

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CALIFORNIA 90802-4830
PH (562) 590-5071 FAX (562) 590-5084
WWW.COASTAL.CA.GOV



Page 1

March 03, 2022

Permit Application Number: **5-19-1296****COASTAL DEVELOPMENT PERMIT**

On December 15, 2021, the California Coastal Commission granted to **Chris Miller, City Of Newport Beach** this permit subject to the attached Standard and Special conditions, for development consisting of **beach replenishment of up to 75,000 cubic yards per year, for a term of six years, of suitable dredged material, including Eelgrass Protection and Mitigation Plan for eelgrass impacts, as** more specifically described in the application filed in the Commission offices.

See also: Consistency Certification CC-0007-21: Maintenance dredging around existing docks and off-shore disposal of up to 75,000 cubic yards per year of suitable dredged material, including proposed Eelgrass Protection and Mitigation Plan for eelgrass impacts, as more specifically described in the application filed in the Commission offices.

The development is within the coastal zone between the shoreline and project lines, on beaches and within bay waters, at street ends and in front of bulkheads in Lower Newport Bay, and within Upper Newport Bay in the bulkheaded areas of Dover Shores, Bayside Village, and existing docks at Shellmaker Island.

Issued on behalf of the California Coastal Commission by

Sincerely,

John Ainsworth
Executive Director

A handwritten signature in black ink that reads "Mandy Revell". The signature is written in a cursive, flowing style.

Mandy Revell
Coastal Program Analyst

cc: Commissioners/File

Coastal Development Permit
5-19-1296


ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part of that: "A Public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date: March 9, 2022

Signature 

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

Coastal Development Permit

5-19-1296

1. Final Revised Regional General Permit 54 Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a document, subject to the review and written approval of the Executive Director, detailing the final Regional General Permit 54 program as approved by the Coastal Commission. The format of the document shall substantially conform to the preliminary program titled "Permit Application Supplement: Proposed Regional General Permit 54," submitted 9/24/21, and included as [Exhibit 2](#) in the staff report dated 12/2/21, but shall be amended to reflect the following changes:

- A. The demolition, repair and in-kind replacement of docks (including piers, gangways, floats, and piles), bulkheads, and piles with similar structures are excluded from the current Regional General Permit 54 program. These activities shall require a separate coastal development permit from the California Coastal Commission.
- B. The Nearshore Ocean Beach disposal option is excluded from the current Regional General Permit 54 Program.
- C. For disposal of sediments containing Dichlorodiphenyltrichloroethane (DDT) delineated in orange on Exhibit 2 that are dredged below -12 feet MLLW to achieve a z-layer with DDT concentrations that are below the 18ppb threshold, the applicant will be required to collect samples at the following intervals:
 1. Authorized design z-layer depth (between -12 to -12.5 feet MLLW). This sample would be tested to demonstrate whether the z-layer meets the DDT thresholds.
 2. If the z-layer does not meet the DDT threshold, deeper 0.5-foot intervals would be separately collected and tested to find the new z-layer that meets the threshold (total DDT less than 18 ppb).
 3. A vertical composite of the full core length from -12 feet MLLW to the new z-layer would be created and submitted for full confirmatory chemistry to demonstrate suitability of material for ocean disposal based on Tier 1 evaluation as defined by the EPA's Ocean Testing Manual.
 4. Confirmatory chemistry results would be compared against the composite samples for Area 3 as presented in the 2018 Sampling and Analysis Report prepared for the City of Newport Beach by Anchor QEA in June 2018. If confirmatory sample chemistry results are within the range of the composite sample found to be suitable for ocean disposal based on the full Tier III testing program, then material below -12 feet MLLW would be recommended as suitable for ocean disposal based on a Tier 1 analysis.

