging effort due to improved watershed sediment management

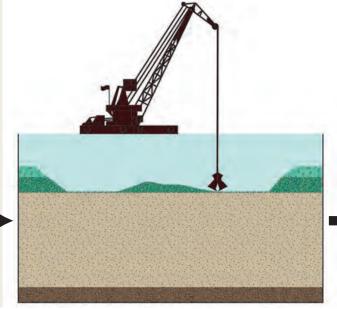
City construction of CAD facility for unsuitable dredge material and placement of a final cap layer.

Current application (CDP No. 5-21-0640) limited to City's CAD portion of overall project

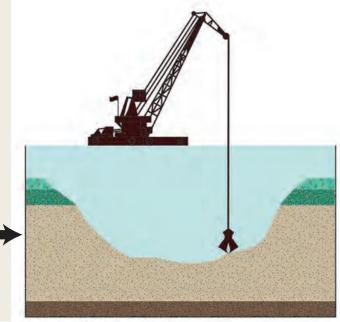
CAD Construction



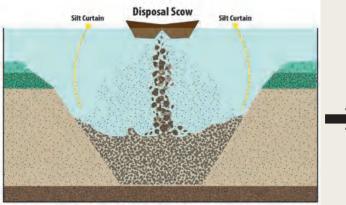
1. Existing Conditions



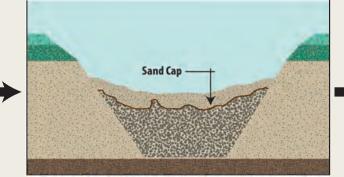
2. Federal Channels Dredging



3. Excavate CAD (Nearshore Disposal)



4. Unsuitable Material Placement



5. Interim Cap Placement



6. Additional Material Placement and Final Cap

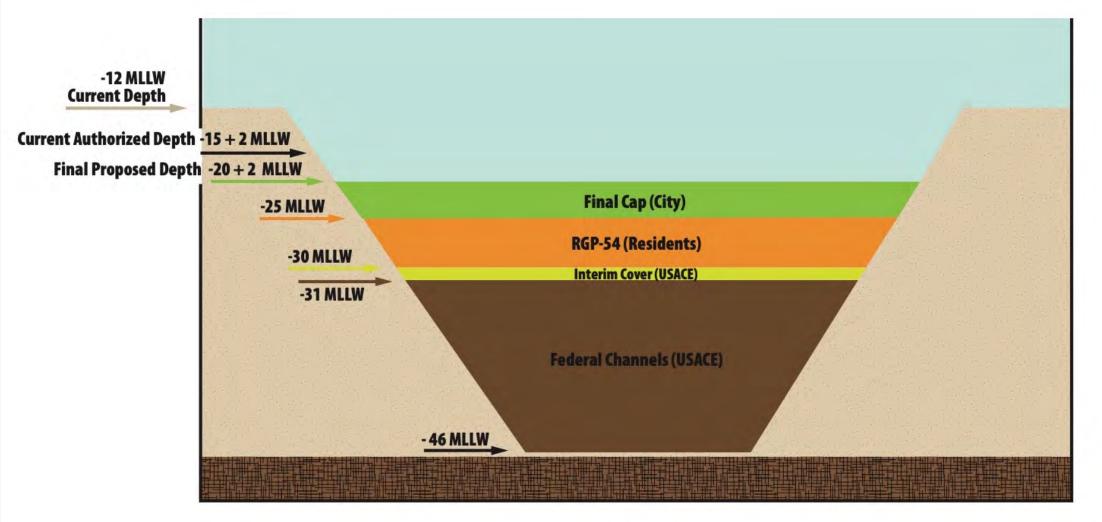
Additional Benefit for Harbor

- US EPA requested development of a <u>Sediment Management Plan</u> to address other non-federal unsuitable sediment.
 - Creates an inventory of all sediment in Newport Harbor requiring dredging both within and outside the Federal Channels
 - Identifies sediment management options based on sediment characteristics, disposal location, and permitting requirements
- City designed CAD to accommodate <u>additional 50,000 cy</u> to assist other harbor residents/marinas – holistic harborwide approach.
 - Available during a 6-month window two years after USACE places unsuitable Federal Channels material
 - Cost-effective and convenient disposal opportunity for waterfront homeowners with impacted sediment

