CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

October 5, 2012

Adam Gale
Anchor QEA, L.P.
26300 La Alameda, Suite 240
Mission Viejo, California 92691

GENERAL CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR PROJECTS SUBJECT TO U.S. ARMY CORPS OF ENGINEERS REGIONAL GENERAL PERMIT NO. 54 (SARWQCB PROJECT NO. 302012-21)

Dear Mr. Gale:

On May 18, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Anchor QEA, L.P. on behalf of the City of Newport Beach (City) for projects subject to the U.S. Army Corps of Engineers' (Corps) Regional General Permit No. 54 (RGP-54).

This letter responds to your request for certification that the activities described in your application will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments:

Project Description:

RGP-54 is a general permit administered by the Corps for small dock maintenance dredging projects within the City of Newport Beach. The geographic area covered by RGP-54 is limited to Lower Newport Bay and a portion of Upper Newport Bay. RGP-54 expired in 2011, and the City has applied to the Corps to renew RGP-54 for another five years. The specific areas proposed for inclusion in the renewal of RGP-54 are depicted in Attachments 1-4. Two areas (portions of the West Lido Channel and the Balboa Island Channel) are excluded due to mercury concentrations that exceed the U.S. EPA limit of 1.0 mg/kg for off-shore disposal. Two other areas (Bayside Village Marina and Balboa Yacht Basin) are excluded because the sediments have not been characterized for contaminants and grain size.

The Santa Ana Regional Water Quality Control Board (Regional Board) issued a general 401 certification for activities subject to RGP-54 on October 4, 2006. This certification was valid for five years and expired on October 4, 2011. During the five-year term of the project, the average annual area dredged totaled about 5 acres, and annual dredge volumes ranged from 2,600 cubic yards to 10,900 cubic yards.

The following limitations were included in RGP-54 and are proposed for inclusion in the reauthorized RGP-54:

- Only previously authorized docks are eligible.
- Dredging must be between pierhead and bulkhead lines.
- Dredging depths must not exceed -7 feet MLLW with one additional foot of allowed over-dredging.
- Individual projects are limited to a dredge volume of less than or equal to 1,000 cubic yards.
- Cumulative dredging volumes must not exceed 20,000 cubic yards annually
- Projects where eelgrass is present within 15 feet of the dredging footprint are excluded.
- Sediments to be dredged must have been previously characterized for contaminants and grain size and approved for disposal at an appropriate location.

Dredged sediment will be disposed of either at the U.S. EPA's LA-3 Ocean Dredged Material Disposal Site (LA-3), at nearshore areas, or at upland landfills.

The project will take place within Section 27 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, Calif.* quadrangle map (33° 36' 36.72" N/ 117° 54' 20.16" W).

Receiving water: Lower Newport Bay, Upper Newport Bay

Fill area: Not applicable

Dredge volume: Up to 100,000 cubic yards total (20,000 cubic yards annually)

Federal permit: Rivers and Harbors Act Section 10

Onsite Water Quality Standards Mitigation Proposed:

- None proposed.

Offsite Water Quality Standards Mitigation Proposed:

- None proposed.

Findings:

The City of Newport Beach has served as the primary point of contact for projects seeking authorization under RGP-54, screening applications for accuracy and completeness and forwarding applications to the Regional Board. The City proposes to continue serving as the primary point of contact.

Some of the sediments proposed for dredging were characterized by a sampling program conducted in May 2009 as part of the Army Corps' Lower Newport Bay dredging project. Most sediment was found to be acceptable for nearshore placement or for disposal at the U.S. EPA's LA-3 Ocean Dredged Materials Disposal Site (LA-3). Sediments unsuitable for nearshore placement or disposal at LA-3 will be disposed of at upland landfills. These results are valid for a period of five years (to May 2014) for purposes of evaluating compliance with disposal criteria.

