

Appendix B

Public Involvement and Comment Letters

Santa Ana Regional Water Quality Control Board

January 15, 2020

Chris Miller, Public Works Manager
City of Newport Beach, Public Works
Department
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LOWER NEWPORT HARBOR CONFINED AQUATIC DISPOSAL (CAD) FACILITY, CONSTRUCTION PROJECT PA2019-020: INITIAL STUDY, PROJECT NUMBER 180243-02.01

Dear Mr. Miller

In response to the solicitation of comments in the Notice of Preparation for the proposed Lower Newport Harbor CAD Facility Construction Project, the Santa Ana Water Board staff herein comment on the technical document submitted as a supplement to the Notice titled:

Overall general comment:

Santa Ana Water Board staff recommends that the City put together a Technical Advisory Committee or use the existing Southern California Dredged Material Management Team (SC-DMMT) to provide input into the proposed project design, the proposed Sediment Management Plan, and the Operations Management and Monitoring Plan, as was previously suggested in emails sent by Santa Ana Water Board staff to City staff in June and August of 2019.

Comments by section

Direct citations from Initial Study document are noted in quotes

Section 1.1

“Following authorization of the CAD facility, the City and its residents would have an opportunity to place material dredged from outside the federal navigation channels into the CAD for a period of up to 10 years with agency approval under the City’s Regional General Permit (RGP) 54 or individual permits.”

Santa Ana Water Board staff disagrees with this statement, which gives the impression that this proposed use of the CAD has been approved by State and federal agencies. There has been no discussion with Santa Ana Water Board staff about the duration of the potential use of the facility to dispose of RGP-54 dredged material to extend over the course of 10 years. The proposed disposal mechanism for contaminated sediment from general slip and dock maintenance projects into a CAD does not currently appear in the approved Clean Water Act section 401 water quality certification (Certification) for the current RGP-54 permit. What further complicates this CEQA analysis is that the City’s request for certifying the renewal of the RGP-54 permit is being initiated prior to the development and finalization of the CAD CEQA document. We recommend that the City include the proposed expansion of RGP-54 coverage within the CEQA analysis of the CAD in order to adequately assess cumulative impacts of exposing potentially contaminated sediment from the dredging activities to create the CAD and from projects being proposed under an amended RGP-54.

Section 1.2.3

“RGP-54 covers the following regulated activities in eligible areas of Newport Harbor: Discharge of dredged material at adjacent beach sites for beach nourishment, the LA-3 Ocean Dredged Material Disposal Site (ODMDS) confined disposal facilities (CDFs), or at approved upland disposal sites.”

This statement appears to be inaccurate because the current Certification for RGP-54 contains no language authorizing the disposal of material into confined disposal facilities (CDFs). Specifically, the Certification (amended SARWQCB Project No. 302014-03, signed December 20, 2018) states: “The SC-DMMT evaluated these data in November 2013, approving discharge of dredged material at adjacent beach sites (for beach nourishment) or disposal at the U.S. EPA’s LA-3 Ocean Dredged Material Disposal Site (LA-3) for sediments from all areas except for the Balboa Yacht Basin and Promontory Bay. Sediments not approved for disposal at LA-3 will be disposed of at an upland landfill.” It also states: “This certification is limited to areas characterized by sediment sampling and authorized for disposal at LA-3 discharge of dredged material at adjacent beach sites (for beach nourishment) or upland (U.S. EPA’s suitability determinations in 2018).” In addition, there currently are no existing CDFs that could be used for dredged material disposal in Newport Bay. Please clarify the statement.

Section 1.4

"To accomplish this goal, the following key project objectives must be accomplished... Disposing of unsuitable dredged sediment in a manner that is safe to human and ecological health and minimizes secondary environmental impacts."

This statement can be vaguely interpreted to imply that it addresses the protection of beneficial uses and water quality objectives in the Lower Newport Bay as designated in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan, Chapter 3, updated June 2019). Address this more explicitly in the draft CEQA document.

Section 1.5

"The proposed Project includes the following elements... Disposal of an additional 50,000 cy in the CAD facility for a period of up to 10 years."

The implication, unstated, is that the additional 50,000 cy will be produced by RGP-54 dredging projects. There is no indication of how this volume was calculated, or whether the 10-year timespan was appropriate given changing conditions over the course of that period. For example, storm-associated sediment dynamics, sea level rise, and potential volume of additional non-RGP 54 associated contaminated sediment remediation in other highly contaminated sites in the Bay. More detail needs to be provided in the draft CEQA document.

Section 1.5.1

"The City will have an opportunity for up to 10 years to place 50,000 cy of material in the CAD."

The implication is that this 50,000 cy of material from RGP-54 projects has already been approved by the Santa Ana Water Board, and this is not the case.

"The City will be developing a Sediment Management Plan in coordination with the resource and regulatory agencies to manage disposal of the material in the CAD, including interim placement of clean sand during the 10-year period, and final cap."

Please note that Santa Ana Water Board staff will need to review and approve the Sediment Management Plan prior to any certification under Clean Water Act section 401 or issuance of Waste Discharge Requirements (WDRs) for construction and operation of the proposed facility. In the draft CEQA document, specify how and when clean sand will be applied as an interim cap. Also identify the depth needed to isolate the contaminated sediments from bioturbation and anthropogenic disturbance.

Section 1.5.2

“An Operations Management and Monitoring Plan for the CAD facility will be developed for implementation by the City. The plan will describe the management and monitoring objectives for the CAD facility, a communications plan covering the entire CAD facility construction and sediment disposal process, construction monitoring and post-disposal monitoring plans, contingency plans, annual monitoring plans, and long-term management plans for the CAD facility once it has been capped.”

Santa Ana Water Board staff will need to review and approve the Operations Management and Monitoring Plan prior to any certification under Clean Water Act section 401 or issuance of WDRs for the construction and operation of the proposed facility.

Section 1.6.2.3

“The Reduced Project Alternative includes construction of a smaller CAD footprint. Under this reduced alternative, there could be two potential scenarios: either less dredging of unsuitable material would occur, or any dredged sediment deemed unsuitable for open ocean disposal that could not be placed into the smaller CAD site would be trucked to permitted upland facilities.”

Santa Ana Water Board staff expects any alternatives to the project to be thoroughly scoped in the draft CEQA document because the volume capacity is an estimate that may be insufficient to contain the sediment planned for the facility.

Section 2.1, Table 1

The “Santa Ana Regional Water Quality Control Board” is listed as a Local Agency. This is incorrect. The Santa Ana Water Board enforces State statute under authority of the Porter-Cologne Water Quality Control Act and is, therefore, a State Agency. Furthermore, as is indicated in the table itself, the Santa Ana Water Board is delegated the authority to enforce compliance with federal law through the Clean Water Act sections 401 and 402. The Santa Ana Water Board should not be listed as a Local Agency.

Section 2.3

The City states that “several” public stakeholder meetings were held. The Santa Ana Water Board requests details of the meetings, including dates, locations, and lists of participants. Specific public comments from those meetings should be provided in writing to regulatory agencies.

A CEQA scoping meeting occurred on December 4, 2019. Staff of the Santa Ana Water Board attended the meeting and provided verbal and written comments. Santa Ana

Water Board staff anticipates that the draft CEQA document will address those comments or that the City will provide written responses to them.

The comments made by Santa Ana Water Board staff at that December 4th meeting, either verbally or in writing, are summarized below:

- The draft CEQA document should contain, in addition to mercury, an analysis of all other detected contaminants in the sediment cores taken from the planned dredge areas of Lower Newport Bay where the dredged material is intended for CAD disposal;
- We understand from the CEQA scoping meeting that all sediment characterization data are online or may be otherwise accessible to the general public; nevertheless, we request that relevant and referenced documents and reports be attached in full as appendices to the draft CEQA document for comprehensive public review;
- While mention of fill into the U.S. Department of the Navy's current revision of Anaheim Bay was brought up during the scoping meeting, note that volumes of sediment disposal and fill for the Navy Anaheim Bay Project have already been calculated and permitted, along with specific conditions, by the Santa Ana Water Board, the U.S. Army Corps of Engineers, the Coastal Commission, and other agencies;
- The City stated during the scoping meeting that disposal at LA-3 is being allowed by the U.S. Environmental Protection Agency for mercury levels as high as 1.5 ppm - above the typical threshold of 1.0 ppm - because a "Sediment Management Plan" exists for levels of mercury in the sediment higher than 1.5 ppm. The detected ranges are reported by the City to extend from 1.5 ppm to levels as high as 4 ppm. The draft CEQA document should thoroughly discuss the "Sediment Management Plan." No additional characterization is planned for sediments proposed for CAD disposal, so there is no guarantee that the worst quality sediments would be buried the deepest to minimize risk for mobilization and potential environmental impacts;
- From the "Initial Study" document, page 7, the Reduced Project Alternative was not identified as such during the scoping meeting and should be elaborated in the draft CEQA document. Santa Ana Water Board staff requests that all alternatives to the Project be presented and discussed sufficiently.
 - The Reduced Project Alternative of trucking the highest levels of contaminated sediment to a hazardous waste or special waste disposal facility is feasible. Placing sediment with lower levels of contaminants into

a smaller CAD footprint in Lower Newport Bay would be an option; and

- A Project Alternative put forth by Newport Bay residents suggested two CADs smaller than the one planned, positioned closer to areas of unsuitable dredged material (green areas in Figure 2 of the “Initial Study” document). The areas suggested were at the mouth of the Rhine Channel and in the “turnaround” northwest of Lido Isle (junction of Lido Channel and West Lido Channel). Dredged sediments from the most highly contaminated areas could be placed upon a treatment scow, then transferred to an onshore stockpile. Less-contaminated sediments that are dredged may also be separated into stockpiles but would go back into the new CADs;
- The Project CAD location is where almost all Lower Newport Bay traffic will cross, presenting hazards for dumping dredges. The City indicated during the scoping meeting that this site is projected to receive sediment migrating from Upper Newport Bay, accumulating within and then exiting the Bay. That influx of volume represents an unknown variable that was not quantified, which may offset calculated disposal capacity and capping material volume. Upstream sediment, with its own potential contaminants, should not obscure the actual CAD cover. Again, Santa Ana Water Board staff recommends that the draft CEQA document explore the economy of more than one CAD positioned out of the way, elsewhere in the Bay; and
- Please also note that while attending the scoping meeting, Santa Ana Water Board staff filled out a comment card, which captured much of what is expressed above, though we also ask City staff to consider the statements herein, as well.