Coastal Development Permit

5-19-1296

5. The City (representing the applicant) would submit a brief memo to the EPA presenting the proposed project and include a comparison of confirmatory chemistry results to what was determined suitable in 2018. If the EPA approves the Tier 1 analysis, then the results memo and correspondence with EPA would be included as part of the RGP 54 application submitted to the Coastal Commission's South Coast office.
- D. The areas depicted in orange on Exhibit 2 may be dredged to no more than - 15 feet MLLW subject to **Special Condition 5**.
- E. The City shall submit a pre-construction notification to the Executive Director for all proposed dredging, disposal, and beach maintenance activities and must receive a written authorization from the Executive Director prior to any dredging or disposal event undertaken by the City or by anyone with a legal right to dredge or dispose of dredged material in excess of 2,500 cubic yards. A written authorization from the Executive Director shall be required for any dredging activity of any amount of sediment (including an amount less than 2,500 cy) in RGP 54 areas flagged for exceedances of mercury, polychlorinated biphenyls, or DDT. The City shall submit pre-construction notifications in batches and shall submit no more than one batch per calendar month. The Executive Director shall notify the City within 60 days indicating whether a proposed dredging or disposal event qualifies under the confines of the Regional General Permit 54 program or whether a separate coastal development permit/federal consistency certification is required from the Commission.
- F. The City of Newport Beach Tidelands Administrator shall be the primary Point of Contact (POC) for applicants seeking authorization under Coastal Development Permit No. 5-19-1296 and Federal Consistency Certification No. CC-0007-21 (CDP/CC). Once the POC has determined an application meets the conditions of the subject CDP/CC, the POC will forward the application to the Executive Director of the Commission along with a written certification for the Executive Director's review and approval. The POC may submit one batch of applications to the Executive Director for review and approval once per calendar month. This certification shall include the following information:
 1. Certification letter from the City of Newport Beach Tidelands Administrator confirming the proposed application meets the terms and conditions of the CDP/CC, with special emphasis on the presence or absence of eelgrass and any contaminated sediments.
 2. Maps of the project site including location within the harbor, site address, site assessor's parcel number, site latitude and longitude coordinates (decimal degree format), as well as to-scale drawings of the proposed action (plan view and cross-section view of proposed

Coastal Development Permit 5-19-1296

activity), including the boundaries of any proposed sediment dredging and/or disposal work, the location and physical dimensions of any existing docks, floats, piers, pilings and bulkheads (and general outline of same that is present on adjacent sites), the location of the bulkhead, project and pierhead lines, and the specific location of any eelgrass beds within or near the work area (based on the most recent comprehensive eelgrass survey required pursuant to Special Condition No. 2).

3. The proposed area of temporary impacts to coastal waters (in acres), proposed dredge and/or disposal quantities (in cubic yards), including a detailed estimate of how much material has been dredged from or discharged onto the site through previous activities.
4. The results of invasive algae (*Caulerpa sp.*) surveys consistent with **Special Condition 3**.
5. Photos (a minimum of five) of the beach area and the low tide line (i.e., prior to any work), with special emphasis on any areas of eelgrass.
6. Evidence of California State Lands Commission approval for any work upon land that is not within the City of Newport Beach tidelands grant, which shall consist of (a) a copy of a permit issued by the California State Lands Commission, or (b) letter of permission, or (c) evidence that no permit or permission is required for the development to occur at the proposed site. The City shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit or a new coastal development permit, and, if applicable, a new consistency certification unless the Executive Director determines that no amendment or new permit and consistency certification is legally required. This may be a one-time requirement so long as the approval covers the entire geographic area and time period covered under this CDP/CC.
7. Evidence of the permittee's legal ability to undertake the proposed development, as conditioned herein, on any land that is not owned in fee title by the City of Newport Beach or County of Orange or upon any land granted to the City or County pursuant to a State Tidelands grant under which said grant does not specifically authorize the grantee to undertake the proposed activity. Such evidence shall

Coastal Development Permit 5-19-1296

include written documentation demonstrating that the permittee has the legal ability to undertake the proposed development as conditioned herein. The permittee shall inform the Executive Director of any changes to the project required in obtaining such legal ability. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit and, if applicable, a new consistency certification, unless the Executive Director determines that no amendment or consistency certification is legally required. This may be a one-time requirement so long as the approval covers the entire geographic area and time period covered under this CDP/CC.