In May 2011, the City of Newport Beach conducted a supplemental sediment sampling program in four subareas of Newport Bay to characterize sediments in areas not sampled in May 2009. Most sediment was found to be acceptable for nearshore placement or disposal at LA-3. Sediments unsuitable for nearshore placement or disposal at LA-3 will be disposed of at upland landfills. These results are valid until May 2016.

Natural background turbidity in Lower Newport Bay is below 50 Nephelometric Turbidity Units (NTUs) except during storm events. For waters with natural turbidity less than 50 NTU, the Basin Plan specifies a water quality objective for turbidity as a maximum increase not to exceed 20% as a result of controllable water quality factors. To implement this objective, this certification specifies numeric limits at a specific distance from the active dredging area for total suspended solids (TSS), transmissivity, and turbidity.

Pursuant to the California Environmental Quality Act ("CEQA"), the City of Newport Beach and the Regional Board have independently determined that the proposed project is categorically exempt from provisions of CEQA under Guidelines Section 15304 (g) Minor Alterations to Land – "Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies." The U.S EPA approved disposal of most of the sediments from areas covered by RGP-54 at the LA-3 site in March 2010 (for sediments characterized in May 2009) and September 2011 (for sediments characterized in May 2011). Sediments not approved for disposal at LA-3 will be disposed at an upland landfill.

This 401 Certification is contingent upon the execution of the following conditions:

1. Notification: Applicants intending to enroll under RGP-54 must notify the Regional Board at least 30 days prior to commencing work. Applicants may use the same notification as that used to notify the Corps provided it contains the information listed

below. The Regional Board may disqualify a project from coverage under this Certification. In the event of disqualification, the applicant will be notified in writing within 30 days of receipt of notification. If the applicant is not contacted by the Regional Board within 30 days after mailing the notification, the applicant may proceed with the project. The minimum content of a notification includes:

a. A statement that the notification is submitted pursuant to this General Certification for activities subject to RGP-54, and that the applicant agrees to abide by all conditions contained herein.
b. The name, address, and telephone number of:
    I. The applicant, and,
    II. The applicant's agent (if an agent is submitting the application)
c. Complete identification of all federal licenses/permits being sought for or applying to the proposed activitiy, including:
    I. Federal agency(ies)
    II. Type
    III. File number(s) assigned by the federal agency(ies), if available
d. Complete identification of any State-issued licenses/permits being sought for or applying to the proposed activity, including those issued by the Department of Fish and Game, and the California Coastal Commission.
e. A complete project description, including:
    I. The purpose and final goal of the entire activity.
    II. The address (including city and county), cross-streets, or other appropriate location description, and the longitude and latitude of the project site.
    III. Name(s) of any receiving water body(ies) that may receive a discharge.
    IV. The total estimated quantity of dredge and fill. Fill discharges shall be reported in acres. Fill discharges for channels, shorelines (including bulkheads and seawalls), and other linear habitat shall also be reported in linear feet. Dredge discharges shall be reported in cubic yards.
    V. Disposition of dredge materials, including longitude and latitude of the disposal site(s).
    VI. The results of any applicable sediment characterization completed, including testing conducted by others (e.g., the City of Newport Beach), and as required by RGP-54.
f. A check in the amount specified in Section 2200, Title 23 of the California Code of Regulations, made payable to the State Water Resources Control Board.
g. The notification must be signed by the applicant or the applicant's agent. The notification must include a statement that the submitted information is complete and accurate.

2. Point-of-Contact: The City of Newport Beach shall serve as the primary point-of contact for applicants, and shall review all notifications for completeness and

accuracy. Once the City of Newport Beach has determined that the project meets the conditions of this permit, it shall forward the notification to the Regional Board.

3. Expiration: This certification expires five years after the date of its issuance. Any project begun or in progress on that date shall complete all discharges of dredge or fill within thirty days of the expiration date.

4. Sediment Characterization: This certification is limited to the areas covered by the U.S. EPA's suitability determinations in 2010 (data collected in May 2009) and 2011 (data collected in May 2011). The suitability determinations are valid for a period of five years from the date of the data collection. Therefore, projects in areas characterized in May 2009 must be completed by June 30, 2014, and projects in areas characterized in May 2011 must be completed by June 30, 2016.