Timeline - Capping of CAD

- Interim cap placed after Federal Channels material for 2 years.
- 50,000 cy of other harbor material placed for 6 months.
- Final cap layer placed within CAD to isolate the underlying sediments from burrowing organisms and biota residing in the overlying water column.
 - Clean material sourced by the City and designed/modeled to a thickness of 3-feet (33,600 cy).
 - Clean material likely consisting of material dredged under the City's RGP 54 dredging program, maintenance dredging at the Santa Ana River as a contingency, or other sources available at the time. (Plan required per CCC Special Condition No. 2)

CAD Facility Design Layers



Fill Responsibilities

Long Term Monitoring

- An Operations, Management, and Monitoring Plan (OMMP) for the CAD facility will be implemented. This includes:
 - Management and monitoring objectives for the CAD
 - Communications plan for the entire CAD construction and sediment disposal process
 - Construction monitoring and post-disposal monitoring plans
 - Contingency plans
 - Annual monitoring plans
 - Long-term management plans after final cap
 - Other plans as required by CCC and Water Board

Response to Public Comments

Comment: Stakeholder and Public Input

Response:

- More than <u>65</u> public outreach efforts (meetings, media, announcements)
- Comment: Lower Castaways Disposal Alternative (Presented by Friends of Newport Harbor)

- Environmental Impact Report (EIR) considered landside disposal more impactful than CAD (rehandling material, over 9,000 truck trips, dewatering, treating etc.)
- Conflicts with City's Local Coastal Program with significant impacts to public access, ESHA, coastal bluffs, visual quality, and public views
- Site would not accommodate all material (independent 3rd party review)
- City Council has not decided appropriate long-term use of this City public park

- Comment: Newport Dunes Resort Disposal Alternative Response:
 - County owned property (Not City) Assumes County would accept material. Site currently designated for hotel.
- Comment: Short Term Water Quality Impacts

Response:

"The [City's] application of the STFATE model is appropriate to evaluate the short-term losses during the placement operations at the proposed Lower Newport Bay CAD site. Applying the STFATE model for a CAD site would generate rather conservative estimates of losses until the CAD cell is nearly full. The model input, scenarios, application and assumptions are appropriate to provide a conservative picture of the potential solids losses from the placement operations."

(Paul R. Schroeder, PhD, PE, USACE Engineering and Research Development Center, May 16, 2022)

- Comment: CAD Can Never Be Dredged Again Response:
 - Final CAD elevation will be deeper than authorized depth (15-feet vs 20-feet)
 - Equal to deepest Federal Channels (20-feet) planning for the future.
- Comment: CAD Construction Is Not Putting Sand Directly On Beach Response:
 - Sand will be placed in nearshore zone as close to shore as possible
 - Proven/accepted sand management technique along coastal communities.
 Adding valuable sand back into littoral cell.

- Comment: Anchorage with Large Vessels Traversing, Propellers, Thrust Engines and Anchors Response:
 - CAD final elevation will be at least 5-feet deeper than existing depth therefore providing more clearance from propellers and bow-thrusters.
 - Cap design included engineered modeling for larger propellers and anchors
- Comment: Stability of CAD Adjacent to Federal Channel Thin Wall of Sediment

- CAD immediately adjacent to Federal Channel. Final elevation at same or deeper depth than Federal Channel.
- No thin wall of sediment

Comment: CAD Will Not Benefit Newport Homeowners Response:

- Sediment Management Plan allows for <u>any</u> sediment in Newport Harbor to take advantage of CAD <u>including</u> residential docks.
- The City's residential dredging program (CDP 5-19-1296, Special Condition 5.E.1) states that "...dredge material may be disposed of at a Commission approved Confined Aquatic Disposal site (CAD)."

Comment: Material Remains Toxic In CAD

- Material is NOT toxic as scientifically defined by regulatory agencies.
- CAD is an <u>accepted method</u> for unsuitable material as permitted elsewhere in California and other east coast locations (e.g. New Bedford, MA – residential)

- Comment: Sediment with Contaminants Cannot Be Disposed Offshore Response:
 - DDT material is below threshold acceptable to dispose offshore.
 - Mercury level is 1 ppm (negotiated to 1.5 ppm). Material passed toxicity tests and does not pose a risk to human health.
- Comment: The City's Testing Is Incomplete

- All sediment material is thoroughly vetted and approved by regulatory and resource agencies (Dredged Material Management Team).
- EPA scrutinized sampling plan and final report. Evaluated against all past harbor sampling events.