- G. Reporting: The City of Newport Beach shall submit annual reports for the life of the subject CDP/CC to the South Coast District Office (Long Beach) of the California Coastal Commission documenting activities authorized under this CDP/CC. Each annual report shall include a cumulative ledger documenting all activities conducted to date under the subject CDP/CC. The annual report shall be submitted no later than January 1 of each year. Annual reports from the City shall include:
1. A summary of dredging operations including location (coordinates and address) of each dredging operation, areas, and volumes of material dredged (in cubic yards and acres);
 2. Disposal location(s) (coordinates and address) and volumes for each method used (i.e., beach disposal, LA-3, or inland site);
 3. An estimate of the total acreage of coastal waters impacted for each activity type;
 4. Summary of any direct and indirect eelgrass impacts for each activity type, and the on-site or off-site eelgrass mitigation completed or in progress;
 5. An updated, to-scale map showing the locations of all activities conducted using this coastal development permit and consistency certification to date.
 6. Confirmation of compliance with all special conditions, or a detailed explanation of any special conditions not complied with.

Coastal Development Permit 5-19-1296

The City and anyone with a legal right to dredge or dispose of dredged material shall undertake development in accordance with the approved final Regional General Permit 54 program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit (and, if applicable, a new consistency certification) unless the Executive Director determines that no amendment is legally required.

2. Compliance with October 2015 Final Eelgrass Protection and Mitigation Plan.

The applicant shall comply with the Final Eelgrass Protection and Mitigation Plan approved by the Executive Director in October 2015, including:

- A. Term of Authorization and Requirement for Eelgrass Monitoring and Biennial Surveys: During the six (6) year period for which the applicant is authorized to dredge and dispose of suitable material at an approved ocean or beach disposal site under this CDP/CC (subject to the requirements of Special Condition 1), the applicant shall conduct a minimum of three (3) comprehensive eelgrass surveys of the Plan Area as specified in the Eelgrass Protection and Mitigation Plan. The second of the three surveys shall not be limited to the areas where dredging and beach replenishment are permitted under this permit, but shall cover the entire Newport Harbor. The surveys shall occur once every two years, beginning no later than one year after the issuance of this permit, unless the Executive Director grants additional time for good cause.
- B. If eelgrass was present within a dredging footprint during the previous biennial survey, its presence at the time of dredging must be assumed and the size of the presumed eelgrass loss documented. That area shall be examined specifically during all following biennial surveys and the distribution and cover of eelgrass documented to determine recovery time.
- C. Restoration undertaken by the City and Orange County Coastkeeper (with funding from the City) under Tier 1 and Tier 2 of the existing Eelgrass Plan, and restoration undertaken by dock owners under Tier 2, shall be documented and reported annually, including time and duration of restoration activities and types of activities undertaken. If Orange County Coastkeeper restoration activities are funded through sources in addition to the City, annual reporting shall document these additional funds and sources and include an estimate of the proportion of total restoration that can be attributed entirely to funding provided by the City. The annual reports shall also evaluate the success of the restoration in terms of eelgrass bed size, cover, and turion density.

Coastal Development Permit 5-19-1296

- D. The City shall submit an annual evaluation of the RGP 54 and Eelgrass Protection and Mitigation Plan, which shall include: (a) estimates of the time required for eelgrass recovery with and without on-site restoration activities, (b) estimates of the total temporal loss of eelgrass due to dredging (acres and acre-years), (c) estimates of the total area of off-site eelgrass restoration accomplished, and (d) the net mitigation accomplished.
- E. The Eelgrass Plan does not permit eelgrass impacts as a result of beach maintenance, beach replenishment, or disposal of dredged material in front of an existing bulkhead where eelgrass is present. If an unexpected impact to eelgrass occurs during beach maintenance or disposal of dredged material, such impact shall be documented and reported to the Executive Director in the same manner that dredging impacts on eelgrass are documented and reported. If an impact was detected (as defined above), the report will include a summary of how the California Eelgrass Mitigation Policy will be complied with. Implementation of mitigation shall require a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. The following implementation measures shall be applied:
1. No dredging, disposal, or movement of sediment to shape the beach profile shall occur within 15 feet of eelgrass.
 2. If eelgrass was present within 15 feet (in any direction) of a potential beach maintenance or dredged material disposal site (in any direction) at the time of the most recent comprehensive eelgrass survey, that site shall be assumed to support eelgrass and a site-specific survey during the period of active eelgrass growth shall be required prior to any beach maintenance or dredged material disposal activities.
 3. The City and anyone with a legal right to dredge or dispose of dredged material shall undertake development in accordance with the approved final Eelgrass Protection and Mitigation Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit and new consistency certification unless the Executive Director determines that no amendment and consistency certification is legally required.