Section 3.1

The checkbox indicates that the applicants determine that the project “1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets.” Santa Ana Water Board staff does not find that the documentation submitted justifies this determination. Santa Ana Water Board staff agrees that “the subsequent activity may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.”.

Section 3.1.4

Despite the claim that the Lower Newport Bay is “devoid of potential habitat for special-status species,” the RARE beneficial use is designated for this water body in the Basin Plan, as approved by the U.S. Environmental Protection Agency. Per the Basin Plan, “Rare, Threatened or Endangered Species (RARE) waters support the habitats necessary for the survival and successful maintenance of plant or animal species

designated under state or federal law as rare, threatened or endangered.” The City indicates that the draft CEQA document will evaluate the potential for biological impacts. In that document, provide a thorough assessment of potential direct effects on benthic infauna and also indirect effects due to bioaccumulation and biomagnification of noted contaminants in high trophic level marine life and marine-dependent wildlife.

Figure 2 (Publish Date: 2019/11/12 4:51 PM | User: mpratschner)

This map indicates green areas where sediment is determined to be “not suitable for open-ocean disposal.”

These areas are identified as being in the footprint of the proposed federal channel navigational project. The federal channel project has not yet been approved or permitted, nor has there been a Certification issued. Furthermore, no permit application has been received. Santa Ana Water Board staff has not been made aware of any final determination of the areas (shown in green in Figure 2) from which sediment could potentially be placed in the proposed CAD. There have been discussions with the SC-DMMT on this federal project; however, Santa Ana Water Board staff has not been informed of any decisions being made with regard to this project. The draft CEQA document will need to identify and discuss this project as part of its analysis of cumulative and significant impacts.

If we may clarify any of our comments or be of further assistance, please contact me at terri.reeder@waterboards.ca.gov or (951) 782-4995, or Dr. Jason Freshwater, at jason.freshwater@waterboards.ca.gov or (951) 321-4576, or Glenn Robertson, at glenn.robertson@waterboards.ca.gov or (951) 782-3259.

Sincerely,



Terri S. Reeder, P.G., C.E.G., C.H.G.
Senior Engineering Geologist
Supervisor, Coastal Waters Planning and CEQA Section
Santa Ana Regional Water Quality Control Board

cc:

City of Newport Beach, Dave Webb – dawebb@newportbeachca.gov
U.S. Fish and Wildlife Service, Carol Roberts – carol_a_roberts@fws.gov
U.S. Environmental Protection Agency, Melissa Scianni – scianni.melissa@epa.gov
U.S. Environmental Protection Agency, Allan Ota – ota.allan@epa.gov
U.S. Army Corps of Engineers, Larry Smith – lawrence.j.smith@usace.army.mil
California Coastal Commission, Larry Simon – larry.simon@coastal.ca.gov

NATIVE AMERICAN HERITAGE COMMISSION
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November 18, 2019

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

RE: SCH# 2019110340, Lower Newport Bay Confined Aquatic Disposal (CAD) Facility Construction Project (PA2019-020), Orange County

Dear Mr. Miller:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:

Andrew.Green@nahc.ca.gov.

Sincerely,



Andrew Green
Staff Services Analyst

cc: State Clearinghouse

SENT VIA USPS AND E-MAIL:

January 7, 2020

cmiller@newportbeachca.gov

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

**Notice of Preparation of an Environmental Impact Report for the Proposed
Lower Newport Harbor Confined Aquatic Disposal Facility Construction Project¹**

South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the above-mentioned document. South Coast AQMD staff's comments are recommendations regarding the analysis of potential air quality impacts from the Proposed Project that should be included in the Environmental Impact Report (EIR). Please send South Coast AQMD a copy of the EIR upon its completion. Note that copies of the EIR that are submitted to the State Clearinghouse are not forwarded to South Coast AQMD. Please forward a copy of the EIR directly to South Coast AQMD at the address shown in the letterhead. **In addition, please send with the EIR all appendices or technical documents related to the air quality, health risk, and greenhouse gas analyses and electronic versions of all air quality modeling and health risk assessment files². These include emission calculation spreadsheets and modeling input and output files (not PDF files). Without all files and supporting documentation, South Coast AQMD staff will be unable to complete our review of the air quality analyses in a timely manner. Any delays in providing all supporting documentation will require additional time for review beyond the end of the comment period.**

Air Quality Analysis

South Coast AQMD adopted its California Environmental Quality Act (CEQA) Air Quality Handbook in 1993 to assist other public agencies with the preparation of air quality analyses. South Coast AQMD recommends that the Lead Agency use this Handbook as guidance when preparing its air quality analysis. Copies of the Handbook are available from South Coast AQMD's Subscription Services Department by calling (909) 396-3720. More guidance developed since this Handbook is also available on South Coast AQMD's website at: [http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-\(1993\)](http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-(1993)). South Coast AQMD staff also recommends that the Lead Agency use the CalEEMod land use emissions software. This software has recently been updated to incorporate up-to-date state and locally approved emission factors and methodologies for estimating pollutant emissions from typical land use development. CalEEMod is the only software model maintained by the California Air Pollution Control Officers Association (CAPCOA) and replaces the now outdated URBEMIS. This model is available free of charge at: www.caleemod.com.

South Coast AQMD has also developed both regional and localized significance thresholds. South Coast AQMD staff requests that the Lead Agency quantify criteria pollutant emissions and compare the results

¹ The Proposed Project consists of construction of a facility to receive up to 156,900 cubic yards of ocean dredging materials offshore.

² Pursuant to the CEQA Guidelines Section 15174, the information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

to South Coast AQMD's CEQA regional pollutant emissions significance thresholds to determine air quality impacts. South Coast AQMD's CEQA regional pollutant emissions significance thresholds can be found here at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>. In addition to analyzing regional air quality impacts, South Coast AQMD staff recommends calculating localized air quality impacts and comparing the results to localized significance thresholds (LSTs). LSTs can be used in addition to the recommended regional significance thresholds as a second indication of air quality impacts when preparing a CEQA document. Therefore, when preparing the air quality analysis for the Proposed Project, it is recommended that the Lead Agency perform a localized analysis by either using the LSTs developed by South Coast AQMD staff or performing dispersion modeling as necessary. Guidance for performing a localized air quality analysis can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the Proposed Project and all air pollutant sources related to the Proposed Project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, such as sources that generate or attract vehicular trips, should be included in the analysis.

In the event that the Proposed Project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment ("*Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis*") can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating such air pollutants should also be included.

In addition, guidance on siting incompatible land uses can be found in the California Air Resources Board's *Air Quality and Land Use Handbook: A Community Health Perspective*, which can be found at: <http://www.arb.ca.gov/ch/handbook.pdf>. CARB's Land Use Handbook is a general reference guide for evaluating and reducing air pollution impacts associated with new projects that go through the land use decision-making process. Guidance³ on strategies to reduce air pollution exposure near high-volume roadways can be found at: https://www.arb.ca.gov/ch/rd_technical_advisory_final.PDF.

Mitigation Measures

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized during project construction and operation to minimize these impacts. Pursuant to CEQA Guidelines Section 15126.4 (a)(1)(D), any impacts resulting from mitigation measures must also be discussed. Several resources are available to assist the Lead Agency with identifying potential mitigation measures for the Proposed Project, including:

³ In April 2017, CARB published a technical advisory, *Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways: Technical Advisory*, to supplement CARB's *Air Quality and Land Use Handbook: A Community Health Perspective*. This technical advisory is intended to provide information on strategies to reduce exposures to traffic emissions near high-volume roadways to assist land use planning and decision-making in order to protect public health and promote equity and environmental justice. The technical advisory is available at: <https://www.arb.ca.gov/ch/landuse.htm>.

- Chapter 11 “Mitigating the Impact of a Project” of South Coast AQMD’s *CEQA Air Quality Handbook* South Coast AQMD’s CEQA web pages available here: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies>
- South Coast AQMD’s Rule 403 – Fugitive Dust, and the Implementation Handbook for controlling construction-related emissions and Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities
- South Coast AQMD’s Mitigation Monitoring and Reporting Plan (MMRP) for the 2016 Air Quality Management Plan (2016 AQMP) available here (starting on page 86): <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-mar3-035.pdf>
- CAPCOA’s *Quantifying Greenhouse Gas Mitigation Measures* available here: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

Alternatives

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires the consideration and discussion of alternatives to the project or its location which are capable of avoiding or substantially lessening any of the significant effects of the project. The discussion of a reasonable range of potentially feasible alternatives, including a “no project” alternative, is intended to foster informed decision-making and public participation. Pursuant to CEQA Guidelines Section 15126.6(d), the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the Proposed Project.

