



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**

LOS ANGELES DISTRICT CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

January 10, 2013

Regulatory Division

Chris Miller  
Division of Harbor Resources  
City of Newport Beach  
829 Harbor Island Drive  
Newport Beach, California 92660

Dear Mr. Miller:

Enclosed you will find a signed copy of Regional General Permit No. 54 (Corps File No. SPL-2011-00249-SME), located in portions of Newport Bay in the city of Newport Beach, Orange County, California. Please retain this copy for your files.

Thank you for participating in our Regulatory Program. If you have any questions, please contact Stephen Estes at 213-452-3660 or via email at [Stephen.M.Estes@usace.army.mil](mailto:Stephen.M.Estes@usace.army.mil).

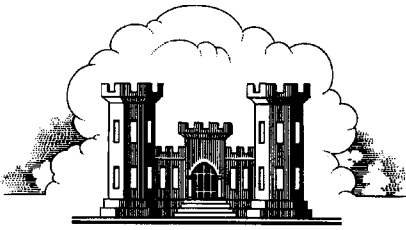
Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:  
<http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

A handwritten signature in black ink that reads "Corice J. Farrar".

Corice J. Farrar  
Chief, Orange and Riverside Counties Section  
South Coast Branch

Enclosure



*LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS*

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 54**

**Permittee:** City of Newport Beach, Division of Harbor Resources  
**Permit Number:** Regional General Permit (RGP) No. 54 (SPL-2011-00249-SME)  
**Issuing Office:** Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Location:** The proposed work would take place in portions of Newport Bay, within the boundaries shown on the enclosed Figures 1-2 (except for the exclusion areas shown on the enclosed Figures 3-5), in the city of Newport Beach, Orange County, California.

**Project Description:** RGP No. 54 authorizes minor maintenance dredging underneath and adjacent to private, public, and commercial docks, floats, and piers throughout portions of Newport Bay (Figures 1 and 2). Dredged sediment would either be (1) discharged onto adjacent beaches or in front of existing bulkheads or (2) disposed of at the LA-3 Ocean Dredged Material Disposal Site (ODMDS) or an approved inland disposal site.

Up to 20,000 cubic yards (CY) of sediment may be dredged annually from the project area (Figures 1-5). Individual projects may receive authorization to dredge up to 1,000 CYs of sediment. Any project proposing to dredge more than 1,000 CYs of sediment would need a separate Corps authorization.

Generally, dredging would occur to a depth not exceeding -7 feet mean lower low water (MLLW) (plus one foot of allowable overdepth). If it can be demonstrated a particular location historically had a design depth below -7 feet MLLW, maintenance dredging to a maximum depth of -10 feet MLLW (plus one foot of allowable overdepth) may be authorized as long as the dredged material is disposed of at an approved inland disposal site. Dredging is not authorized in certain areas of Newport Bay, including the Rhine Channel, portions of the West Lido Channel, areas west of

Newport Boulevard, areas north of Dover Shores, portions of the Bayside Village Marina, Promontory Bay, and portions of the Balboa Yacht Basin (Figures 1-5). However, the Corps Regulatory Division and U.S. Environmental Protection Agency (EPA) may approve sediment dredging or disposal operations under RGP No. 54 at these locations if additional sediment testing is conducted (via a Corps- and EPA-approved Sediment Analysis Plan (SAP)) and the material is found to be suitable.

## **Permit Conditions:**

### **General Conditions:**

1. The time limit for completing the authorized activity ends on **December 20, 2015**.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. A conditioned water quality certification has been issued for your project (No. 302012-21). You must comply with the conditions specified in the certification as Special Conditions to this permit. For your convenience, a copy of the 401 certification is attached (Attachment A).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

## **Special Conditions:**

1. Coastal Development Permit Amendment No. 5-06-117 expires on March 31, 2014 (Attachment B). Therefore, no work shall occur after March 31, 2014 unless the permittee receives authorization from the California Coastal Commission. The Permittee shall submit a copy of such authorization to the Corps Regulatory Division upon receipt.
2. Overall Special Conditions applicable to all uses of RGP No. 54:
  - a. Annual maintenance dredging is limited to 20,000 CYs of material. Individual dredging projects shall be no more than 1,000 CYs. Individual disposal projects shall be no more than 1,000 CYs.
  - b. The applicant shall submit a pre-construction notification (PCN) and must receive a signed notice to proceed (NTP) from the Corps Regulatory Division before commencing any work in waters of the United States.
  - c. The City of Newport Beach Tidelands Administrator (aka Harbor Resources Manager) shall be the primary Point of Contact (POC) for applicants seeking authorization under RGP No. 54 and applications will be screened through this office. Once the POC has determined an application meets the conditions of this permit, the POC will forward the application to the Corps Regulatory Division along with a written certification. This certification shall include the following information:
    - i. Certification letter from the City of Newport Beach Tidelands Administrator confirming the proposed application meets the terms and conditions of RGP No. 54 with special emphasis on the presence or absence of eelgrass;
    - ii. Maps of the project site including location within Newport Bay, site address, site latitude and longitude coordinates (e.g. decimal degree format), as well as to-scale drawings of the proposed action (i.e. plan view and cross-section view of proposed activity), including the boundaries of any proposed sediment dredging and/or disposal work;
    - iii. The proposed area of permanent and temporary impacts to waters of the United States (in acres or square feet), proposed dredge and/or disposal quantities (in CYs), including a detailed estimate of how much material has been dredged from or discharged onto the site through previous activities; and
    - iv. Photos (minimum of five) of the beach area and the low tide line (i.e. prior to any work) with special emphasis on any areas of eelgrass.
  - d. Annual Reporting: The City of Newport Beach shall submit annual reports for the life of the RGP to the Corps Regulatory Division documenting activities authorized under this

RGP. Each annual report shall be a cumulative ledger documenting all activities conducted using this reissued RGP to date. The annual report shall be submitted by July 1 of each year. Annual reports from the City of Newport Beach shall include:

