



Applicant/Owner Agreement for Regional General Permit 54

Corps File No. SPL-2013-00020-SME

Coastal Commission CDP 5-14-0200 and CC-0002-15

Clean Water Act Section 401 Certification No. 302014-03

Property Address: _____

I, _____ (Applicant/Owner), hereby certify that the information on my application, which was approved by the City of Newport Beach, is accurate and complete. I also certify that I have read the Coastal Development Permit and federal consistency certification (CDP/CC), the U.S. Army Corps of Engineers (USACE) Regional General Permit No. 54, the California Regional Water Quality Control Board Clean Water Act Section 401 Certification, and the Eelgrass Protection and Mitigation Plan, if applicable, and that I will comply with all of the conditions in those permits and the terms of this Applicant/Owner Agreement.

I certify that I have read the attached list of Construction Requirements and Best Management Practices (BMPs) and will abide by the construction requirements and BMP list.

I understand the requirement to submit a Post-dredging and Disposal Completion Report within thirty (30) calendar days after completion of the discharge operations. I understand that failure to provide post-construction reporting will result in a hold placed on future project applications for the applicant/owner, authorized agents, and associated contractors.

By acceptance of the permits, I acknowledge and agree that the site may be subject to hazards from slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; and I agree to assume the risks to the applicant and the property that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development.

To the fullest extent permitted by law, Applicant/Owner shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims

(including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Applicant/Owner Agreement, any work performed or services provided under this Applicant/Owner Agreement including, without limitation, defects in workmanship or materials or Applicant's/Owner's presence or activities conducted during dredging operations (including the negligent and/or willful acts, errors and/or omissions of Applicant/Owner, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Applicant/Owner to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Applicant/Owner Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant/Owner.

I understand that any work authorized must be completed during the valid dates of the permits referenced above, after which a new authorization is required. I further understand dredging is not authorized in certain areas of Newport Bay, including the Balboa Yacht Basin, Promontory Bay, and at dredging depths between -8 and -12 feet mean lower low water (MLLW) for several other areas. Maintenance and repair of structures is not allowed without additional permits and approvals. Dredging and related work is limited between the hours of 7:00 a.m. and 6:30 p.m. Monday through Friday, and between 8:00 a.m. and 6:00 p.m. on Saturday. No dredging work is allowed on Sunday. Any deviation to these hours must be pre-approved by Harbor Resources.

Project Applicant/Owner

Date

Co-Project Applicant/Owner (if applicable)

Date

Co-Project Applicant/Owner (if applicable)

Date

Co-Project Applicant/Owner (if applicable)

Date

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To minimize adverse environmental impacts and the unpermitted deposition, spill, or discharge of any liquid or solid into the sea, the applicant shall implement the following requirements and best management practices (BMPs) at a minimum, in addition to the requirements of the permits and the Eelgrass Protection and Mitigation Plan:

- No construction materials, debris, waste, oil, or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow.
- Any and all debris resulting from construction activities shall be removed from the site within ten (10) calendar days of completion of construction.
- No machinery or construction materials not essential for project implementation shall be allowed at any time in the intertidal zone or in the harbor.
- Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity.
- If turbid conditions are generated during construction, a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.
- All stock piles and construction materials shall be covered, enclosed on all sides, located as far away as possible from drain inlets and any waterway, and not stored in contact with the soil.
- All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited.
- Floating booms will be used to contain debris discharged into coastal waters, and any debris discharged will be removed as soon as possible but no later than the end of each day.
- Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- Prior to commencement of any activity authorized under these permits, the boundaries of any eelgrass meadow within thirty (30) feet of the activity shall be marked with buoys so that equipment and vessel operators avoid damage to eelgrass meadows.
- Barges and other vessels shall be anchored a minimum of fifteen (15) feet from any eelgrass bed. Anchors and anchor chains shall not encroach into any eelgrass bed.

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- 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.
- A copy of RGP 54 and any signed Notice to Proceed (NTP) shall be maintained on all vessels used to dredge, transport, and dispose of dredged material.
- For projects dredging more than one thousand (1,000) cubic yards, a continuous, floating silt curtain shall be deployed around active dredging areas.
- 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.
- All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources associated with the project and incorporating all necessary pollution prevention BMPs for each potential pollution source identified.
- If invasive algae (*Caulerpa taxifolia*) are found within the project area, the City and anyone with a legal right to dredge or dispose of dredged material shall immediately (within five [5] calendar days) report it to the Executive Director of the California Coastal Commission (CCC), the National Marine Fisheries Service (NMFS), and the Surveillance Subcommittee of the Southern California Caulerpa Action Team. The City and anyone with a legal right to dredge or dispose of dredged material shall not proceed with any dredging or disposal of dredged material in the project area until the City has provided evidence to the Executive Director that all *Caulerpa taxifolia* discovered within the project area has been eliminated in a manner that complies with all applicable governmental approval requirements, including, but not limited to, those of the California Coastal Act.
- When eelgrass is in Tier 2, applicants will be required to implement active regrowth by deploying buoy-deployed seed bags or Transplanting Eelgrass Remotely with Frame Systems (TERFS) off their docks in areas of suitable depth.
- When eelgrass is in Tier 3, any temporary impacts to eelgrass will require the applicant to mitigate pursuant to the California Eelgrass Mitigation Policy (CEMP), including retaining responsibility to meet the performance criteria after five (5) years of monitoring. Five (5) years of monitoring and reporting would be completed by the

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applicant independent of the City's biannual monitoring and would be reported by the applicant to the agencies on an annual basis for the duration of the required monitoring period. Consistent with the CEMP, if the mitigation success is not met after five (5) years, the applicant would be responsible for providing additional mitigation to meet the success criteria.