5. Reporting: The City of Newport Beach shall forward copies of sediment testing and dredging activity (sediment volumes excavated, disposed), and water quality monitoring to the Regional Board concurrent with submission of such reports to the Corps.

6. *Caulerpa*: Enrollees must conduct at least one survey for the invasive algae *Caulerpa taxifolia* 30 to 90 days prior to project initiation. If *Caulerpa taxifolia* is discovered, the enrollee must not begin dredging. The enrollee must notify Regional Board staff, the California Department of Fish and Game (CDFG) (William Paznokas: 858-467-4218,(wpaznokas@dfg.ca.gov) and/or the National Marine Fisheries Service (NMFS) (Eric Chavez: 562-980-4064, Eric.Chavez@noaa.gov) within 24-hours of discovery. The enrollee may begin dredging after implementing management measures specified by the CDFG and/or NMFS.

7. Eelgrass: Applicants must conduct an eelgrass survey within 30 to 90 days prior to commencement of the project. Potential impacts to eelgrass located between 15 and 30 feet from the dredge footprint will be monitored and mitigated on-site or off-site on an individual project basis consistent with the provisions of the Southern California Eelgrass Mitigation Policy.

8. Excluded Activities: This certification does not apply to the following:
    a. Projects where eelgrass is present within 15 feet of the dredge/ operating equipment or disposal site.
    b. Projects requiring coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity (Order 2009-0009-DWQ).
    c. Projects involving the construction of any new storm drain outfall.
    d. Projects that may result in the loss of wetlands or the impairment of their beneficial uses.
    e. Discharges of contaminated sediment to waters of the State, or to land where the material or its contaminants may enter waters of the State, and the

contaminants are present at concentrations that exceed NOAA Threshold Effects Levels.

9. Best Management Practices: At a minimum, the following BMPs shall be utilized:

    a. A continuous, floating silt curtain shall be deployed around active dredging areas.
    b. Operational BMPs such as reduction in dredging rate, modification of clamshell operation, use of favorable tidal conditions to minimize turbidity, and temporary suspension of dredging shall be employed as necessary.
    c. 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.

10. Receiving Water Limitations: Applicants must comply with the following applicable narrative and/or numeric objectives:

    a. Narrative Objectives for Physical Characteristics: Wastes associated with the dredging operation shall not violate Basin Plan narrative objectives for color, floatables, and oil and grease, including the following:
        I. Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses.
        II. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.
        III. Waste discharges shall not 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, or which cause a nuisance or adversely affect beneficial uses.

    b. Numeric Limits for Physical/Chemical Characteristics: Applicants must comply with the numeric receiving water limitations specified in Table 1. Data shall be collected at a distance of no more than 300 feet from the dredge footprint. The turbidity and transmittance limits in Table 1 are based on recent data collected in Lower Newport Bay[1]. Applicants may use the City of Newport Beach's latest eelgrass survey to determine whether eelgrass is present within 300 feet of the project site. The transmissivity limits in Table 1 apply only if the applicant chooses to monitor transmissivity in addition to turbidity. When the applicant monitors both transmissivity and turbidity, compliance will

[1] Anchor QEA. Lower Newport Bay Water Quality Monitoring, Suspended Sediment Special Study. May 18, 2012.

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 unit change from ambient	
Dissolved Oxygen	> 5 mg/L	

11. Monitoring: Minimum Monitoring Program: Applicants must implement a monitoring program to ensure compliance with the receiving water limitations specified in Condition 10, above. Minimum requirements of the monitoring plan are listed in Table 2.