- i. Summary of dredge operations including;
    1. Location (address) of each dredging operation;
    2. Areas and volumes of material dredged (in acres and CYs); and
    3. Disposal location(s) and volumes for each method used (i.e. LA-3, inland site, or other approved area).
  - ii. An estimate of the total acreage of waters of the United States impacted for each activity type;
  - iii. Summary of any direct and indirect eelgrass impacts for each activity type, and the eelgrass mitigation completed or in progress (per Special Condition “2.e.” below);
  - iv. An updated, to-scale map showing the locations of all activities conducted using this reauthorized RGP No. 54 to date; and
  - v. Confirmation of compliance with all Special Conditions, or a detailed explanation of any Special Conditions not complied with.
- e. Eelgrass-related requirements: ALL projects proposed for authorization under RGP No. 54 shall meet the following requirements:
- i. All projects proposed for authorization under RGP No. 54 must be surveyed for eelgrass (*Zostera marina*) presence out to 30 feet in all directions from the proposed project footprint;
  - ii. RGP No. 54 does not apply to dredging projects in which eelgrass is found 15 feet or less (in any direction) from the proposed dredge or dredge material discharge footprint;
  - iii. For RGP No. 54-eligible dredging projects, where the dredged material would not be placed on an adjacent beach site or in front of an existing bulkhead (i.e. disposal at a designated offshore disposal site), any eelgrass present at the site must be located greater than 15 feet (in any direction) away from the proposed dredge footprint. No further eelgrass-related monitoring conditions apply in this situation provided the survey remains 'valid' in accordance with Special Condition “2.e.v.” below;
  - iv. For RGP No. 54-eligible dredging projects, should it be determined dredged material is suitable for placement on a beach or in front of an existing bulkhead(s), the following eelgrass monitoring requirements apply:

1. If eelgrass is not present within 30 feet (in any direction) of the proposed dredge or dredge material disposal footprint, no additional eelgrass monitoring requirements apply;
  2. If eelgrass is present between 15-30 feet from the proposed dredge material disposal footprint (in any direction), 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 feet apart which map the eelgrass bed. Enough transects will be used to extend the length of the project footprint. Along each transect, the extent of eelgrass will 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 60 days prior to the start of dredging and the post-project transects shall be conducted no later than 30 days following the completion of dredging; and
  3. Should the monitoring required in Special Condition "2.iv.2." above identify an impact to the mapped eelgrass bed, then mitigation consistent with the provisions of the Southern California Eelgrass Mitigation Policy (SCEMP) shall apply. An eelgrass monitoring report will be submitted to the Corps Regulatory Division, National Marine Fisheries Service (NMFS), and the California Coastal Commission no later than 90 days following completion of dredging. If an impact was detected (as defined above), the report shall include a summary of how the SCEMP will be complied with;
- v. For purposes of this RGP, all eelgrass survey/mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days with the exception of surveys completed from August through October. A survey completed from August through October shall be valid until the resumption of active growth (i.e. March 1). Work may only occur with a valid survey. If the survey expires prior to commencement of work, a new survey shall be required prior to commencement of any work;
  - vi. Prior to commencement of any activity authorized under RGP No. 54, the boundaries of any eelgrass meadow within the general project area shall be marked with buoys so that equipment and vessel operators shall avoid damage to eelgrass meadows; and
  - vii. Barges and other vessels used for any activity authorized under RGP No. 54 shall be anchored to avoid encroachment into any eelgrass bed. 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.
- f. Caulerpa-related requirements: ALL projects proposed for authorization under RGP No. 54 shall meet the following requirements:
    - i. A pre-construction survey of the project area for Caulerpa (*Caulerpa taxifolia*) shall be conducted in accordance with the Caulerpa Control Protocol (see

<http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) not earlier than 90 calendar days prior to planned construction or dredging-related activities and not later than 30 calendar days prior to construction or dredging-related activities. The results of that survey shall be furnished to the Corps Regulatory Division, NMFS, California Coastal Commission, and the California Department of Fish and Game (CDFG) at least 15 calendar days prior to initiation of work in navigable waters. In the event that Caulerpa is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS, the California Coastal Commission and CDFG.

- g. To renew RGP No. 54, the Permittee shall submit a report that documents the existing conditions in the project area at least four months prior to the expiration date of the permit. This report shall include new sediment testing data collected in accordance with a new SAP approved by the Corps Regulatory Division and EPA. If the Corps determines there are no changes in the project area that would warrant further in-depth analysis, RGP No. 54 would be issued for another 5-year period with minimal environmental review. If there are substantial changes in the project area, RGP No. 54 could still be re-issued; however, the Corps would need to complete a more substantive environmental review to address the changes in the project area.
3. Minor maintenance dredging under and adjacent to previously authorized private, public, and commercial docks, floats, and piers:
    - a. For this RGP, the term dredging operations shall mean: navigation of the dredging vessel at the dredging site, excavation of dredged material within the project boundaries, and placement of dredged material into a hopper dredge or disposal barge or scow.
    - b. Under RGP No. 54, dredging operations would be limited to -7 feet MLLW with one foot of allowable overdepth. Discharge of material dredged from below -8 feet below MLLW (dredging design depth plus overdredge depth), which represents the characterization depth, or dredged from outside the project boundaries (Figures 1-5), is not authorized by this permit. If the Permittee can demonstrate that a particular location has historically had a design depth below -7 feet MLLW, the Corps Regulatory Division may authorize deeper maintenance dredging to a maximum depth of -10 feet MLLW (plus one foot of allowable overdepth), provided that material is to be disposed in uplands or in an approved confined fill.
    - c. In no case will offshore (ocean) disposal or beach discharge be authorized for material dredged below the sediment testing characterization depth (currently -8 feet MLLW) for any particular site. Any such material must be disposed in uplands or in an approved confined fill. However, the Corps Regulatory Division and EPA may approve offshore disposal and/or beach discharge for a particular site if additional sediment testing is conducted to the depth requested (via Corps- and EPA-approved SAP) and the material is found to be suitable.