General Conformity Review Request and Determination

The Clean Air Act requires that federal agencies and public and private entities that receive approvals or funding from federal agencies such as airports and seaports undergo a General Conformity review and determination process in order to demonstrate that emissions from a proposed federal action will not interfere with a state or tribal implementation plan (SIP/TIP) for an area that has been designated by the United States Environmental Protection Agency (U.S. EPA) as a nonattainment or maintenance area for a National Ambient Air Quality Standard (NAAQS). The conformity determination process is intended to demonstrate that a proposed federal action will not: (1) cause or contribute to new violations of a NAAQS; (2) interfere with provisions in the applicable SIP for maintenance of any NAAQS; (3) increase the frequency or severity of existing violations of any standard; or (4) delay the timely attainment of any standard⁴.

In the event that the Proposed Project requires a general conformity determination by South Coast AQMD, the Proposed Project’s annual emissions from commencement of construction to full operation, with supporting data, will be needed for review before a conformity determination can be made by South Coast AQMD staff. Any questions related to the South Coast AQMD General Conformity review process and determination can be directed to Dr. Sang-Mi Lee, Program Supervisor, at slee@aqmd.gov.

Permits

If implementation of the Proposed Project requires a permit from South Coast AQMD, South Coast AQMD should be identified as a Responsible Agency for the Proposed Project in the EIR. For more information on permits, please visit South Coast AQMD’s webpage at: <http://www.aqmd.gov/home/permits>. Questions on permits can be directed to South Coast AQMD’s Engineering and Permitting staff at (909) 396-3385.

⁴ United States Environmental Protection Agency. *General Conformity*. Accessed at: <https://www.epa.gov/general-conformity/what-general-conformity>.

Data Sources

South Coast AQMD rules and relevant air quality reports and data are available by calling South Coast AQMD's Public Information Center at (909) 396-2001. Much of the information available through the Public Information Center is also available at South Coast AQMD's webpage at: <http://www.aqmd.gov>.

South Coast AQMD staff is available to work with the Lead Agency to ensure that project's air quality and health risk impacts are accurately evaluated and mitigated where feasible. If you have any questions regarding this letter, please contact me at lsun@aqmd.gov.

Sincerely,

Lijin Sun

Lijin Sun, J.D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

LS

ORC191120-02

Control Number

January 8, 2019

NCL-19-039

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

Subject: Notice of Preparation and Scoping Meeting for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project Environmental Impact Report.

Dear Mr. Miller:

The County of Orange has reviewed the proposed Notice of Preparation and Scoping Meeting for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project Environmental Impact Report and has no comments at this time. We would like to be advised of further developments on the project. Please continue to keep us on the distribution list for future notifications related to the project.

If you have any questions regarding these comments, please contact Cindy Salazar at (714) 667-8870 in OC Development Services.

Sincerely,



Richard Vuong, Manager, Planning Division
OC Public Works Service Area/OC Development Services
601 North Ross Street
Santa Ana, California 92701
Richard.Vuong@ocpw.ocgov.com



SOUTHERN CALIFORNIA
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Community, Economic &
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Peggy Huang, Transportation
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Energy & Environment
Linda Parks, Ventura County

Transportation
Cheryl Viegas-Walker, El Centro

January 17, 2020

Mr. Chris Miller, Public Works Manager
City of Newport Beach, Public Works Department
100 Civic Center Drive
Newport Beach, California 92660
Phone: (949) 644-3043
E-mail: cmiller@newportbeachca.gov

RE: SCAG Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project [SCAG NO. IGR10073]

Dear Mr. Miller,

Thank you for submitting the Notice of Preparation of a Draft Environmental Impact Report for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project ("proposed project") to the Southern California Association of Governments (SCAG) for review and comment. SCAG is the authorized regional agency for Inter-Governmental Review (IGR) of programs proposed for Federal financial assistance and direct Federal development activities, pursuant to Presidential Executive Order 12372. Additionally, SCAG reviews the Environmental Impact Reports of projects of regional significance for consistency with regional plans pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

SCAG is also the designated Regional Transportation Planning Agency under state law, and is responsible for preparation of the Regional Transportation Plan (RTP) including the Sustainable Communities Strategy (SCS) pursuant to Senate Bill (SB) 375. As the clearinghouse for regionally significant projects per Executive Order 12372, SCAG reviews the consistency of local plans, projects, and programs with regional plans.¹ SCAG's feedback is intended to assist local jurisdictions and project proponents to implement projects that have the potential to contribute to attainment of Regional Transportation Plan/Sustainable Community Strategies (RTP/SCS) goals and align with RTP/SCS policies.

SCAG staff has reviewed the Notice of Preparation of a Draft Environmental Impact Report for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project in Orange County. The proposed project consists of constructing a Confined Aquatic Disposal (CAD) facility on an 844-acre project site as a solution for sediment dredged from within Lower Newport Harbor that is not suitable for open ocean placement or nearshore disposal. The facility would accommodate 106,900 cubic yards (CY) of unsuitable material and would entail the additional disposal of 50,000 CY for a period of up to 10 years to be processed by the facility.

When available, please send environmental documentation to SCAG's Los Angeles office in Los Angeles (900 Wilshire Boulevard, Ste. 1700, Los Angeles, California 90017) or by email to au@scag.ca.gov providing, at a minimum, the full public comment period for review.

If you have any questions regarding the attached comments, please contact the Inter-Governmental Review (IGR) Program, attn.: Anita Au, Associate Regional Planner, at (213) 236-1874 or au@scag.ca.gov. Thank you.

Sincerely,

Ping Chang
Manager, Compliance and Performance Monitoring

¹ Lead agencies such as local jurisdictions have the sole discretion in determining a local project's consistency with the 2016 RTP/SCS for the purpose of determining consistency for CEQA. Any "consistency" finding by SCAG pursuant to the IGR process should not be construed as a determination of consistency with the 2016 RTP/SCS for CEQA.

**COMMENTS ON THE NOTICE OF PREPARATION OF A
DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE
LOWER NEWPORT HARBOR CONFINED AQUATIC DISPOSAL (CAD) FACILITY CONSTRUCTION PROJECT
[SCAG NO. IGR10073]**

CONSISTENCY WITH RTP/SCS

SCAG reviews environmental documents for regionally significant projects for their consistency with the adopted RTP/SCS. For the purpose of determining consistency with CEQA, lead agencies such as local jurisdictions have the sole discretion in determining a local project's consistency with the RTP/SCS.

Please note the Draft 2020 RTP/SCS (Connect SoCal) was released for public review on November 14, 2019 until January 24, 2020. The Final Connect SoCal is anticipated to be adopted in April 2020. Please refer to Connect SoCal goals and growth forecast for RTP/SCS consistency for future projects. The Draft Connect SoCal can be reviewed here: <https://www.connectsocial.org/Pages/Connect-SoCal-Draft-Plan.aspx>.

2016 RTP/SCS GOALS

The SCAG Regional Council adopted the 2016 RTP/SCS in April 2016. The 2016 RTP/SCS seeks to improve mobility, promote sustainability, facilitate economic development and preserve the quality of life for the residents in the region. The long-range visioning plan balances future mobility and housing needs with goals for the environment, the regional economy, social equity and environmental justice, and public health (see <http://scagrtpscs.net/Pages/FINAL2016RTPSCS.aspx>). The goals included in the 2016 RTP/SCS may be pertinent to the proposed project. These goals are meant to provide guidance for considering the proposed project within the context of regional goals and policies. Among the relevant goals of the 2016 RTP/SCS are the following:

| SCAG 2016 RTP/SCS GOALS | |
|--|--|
| RTP/SCS G1: | <i>Align the plan investments and policies with improving regional economic development and competitiveness</i> |
| RTP/SCS G2: | <i>Maximize mobility and accessibility for all people and goods in the region</i> |
| RTP/SCS G3: | <i>Ensure travel safety and reliability for all people and goods in the region</i> |
| RTP/SCS G4: | <i>Preserve and ensure a sustainable regional transportation system</i> |
| RTP/SCS G5: | <i>Maximize the productivity of our transportation system</i> |
| RTP/SCS G6: | <i>Protect the environment and health for our residents by improving air quality and encouraging active transportation (e.g., bicycling and walking)</i> |
| RTP/SCS G7: | <i>Actively encourage and create incentives for energy efficiency, where possible</i> |
| RTP/SCS G8: | <i>Encourage land use and growth patterns that facilitate transit and active transportation</i> |
| RTP/SCS G9: | <i>Maximize the security of the regional transportation system through improved system monitoring, rapid recovery planning, and coordination with other security agencies*</i> |
| *SCAG does not yet have an agreed-upon security performance measure. | |

For ease of review, we encourage the use of a side-by-side comparison of SCAG goals with discussions of the consistency, non-consistency or non-applicability of the goals and supportive analysis in a table format. Suggested format is as follows:

| SCAG 2016 RTP/SCS GOALS | |
|---|--|
| Goal | Analysis |
| RTP/SCS G1: <i>Align the plan investments and policies with improving regional economic development and competitiveness</i> | Consistent: Statement as to why; Not-Consistent: Statement as to why; Or Not Applicable: Statement as to why; DEIR page number reference |
| RTP/SCS G2: <i>Maximize mobility and accessibility for all people and goods in the region</i> | Consistent: Statement as to why; Not-Consistent: Statement as to why; Or Not Applicable: Statement as to why; DEIR page number reference |
| etc. | etc. |

2016 RTP/SCS STRATEGIES

To achieve the goals of the 2016 RTP/SCS, a wide range of land use and transportation strategies are included in the 2016 RTP/SCS. Technical appendances of the 2016 RTP/SCS provide additional supporting information in detail. To view the 2016 RTP/SCS, please visit: <http://scagrtpscscs.net/Pages/FINAL2016RTPSCS.aspx>. The 2016 RTP/SCS builds upon the progress from the 2012 RTP/SCS and continues to focus on integrated, coordinated, and balanced planning for land use and transportation that the SCAG region strives toward a more sustainable region, while the region meets and exceeds in meeting all of applicable statutory requirements pertinent to the 2016 RTP/SCS. These strategies within the regional context are provided as guidance for lead agencies such as local jurisdictions when the proposed project is under consideration.