    The applicant will be required to perform water quality monitoring on a daily basis during the first individual dredging episodes of a given type of dredging (e.g., hydraulic suction dredging or mechanical dredging) approved under RGP-54. The results of the monitoring shall be forwarded to the Regional Board as specified in Condition 5. If the monitoring results are within the receiving water limitations specified in Condition 10, then subsequent monitoring during individual projects will not be required if the total dredging duration will be less than two days. If dredging will extend beyond two (2) consecutive days, then monitoring will be required every other day beginning with the third day (monitoring will be required on days 3, 5, 7, etc.).

Table 2: Minimum Monitoring Program

Locations	Monitored Analytes	Frequency
Less than or equal to 300 feet from dredge footprint	Turbidity Dissolved Oxygen pH	Every other day beginning with the third consecutive day of dredging

12. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions 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 Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process 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 certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of 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) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

If you have any questions please contact Doug Shibberu at (951) 782-7959, or Mark Adelson at (951) 782-3234.

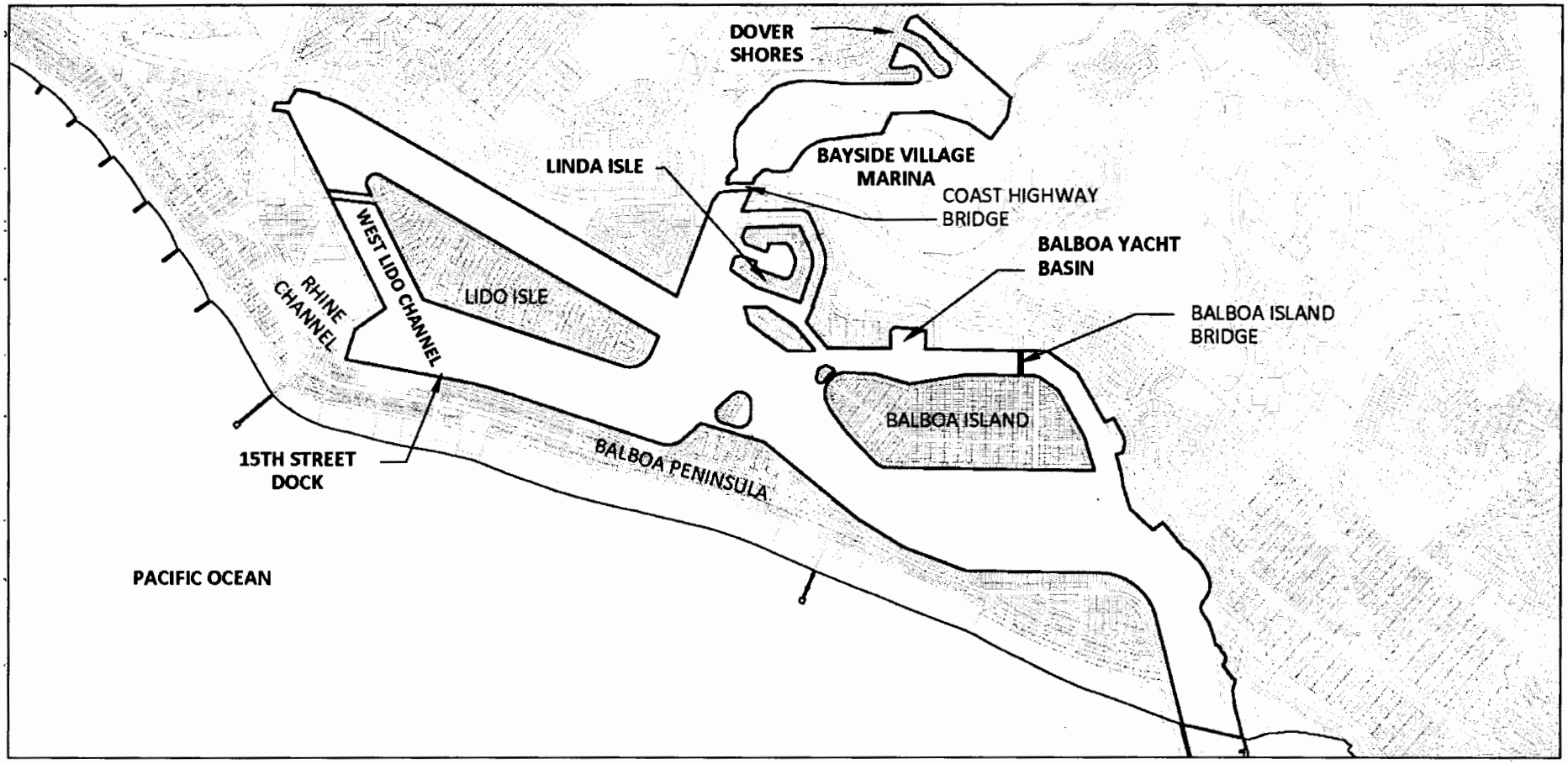
Sincerely,

Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ -Water Quality Certification Unit – Bill Orme
U. S. Army Corps of Engineers, Los Angeles Office – Stephen Estes
U. S. Fish and Wildlife Service - Jon Avery
California Department of Fish and Game – Loni Adams
City of Newport Beach – Chris Miller

w:\mbrown\401\draft certs with comments\302012-21_rgp-54_reauthorization_final4oct2012.docx