Comment: Post Dredge Monitoring Plan Inadequate Response:

 Regulatory agencies (CCC, RWQCB and USACE) issue permits with conditions including required monitoring plans.

■ Comment: The CAD Will Have a Thin Interim Cap Layer

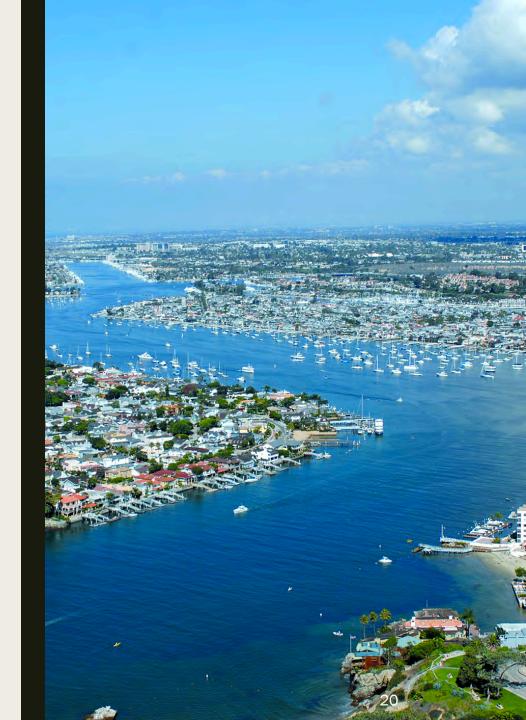
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Project Benefits

Improved navigation and recreation

Beneficial reuse of suitable beach material

Proper management of unsuitable material



Conclusion

The City of Newport Beach appreciates and agrees with the staff recommendation and all special conditions and respectfully requests <u>approval</u> by the Commission.

Thank You



EXPARTE COMMUNICATION DISCLOSURE FORM Filed by Commissioner Donne Brownsey

1)Name or description of project: Oct 14, 2022 Agenda, Item F 17 a. City of Newport Beach to construct a Confined Aquatic Disposal (CAD) site.

2) Date and time of receipt of communication: October 6, 2022 at 3:30-4:00pm

3) Location of communication On Zoom

4) Identity of person(s) initiating communication: Anne Blemke

5) Identity of person(s) on whose behalf communication was made: City of Newport Beach

6) Identity of persons(s) receiving communication:Donne Brownsey

7) Identity of all person(s) present during the communication: Brownsey, Blemke, Susan McCabe, Chris Miller Public Works Manager, Steve Cappellini Principal Scientist w/ Anchor QEA

Complete, comprehensive description of communication content:

The group described the project briefly and then responded to the concerns raised by the Friends of Newport Harbor. They indicated that they did 65 public meetings. The entire project followed the federal Guidance document on SubAqueous Dredge Materials Capping. They did an EIR and did an exhaustive analysis of the alternatives and rejected an alternative favored by the Friends due to size. They did comprehensive testing of various contaminants and it is their conclusion that the sediments that exceed the limits for open ocean disposal will be safely contained in the CAD. The extensive monitoring required by the CDP will ensure that if this is not the case, the situation will need to be addressed to the various state and federal agencies.

Date October 6, 2022

Dowe Bruna.

Signature of Commissioner Donne/Brownsey

CDP 5-21-0640 LOWER NEWPORT BAY CONFINED AQUATIC DISPOSAL (CAD)