DEMOGRAPHICS AND GROWTH FORECASTS

Local input plays an important role in developing a reasonable growth forecast for the 2016 RTP/SCS. SCAG used a bottom-up local review and input process and engaged local jurisdictions in establishing the base geographic and socioeconomic projections including population, household and employment. At the time of this letter, the most recently adopted SCAG jurisdictional-level growth forecasts that were developed in accordance with the bottom-up local review and input process consist of the 2020, 2035, and 2040 population, households and employment forecasts. To view them, please visit <http://www.scag.ca.gov/Documents/2016GrowthForecastByJurisdiction.pdf>. The growth forecasts for the region and applicable jurisdictions are below.

| | Adopted SCAG Region Wide Forecasts | | | Adopted City of Newport Beach Forecasts | | |
|------------|------------------------------------|------------|------------|---|-----------|-----------|
| | Year 2020 | Year 2035 | Year 2040 | Year 2020 | Year 2035 | Year 2040 |
| Population | 19,663,000 | 22,091,000 | 22,138,800 | 89,300 | 92,300 | 92,700 |
| Households | 6,458,000 | 7,325,000 | 7,412,300 | 40,200 | 41,300 | 41,700 |
| Employment | 8,414,000 | 9,441,000 | 9,871,500 | 77,900 | 78,900 | 79,100 |

MITIGATION MEASURES

SCAG staff recommends that you review the Final Program Environmental Impact Report (Final PEIR) for the 2016 RTP/SCS for guidance, as appropriate. SCAG's Regional Council certified the Final PEIR and adopted the associated Findings of Fact and a Statement of Overriding Considerations (FOF/SOC) and Mitigation Monitoring and Reporting Program (MMRP) on April 7, 2016 (please see: <http://scagrtpscscs.net/Pages/FINAL2016PEIR.aspx>). The Final PEIR includes a list of project-level performance standards-based mitigation measures that may be considered for adoption and implementation by lead, responsible, or trustee agencies in the region, as applicable and feasible. Project-level mitigation measures are within responsibility, authority, and/or jurisdiction of project-implementing agency or other public agency serving as lead agency under CEQA in subsequent project- and site- specific design, CEQA review, and decision-making processes, to meet the performance standards for each of the CEQA resource categories.



December 5, 2019

Honorable Mayor and Members of the Newport Beach City Council,

At its November 7, 2019 meeting, the Water Quality/Coastal Tidelands Committee of the Newport Beach City Council reviewed the proposed plans to dredge Lower Newport Harbor back to its original design depth in order to restore navigation. The Committee understands that this is a collaborative project between the federal government (Army Corps of Engineers) and the City of Newport Beach.

It should also be noted that an important byproduct of dredging the harbor to its original design depth will be the increased tidal exchange and flushing which in turn, promotes improved water quality. As such, the Committee supports this effort.

In addition, the Project also proposes to responsibly manage dredged sediment that is unsuitable for ocean disposal via the construction of a Confined Aquatic Disposal site. This plan will bury and encapsulate existing harbor material that is unsuitable for ocean disposal, but suitable for placement within the harbor. This is a proven technique and an agency-preferred method to manage aquatic sediment that otherwise would remain near or on the surface of the harbor, untreated.

The Committee supports the concept to place material in-harbor within a Confined Aquatic Disposal site because this directly addresses sediment that would otherwise not be suitable for ocean placement.

Thank you,

Jeff Herdman, Council Member
Chair, Water Quality/Coastal Tidelands Committee



January 17, 2020

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

Via Email Only – cmiller@newportbeachca.gov

**RE: Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility
Construction Project (PA2019-202) Environmental Impact Report**

Dear Mr. Miller,

On behalf of Surfrider Foundation's Newport Beach Chapter, we offer the following comments regarding the forthcoming Draft Environmental Impact Review (DEIR) for the Confined Aquatic Disposal (CAD) Facility as proposed by the City of Newport Beach and further outlined in the *Initial Study* prepared by ANCHOR QUE dated November 19, 2019. Surfrider Foundation is a national nonprofit focused on the protection of the world's ocean, beaches, and waves, and represents tens of thousands of Californians in our expansive activist network, including hundreds of members in the Newport Beach area. One of Surfrider Foundation's key priorities is the preservation of clean water for the betterment of public health and the environment.

After careful review of the *Initial Study*, we find numerous sections of Chapter 3 particularly concerning, most notably section 3.1.21, in which the "Mandatory Findings of Significance" (a. environmental impact, b. individually limited or cumulatively considerable impacts, and c. public health) are all graded with "Potentially Significant Impact." Surfrider Foundation therefore advocates for the DEIR to address the full suite of alternatives to a water-based storage facility.

We thank you for the opportunity to provide feedback on this project and look forward to further updates.

Regards,

Michelle Giron
Chair
Newport Beach Chapter

John Wadsworth
Vice Chair
Newport Beach Chapter

Bill Hickman
Regional Manager
Southern California



January 7, 2020

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

SUBJECT: The California Environmental Quality Act (CEQA) scoping the Environmental Impact Report PA2019-020 proposing construction of a Confined Aquatic Disposal (CAD) in Newport Harbor.

Mr. Miller,

On behalf of Lido Isle Community Association (LICA), Board of Directors, representing the residents of Lido Island we are in support of the City and U.S. Army Corps of Engineers (USACE) phase II dredging in Newport Harbor, the importance of dredging is understood. We strongly oppose a Confined Aquatic Disposal (CAD) Facility or any other type of dump site in our harbor. The concern is how do we dredge so problems don't reoccur.

All toxic, contaminated, and unsuitable materials should be permanently removed. Further studies need to be done to Investigate reduced dredge volume alternatives based on vertical gradients of contaminants so offshore and/or upland disposal with accurate quantities can be analyzed. The best alternative is to take the unsuitable materials offshore or upland.

Water Quality will be significantly compromised when digging up the unsuitable material and then again when dumping the unsuitable material into a CAD thereby doubling the negative impact. The plan to leave the CAD available for a ten-year period is unacceptable. The disposal of "unsuitable" dredged materials is a potential long-term danger to the Harbor, the residents, visitors and future legal exposure for the City.

This should be registered as an official response in opposition to the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) and Notice of Public Scoping Meeting for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project. Moving contaminated and unsuitable materials into any clean area of the bay is not an acceptable alternative.

Sincerely,

Eric Henn, President
Lido Isle Community Association
Board of Directors

Subject: Dredging Project for Balboa Bay starting in 2020

To: Dave Webb and Chris Miller

From Bob Yates, Fleet Captain for Harbor 20 Sailboats

Date: December 5, 2019, revised December 13, 2019

Thank you for the informative meeting that you held last night regarding the dredging of the Bay. We appreciate that this is an opportune time with funding becoming available, and with the alignment of many Government Agencies for approving the work. Fortunately we all have a strong interest in using and maintaining the Bay for many years into the future, and appreciate the hard work that you have been doing to find an ideal manner in which to perform the dredging operation. However, we feel that the Plan that has been developed by you and your staff should be reconsidered.

Chris, you apologized for giving all the “numbers” regarding the work to be done. Personally, I liked them, and better understand the magnitude of the task ahead because of them. I hear that the future dredging will remove approximately twice the amount of materials as the dredging project of a few years ago. This is big, and a lot time and effort should be spent on this project before implementation. However, for now I want to focus on one key point of your Plan-----digging/dredging up the Mercury “contaminated” soil at the West end of the Bay and placing it into a Confined Aquatic Disposal (CAD) suite which would be 450 feet x 450 feet x 46 feet deep (the size of four football fields), and located right in the middle of the Bay at the “Five Corners” intersection. This Plan calls for large dredgers and multiple barges working for years into the future for removing nearly 300,000 yards of good soil from this site, relocating/storing/disposing it, and then digging up and placing contaminated soil from the West end of the Bay in the place of the good soil that was removed, and finally after many years (10 years was mentioned), putting a cap over the entire pit. This process will severely impact the recreational use of this part of the Bay for years to come.

In my case, I represent the one hundred and forty Harbor 20 sailors who belong to Fleet #1 and who participate in sailing activities on well over 100 days a year in the same “Five Corners” location as the proposed CAD site. Presently, we share this area throughout the year with many hundreds of children sailing sabots, numerous Commercial Tour Boats, High School Sailing Teams, kayaks, paddleboards, Duffy Electric Boats, the Orange Coast College and the Sea Base (Boy Scout) sailing school programs, the recreational boaters, and the transit boats going to and from the Back Bay. In total, there are many tens of thousands (could it be hundreds of thousands?) of user hours in this area each year. For all of us, this is the center of the Bay, and nearly all traffic and activities must happen here. To the sailors it is the only space in the Bay that will accommodate a fair sailing course when we have a southerly wind, which is nearly fifty percent of the time. To the commercial operators and the other boaters, it is the only transit area from one end of the Bay to the other. To the sailing students it is the open area where they can develop their skills in a large and safe area. This is the corner of Main Street and Main Street as one attendee said, and never would a construction project on land be planned to obstruct usage in the manner of this project.

Some possible alternatives were discussed at the meeting. First, since nearly all of the mercury laden soil is located in areas at the West end of the two channels adjacent to Lido Isle, it was suggested that smaller CAD sites be dug in the immediate vicinity of the contaminated areas. These areas are not nearly as crowded as the Five Points Area. Most importantly, the contaminated soil would NOT have to be transported to a clean remote location, saving money and, I believe, the possibility of spreading contamination throughout clean areas in other parts of the Bay. Also, being smaller sites, the work could be scheduled to be done one site at a time and more quickly. Work on one site could be completed before the second site is started thereby saving inconvenience for the residents and users of the Bay. We realize that a lot of planning will need to take place to create an effective plan to do this, but it does not have the onerous consequences of the aforementioned plan.