- d. Sediments from areas within the RGP No. 54 boundary identified as containing elevated mercury levels are not eligible for sediment dredging or disposal operations under this RGP. However, the Corps Regulatory Division and EPA may approve sediment dredging or disposal operations under RGP No. 54 at these locations if additional sediment testing is conducted (via a Corps- and EPA-approved SAP) and the material is found to be suitable.
- e. Sediment from authorized areas (Figures 1-5) within the proposed RGP No. 54 area that meet the grain size criteria (at least 75% sand and no more than 10% difference in sand content between dredging and beach disposal sites) are suitable for discharge onto beach sites within 1,000 feet of dredging operation sites. No use of sediments from areas identified as containing elevated mercury levels would be authorized for beach nourishment unless individual stations were to be retested and found by the Corps Regulatory Division to be suitable for beach nourishment.
- f. Sediment from authorized areas (Figures 1-5) within the proposed RGP No. 54 area with 80% or less sand content are suitable for disposal at the LA-3 ODMDS. No use of sediments from areas identified as containing elevated mercury levels would be authorized for disposal at the LA-3 ODMDS unless individual stations were to be retested and found by the Corps Regulatory Division to be suitable for offshore placement.
- g. Dredging authorized by this permit shall be limited to the areas with existing authorized docks or bulkheads in Newport Bay (Figures 1-5). No dredging operation is authorized in any other location under this permit. No more than 1,000 CYs of dredged material is authorized for dredging for any individual project (i.e. any single and complete project with independent utility) proposed for authorization under RGP No. 54. This permit does not authorize the placement or removal of buoys.
- h. The Permittee is prohibited from dredging and disposing material in navigable waters of the United States that has not been tested and determined by the Corps Regulatory Division, in consultation with the EPA, to be both clean and suitable for beach nourishment. EPA must expressly approve materials for placement in approved ocean disposal sites. In the case of this RGP, re-testing of previously tested or dredged areas is required after three years from the date of permit issuance. This time limit is subject to shortening given the occurrence of any event that may cause previously determined clean material to become suspect, at the discretion of the Corps Regulatory Division. Prior to each dredging episode, the Permittee must demonstrate that the proposed dredged materials are chemically and physically suitable for disposal in ocean waters according to the provisions of the Inland Testing Manual or Ocean Disposal Manual, as appropriate. If the material does not meet the physical and chemical criteria for unconfined disposal in ocean waters, the dredged material shall be disposed in an upland disposal area. The Permittee shall submit to the Corps Regulatory Division and EPA a draft SAP. Sampling may not commence until the SAP is approved, in writing, by the Corps Regulatory Division, in consultation with EPA.

- i. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the Permittee shall send a dredging and disposal operations plan to the Corps Regulatory Division and EPA with the following information:
  - i. A list of the names, addresses, and telephone numbers of the Permittee's project manager, the contractor's project manager, the dredging operations inspector, the disposal operations inspector and the captain of each tug boat, hopper dredge or other form of vehicle used to transport dredged material to the designated disposal site;
  - ii. A list of all vessels, major dredging equipment and electronic positioning systems or navigation equipment that will be used for dredging and disposal operations, including the capacity, load level and acceptable operating sea conditions for each hopper dredge or disposal barge or scow to assure compliance with Special Conditions on dredging and disposal operations;
  - iii. A detailed description of the dredging and disposal operations authorized by this permit. Description of the dredging and disposal operations should include, at a minimum, the following:
    1. Dredging and disposal procedures for the dredged material determined by the Corps Regulatory Division and EPA to be unsuitable for ocean disposal;
    2. Dredging and disposal procedures for the material to be dredged from the proposed site; and
    3. A schedule showing when the dredging project is planned to begin and end;
  - iv. A pre-dredging bathymetric condition survey, taken within 30 days before the dredging begins. For RGP No. 54 only, one of two survey methods can be used:
    1. Survey taken via lead line, sounding disc, or sounding pole techniques according to Chapter 8 (Manual Depth Measurement Techniques) from the Corps' Engineering and Design Hydrographic Surveying Manual (EM 1110-2-1003, published 01 Jan 2002). Each individual project survey using this method will include a minimum of three sounding points (adjusted for tide) per individual dock; and
    2. Survey (presented as a large format plan view drawing), taken within thirty (30) days before the dredging begins, accurate to 0.5-foot with the exact location of all soundings clearly defined on the survey chart. The pre-dredge survey chart shall be prepared showing the following information:
      - a. The entire dredging area, the toe and top of all side-slopes and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the pre-dredge condition survey should cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered;
      - b. The dredging design depth, overdredge depth, and the side-slope ratio;

- c. The total quantity of dredged material to be removed from the dredging areas and the side-slope areas;
  - d. Areas shallower than the dredging design depth shall be shaded green, areas between the dredging design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps Regulatory Division may request additional information; and
  - e. The pre-dredging survey chart shall be signed by the Permittee to certify that the data are accurate and that the survey was completed within 30 days before the proposed dredging start date; and
- v. A debris management plan to prevent disposal of large debris at all disposal locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.
- j. The Permittee shall not commence individual dredging operations unless and until the Permittee receives a signed NTP from the Corps Regulatory Division.
- k. The Permittee shall maintain a copy of this RGP No. 54 and the signed NTP on all vessels used to dredge, transport, and dispose of dredged material authorized under this permit.
- l. The Permittee shall notify the Commander, Eleventh Coast Guard District, and the Coast Guard Marine Safety Office / Group LA-LB, not less than 14 calendar days prior to commencing work and as project information changes. The notification, either by letter, FAX, or e-mail, shall include as a minimum the following information:
- i. Project description including the type of operation (i.e. dredging, diving, construction, etc);
  - ii. Location of operation, including Latitude / Longitude (NAD 83);
  - iii. Work start and completion dates and the expected duration of operations;
  - iv. Vessels involved in the operation (name, size, and type);
  - v. VHF-FM radio frequencies monitored by vessels on scene;
  - vi. Point of contact and 24-hour phone number;
  - vii. Potential hazards to navigation; and
  - viii. Chart number for the area of operation.

Addresses:

Commander, 11th Coast Guard District (dpw)

Telephone: 510-437-5836

E-mail: D11LNM@uscg.mil

Website: <http://www.uscg.mil/d11/dp/LNMRequest.asp>

U.S. Coast Guard, Sector LA-LB (COTP)

Telephone: 310-521-3860

E-mail: john.p.hennigan@uscg.mil

- m. The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the U.S. Coast Guard in writing, with a copy to the Corps Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation which requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office. The Permittee and its contractor(s) are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.
- n. Should the Permittee determine the work requires the placement and use of private aids to navigation in navigable waters of the United States, the Permittee shall submit a request in writing to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office. The Permittee is prohibited from establishing private aids to navigation in navigable waters of the United States until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.
- o. The Permittee shall ensure that the captain of any hopper dredge, tug or other vessel used in the dredging and disposal operations, is a licensed operator under U.S. Coast Guard regulations and follows the Inland and Ocean Rules of Navigation or the U.S. Coast Guard Vessel Traffic Control Service. All such vessels, hopper dredges or disposal barges or scows, shall have the proper day shapes, operating marine band radio, and other appropriate navigational aids.
- p. The Permittee's contractor(s) and the captain of any dredge covered by this permit shall monitor VHF-FM channels 13 and 16 while conducting dredging operations.
- q. Upon request, the Permittee and its contractor(s) shall allow inspectors from the Corps Regulatory Division, EPA, and/or the U.S. Coast Guard to inspect all phases of the dredging and disposal operations.
- r. Upon request, the Permittee and its contractor(s) retained to perform work authorized by the permit or to monitor compliance with this permit shall make available to inspectors from the Corps Regulatory Division, EPA, and/or the U.S. Coast Guard the following: dredging and disposal operations inspectors' logs, the vessel track plots, and all disposal vessel logs or records, any analyses of the characteristics of dredged material, or any other documents related to dredging and disposal operations.
- s. The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States.
- t. If a violation of any permit condition occurs, the violation shall be reported by the Permittee to the Corps Regulatory Division within 24 hours. If the Permittee retains any

contractors to perform any activity authorized by this permit, the Permittee shall instruct all such contractors that notice of any violations must be reported to the Permittee immediately.