3. Caulerpa Surveys Within Infected Systems.

Coastal Development Permit 5-19-1296

- A. The following survey conditions shall apply to any permitted Bottom Disturbing Activity within Infected Systems:
1. Prior to initiation of any permitted Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project Area of Potential Effect (APE). The first survey shall be conducted using High Intensity Level techniques (more intensive survey using a systematic sub-sampling of the entire APE during which at least 50% of the bottom is inspected). Surveys may be accomplished using a diver or remote camera transects. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries, CDFW, and the Executive Director) and the second survey shall be conducted using Eradication Area Level techniques (most intensive survey using a systematic and comprehensive survey of the entire APE during which 100% of the bottom is inspected). Surveys must be accomplished using divers moving at a rate appropriate to the site conditions to ensure that all areas are comprehensively searched irrespective of site conditions which may complicate surveys. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries, CDFW, and the Executive Director). Both surveys shall be conducted within the same High Growth Period, unless otherwise approved by NOAA Fisheries, CDFW, and the Executive Director.
 2. At least one survey shall be conducted within 45 days of initiation of a permitted Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/ CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.
 3. If the Bottom Disturbing Activity extends for over 90 calendar days, the portions of the APE that would be expected to be impacted by a Bottom Disturbing Activity within the subsequent 90 days must be re-surveyed at a High Intensity Level. This subsequent survey must be conducted within 15 days following the first 90 days. Prolonged activities would require a repetition of this phased survey requirement.

Coastal Development Permit

5-19-1296

4. If dredged material is removed from the APE and placed elsewhere in the marine environment, then no sooner than 60 days after placement of the dredged materials and during the next High Growth Period, the applicant shall conduct a Surveillance Level survey at all disposal areas except where material is disposed of within an existing U.S. EPA designated deep ocean disposal site. The specific survey requirements shall be determined by NOAA Fisheries and CDFW on a case-by-case basis.
 5. The final survey shall be submitted for the review and written approval of the Executive Director prior to commencement of any dredging activities in infested systems.
 6. Area of Potential Effect (APE) is the area surrounding an authorized project site that could be affected by a Bottom Disturbing Activity related to the implementation of the project work. This includes the project footprint, areas where equipment is stored or moored, areas where vessel prop-wash could occur in association with work, or in-water disposal areas used by the project. It does not include U.S. Environmental Protection Agency (EPA) designated deep-ocean disposal sites.
- B. If *Caulerpa* is Found:
1. If *Caulerpa* is found, then the NOAA Fisheries/CDFW Contacts shall be notified within 24 hours of the discovery. The Bottom Disturbing Activity shall not be conducted until such time as the infestation has been isolated, treated or the risk of spread from the project is eliminated.
 2. All *Caulerpa* assessment and treatment shall be conducted under the auspices of the CDFW and NOAA Fisheries as the state and federal lead agencies for implementation of *Caulerpa* eradication in California.
 3. Within seven days of notification, NOAA Fisheries and CDFW will coordinate with the Southern California Caulerpa Action Team (SCCAT) and relevant permitting and resource agencies (and project proponent, as warranted) to fully document the extent of the *Caulerpa* infestation within the project APE. *Caulerpa* eradication activities, which are subject to review and approval by NOAA Fisheries and CDFW, in coordination with the SCCAT and relevant permitting and resource agencies, shall be undertaken using the best available technologies at the time and will depend upon the specific circumstances of the infestation. This activity may include in situ treatment using contained chlorine applications, mechanical removal, or other appropriate methods. The eradication

Coastal Development Permit 5-19-1296

technique is subject to change at the discretion of NOAA Fisheries and CDFW and as technologies are refined.