A second possibility is to proceed with the dredging of the CLEAN sand throughout the Bay, and to NOT dredge the so-called "contaminated" sand which has about 1 to 4 parts per million of Mercury. Your "experts" explained that the mercury is a heavy metal and will sink deeper into the sand with time, and will not migrate to other areas of the Bay thereby causing a health or safety issue. When, in the future, a disposal site for contaminated soil becomes available, the dredging of this soil will be performed and disposed of in an appropriate manner. In the meantime, let's not compromise the use of our Bay for a problem that (fortunately) does not exist.

In our recent meeting at City Hall we agreed upon the importance of careful planning and coordinating of the dredging with the boating community in mind, whatever Plan is implemented. The AOCYC Calendar might be a template. This schedule provides for coordination for all the sailing activities on every day of the year. I suggested that you take a look at the Calendar, and see the impact that dredging will have on all the scheduled sailing activities. Perhaps a similar type of schedule can be developed for coordinating dredging with ALL of the boating community so as to minimize the conflicts between the barges and boaters. Our Fleet members will be glad to work with you on developing this scheduling and communication process.

Please consider the people that use and appreciate the Bay the most by giving alternative proposals, good planning and communications serious consideration. The Bay is our great resource. Don't take it away from the people who appreciate it the most.

Thank you, Bob Yates

From: anitaafg@aol.com
Sent: Friday, January 17, 2020 3:11 PM
To: Miller, Chris
Subject: bay dredging

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Chris, I have been a resident of Newport Beach for over 50 years. The bay has always been dredged and the material was taken way out in the ocean. The dredging you are proposing would interfere with all sailing programs in Bay for years.

All of your possible alternatives you listed should be considered. I would also include a vote of all residents should be considered.

Sincerely,
Anita M Gillett

From: Jim Mosher <jimmosher@yahoo.com>
Sent: Friday, January 17, 2020 4:59 PM
To: Miller, Chris
Subject: Comments on NOP: Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project (PA2019-020) EIR

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

* The notice of preparation is extremely unclear as to whether the EIR is intended to assess the potential impacts of *just* the CAD, *or* of the larger dredging project as well.

* As to the CAD itself, I assume testing has been done to ensure the feasibility of construction at the indicated site, but I hope the EIR will consider what will be done if: (1) unsuitable material is found during the CAD excavation, and/or (2) unexpected obstacles are discovered to digging to the intended depth (for example, hitting bedrock).

* As to the larger project of dredging to the "design depth," that, obviously, assumes there is a design. I hope the EIR will address what the design depths were designed for and their relevance to current uses in the harbor.

* Also as to the larger project, I hope the EIR will discuss its consistency with the City's [Harbor Area Management Plan](#), a document that no longer seems to be readily accessible from the City's website, but which I thought had been adopted to provide an integrated approach to maintaining the harbor.

* I have heard the larger dredging project is expected to improve circulation and tidal flushing in the bay, yet there is an argument on the other side that it will create a greater volume of water that needs to be exchanged and hence could result in less complete flushing. The City's Water Quality/Coastal Tidelands committee (mis-listed as "Coastal Bay Water Quality Committee" on page 9 of the Initial Study) has heard from researchers at UCI who said they had prepared three-dimensional digital models of circulation in the bay, presumably far more sophisticated than those available when the HAMP was prepared. I hope the EIR will use those to evaluate whether the proposed dredging will indeed improve circulation, or instead have unexpected detrimental effects. Likewise, I hope the EIR will use that modelling consider if any adjustments to the design of the larger project might make it more beneficial from a tidal flushing perspective.

Yours sincerely,

Jim Mosher

From: Elizabeth Decker <betsymorandecker@gmail.com>
Sent: Friday, January 17, 2020 1:21 PM
To: Miller, Chris
Subject: Newport Harbor CAD Site Location

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear City of Newport Beach,

I am writing as a concerned resident of Newport Beach. As an active sailor and enjoyer of our beautiful bay I strongly urge you not to dump toxic soil in our turning basin. My three children, all very active sailors, and our family regularly use the turning basin for swimming, sailing and water activities. Toxic soil should not be dumped in such a heavily utilized area where recreation occurs throughout the year.

Best,

Betsy Decker
949-922-9006

From: ROGER MACGREGOR <macboats@pacbell.net>
Sent: Thursday, January 16, 2020 3:12 PM
To: Miller, Chris
Cc: info@tattooyachts.com; brookannsharp@gmail.com
Subject: RELOCATION OF TOXIN MATERIALS IN NEWPORT HARBOR

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Digging out the contaminated waste in the Rhino channel and dumping it in a highly used area of the bay appears to be the dumbest idea I have your heard in years.

That sediment has been buried away in relatively deep water for many decades, and has presented no health problems, or problems of any kind, over the years. The old adage applies here: "Let sleeping dogs lay".

The act of digging it out and dumping it in a new location is fraught with peril. In the transfer, the toxins will be spread into our water, and the strong tidal currents will carry them to the shallow areas and beaches throughout the harbor, where there they will guaranteed human exposure. As a longtime Lido Isle waterfront property owner, my objection is strong and personal.

Even after the transfer, the toxins will be of no less risk than they are in their present location.

If the authorities don't think this stuff belongs in the deep and almost limitless ocean, it certainly does not belong in the tight confines of our bay.

The act of digging a big hole in which to dump this goop it is, in itself, a potential disaster. I have witnessed the digging of deep holes for garages for large buildings near the water's edge. The exposure of this pre-dinosaur slime results in unbelievable stench and all kinds of new and scary pollution.

If this plan is pursued, you can expect a massive and powerful reaction from the local citizenry. It will likely be a likely hot issue it will for any forthcoming Newport election.

Roger MacGregor

From: John Clement <john.clement@venturepointinc.com>
Sent: Thursday, January 16, 2020 5:24 PM
To: Miller, Chris
Subject: Vote Against CAD in Newport Harbor

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Chris,

Thank you for everything you do for our city and harbor, greatly appreciated.

It is rare I speak up on political matters, but the proposed CAD site in the turning basin off the tip of Lido is a material concern.

I have been a resident of Newport for over 40 years and a resident of Lido over 25 years. I am an avid boater and sailor, owning 4 boats, and Rear Commodore of the LIYC. I am also an engineer in the land development business and often involved in environmental clean-up.

I ask you to reconsider the current proposal to use a CAD approach for polluted material in our bay (and I understand bringing in outside waste). The negative effect of this on the environment and residents is far greater than the theoretical solution it may provide. I will not get into the weeds of my basis for this, but I wanted you to know of my strong disagreement. There is also a large silent majority of residents that feel the same way.

I propose waiting for a proper method of relocating waste to a receiver location that is certified and safe, outside of the largest pleasure-boat harbor in the country.

Best,

John E. Clement
President

VENTUREPOINT

PROPERTY

ASSET MANAGEMENT ♦ INVESTMENT ♦ DEVELOPMENT

4685 MacArthur Court, Suite 375, Newport Beach, CA 92660

Tel: 949.673.4660 Fax: 949.220.0566

Email: john.clement@venturepointinc.com

Website: www.venturepointinc.com

 Please consider the environment before printing this e-mail

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From: Brooke Sharp <sailingdirector@liyc.net>
Sent: Thursday, January 16, 2020 12:11 PM
To: Miller, Chris
Subject: [EXTERNAL]Newport Harbor CAD Site Opposition

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Chris,

As a resident of Orange County, Sailing Director for Lido Isle Yacht Club and someone who grew up swimming and sailing in Newport Bay, I would like to voice my vehement opposition to the proposed CAD site in the Turning Basin.

I run the Lido Isle Yacht Club Junior Sailing Program and this puts our children at unnecessary risk. We have over 150 children in our program each summer who regularly swim and sail in the vicinity of the Turning Basin. We are one of 4 major yacht clubs that run summer Junior Programs. Not only would disturbing the unsuitable sediment create a health risk to our kids, it would negatively impact the surrounding community for years - both recreationally and for businesses throughout Newport Harbor. Either leave the sediment alone or bring it to the ocean to dilute it. The Turning Basin is not a suitable location.

Please let me know if you would like any further input.

Best,

Brooke Sharp
Sailing Director, LIYC
sailingdirector@liyc.net
Office: 949.673.5119

From: Lawrence Cunningham <ljcunningham123@gmail.com>
Sent: Tuesday, January 14, 2020 3:48 PM
To: Miller, Chris
Cc: eric henn; Shana Conzelman; Mike Oshea; Marion Smith; Marsha Ferrall; Leslie Thompson
Subject: Lower Newport Harbor CAD Facility

Dear Mr. Miller,

I do not have the technical background to provide the reasons why we should not place the CAD in the middle of our harbor, however my family has lived on Lido Isle since 1953 and it is from this perspective that I address this letter to you.

I cannot recall at anytime the water quality being as polluted as it has been in the past few years. Adding CAD to the central Bay Area versus moving it out of the harbor only adds to the degradation of our bay.

It is my fervent hope that our city representatives will work towards the only acceptable option which is to move the contaminated sand offshore.

Thanking you for considering this request.

Respectfully,

Lawrence Cunningham
Lido Isle

From: info@tattooyachts.com
Sent: Tuesday, January 14, 2020 7:10 AM
To: Miller, Chris
Cc: Brooke Sharp; Roger MacGregor
Subject: Newport Harbor CAD site

We vehemently object to moving polluted sediment to a new area of the bay. If it is unsuitable to be moved to the open ocean it has no place in the turning basin, which is the most actively used area, and where our children and grandchildren sail. the anchorage will also be affected.