- u. When using a hopper dredge, water flowing through the weirs shall not exceed 10 minutes during dredging operations. The level that a hopper dredge can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site or during transit from the dredging site to the disposal site. No hopper dredge shall be filled above this predetermined level. Before each hopper dredge is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.
- v. When using a disposal barge or scow, no water shall be allowed to flow over the sides. The level that a disposal barge or scow can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site. No disposal barge or scow shall be filled above this predetermined level. Before each disposal barge or scow is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.
- w. The Permittee shall use an electronic positioning system to navigate at the dredging site. The electronic positioning system shall have a minimum accuracy and precision of +/- 10 feet (3 meters). If the electronic positioning system fails or navigation problems are detected, all dredging operations shall cease until the failure or navigation problems are corrected. Any navigation problems and corrective measures shall be described in the post-dredging completion report per Special Condition 3.x.
- x. The Permittee shall submit a post-dredging completion report to the Corps Regulatory Division within 30 calendar days after completion of each dredging project to document compliance with all general and Special Conditions defined in this permit. The report shall include all information collected by the Permittee, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the Special Conditions of this permit. The report shall indicate whether all general and Special Conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:
  - i. Permit and project number;
  - ii. Start date and completion date of dredging and disposal operations;
  - iii. Total cubic yards disposed at the authorized disposal site(s);
  - iv. Mode of dredging;
  - v. Mode of transportation;
  - vi. Form of dredged material;
  - vii. Frequency of disposal and plots of all trips to the authorized disposal site(s);
  - viii. Tug boat or other disposal vessel logs documenting contact with the U.S. Coast Guard before each trip to the authorized ocean disposal site;
  - ix. Percent sand, silt, and clay in dredged material: for RGP No. 54 only, see sediment testing requirements above;

- x. A certified report from the dredging site inspector indicating all general and Special Conditions were met. Any violations of the permit shall be explained in detail;
- xi. Pre-dredging hydrographic survey (per Special Condition 3.i.iv. above);
- xii. A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredged depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the pre-dredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the pre-dredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate; and
- xiii. The post-dredging report shall be signed by a duly authorized representative of the Permittee. The Permittee's representative shall make the following certification: *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

4. Offshore (ocean) disposal of dredged material:

- a. All sediment within the authorized areas (Figures 1-5) of RGP No. 54 with 80% or less sand content are suitable for disposal at the LA-3 ODMDS with the exception of sediment from areas identified as containing elevated mercury levels. However, the Corps Regulatory Division and EPA may approve sediment dredging or disposal operations under RGP No. 54 at these locations if additional sediment testing is conducted (via a Corps- and EPA-approved SAP) and the material is found to be suitable.
- b. For this permit, the term “ocean disposal operations” shall mean: the transportation of dredged material from the dredging site to the LA-3 ODMDS, proper disposal of dredged material at the central disposal area within the LA-3 ODMDS, and transportation of the hopper dredge or disposal barge or scow back to the dredging site.
- c. The ocean disposal site is demarcated as a circle with the center coordinates and radii listed below:  
  
LA-3: 33 degrees 31.00 minutes North Latitude, 117 degrees 53.50 minutes West Longitude (NAD 1983), circular site with radius of 3,000 feet.
- d. In no case will offshore (ocean) disposal or beach discharge be authorized for material dredged below the sediment testing characterization depth (currently -8 feet MLLW) for any particular site. Any such material must be disposed in uplands or in an approved confined fill. However, the Corps Regulatory Division and EPA may approve offshore disposal and/or beach discharge for a particular site if additional sediment testing is

conducted to the depth requested (via Corps Regulatory Division and EPA-approved SAP) and the material is found to be suitable.

- e. No more than 1,000 CYs of dredged material excavated for an individual dredging project authorized under RGP No. 54 are authorized for disposal at the LA-3 ODMDS.
- f. Prior to commencement of any ocean disposal operations, the Permittee shall submit a Scow Certification Checklist to EPA and the Corps Regulatory Division for review and approval. The Scow Certification Checklist shall document: the amount of material dredged and loaded into each barge for disposal, the location from which the material in each barge was dredged, the weather report for and sea-state conditions anticipated during the transit period, and the time that each disposal vessel is expected to depart for, arrive at, and return from the ocean disposal site.
- g. The Permittee shall notify the U.S. Coast Guard by radio on VHF-FM channel 16 or by telephone at least 4 hours before departing for each disposal site. The notification shall include:
  - i. Name of Permittee;
  - ii. Corps permit number;
  - iii. Name and identification of vessels (tug boat, hopper dredged or disposal barge or scow) employed in the disposal operation;
  - iv. Loading location of the material to be disposed;
  - v. Material to be disposed;
  - vi. Time of departure from the dredging site;
  - vii. Estimated time of arrival at the ocean disposal site and estimated time of departure from the ocean disposal site; and
  - viii. Estimated time of arrival at dredging site after the disposal operation is completed.
- h. 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.
- i. When dredged material is discharged by the Permittee at the ocean disposal site, no portion of the vessel from which the materials are to be released (e.g. hopper dredge or towed barge) may be further than 1,000 feet (305 meters) from the center of the disposal site (the "surface disposal zone" or "SDZ").
- j. No more than one disposal vessel may be present within the ocean disposal site SDZ at any time.