4. The efficacy of treatment shall be determined prior to proceeding with permitted activities. To determine effectiveness of the treatment efforts, a written Survey Plan shall be prepared. The plan shall be developed in conjunction with the CDFW and NOAA Fisheries and shall be approved by these agencies and the Executive Director prior to implementation.
 5. This policy does not vacate any additional restrictions on the handling, transport, or disposal of *Caulerpa* that may apply at the time of permit issuance or in the future. It is incumbent upon the permittee to comply with any other applicable State or Federal regulations, restrictions, or changes to the Protocol that may be in effect at the time of initiation of permitted activities.
- C. In non-infected systems, prior to initiation of any permitted Bottom Disturbing Activity, a minimum of one survey shall be conducted using Surveillance Level techniques (general survey coverage providing a systematic subsampling of the entire APE during which at least 20% of the bottom). Surveys may be accomplished using diver transects, remote cameras, and acoustic surveys with visual ground truthing. Other proposed methods may be approved on a case-by-case basis by NOAA Fisheries and CDFW and the Executive Director.
- 4. Construction and Operational Best Management Practices.** In order to minimize adverse environmental impacts and the unpermitted deposition, spill or discharge of any liquid or solid into the sea, the applicant and anyone with a legal right to dredge or dispose of dredged material subject to the program and plan approved by this CDP/CC shall implement the following construction-related and operational best management practices (BMPs), in addition to those construction best management practices proposed by the applicant's preliminary program (titled "Permit Application Supplement: Proposed Regional General Permit 54," submitted December 2019, and included as Exhibit 2 in the staff report dated 11/25/2021) and the applicant's Eelgrass Protection and Mitigation Plan (most recently updated March 2015 and included as Exhibit 3 in the staff report dated 11/25/2021):
- A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow.
 - B. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction.

Coastal Development Permit
5-19-1296

- C. No machinery or construction materials not essential for project implementation shall be allowed at any time in the intertidal zone or in the harbor.
- D. Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity.
- E. If turbid conditions are generated during construction a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.
- F. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- G. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- H. The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited.
- I. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- J. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- K. Prior to commencement of any activity authorized under this CDP/CC, the boundaries of any eelgrass meadow within 30 feet of the activity shall be marked with buoys so that equipment and vessel operators avoid damage to eelgrass meadows.
- L. Barges and other vessels shall be anchored a minimum of 15 feet from any eelgrass bed. Anchors and anchor chains shall not encroach into any eelgrass bed.
- M. Barges and other vessels shall avoid transit over any eelgrass meadow to the maximum extent practicable. Where transit over eelgrass beds is unavoidable such transit shall only occur during high tides when grounding and potential damage to eelgrass can be avoided.

The applicant and anyone with a legal right to dredge or dispose of dredged material subject to the program and plan approved by this CDP/CC shall include the requirements of this condition (including those BMPs proposed in the Regional

Coastal Development Permit 5-19-1296

General Permit 54 and the Eelgrass Protection and Mitigation Plan) on all plans and contracts issued for development subject to program and plan approved by this CDP/CC.

5. **Dredging and Dredged Material Disposal Requirements.** For this CDP/CC, the term “dredging operations” shall mean navigation of a dredging vessel at a dredging site, excavation of dredged material within the project boundaries, and placement of dredged material into a hopper dredge or disposal barge or scow. The following requirements shall apply, in addition to those proposed by the applicant’s revised preliminary program titled “Permit Application Supplement: Proposed Regional General Permit 54” (submitted September 2021, and included as Exhibit 2 in the staff report dated 9/30/21) and the applicant’s Eelgrass Protection and Mitigation Plan (most recently updated March 2015 and included as Exhibit 3 in the staff report dated 9/30/21):
 - A. Dredging Activities.
 1. Under this CDP/CC, dredging operations are limited to -10 feet MLLW with a 2-foot allowable overdraft (1 foot paid, 1 foot unpaid) or -7 feet MLLW with 1-foot allowable overdraft) in areas depicted in green in [Exhibit 2](#).
 2. Under this CDP/CC, dredging operations are limited to -15 MLLW (with no allowable overdraft) in areas depicted in orange in Exhibit 2.
 3. Sediment Testing Requirements. The permittee is prohibited from dredging and disposing material in coastal waters that has not been tested and determined by the Commission, in consultation with the Army Corps of Engineers and with the Environmental Protection Agency Region IX (EPA), to be both clean and suitable for ocean disposal or beach replenishment. Prior to each dredging episode at each individual dredging location the sediment must be tested according to the standard above. Prior to beach replenishment at each replenishment location, the permittee shall sample the material to be placed and any beach-receiver location for the purpose of determining the physical characteristics of the material. Testing shall be performed consistent with procedures defined in: "Procedures for Handling and Chemical Analysis of Sediment and Water Samples," by Russell H. Plumb (1981), Corps Technical Report EPA/CE-81-1, pages 3-28 to 3-47. The grain size test shall be conducted on a composite of at least one core per one-quarter (1/4) acre area to be dredged and/or at least one core per site for each project, as well as at least one core per receiver beach location. The core depth shall be equivalent to the proposed dredging