- If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify USACE of what you have found. They will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- If a violation of any permit condition occurs during operations, the applicant shall report such violations to the USACE Regulatory Division within twenty-four (24) hours after the violation occurs. If the applicant retains any contractors, the applicant shall instruct all such contractors that notice of any permit violations must be immediately so the applicant can report the violation as required.
- **Water quality monitoring:**
 - If dredging will extend beyond two (2) consecutive days for any dredging method, water quality monitoring will be required by the applicant every other day beginning with the third day (monitoring will be required on days 3, 5, 7, etc.). Individual applicants would be responsible for conducting the monitoring, and the results of the monitoring shall be forwarded by the applicant to the Regional Water Quality Control Board (RWQCB).
 - Waste discharges shall not result in coloration of the receiving waters; contain floating materials, including solids and liquids; or result in deposition of oil, grease, wax, or other materials in concentrations which result in a visible film or in coating objects in the water.
 - Numeric Limits for Physical/Chemical Characteristics: Enrollees must comply with the numeric receiving water limitations specified in Table 1. Data shall be collected at a distance of no more than three hundred (300) feet from the dredge footprint. The turbidity and transmittance limits in Table 1 are based on recent data collected in Lower Newport Bay. Enrollees may use the City of Newport Beach's latest eelgrass survey to determine whether eelgrass is present within three hundred (300) feet of the project site. The transmissivity limits in Table 1

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apply only if the enrollee chooses to monitor transmissivity in addition to turbidity. When the enrollee monitors both transmissivity and turbidity, compliance will be achieved if either transmissivity or turbidity is below the respective limit shown in Table 1.

Table 1
Numeric Receiving Water Limitations

Parameter	Receiving Water Limitation	
	Eelgrass Present within 300 feet	No Eelgrass Present within 300 feet
Transmissivity	38%	16%
Turbidity	16 NTU	47 NTU
pH	7 < pH < 8.6; < 0.2 change from ambient	
Dissolved Oxygen	> 5 mg/L	

Note:

NTU = Nephelometric Turbidity Units

- **Requirements specific to beach disposal:**
 - The permittee shall implement all appropriate, standard BMPs to ensure that toxic materials, silt, debris, or excessive eroded materials do not enter coastal waters due to beach replenishment operations. Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity. If turbid conditions are generated during construction, a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.
 - The permittee will establish a safety flag perimeter of the beach replenishment area during disposal activities and monitor the premises to protect the general public from construction hazards and equipment.
 - No maintenance, storage, or fueling of heavy tracked equipment or vehicles will occur within five hundred (500) feet of the high tide line of waters of the United States.
 - Eelgrass impacts as a result of beach replenishment or disposal of dredged material in front of an existing bulkhead are not covered under the Eelgrass Protection and Mitigation Plan. If an unexpected impact to eelgrass occurs during disposal of

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dredged material, such impact shall be documented and reported to the CCC in the same manner that dredging impacts on eelgrass are documented and reported. If an impact was detected, the report will include a summary of how the CEMP will be complied with. Implementation of mitigation shall require a new coastal development permit unless the Executive Director of the CCC determines that no amendment or new permit is required. The following implementation measures shall be applied:

- I. If eelgrass was present within fifteen (15) feet (in any direction) of a potential dredged material disposal site (in any direction) at the time of the most recent comprehensive eelgrass survey, that site shall be assumed to support eelgrass and cannot be used as a disposal site.
- II. If eelgrass was present between fifteen to thirty (15 to 30) feet from a potential dredged material disposal site (in any direction) at the time of the more recent comprehensive eelgrass survey, then monitoring of the site for potential eelgrass impacts from disposal operations shall be required. Monitoring shall consist of pre- and post-project transects placed perpendicular to the shoreline and spaced five (5) feet apart to map the eelgrass bed. Enough transects shall be used to extend the length of the project footprint. Along each transect, the extent of eelgrass shall be measured. Any decrease in eelgrass extent along any transect (pre-project vs. post-project) will constitute an impact. The pre-project transects shall be conducted no sooner than sixty (60) calendar days prior to the start of dredging, and the post-project transects shall be conducted no later than thirty (30) calendar days following the completion of dredging.

Should the monitoring identify an impact to a mapped eelgrass bed as a result of beach replenishment disposal of dredged material in front of an existing bulkhead, then mitigation consistent with the provisions of the CEMP shall apply. An eelgrass monitoring report shall be submitted to USACE, NMFS, and CCC no later than ninety (90) days following completion of disposal of dredged material on a beach or in front of an existing bulkhead(s).

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- **Requirements specific to offshore (ocean) disposal:**
 - The permittee shall ensure dredged material is not leaked or spilled from the disposal vessel(s) during transit to the ocean disposal site. The permittee shall transport dredged material to the ocean disposal site only when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak, or other loss of dredged material during transit. No disposal vessel trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete disposal operations.
- A copy of the Clean Water Act Section 401 Water Quality Standards Certification must remain at the project site for the duration of the work and be available for inspection upon request.
- The applicant shall comply with all permit requirements and mitigation measures of NMFS, USACE, RWQCB, the Environmental Protection Agency, the California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment.
- The applicant shall include these requirements and those BMPs proposed in RGP 54 and the Eelgrass Protection and Mitigation Plan on all plans and contracts.
- All contracts involving the subject project shall include the conditions of material suitability and approval for disposal.