- k. The captain of any tug boat or other vessel covered by this permit shall monitor VHF-FM channel 16 while conducting disposal operations.
- l. The primary disposal tracking system for recording ocean disposal operations data shall be disposal vessel- (e.g. scow-) based. An appropriate Global Positioning System shall be used to indicate the position of the disposal vessel with a minimum accuracy of 10 feet during all transportation and disposal operations. This primary disposal tracking system must indicate and automatically record both the position and the draft of the disposal vessel at a maximum 1-minute interval while outside the ocean disposal site boundary, and at a maximum 15-second interval while inside the ocean disposal site boundary. This system must also indicate and record the time and location of each disposal event (e.g. the discharge phase). Finally, the primary system must include a real-time display, in the wheelhouse or otherwise for the helmsman, of the position of the disposal vessel relative to the boundaries of the ocean disposal site and its SDZ, superimposed on the appropriate National Oceanic Service navigational chart, so that the operator can confirm proper position within the SDZ before disposing the dredged material.
- m. Data recorded from the primary disposal tracking system must be posted by a third party contractor on a near-real time basis to an internet site accessible at a minimum by EPA, the Corps Regulatory Division, the Permittee, the prime dredging contractor, and any independent inspector. The Internet site shall be provided to the Corps Regulatory Division and EPA prior to commencement of disposal operations. The Internet site must be searchable by disposal trip number and date, and at a minimum for each disposal trip it must provide a visual display of: the disposal vessel transit route to the ocean disposal site, the beginning and ending locations of the disposal event, and the disposal vessel draft throughout the transit. The requirement for posting this information on the Internet is independent from the hard-copy reporting requirements listed in Special Condition 4.p. below. The third-party system must also generate and distribute "e-mail alerts" regarding any degree of apparent dumping outside the SDZ of the ocean disposal site, and regarding any apparent substantial leakage/spillage or other loss of material en route to the ocean disposal site. Substantial leakage/spillage or other loss for this permit is defined as an apparent loss of draft of one foot or more between the time that the disposal vessel begins the trip to the ocean disposal site and the time of actual disposal. E-mail alerts for any disposal trip must be sent within 24 hours of the end of that trip, at a minimum to EPA, the Corps Regulatory Division, the Permittee, and the prime dredging contractor.
- n. If the primary disposal tracking system fails during transit to the ocean disposal site, the navigation system on the towing vessel (tug, if any), meeting the minimum accuracy requirement listed above, may be used to complete the disposal trip by maneuvering the towing vessel so that, given the compass heading and tow cable length to the scow (Alay back@), the estimated scow position would be within the SDZ of the ocean disposal site. In such cases, the towing vessel's position, and the tow cable length and compass heading to the disposal vessel, must be recorded and reported. The Permittee shall halt further disposal operations using a disposal vessel whose navigation tracking system fails until those primary disposal tracking capabilities are restored.

- o. The Permittee shall report any anticipated, potential, or actual variances from compliance with the general and Special Conditions of this permit, to the Corps Regulatory Division and EPA within 24 hours of discovering such a situation. An operational “email alert” system, as described above, will be considered as fulfilling this 24-hour notification requirement. In addition, the Permittee shall prepare and submit a detailed report of any such compliance problems with the monthly hard-copy reports described below.
  - p. The Permittee shall collect, for each ocean disposal trip, both automatically-recorded electronic data and printouts from the primary disposal tracking system showing transit routes, disposal vessel draft readings, disposal coordinates, and the time and position of the disposal vessel when dumping was commenced and completed. These daily records shall be compiled, and provided in reports to both EPA and the Corps Regulatory Division at a minimum for each month during which ocean disposal operations occur. These reports shall include the automatically-recorded electronic navigation tracking and disposal vessel draft data on CD-ROM (or other media approved by EPA and the Corps Regulatory Division), as well as hard copy reproductions of the Scow Certification Checklists and printouts listed above. The reports shall also include a cover letter describing any problems complying with the general and Special Conditions of this permit, the cause(s) of the problems, any steps taken to rectify the problems, and whether the problems occurred on subsequent disposal trips.
  - q. Following the completion of ocean disposal operations, the Permittee shall submit to EPA and the Corps Regulatory Division a completion letter summarizing the total number of disposal trips and the overall (in-situ) volume of material disposed at the ocean disposal site for the project, and whether any of this dredged material was excavated from outside the areas authorized for ocean disposal or was dredged deeper than authorized by the permit.
5. Beach discharge (beach nourishment):
- a. No use of sediments from areas identified as containing elevated mercury levels would be authorized for beach nourishment. However, the Corps Regulatory Division and EPA may approve sediment dredging or disposal operations under RGP No. 54 at these locations if additional sediment testing is conducted (via a Corps- and EPA-approved SAP) and the material is found to be suitable.
  - b. Material dredged under RGP No. 54 is only authorized for beach discharge onto sites located within 1,000 feet of the authorized dredge site.
  - c. In no case will offshore (ocean) disposal or beach discharge be authorized for material dredged below the sediment testing characterization depth (currently -8 feet MLLW) for any particular site. Any such material must be disposed in uplands or in an approved confined fill. However, the Corps Regulatory Division and EPA may approve offshore disposal and/or beach discharge for a particular site if additional sediment testing is

conducted to the depth requested (via Corps- and EPA-approved SAP) and the material is found to be suitable.

- d. Sediment from approved areas within the proposed RGP No. 54 area that meet the grain size criteria (at least 75% sand and no more than 10% difference in sand content between dredging and beach disposal sites) are suitable for discharge onto beach sites within 1,000 feet of dredging operation sites.
- e. A detailed description of the transport and discharge operations authorized by this permit will be submitted to the Corps Regulatory Division at least 15 calendar days prior to work in waters of the United States. Description of the transport and discharge operations should include, at a minimum, the following:
  - i. Transport and discharge procedures for all sediment, including all material unsuitable for beach nourishment discharge;
  - ii. A schedule showing when the beach nourishment project is planned to begin and end;
  - iii. A debris management plan to prevent disposal of large debris at all beach discharge locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods;
  - iv. The plan shall include the volume of material to be excavated and discharged; and
  - v. The plan shall list previous discharges by site, date, and volume, as well as the total volume of material which has been excavated and discharged to date, using this RGP.
- f. The permittee shall not commence individual beach discharge operations unless and until the permittee receives a signed NTP from the Corps Regulatory Division.
- g. If a violation of any permit condition occurs during discharge operations, the permittee shall report such violations to the Corps Regulatory Division within 24 hours after the violation occurs. If the permittee retains any contractors to perform any activity authorized by this permit or to monitor compliance with this permit, the permittee shall instruct all such contractors that notice of any permit violations must be provided to the permittee immediately so the permittee can report the violation as required.
- h. The permittee shall maintain a copy of this permit on all vehicles used to transport and discharge of fill material authorized under this permit.
- i. The permittee shall send one copy of a beach disposal post-discharge report to the Corps Regulatory Division documenting compliance with all general and Special Conditions defined in this permit. The post-discharge report shall be sent within 30 calendar days after completion of the discharge operations authorized in this permit. The report shall indicate whether all general and Special Conditions were met. Any violations of the permit shall be explained in detail. The report shall include:
  - i. Corps permit number;
  - ii. Identify source of material;