Coastal Development Permit 5-19-1296

depth plus any over-dredging. Grain size data shall be reported to the nearest 1% for sand, silt, and clay consistent with procedures defined in: "Procedures for Handling and Chemical Analysis of Sediment and Water Samples," by Russell H. Plumb (1981), Corps Technical Report EPA/CE-81-1, pages 3-28 to 3-47.

4. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the permittee shall send a dredging and disposal operations plan to USACE, EPA, and CCC with the following information:
 - i. A list of the names, addresses and telephone numbers of the permittee's project manager, the contractor's project manager, the dredging operations inspector, the disposal operations inspector and the captain of each tug boat, hopper dredge or other form of vehicle used to transport dredged material to the designated disposal site.
 - ii. A list of all vessels, major dredging equipment and electronic positioning systems or navigation equipment that will be used for dredging and disposal operations, including the capacity, load level and acceptable operating sea conditions for each hopper dredge or disposal barge or scow to assure compliance with special conditions on dredging and disposal operations.
 - iii. A detailed description of the dredging and disposal operations authorized by this permit. Description of the dredging and disposal operations should include, at a minimum:
 - a. Dredging and disposal procedures for the dredged material determined by the USACE and EPA Region IX to be unsuitable for ocean disposal, including areas of the harbor requiring additional confirmatory sampling. Sampling for the site shall be submitted.
 - b. Dredging and disposal procedures for the material to be dredged from the proposed site.
 - c. A schedule showing when the dredging project is planned to begin and end.
5. A pre-dredging bathymetric condition survey, taken within 30 days of the dredge start date. The survey may be taken via lead line, sounding disc, or sounding pole techniques according to Chapter 8 (Manual Depth

Coastal Development Permit 5-19-1296

Measurement Techniques) from USACE Engineering and Design - Hydrographic Surveying manual (EM 1110-2-1003, published 01 Jan 2002). Each individual project survey using this method will include a minimum of three sounding points (adjusted for tide) per individual dock.

The pre-dredge survey shall be accurate to 0.5-foot with the exact location of all soundings clearly defined on the survey chart. The pre-dredge survey chart shall be prepared showing the following information:

- a. The entire dredging area, the toe and top of all side-slopes and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the pre-dredge condition survey should cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered.
 - b. The dredging design depth, overdredge depth and the side-slope ratio.
 - c. The total quantity of dredged material to be removed from the dredging areas and the side-slope areas.
 - d. Areas shallower than the dredging design depth shall be shaded green, areas between the dredging design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue.
 - e. The pre-dredging survey chart shall be signed by the permittee to certify that the data are accurate and that the survey was completed within 30 days of the proposed dredging start date.
 - f. A debris management plan to prevent disposal of large debris at all disposal locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.
6. The permittee shall not commence individual dredging operations greater than 2,500 cubic yards unless and until the permittee receives a written authorization to proceed from the Executive Director of the Commission to commence work, subject to the terms of Special Condition 1(F).
7. The City shall require applicants to submit a post-dredging completion report, which shall be compiled by the City and submitted to the Executive Director in an annual report. The report

Coastal Development Permit 5-19-1296

shall include all information collected by the permittee, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:

- a. Permit and project number.
- b. Start date and completion date of dredging and disposal operations.
- c. Total cubic yards disposed at the authorized disposal site(s).
- d. Mode of dredging.
- e. Mode of transportation.
- f. Form of dredged material.
- g. Frequency of disposal and plots of all trips to the authorized disposal site(s).
- h. Tug boat or other disposal vessel logs documenting contact with the USCG before each trip to the authorized ocean disposal site.
- i. Percent sand, silt and clay in dredged material: for this CDP/CC only, see sediment testing requirements above.
- j. A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
- k. Pre-dredging hydrographic survey.
- l. A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredged depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the predredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the predredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate.