CITY OF NEWPORT BEACH OCTOBER 14, 2022 ITEM F17a

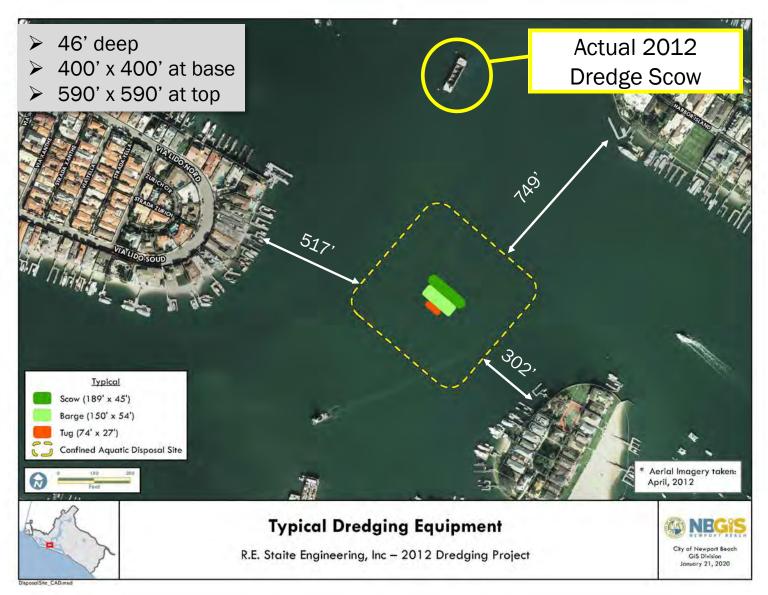
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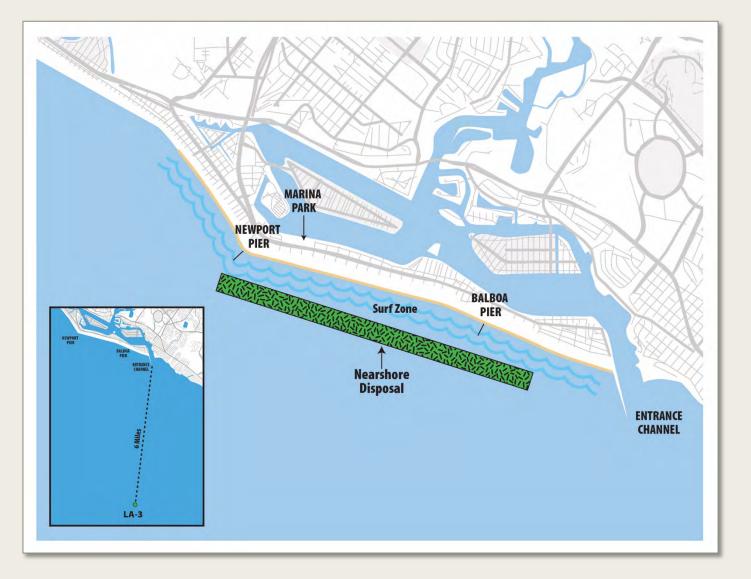
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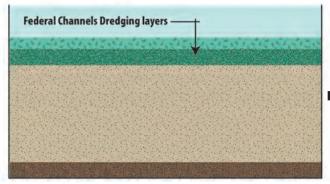
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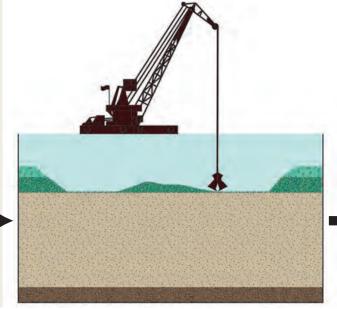
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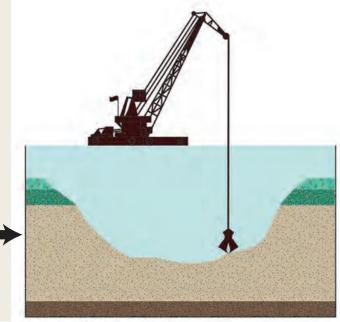
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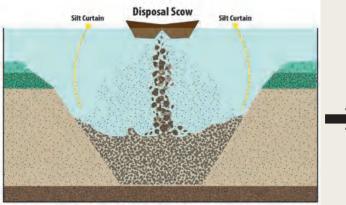
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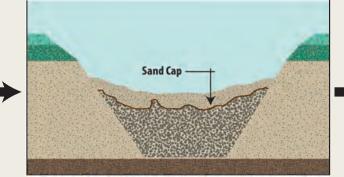
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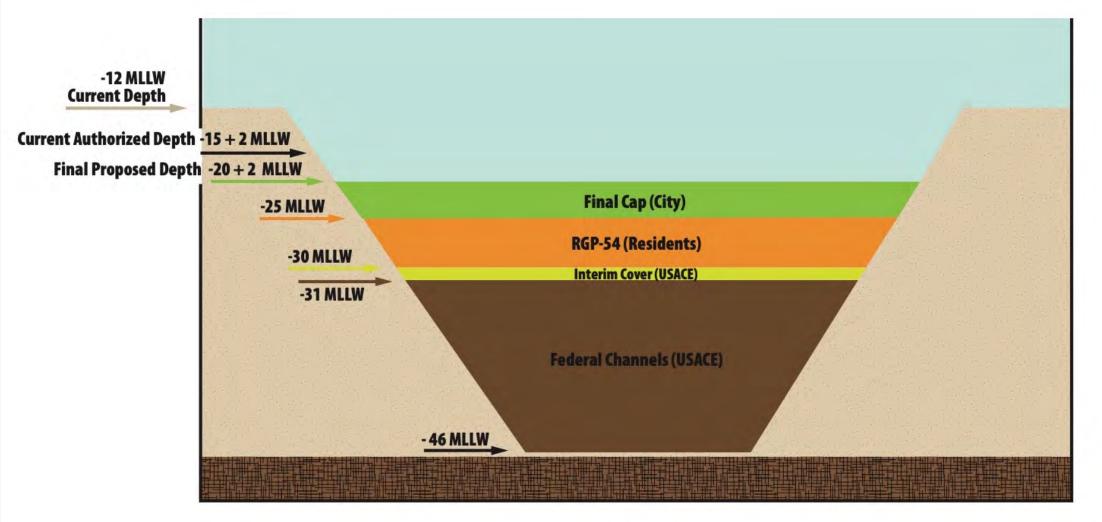
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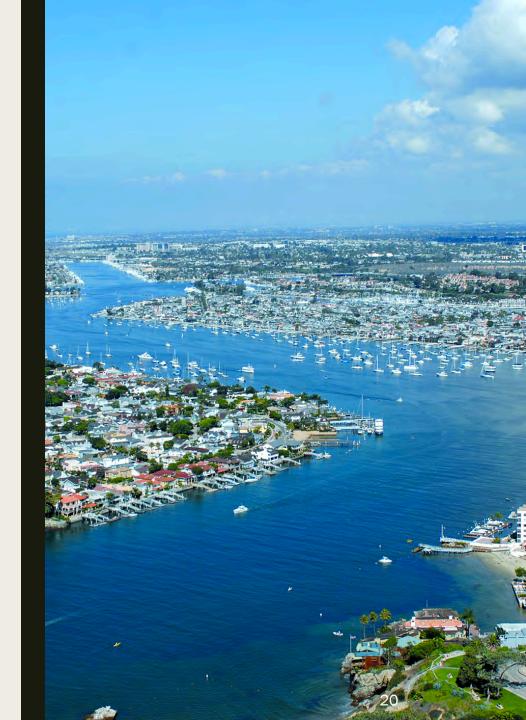
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Conclusion

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Thank You



Received on 10/7/22

EXPARTE COMMUNICATION DISCLOSURE FORM Filed by Commissioner Donne Brownsey

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2) Date and time of receipt of communication: October 6, 2022 at 3:00pm-3:30pm

3) Location of communication On Zoom

4) Identity of person(s) initiating communication: Yolande Venter

5) Identity of person(s) on whose behalf communication was made: Friends of Newport Harbor

6) Identity of persons(s) receiving communication:Donne Brownsey

7) Identity of all person(s) present during the communication: Brownsey, Venter, Kim Lewand-Martin, Jennifer Novak, Shana Couzelman & Brent Mardian.

Complete, comprehensive description of communication content:

The group raised a number of issues of concern re: the CAD. They are unsatisfied and believe that the City's did insufficient environmental analysis re: samples, the limited number of samples, that they were based on modeling and not hard lab analysis, that dredged materials may include more contamination than their samples, and that the decision of a CAD did not include enough environmental analysis of alternatives. They asserted that the City has not followed the Corp's Guidance document for Subaqueous Dredge Material Capping. They oppose the project and seek a denial on the permit.

Date October 6, 2022

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Signature of Commissioner Donne Brownsey