- iii. Total cubic yards disposed at each beach disposal site;
  - iv. Modes of transportation and discharge; and
  - v. Actual start date and completion date of transport and discharge operations.
- j. The permittee shall implement all appropriate, standard BMPs to ensure that toxic materials, silt, debris, or excessive eroded materials do not enter waters of the United States due to beach nourishment operations.
  - k. The applicant will establish a safety flag perimeter of the beach nourishment area during disposal activities, and monitor the premises to protect the general public from construction hazards and equipment.
  - l. No maintenance, storage, or fueling of heavy tracked equipment or vehicles will occur within 500 feet of the high tide line of waters of the United States.

6. Inland disposal:

If neither beach discharge nor offshore disposal are appropriate options for an individual project proposed under this RGP, an inland disposal site may be utilized, if approved by the Corps Regulatory Division.

7. Mitigation:

This RGP does not authorize significant impacts to aquatic resources. Based on relevant information, the Corps Regulatory Division will determine if compensatory mitigation is required. Any required mitigation would be the responsibility of the permittee and failure to implement Corps-specified mitigation could result in enforcement proceedings. Any impacts to eelgrass would be mitigated according to Special Condition 2.e.iv.3. above.

**Further Information:**

- 1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - (X) Section 103 of the Marine Protection Research and Sanctuaries Act (33 U.S.C. 1413).
- 2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Re-evaluation of Permit Decision. This office may re-evaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. §325.7 or enforcement procedures such as those contained in 33 C.F.R. §§326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. §209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Chris Miller  
PERMITTEE  
Chris Miller  
Harbor Resources Manager

12/28/12  
DATE

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Corice J. Farrar  
Corice J. Farrar  
Chief, Orange and Riverside Counties Section  
South Coast Branch

9 Jan 2013  
DATE

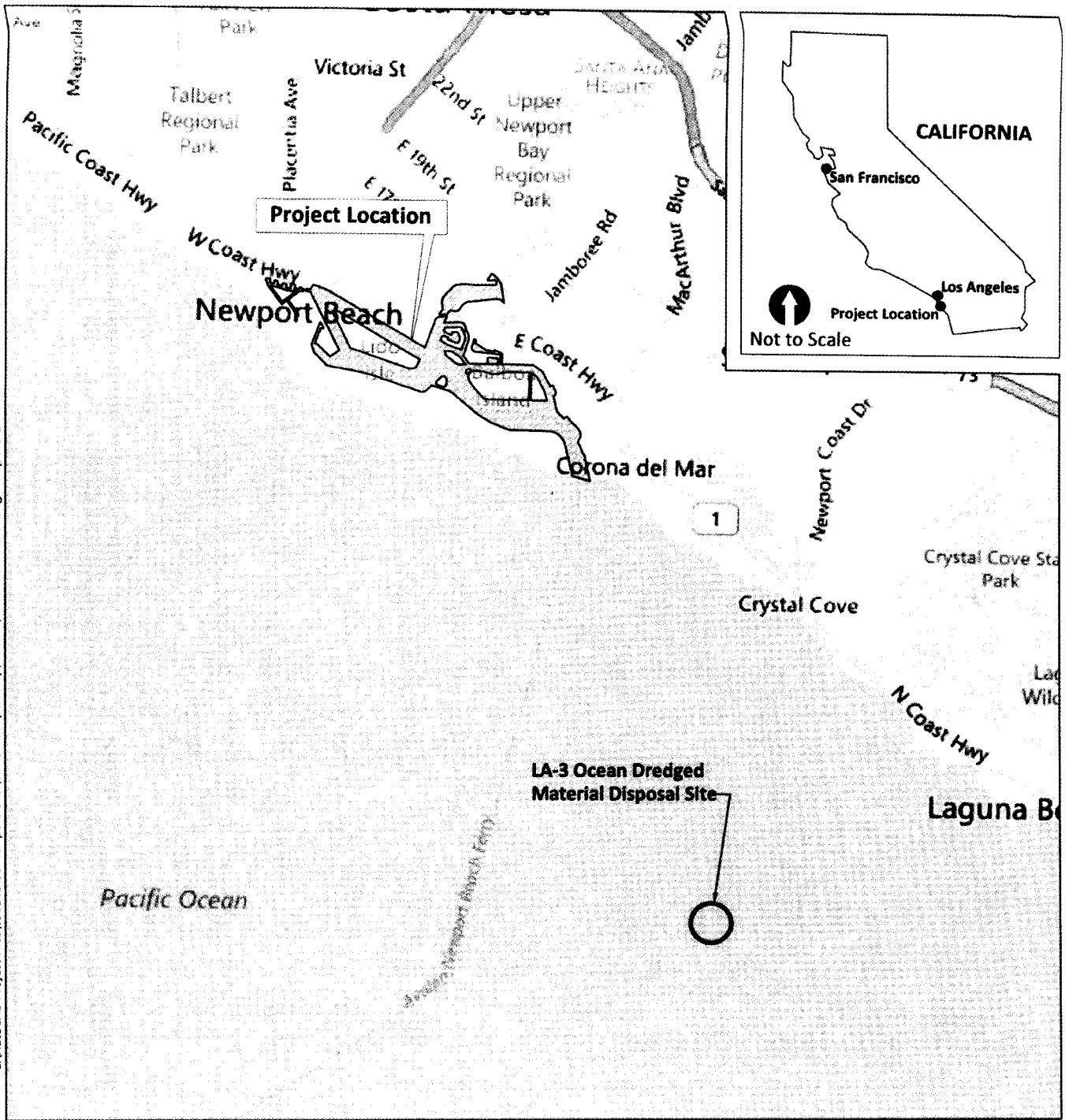
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
TRANSFEEE