B. Beach disposal (beach replenishment)

1. Beach disposal (replenishment) shall be the preferred disposal method under the program. All sediment removed from

Coastal Development Permit

5-19-1296

the harbor which is suitable for beach replenishment (subject to the following testing and disposal requirements) shall be disposed of on beaches in front of bulkheads and at street end beaches throughout the bay, subject to the approval of the landowner, Tidelands administrator, and the Executive Director.

2. Grain Size Criteria: Material utilized for beach replenishment shall have a sand content that is either i) greater than 80% sand; or ii) at least 75% sand and within 10% of the sand content of the receiver beach. Any material that meets the requirements outlined above for beach replenishment and consists of less than 80% sand shall only be placed upon submerged beach areas (i.e. below the water line).
3. Prior to commencement of beach replenishment at a site, the results of each sampling episode and beach replenishment compatibility test described above shall be submitted for the review and approval of the Executive Director. Dredged material deemed suitable for beach replenishment may be deposited at the approved deposition sites only after the Executive Director has concurred with a City determination that the materials to be dredged have been deemed "suitable" using the standards in these special conditions. All dredged material deemed "unsuitable" for beach replenishment shall be disposed of at an approved location according to all federal, state and local regulations. If the disposal site is not within an approved ocean disposal site, but is located in the coastal zone, a separate coastal development permit application shall be filed for the disposal of the "unsuitable" material. All contracts involving the subject project shall include the above stated condition of approval.
4. In no case will beach disposal be authorized with material dredged below the sediment testing characterization depth for any particular site.
5. A detailed description of the transport and discharge operations authorized by this permit will be submitted to the Executive Director of the Commission for review and approval at least 15 calendar days prior to work in coastal waters. Description of the transport and discharge operations shall include:
 6. Transport and discharge procedures for all sediment, including all material unsuitable for beach replenishment discharge.
 7. A schedule showing when the beach replenishment project is planned to begin and end.

Coastal Development Permit

5-19-1296

- i. A debris management plan to prevent disposal of large debris at all beach discharge locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.
 - ii. The volume of material to be excavated and discharged.
 - iii. A list of previous discharges by site, date, and volume, as well as the total volume of material which has been excavated and discharged to date using this CDP/CC.
8. The City must submit a pre-construction notification and must receive a written authorization to proceed from the Executive Director of the Commission before the permittee may commence any work, except Executive Director review is not required for dredging events of 2,500 cubic yards or less in areas where sediment is not known to exceed thresholds for mercury, polychlorinated biphenyls, or DDT.
9. The permittee shall send one copy of a beach disposal post-discharge report to the Executive Director documenting compliance with all general and special conditions defined in this permit. The post-discharge report shall be sent within 30 calendar days after completion of the discharge operations authorized in this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall include:
 - i. CDP/CC number.
 - ii. Identify source of material.
 - iii. Total cubic yards disposed at each beach disposal site.
 - iv. Modes of transportation and discharge.
 - v. Actual start date and completion date of transport and discharge operations.
10. The permittee shall implement all appropriate, standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive eroded materials do not enter coastal waters due to beach replenishment operations. Sediment for beach replenishment shall be placed, not dumped, using means to minimize disturbance to bay sediments and to minimize turbidity.

Coastal Development Permit

5-19-1296

If turbid conditions are generated during construction a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable.

11. The permittee will establish a safety flag perimeter of the beach replenishment area during disposal activities and monitor the premises to protect the general public from construction hazards and equipment.
12. No maintenance, storage, or fueling of heavy tracked equipment or vehicles will occur within 500 feet of the high tide line of waters of the United States.

C. Offshore (ocean) disposal

1. All of the sediments dredged from within the Plan Area that are deemed unsuitable for beach replenishment are suitable for ocean disposal, with the exceptions as identified in the RGP 54 program and this CDP/CC.
2. Prior to commencement of ocean disposal, the results of each sampling episode described above shall be submitted for the review and approval of the Executive Director. Dredged material deemed unsuitable for beach disposal/replenishment may be deposited at the approved ocean disposal sites only after the Executive Director has concurred with a City determination that the materials to be dredged have been deemed unsuitable for beach replenishment and are suitable for ocean disposal using the standards in these special conditions. All dredged material deemed unsuitable for beach replenishment shall be disposed of at an approved location according to all federal, state and local regulations. If the disposal site is not located at an approved ocean disposal site or Commission-approved CAD and is located in the coastal zone, a separate coastal development permit application shall be filed for the disposal of the material. All contracts involving the subject project shall include the above stated condition of approval.
3. For this permit, the phrase "ocean disposal operations" shall mean: the transportation of dredged material from the dredging site to the ocean disposal site, proper disposal of dredged material at the central disposal area within the ocean disposal

Coastal Development Permit

5-19-1296

site, and transportation of the hopper dredge or disposal barge or scow back to the dredging site.