Attachment 1: RGP-54 Boundary Outline
(Figure 2 from CWA Section 401 application supplement)



SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Proposed RGP 54 Boundary

0 2,500
Scale in Feet

Attachment 2: RGP-54 Boundary Detail, West Portion of Lower Newport Bay
(Figure 3 from CWA Section 401 application supplement)

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

C:\MJP ACAD\Working Remotely\RGP 54\0243RPG-RP-003.dwg FIG 3
May 18, 2012 10:31am mpratschner

ANCHOR QEA

Figure 3
RGP 54 Boundary - West Portion of Lower Newport Bay
Reauthorization of Regional General Permit 54

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

L:\AutoCAD Project Files\090243-01 Newport CAD\Lower Newport Bay\RGP 54\0243RPG-RP-003.dwg FIG 3
Oct 01, 2012 1:48pm mpratschner

ANCHOR QEA

Figure 3
RGP 54 Boundary - West Portion of Lower Newport Bay
Reauthorization of Regional General Permit 54

Attachment 3: RGP-54 Boundary Detail, East Portion of Lower Newport Bay
(Figure 4 from CWA Section 401 application supplement)

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

C:\MJP ACAD\Working Remotely\RGP 54\0243RPG-RP-003.dwg FIG 4
May 18, 2012 10:31am mpratschner

ANCHOR QEA

Figure 4
RGP 54 Boundary - East Portion of Lower Newport Bay
Reauthorization of Regional General Permit 54

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

L:\AutoCAD Project Files\090243-01 Newport CAD\Lower Newport Bay\RGP 54\0243RPG-RP-003.dwg FIG 4
Oct 01, 2012 1:49pm mpratschner

ANCHOR QEA

Figure 4
RGP 54 Boundary - East Portion of Lower Newport Bay
Reauthorization of Regional General Permit 54

Attachment 4: RGP-54 Boundary Detail, Marinas in Upper Newport Bay
(Figure 5 from CWA Section 401 application supplement)

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

C:\MJP ACAD\Working Remotely\RGP 54\0243RPG-RP-003.dwg FIG 5
May 18, 2012 10:30am mpratschner

SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

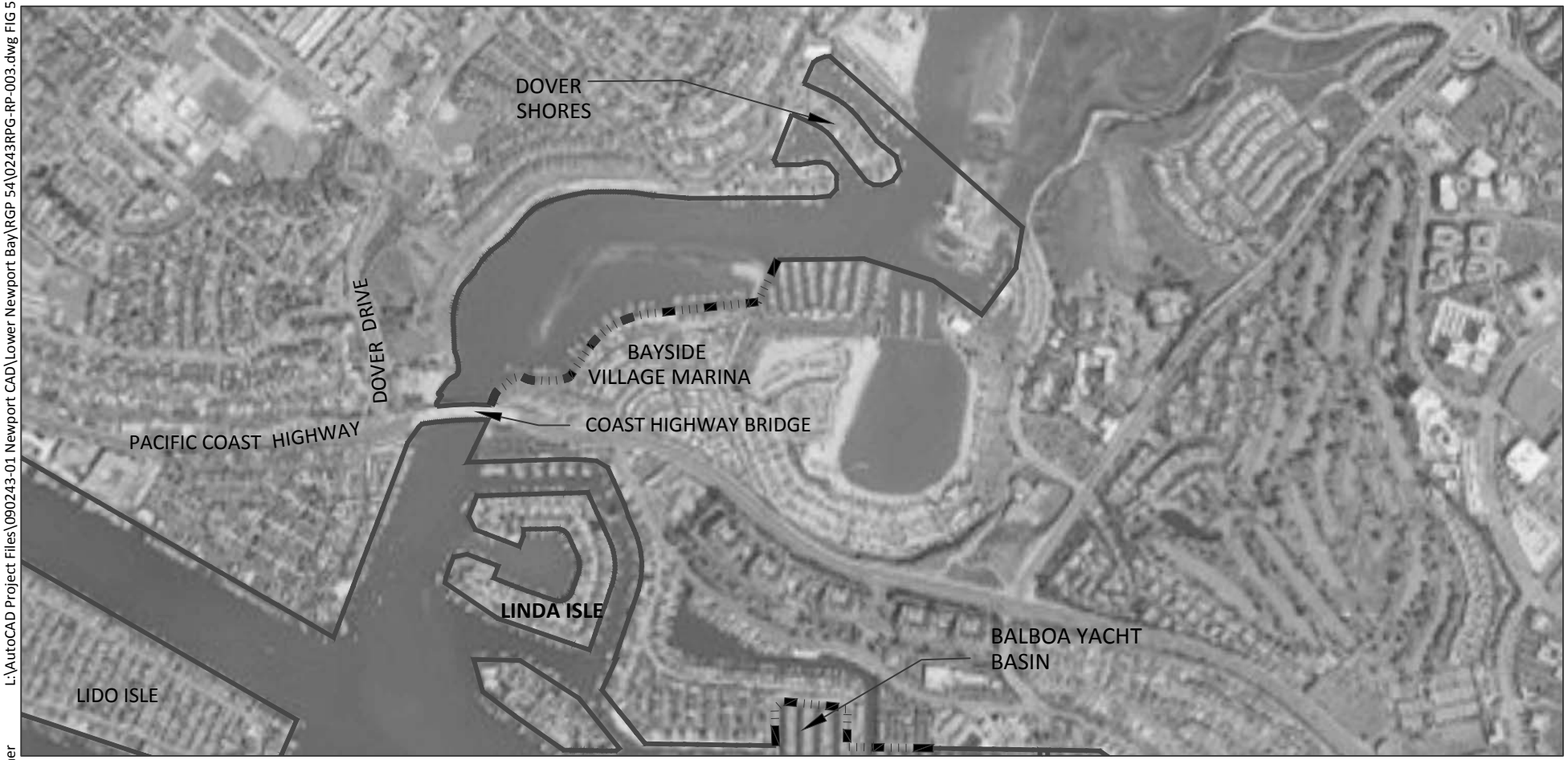
LEGEND:

- Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)
- Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

ANCHOR QEA

Figure 5
RGP 54 Boundary - Developed Portion of Upper Newport Bay
Reauthorization of Regional General Permit 54



SOURCE: Image from Bing map. Coast line extents from City of Newport Beach GIS Department.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)

Area not approved for dredging under RGP 54

0 1,200
Scale in Feet

L:\AutoCAD Project Files\090243-01 Newport CAD\Lower Newport Bay\RGP 54\0243RPG-RP-003.dwg FIG 5
Oct 01, 2012 1:50pm mpratschner

ANCHOR QEA

Figure 5
RGP 54 Boundary - Developed Portion of Upper Newport Bay
Reauthorization of Regional General Permit 54