\_\_\_\_\_  
DATE

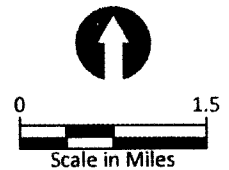
L:\AutoCAD Project Files\090243-01 Newport CAD\Lower Newport Bay\IRP\54\0243RPG-RP-001.dwg VMap FIG-1

May 17, 2012 1:15pm mpratschner

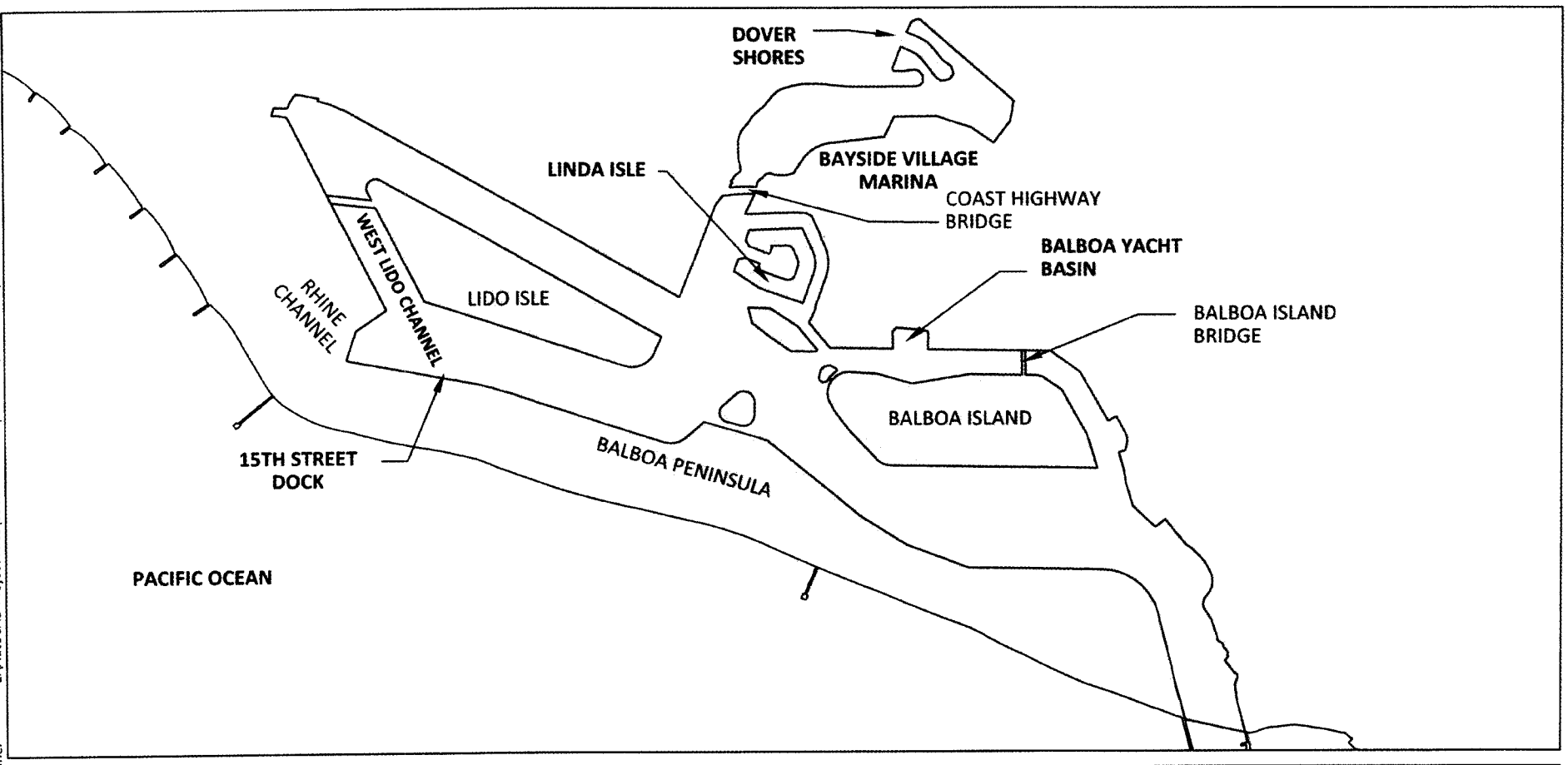


**SOURCE:** Image from Bing map.  
**HORIZONTAL DATUM:** California State Plane, Zone 6, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).


**Approximate Project Location:**  
 33° 36.540', 117° 54.230'

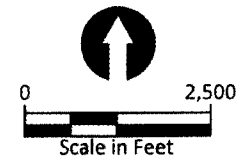


**Figure 1**  
 Vicinity Map  
 Reauthorization of Regional General Permit 54



**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:**  
 Proposed RGP 54 Boundary




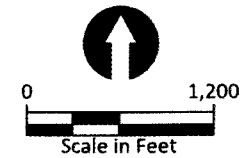


**SOURCE:** Image from Bing map. Coast line extents from City of Newport Beach GIS Department.  
**HORIZONTAL DATUM:** California State Plane, Zone 6, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**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





**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).

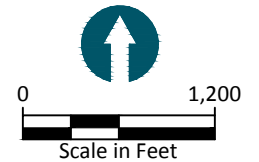
**LEGEND:**



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




C:\MJP ACAD\Working Remotely\RGP 54\0243RPG-RP-003.dwg FIG 4


May 18, 2012 10:31am mpratschner

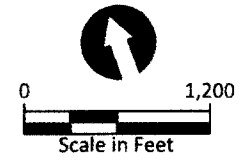


**SOURCE:** Image from Bing map. Coast line extents from City of Newport Beach GIS Department.  
**HORIZONTAL DATUM:** California State Plane, Zone 6, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**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