Either leave it undisturbed or move it to a large open ocean water area where it will be diluted.

Best regards,
Paul and Laura Sharp

Sent from my T-Mobile 4G LTE Device

From: David Alderfer <dsalderfer3@gmail.com>
Sent: Wednesday, January 15, 2020 4:34 PM
To: Miller, Chris
Subject: NO DUMPSITE IN NEWPORT HARBOR

NO DUMPSITE IN NEWPORT HARBOR

From: Alice Brewer <abrewer3@me.com>
Sent: Sunday, January 12, 2020 4:29 PM
To: Miller, Chris
Subject: Dumpsite in Newport Bay!

No Dumpsite in Newport Harbor!

Dear City Manager and Newport City Council Members,

Please don't put contaminated materials in our beautiful bay.
Haul it away to a landfill that is designated for this purpose.
The bay is not a dumpsite.
Please, please vote against this proposal.

Regards,
Dick and Alice Brewer
222 Via Lido Nord
Newport Beach, CA

From: Leslie Ellis <lmellis333@gmail.com>
Sent: Sunday, January 12, 2020 5:57 PM
To: Miller, Chris
Subject: hello

Yes I agree let's dredge....

Leslie Ellis
lmellis333@gmail.com
(949)683-7266 – Cell
Broker Lic.# 01240785

From: Bruce Major <major4445@gmail.com>
Sent: Sunday, January 12, 2020 7:49 AM
To: Miller, Chris
Cc: ddixon@dixonfornewport.com
Subject: No Dumpsite in Newport Harbor

You can't be serious! Has anyone done a serious in-depth risk assessment of this project? Dumping in Newport Harbor; ridiculous!

Bruce & Janie Major
228 Via Ithaca
Newport Beach, CA

From: Gail Reisman <gailreisman@hotmail.com>
Sent: Sunday, January 12, 2020 8:49 AM
To: Miller, Chris
Subject: Harbor Dredging

As Lido Isle residents, we are concerned about the current dredging plan. We strongly recommend that you find a more acceptable disposal solution before you begin the process.

Respectfully

Drs. Gail and Sorel Reisman

112 Via Havre

From: Marion Smith <newportmarion@hotmail.com>
Sent: Sunday, January 12, 2020 12:10 PM
To: ddixon@dianedixonnb.com; bavery@newporbeachca.gov; Duffield, Duffy; Muldoon, Kevin; Herdman, Jeff; O'Neill, William; Miller, Chris
Subject: LETTER SUPPORTING NO DREDGING NO CAD IN OUR NEWPORT BEACH BAY

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

RE: Dredging and putting a CAD at the East Turning Basis

Dear Chris Miller, Mayor O'Neill, and City Council,

I agree that dredging in our bay is good to keep the channels open for all forms of watercraft and for the wildlife. I am however 100% against having dredging of CONTAMINTED materials from one part of the bay and depositing it into a perfectly clean area of our bay. CAD or no cad, this should not be moved in our bay in such a way to provide just a dumping ground and spreading around the contaminated materials! This is the major area of Newport Beach Bay whereby boaters young and old boat, sail, moor for the weekend, kayak, canoe, paddleboard, and swim.

It doesn't make any sense at all to take contaminated materials and place them in this safe clean area. I used to live right there on the bay and am very familiar with the traffic and the continual tide changes/currents and how they affect Lido Isle, Bay Island, Harbor Island and the drifting of the sand that occurs.

If there are contaminated materials you MUST find another suitable area other than depositing back into the bay. Please dredge it and take it to a land fill. Find the experts to support the safe and proper removal of the contamination.

Thank you for hearing the citizens of Newport Beach.

Kindest regards, Marion Smith
110 Via Quito

Lido Isle, CA 92663

From: M Stoddard <twanonrevs@yahoo.com>
Sent: Sunday, January 12, 2020 5:40 PM
To: Dept - City Council; Miller, Chris
Subject: NO DUMPSITE IN NEWPORT HARBOR

My wife and I own residential property on Lido Isle and we are opposed to dumping or burying mercury tainted sediment in Newport Harbor.

Kent Stoddard
949-723-6077

Marine Vie

Subject: FW: December meeting
Attachments: 19-11-12 LNB Outreach - Lido Isle.pdf

From: Miller, Chris <CMiller@newportbeachca.gov>
Sent: Friday, November 15, 2019 5:18 PM
To: 'Shana Conzelman' <sconzelman@gmail.com>
Subject: RE: December meeting

Shana,

1. The notice period for the CEQA process officially starts on Monday the 18th. However, I was already planning on updating the City's calendar by close of business today, and I am confirming this has been done. Within this calendar notice is a link to a folder where the CEQA documents will be posted on Monday.
2. The calendar lists the information you were looking for, but it is here as well: The Public Scoping Meeting will be on Wednesday, December 4, 2019 at 6:00 p.m. at the Friends Room of the Newport Beach Public Library, 1000 Avocado Avenue, adjacent to the Civic Center.
3. Per your request, attached is a digital copy of my presentation to the Lido community on Tuesday.
4. The EPA hasn't published a report, but I am assuming you might be looking for the City's report on the sediment chemistry that we submitted to the EPA for approval. If so, the instructions to access the FTP site are below (the files are very large):

To access the FTP site via web browser please follow the steps below.
Click on the following link: <https://ftp.anchorqea.com/aq>
Username: 170243-02.01@170243-02.01
Password: SuperSilver42!

As promised, I will reach out to you on Monday or so to see if we can arrange a meeting to further discuss the project. I'll check everyone's schedules and suggest a couple days/times.

Thank you,
Chris

From: Shana Conzelman <sconzelman@gmail.com>
Sent: Friday, November 15, 2019 1:09 AM
To: Miller, Chris <CMiller@newportbeachca.gov>
Subject: December meeting

Chris,
I do not see the December Community Dredge II information meeting on any calendars or referenced on the CNB website. Please provide the date, time and location

as soon as possible. I would like a digital copy of your presentation and the EPA report.

Shana Conzelman
(714) 651-2044

Marine Vie

Subject: FW: Newport Bay Dredging comments

From: Miller, Chris <CMiller@newportbeachca.gov>

Sent: Monday, December 9, 2019 8:53 AM

To: 'S Trainor' <d4md4m@gmail.com>

Subject: RE: Newport Bay Dredging comments

Hi Shelly,

Thank you for your interest and for providing comments on our dredging project.

Regarding your concerns about the bay beach sand cycle on Balboa Island, the dredging our project proposes is out in the center channel, and won't affect the beach sand nor it's movement, at all.

Also, 50 years ago, the dock permittees around the harbor and the island could more easily dredge under their docks to replenish the beach sand that had sloughed off down. Apparently, this was done on a more regular cycle than in today's times. In addition, the City pushes sand from the low tide line to the bulkhead each year to help replenish our beaches and maintain that sand that you remember.

Thank you for your comments.

Chris

From: S Trainor <d4md4m@gmail.com>

Sent: Saturday, December 07, 2019 10:34 AM

To: Miller, Chris <CMiller@newportbeachca.gov>

Subject: Newport Bay Dredging comments

Hello Chris

While I don't like the idea of CAD, my concern is about dredging overall.

What I don't understand is the dynamics of the bay. It seems to me that if the channel is dredged, the tidal water flow (and storms) will move the sand from the beaches (particularly Balboa Island) into the hole that is created (as has happened on Grand Canal). Then sand is brought in to replenish the beaches and the cycle of movement continues. Is there an equilibrium point or is this a constant series of repeating costs (dredging then sand replenishment) for the foreseeable future?

I vacationed on Balboa Island as a child and now live here full time. I was not aware of dredging and sand replenishment issues as a child, but I do seem to recall that beaches had more sand 50+ years ago and that there were plenty of boats. Was it the same then or is this a recent phenomenon? If it is recent, then the price tag to have sand and channel depth seems to me to be extreme.

Shelly Trainor
202 Pearl Ave,

From: Laura Thomson <Nbjack@aol.com>
Sent: Tuesday, December 31, 2019 3:47 PM
To: Miller, Chris
Subject: Dredging

Hi Cris

I believe that the majority of residents and visitors that come to Newport Beach would strongly agree that the turning basin is the heart and soul of this harbor.

To drill this area in order to dispose dredged up mercury waste (not suitable for ocean disposal) from an already polluted backwater 2 miles away, can't possibly seem like a reasonable solution.

I'm wondering who it is that will gain financially? Is there some kind of money grab where the army corps of engineers says use it or lose it, and that is why alternatives are not being thought through?

There is plenty of dredging of material that is suitable for open ocean disposal to allow for deep keel boats or large yachts to benefit from approx. 90% of the dredging.

Why not leave the remaining mercury tainted soil lay deep and undisturbed as it has since the mercury was dumped there to begin with? And with the rising sea levels, maybe dredging anything in this harbor is a moot point 😊.

Thank you for taking your time to hear from others before decisions will be made.

Sincerely,

Laura Thomson

Sent from my iPhone Laura Thomson

From: Jack Thomson <jackt@dollarselfstorage.com>
Sent: Wednesday, January 01, 2020 4:28 PM
To: Miller, Chris
Subject: FW: Dredging Proposal

From: Jack Thomson
Sent: Wednesday, January 1, 2020 4:26 PM
To: Chris Miller (CMiller@city.newport-beach.ca.us) <CMiller@city.newport-beach.ca.us>>
Cc: Laura Thomson (NBJacks@aol.com) <NBJacks@aol.com>
Subject: Dredging Proposal

Chris

I read an article in the Lido Islander regarding a proposal afoot to yet again dredge the harbor and had several questions if you don't mind.