4. The approved ocean disposal site is LA-3, effective October 2005: 33 degrees 31.00 minutes North Latitude, 117 degrees 53.30 minutes West Longitude (NAD 1983), circular site with radius of 3,000 feet.
5. In no case will offshore (ocean) or beach disposal be authorized for material dredged below the sediment testing characterization depth for any particular site.
6. No more than 8,000 cubic yards of dredged material excavated for an individual dredging project authorized under this CDP/CC are authorized for disposal at the LA-3 ocean disposal site.
7. The permittee shall ensure dredged material is not leaked or spilled from the disposal vessel(s) during transit to the ocean disposal site. The permittee shall transport dredged material to the ocean disposal site only when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak or other loss of dredged material during transit. No disposal vessel trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete disposal operations.

D. Inland disposal

1. If neither offshore disposal nor beach disposal are available for an individual project proposed under this CDP/CC, material may be disposed of at an inland facility, subject to the review and approval of the Executive Director. A separate coastal development permit application shall be submitted for the disposal of the material.

E. Confined Aquatic Disposal (CAD)

1. If dredge material unsuitable for beach replenishment is unsuitable for disposal at the existing authorized ocean disposal site (LA-3) or at an inland facility, the dredge material may be disposed of at a Commission approved Confined Aquatic Disposal site (CAD).

Coastal Development Permit 5-19-1296

6. Final Report and Eelgrass Mitigation Requirement at End of Six-Year Period

The final report for the six-year period of the Regional General Permit 54 program and Eelgrass Protection and Mitigation Plan shall assess the net effect of dredging and restoration activities on the presence of eelgrass within the Plan Area in the context of natural trends. The City, using the biennial survey data and reference sites within the Plan Area that have not been affected by maintenance dredging or replenishment, shall report on the trends in eelgrass abundance over the permit period. Should reference sites indicate a decline in overall eelgrass abundance at the end of six years, the City, the California Coastal Commission, the California Department of Fish and Wildlife, and the National Marine Fisheries Service will evaluate the causes of such decline and use that information in assessing the success of restoration efforts undertaken by the City during the period of the Plan.

During Tier 3, applicants would be required to provide mitigation pursuant to the California Eelgrass Mitigation Policy including meeting the success criteria after five years based on applicant sponsored annual monitoring. The City would not be responsible for providing additional mitigation during Tier 3 years for any shortcomings presented in the six-year summary report. Any changes to the eelgrass in the Plan Area will be compared to reference sites using procedures adopted in the California Eelgrass Mitigation to be described in the Final Plan.

If, relative to the reference sites, there is a net loss in eelgrass in the impacted areas of Newport Bay at the end of the six years, the City, the California Coastal Commission, and the National Marine Fisheries Service will evaluate the success of the mitigation efforts by the City and by dock owners throughout the bay. If, through these discussions, the Executive Director determines that there is a shortfall in the necessary mitigation to offset temporal or permanent losses of eelgrass, a revised Eelgrass Mitigation and Monitoring Plan shall be prepared by the City to provide the necessary additional eelgrass mitigation. The revised Eelgrass Mitigation and Monitoring Plan shall require separate review and approval by the Commission through the regular coastal development permit/consistency certification process.

- 6. Conformance with the Requirements of the Resource Agencies.** The applicant shall comply with all permit requirements and mitigation measures of the National Marine Fisheries Service, the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, the U.S. Environmental Protection Agency, the California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. Any changes to the approved project which are required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed

Coastal Development Permit 5-19-1296

change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

- 7. Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the sites may be subject to hazards from slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; (ii) to assume the risks to the permittee and the properties that are the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that sea level rise could render it difficult or impossible to provide services to the sites (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the sites; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, and structures may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that structures may be required to be removed or relocated and the site(s) restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.