**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).

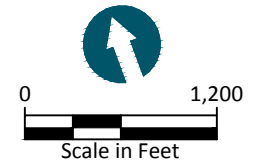
**LEGEND:**



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

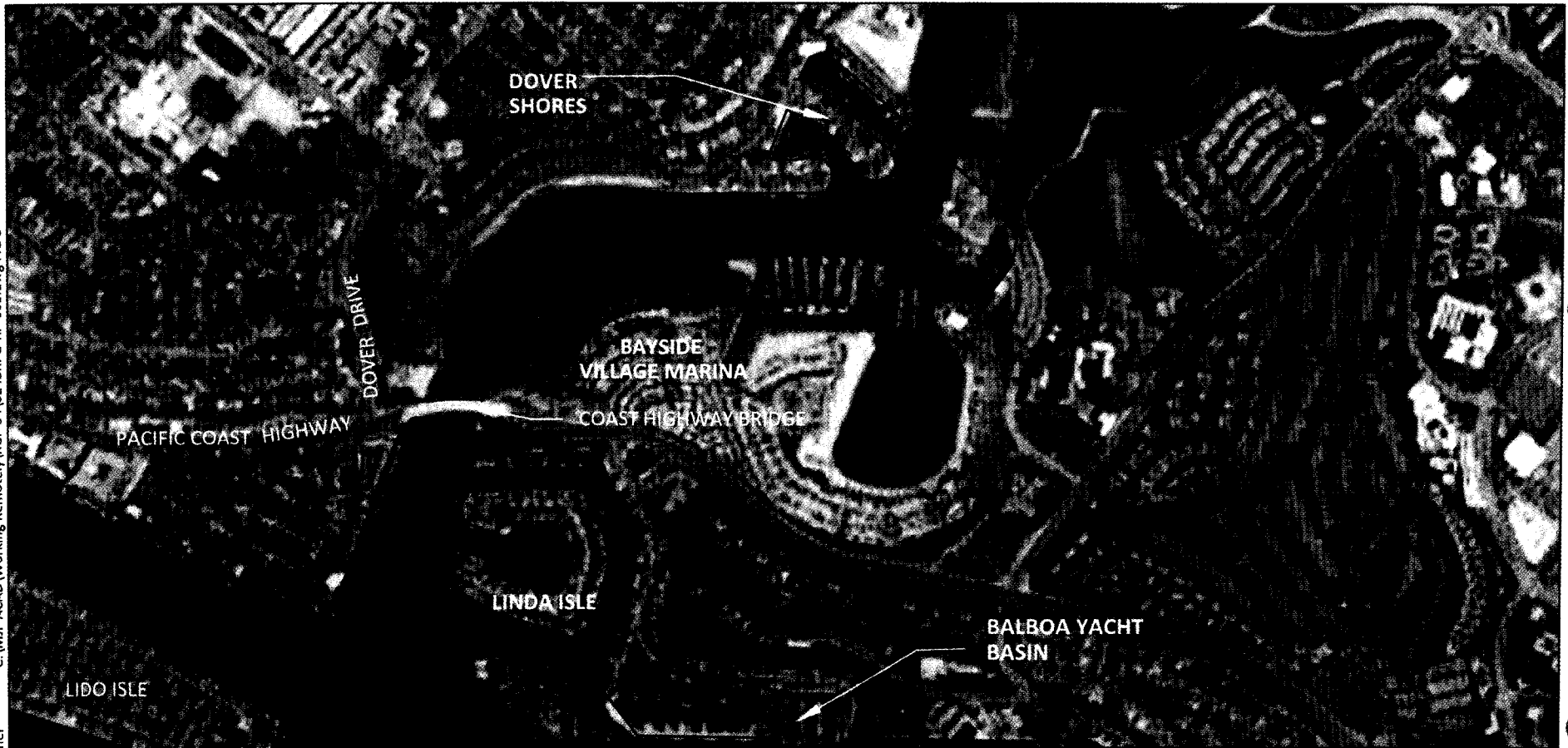


Area not approved for dredging under RGP 54



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).

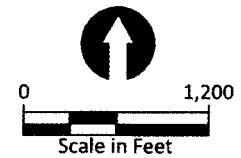
**LEGEND:**



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





**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).

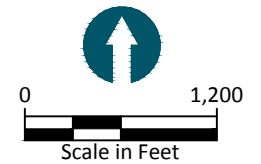
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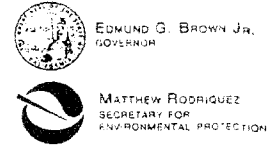


Area approved for disposal at the LA-3 ODMDS and beach nourishment under RGP 54 (area between bulkhead and pierhead lines)



Area not approved for dredging under RGP 54





EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

Received 10/5/12  
SME

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.

CAROLE H. BESWICK, CHAIR | KURT V. BERCHFIELD, EXECUTIVE OFFICER

3707 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

Attachment A

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 activity, 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](mailto:wpaznokas@dfg.ca.gov)) and/or the National Marine Fisheries Service (NMFS) (Eric Chavez: 562-980-4064, [Eric.Chavez@noaa.gov](mailto: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<sup>1</sup>. 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

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<sup>1</sup> 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;<br>< 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<br>Dissolved Oxygen<br>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:

Adam Gale  
Anchor QEA L.P.

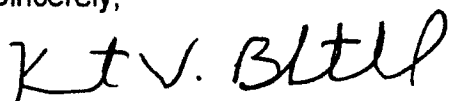
- 9 -

October 5, 2012

[www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo\\_2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.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

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**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
P O BOX 1480  
200 OCEANGATE, 10TH FLOOR  
LONG BEACH, CA 90802-4325  
(562) 590-5071

*Revised 11/10/12  
SMB*



5-06-117-A2

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT**

Date: **October 19, 2012**

Permit Application No.: **5-06-117**

Issued to: **City of Newport Beach, Attn: Mr. Chris Miller**

for: **Beach nourishment of up to 20,000 cubic yards a year of suitable dredged material from existing dock areas; and replacement in-kind or construction of an alternative alignment of residentially associated piers, docks, and gangways.**

at: **Newport Bay, Newport Beach (Orange County)**

has been amended to include the following changes:

**Extend the term of approval of the authorizations for dredging, beach nourishment and offshore disposal (at LA-3 only), from October 23, 2011 to March 31, 2014; and modify the boundary of the area approved for such work to include additional areas in Newport Bay that new testing has shown are suitable for beach nourishment and /or offshore disposal. The amendment does not request to extend the authorization for replacement in-kind or construction of an alternative alignment of residentially associated piers, docks, and gangways – such development must be separately authorized.**

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received or the Commission concurred with the Executive Director's determination of immateriality (Sec. 13166 (b)(2)).

This amendment will become effective upon return of a signed copy of this form to the South Coast District Office. Please note that the original permit conditions are still in effect.

Sincerely,  
CHARLES LESTER  
Executive Director

*Karl Schwing*  
By: Karl Schwing  
Supervisor, Orange County Area

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by its Conditions and the remaining conditions of Permit No: **5-06-117**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Attachment B

## AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Date: October 19, 2012

Permit Application No.: 5-06-117-A2

Page 2 of 2

### STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.