First, it seems like we just dredged a few years ago, why are we doing it so soon? Is it filling in that fast?

If, as the City has been saying for years, the sea is rising rapidly, why do we need to dredge at all?

It seems the areas into which the materials too dangerous to put into the ocean is much larger than the area from which it is being taken. Am I interpreting that correctly?

The last time we dredged we chose to encapsulate the material in place, why are we choosing to take the risk of stirring it all up now?

How do you actually propose to get these wet soils onto a barge and move them? This dredging is messy by nature and I would anticipate much leakage of contaminated soils into the bay, and therefore the ocean.

And finally, could you explain how you plan to encapsulate the material? Please understand that we live at the vortex of the Newport Inglewood fault and the San Juan Hills Blind Thrust Fault with the last major movement at the mouth of the Santa Ana River in 1933. The next, and every time there is a movement, soil and sand liquefaction is highly likely, turning a soil structure into mush.

Thank You in advance for your time.

Regards
Jack Thomson
853 Via Lido Soud, NB

Marine Vie

Subject: FW: Dredging Our Bay

-----Original Message-----

From: Miller, Chris <CMiller@newportbeachca.gov>
Sent: Monday, January 6, 2020 8:05 AM
To: Adam Gale <agale@anchoragea.com>
Subject: FW: Dredging Our Bay

-----Original Message-----

From: Frances Farrer <nbmimi@aol.com>
Sent: Sunday, January 05, 2020 5:17 PM
To: Miller, Chris <CMiller@newportbeachca.gov>
Subject: Dredging Our Bay

Dear Mr. Miller:

With reference to the choice of location to dredge our beautiful bay, the proposed choice, in the clean and heavily trafficked area, makes absolutely no sense.

Why fill the clean area with unsuitable material when there are more appropriate areas? Why take away the area that is enjoyed not only by our residents but by tourists worldwide? Why take away from people when there is no good reason? An area that people from every other place in the world find as a source of enjoyment, you decide to refuse that to them with absolutely no evidence of necessity.

How sad to pick an unspoiled area, loved by thousands, when there are other areas, ones that are much more appropriate. Please do not cause such disappointment.

Sincerely,

Frances Farrer

212 Via Koron

Newport Beach, Ca 93663

From: Debbie Robson <drobson@salushomecare.com>
Sent: Monday, January 06, 2020 10:42 AM
To: Miller, Chris
Cc: Mark Robson
Subject: Opposition - Newport Beach CAD Site Location

Chris,

I am not usually one to write to the City of Newport Beach to support one cause or another, for instance when the city decided to spend far too much taxpayer money on the silly bunnies at the then newly relocated Newport Beach City Hall. While it was certainly annoying, frivolous and in poor taste, it was not harmful to the residents or the environment. Having said that, the decision for the City of Newport Beach Public Work Departments to move forward with a full-scope EIR for a CAD site in the Newport Harbor is in extremely poor judgement and irresponsible.

What are you thinking? How can any of you think this is a good idea? I would have loved to be in attendance at the city meeting where the brainstorming (minus the brain) first took place. To take contaminated dredge soil, that has been found to be too dangerous to put in the ocean, to put it in the Newport Harbor near homes, boats and people. The problems are obvious, however, there are other solutions.

Please do not move forward with this EIR, recognize that it is a mistake and take an alternate course of action. The hazardous materials MUST be removed from the harbor and taken to a more suitable place outside the water. If a CAD is the only answer, then place them where the unsuitable material is located, not in the clean areas of the harbor. DO NOT choose a CAD location such as the proposed site that is the MOST HEAVILY trafficked area of our bay!

Please prove to me, as a resident of Newport Beach, that you should be entrusted with the safety and security of our citizens and visitors.

Sincerely,

Debbie Robson, RN, BSN, MBA-HCM
Vice President / Healthcare Organization

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January 7, 2020

Chris Miller, Public Works Manager

cmiller@newportbeachca.gov

City of Newport Beach, Public Works Department
100 Civic Center Drive
Newport Beach, California 92660

Re: Notice of Preparation and Scoping Meeting
For the Lower Newport Harbor CAD Facility

Copy: citycouncil@newportbeachca.gov
harborcommission@newportbeachca.gov

Dear Mr. Miller,

I am an architect in the city of Newport Beach and a Lido Isle resident having lived on the Isle beginning in 1987. I am also Staff Commodore of LIYC 1997. I am not a marine architect, although I have been involved in a number of projects over the years with CEQA. Most of my involvement with CEQA has centered on the issues dealing with traffic in vehicular and pedestrian intersections. That is why I question the appropriateness of placing a CAD at the intersection of what is a marine version of "Main & Main". I stated this in the City's scoping meeting December 4, 2019.

I am quite familiar with the activities in that part of our harbor. Along with being a boater, as Commodore, I was previously responsible for running our youth and adult sailing programs involving nearly 200 sailors. Limiting the use of that area for any sustained period of time much less ten years would devastate the quality of small boat regattas and thus all but curtail the youngest of our youth sailing programs. Running them adjacent to the equipment at the CAD site if even possible would be much too dangerous. Running regattas entirely in front of LIYC or Newport YC would be nearly impossible as the courses would be too short to be considered in almost all conditions. Running our regatta's from other areas of the harbor such as the western turning basin would cause logistical problems as well as being too distant for the younger of our sailors.

While placing the CAD in the middle of our harbor greatly perplexes me, I have other concerns. When I attended the scoping meeting various quantities of dredged material were mentioned. Frankly, it was obvious that the city did not have (does not have) a clear understanding of the amount of material that will be placed into the CAD nor the amount of "unsuitable material" that will be dredged. Many of the assumptions that have been made regarding the quantity of material are purely that, assumptions. In my world as an architect when I am designing foundations, I need to have a comprehensive soils study done including several borings to identify the limits and depth of the material. It appears to me that this has not been done and as a result assumptions have been made that appear to be overstated. One would likely say that this is done as a factor of safety but the result of which leads to a conclusion that since so much material should be dredged that the CAD solution is the only viable option.

I don't believe for a minute this is true. At least not without a thorough analysis. The CEQA guidelines require alternative solutions to be considered. Although I have nothing against

ATLANTA
MILWAUKEE
NEWPORT BEACH

101 Shipyard Way
Suite B
Newport Beach CA
92663

acs-architects.com

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Anchor QEA, LLC, having the same company furnish the analysis that will provide the work is a conflict of interest and entirely inappropriate. I have heard that Anchor is a CAD expert. Good for them. That may however lead, if not appear to lead, them to be predisposed to a CAD solution. Why not have an independent third party provide the analysis?

To be clear I have no objection to dredging and understand its need. However I believe a CAD should be a last resort due to its permanency. It's interesting that our own Harbor Commissioners recommended siting the CAD facility adjacent to the contaminated material not in the middle of Main and Main. Although I haven't seen alternative solutions, if the decision is to utilize a CAD solution it seems appropriate to deal with the problem adjacent to where it occurs. None of this material occurs in the relatively clean area of the Eastern turning basin. So why bring contaminated material there?

Back to my concern regarding the calculation of the amount of "unsuitable material" to be dredged. If the city were to further analyze the material through core samples and testing it may turn out that the unsuitable material is approximately 20,000 CY or even less. In that case there would likely be no need for a CAD as the material could be disposed of off-site or with further testing possibly at LA3.

In the City's Notice of Preparation dated November 18, 2019, it states that the City will be developing a sediment management plan in coordination with the regulatory agencies to manage the CAD. Isn't this putting the cart before the horse? In my opinion creating a "comprehensive" sediment management plan should be the first part of any plan, much as in my business we create a master plan and program before executing a design. To do otherwise is foolish at best and incompetent in my opinion.

I am not into conspiracy theories, however the fact that the City is accepting the "assumption" that there is a larger amount of material (lacking true data) and the stated fact 1) of the size of the CAD, and 2) that it will be open for ten years, leads me to believe there is a more to understand about the City's intention. Can the residents of Newport Beach be assured of the type of "future material" placed in the CAD?

I know this is an emotional issue for many. I have tried to take the emotion out of this and look only at the facts which I feel we are short of. If however I am wrong or any of my concerns are ill-founded please point me to the material that refutes them. I look forward to hopefully seeing a comprehensive study of the alternatives and the creation of a plan that does not disrupt the recreational quality of our lives. A plan the residents and the city of Newport Beach can stand behind. One in which we can be proud of working out together.

Respectfully Submitted,



David Rhodes, AIA
President

ATLANTA
MILWAUKEE
NEWPORT BEACH

101 Shipyard Way
Suite B
Newport Beach CA
92663

Comment Card

Friends Room of the Newport Beach Public Library
1000 Avocado Avenue, Newport Beach, CA 92660

Scoping Meeting
December 4, 2019

City of Newport Beach, Public Works Department

Lower Newport Harbor Channel Dredging and Confined Aquatic Disposal Facility Construction Project EIR



Written comments may be submitted tonight during the meeting or mailed to Chris Miller, Public Works Manager, City of Newport Beach, Public Works Department. Comments must be received by no later than **January 17, 2020 at 5:00 pm.**

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

cmiller@newportbeachca.gov

Your info (required):

Name: Glenn Robertson

Affiliation/Organization: Santa Ana Regional Water
Quality Control Board

Address: 3737 Main St, Ste 500
Riverside CA 92501

Phone: 951-782-3259

Comments (use reverse for more space):

For EIR: For Alternatives Section, all alternative disposal
① ideas should be analyzed; The Reduced Project Alternative
⇒ where what could not be placed into smaller CAD site would be trucked.

Comments (continued):
Alternatives

- Full Trucking (with various degrees of treatment) to Casmalia, Kettleman Hills, or appropriate special waste site.
- Smaller CAD locations closer to sources of highest (green on maps) Hg levels.
- Any other alternatives

3) Permitting — our Certification group understands that RPG 54 does not apply to private slips (bulkhead out to end of dock). ~~could~~ Please ~~check it~~ state in EIR if federal channel work and small jobs really are expected to be combined in one 404 Permit. We would expect to write Waste Discharge Requirements, not 401 Certification, to cover all locations/~~from~~ dredging jurisdictions (Feds, City responsibility)

- ② Please put in EIR the analyses of all parameters from areas to be dredged — Hg, Pb, Cd, DDT, As etc
- ④ I wrote the Navy's Anaheim Bay 401 Cert — no more outside fill to go in.

CA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer
916.574.1800 Fax 916.574.1810

California Relay Service TDD **800.735.2929**
from Voice Phone **800.735.2922**

Contact Phone: 916.574.2255

March 11, 2020

File Ref: G 09-02.16

Sent via electronic mail

Chris Miller, Public Works Manager
City of Newport Beach, Public Works Department
100 Civic Center Drive
Newport Beach CA 92660
cmiller@newportbeachca.gov

Subject: Maintenance Dredging to remove up to 300,000 cubic yards of sediment, within Lower Newport Harbor, Newport Beach, Orange County, California.

Dear Mr. Miller:

This letter is in response to a Notice of Preparation and Scoping Meeting for the Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility Construction Project (PA2019-020) involving proposed dredging within Lower Newport Harbor. A portion of the proposed project involves dredging on legislatively granted public trust lands held in trust by the City of Newport Beach with mineral interests reserved to the State. Therefore, the City will need to provide additional information to the California State Lands Commission regarding the proposed dredging activity, as further described below on page 2.

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (PRC §6301 and §6306). All tidelands and submerged lands granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tide and submerged lands upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation,

and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After review of in-house records, staff has determined that the proposed dredging location is located within lands the State granted to the City of Newport Beach pursuant to Chapter 74, Statutes of 1978, and as amended, minerals reserved as provided (revenues received from mineral production or freed parcels or property bought by trustee with trust monies shall be paid to the State).

Legislation that took effect January 1, 2014, Chapter 104, Statutes of 2013 (AB 727, Stone), eliminated the requirement of a lease from the Commission for dredging on granted public trust lands where minerals are reserved to the State, if the dredged material is disposed at an approved on or offshore disposal site, is not sold, and is consistent with the proper management of the granted lands. Under this legislation, if a grantee or project applicant desires to dredge on granted lands where minerals are reserved, they are required to notify the Commission of their intent to dredge in writing at least 120 days prior to dredging. The notice must include the following information:

1. A description of the dredging to be conducted on those lands, including a map and land description showing the area and project site.
2. A description of the amount of material to be dredged, disposal amount, location, and means of disposal, if available.
3. The time and manner in which dredging is to occur.
4. The relevant permits, authorizations, and approvals that exist or must be obtained to complete dredging, or, if applicable, demonstration of compliance with a dredged materials management office plan that is administered by the United States Army Corps of Engineers.
5. A declaration that the dredging is necessary for the proper management of the grant consistent with the public trust for commerce, navigation, and fisheries, or a statement of why the dredging is necessary to be undertaken for other purposes and a declaration that the dredging is consistent with the statutory grant.
6. A statement with supporting documents that explains whether the trustee anticipates receipt of any revenues from the materials to be dredged, and, if so, in what amounts.

This determination is without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to our attention. In addition, this letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

I look forward to receiving the above requested information. If you have any questions concerning this letter or the grant to the <https://www.slc.ca.gov/granted-public-trust-lands/grantees/newport-beach/>, please do not hesitate to contact me at 916.574.2255 or by email at Michaela.Moser@slc.ca.gov.

Sincerely,



Michaela Moser
External Affairs and Granted Lands

From: Linda Merrifield <lmerrifield120@gmail.com>
Sent: Sunday, March 08, 2020 4:11 PM
To: Miller, Chris
Subject: NO CAD OFF LIDO ISLAND

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Mr Miller,

Moving unsuitable contaminants into a clean, heavily trafficked area of the public anchorage is unacceptable. These areas of contaminants should be taken out of the bay and properly mitigated, taken to a commercial CAD system or removed while being monitored. If a CAD is the only answer the City of Newport Beach can come up with they need to place two CAD's in the same area the unsuitable materials are located and bury them there. Placing this CAD in our clean anchorage, uprooting causing a pluming effect while removing and again while burying is irresponsible, this area is used by residents and visitors from all over, this is not the answer. Once the CAD is placed this area can never be dredged again. As presented at the informational meetings held by CNB the CAD is proposed to be left available/open for up to ten years for future dumping. Dredging is always good and can be done (according to the Army Corp of Engineers) without uprooting these areas that by the way are mostly in commercial arenas.

Sincerely,

Linda Merrifield

From: Nancy Helm <nancyhelm@hotmail.com>
Sent: Sunday, January 19, 2020 4:52 PM
To: Dixon, Diane; Avery, Brad; Duffield, Duffy; Muldoon, Kevin; Herdman, Jeff; joy@newportbeachca.gov; O'Neill, William
Cc: Miller, Chris; Nancy Helm
Subject: Dumping Tainted Sediment in Newport Harbor

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I do not understand why the city wants to deposit dredged sediment that is mercury contaminated in Newport Harbor. There must be alternatives. The obvious question is why not transport it to an area where it would be less of an environmental concern? Is the answer that it would be too expensive? Is our city government putting a price on safety and the environment? In the past, government entities have often claimed something is safe only to later find they were mistaken. Why take the chance that this could become a huge issue in the future, one that would be difficult to remedy?

The residents of Newport Beach will be furious if the city proceeds with this plan. We must not dump contaminated sediment in Newport Harbor!

Nancy Helm
200 Via Koron
Newport Beach CA 92663
949-683-9123

January 22, 2020

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

Re: Lower Newport Harbor Confined Aquatic Disposal (CAD) Facility
Construction Project (PA2019-020) Environmental Impact Report

Dear Mr. Miller

I reside with my family at 733 Via Lido Soud Newport Beach Ca which is on the bay front close to the location of the proposed project as referenced above.

I would like to express my concerns for this project as follows:

- 1) I have worked on contaminated sites in the development business with the DTSC and RWQCB to secure clean closure plans. It has been my experience that once soil is disturbed the contaminants are released into the atmosphere or adjacent areas where they are difficult to control. For this reason, any EIR should address the issues related to soil disturbance from dredging especially in light of the recreational swimming use in the immediate area at the Lido Island club house and the public park across the bay. Specifically what measure are being considered for monitoring of air quality and capturing/containing greenhouse gas emissions as well as soil contaminates from being released into the bay from dredging.
- 2) Since the dredged material is not suited for open ocean placement or near shore disposal, then the EIR should consider the alternative of disposal at an acceptable disposal site such as in the Port of Long Beach which was used in the previous dredging of the Newport Bay.
- 3) I understand the need to keep the bay available for navigation purposes as I am a boat owner with a slip on the bay who appreciates the efforts by the City of Newport Beach in this regard. However, any EIR should also address the source of the sediments and contaminants flowing into the Newport Bay for any possible cost sharing with adjacent cities and counties.
- 4) Finally, the EIR should address the impacts to the surrounding residential residences in terms of noise, water quality, hours of dredging operations, storage of dredged material, fill cap reliability, projections for additional dredging requirements, bulk head impacts, global warming including rise in sea levels.

Sincerely,
H Roger Heartman

From: Marsha Ferrall <marshaferrall@gmail.com>
Sent: Thursday, January 23, 2020 2:21 PM
To: Miller, Chris
Subject: CAD proposal
Attachments: letter to city CAD.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

hello mr miller.

i am a resident of lido and also on the board of directors. i listened to you speak at our town hall meeting a while ago.

i have written a letter in opposition to the proposed recommendation concerning the contaminated materials in our bay. i have attached this letter to this email as i have been told the deadline is tomorrow, friday, jan 24, and does not allow to come via regular mail.

thank you for your consideration.

january 23, 2020

chris miller, public works manager
city of newport beach, public works department
100 civic center drive
newport beach, ca 92660

SUBJECT: the california environmental quality act (CEQA) scoping the environmental impact report PA2019-020 proposing construction of a confined aquatic disposal (CAD) in newport harbor.

mr miller,

while i support and understand the purpose of dredging our bay, i am opposed to the CAD facility or any other dump site in our harbor. i do not believe enough research for the long time viability of the containment of such material has been done.

the digging up and moving of such material seems to have major flaws in it's core conception. while i am not suggesting we make our contamination someone else's problem, i am thinking the wiser move would be to leave that material as is until such time an opening at an existing disposal site again becomes available.

i am a member of the board of directors for LICA and concur with the letter written by our president, eric henn. i have been a resident in newport beach for over 40 years and on lido for the past 31. we need to protect our beautiful bay.

thank you for your consideration.

marsha ferrall
LICA board of directors

From: Clark, Ronda <Ronda.Clark@am.jll.com>
Sent: Friday, January 24, 2020 9:54 AM
To: Miller, Chris
Subject: No Dredging and Dumpsite in Newport Harbor

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Chris,

I am a Newport Beach resident, 130 Via Xanthe, and also own an investment property in Newport Beach. I would like you to advise you that I am in disagreement with the plan to have a dumpsite in the harbor. My disagreement is based upon environmental concerns and overall disagreement with this approach to resolving the issue. Please note my opposition and consider this in the decision regarding this matter.

Best,

Ronda Clark
Managing Director
JLL
4 Park Plaza, Suite 900
Irvine, CA 92614
main +1 949 885-2900 fax +1 949 885-2901
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