

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

PROJECT: Dana Point Harbor Maintenance Dredging Project
Certification Number R9-2014-0053
WDID: 9000002715

Reg. Meas. ID: 396046 Place ID: 805802 Party ID: 354224 Person ID: 546266
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APPLICANT: Orange County Dana Point Harbor
24650 Dana Point Harbor Drive
Dana Point, CA 92629

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017-DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004-DWQ

PROJECT DESCRIPTION

An application dated April 25, 2014 was submitted by Orange County Dana Point Harbor (hereinafter Applicant), for Water Quality Certification pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) for the proposed Dana Point Harbor Maintenance Dredging Project (Project). The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) deemed the application to be complete on May 25, 2014. The Applicant proposes to discharge dredged or fill material to waters of the United States and/or State associated with construction activity at the Project site. The Applicant has also applied for an individual Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project.

The Project is located within the City of Dana Point, Orange County, California at 34624 Golden Lantern Street. The Project center reading is located at latitude 33.45926 and longitude -117.69534. The Applicant has paid all required fees for this Certification in the amount of \$27,113.00. On April 30, 2014, the San Diego Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received.

The Applicant proposes to dredge approximately 136,000 cubic yards of material from Dana Point Harbor. Sediment deposition in the harbor occurs from littoral sediment transport, which

enters the harbor through the entrance channel, permeable breakwater, and storm drain discharges. This results in navigational hazard conditions due to shoaling. The Applicant proposes to carry out maintenance dredging to remove these shoaled areas and reuse suitable sandy material for beach nourishment at Baby Beach and Capistrano Beach. Dredge material that is not suitable sandy material for beach nourishment will be disposed of within the harbor at Baby Beach, at the LA-3 Designated Dredge Material Disposal Site offshore of Newport Beach, or at San Juan Capistrano County Beach (Capistrano Beach). Material that is not suitable for beach or ocean disposal will be sent to a permitted upland landfill for disposal.

Historically, the County of Orange has carried out maintenance dredging in Dana Point Harbor. The most recent dredging cycle occurred in 2008/2009 when approximately 78,300 cubic yards of sediment were dredged as authorized by Water Quality Certification No. 07C-027. Of this total dredge volume, approximately 48,400 cubic yards of sandy material was placed on Capistrano Beach for beach nourishment; 5,700 cubic yards of sandy material was placed on Baby Beach for beach nourishment; and the remaining 24,200 cubic yards of fine silt and clay dredge material was deposited at LA-3, the EPA-approved offshore open ocean dredge material disposal site.

Project construction will temporarily impact 17.1 acre of harbor and ocean waters of the United States and/or State. The Applicant reports that the Project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impacts to aquatic resources considering all potential practicable alternatives, such as the potential for alternate available locations, designs, reductions in size, configuration or density.

The Project is considered self-mitigating because the Project will restore sand-based marine habitats and enhance recreational opportunities at Capistrano and Baby Beaches. It is expected that beach nourishment at Capistrano Beach will increase the quality of the sandy intertidal habitat and will result in an increase in the diversity of marine invertebrates, providing enhanced foraging habitat for shorebirds and spawning habitat for grunion. During sediment placement, qualified monitors will be in place to ensure that there will be no temporary impacts to grunion or the Western snowy plover.

Additional Project details are provided in Attachments 1 through 3 of this Certification.

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Attachments:

1. Definitions
2. Project Location Maps
3. Project Site Plans

I. STANDARD CONDITIONS

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.
- B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

II. GENERAL CONDITIONS

- A. **Term of Certification.** Water Quality Certification No. R9-2014-0053 (Certification) shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 U.S.C. §1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.
- B. **Duty to Comply.** The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification.
- C. **General Waste Discharge Requirements.** The requirements of this Certification are enforceable through Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material that have Received State Water Quality Certification* (Water Quality Order No. 2003-0017-DWQ). This provision shall apply irrespective of whether a) the federal permit for which the Certification was obtained is subsequently retracted or is expired, or b) the Certification is expired. Water Quality Order No. 2003-0017-DWQ is accessible at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/gowdr401regulated_projects.pdf.
- D. **Project Conformance with Application.** All water quality protection measures and BMPs described in the application and supplemental information for water quality

certification are incorporated by reference into this Certification as if fully stated herein. Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action.

- E. Project Conformance with Water Quality Control Plans or Policies.** Notwithstanding any more specific conditions in this Certification, the Project shall be constructed in a manner consistent with the *California Ocean Plan* (Ocean Plan), *Water Quality Control Plan for the San Diego Basin* (Basin Plan) and any other applicable water quality control plans or policies adopted or approved pursuant to the Porter Cologne Water Quality Act (Division 7, commencing with Water Code Section 13000) or section 303 of the Clean Water Act (33 U.S.C §1313).
- F. Maintain Water Quality Standards.** Dredge and fill activities shall not be conducted if existing conditions indicate such activity would cause a violation of water quality standards at the surf zone. Planned activities must be postponed until the threat of causing a violation of water quality standards has been abated.
- G. Project Modification.** The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this Certification, to the San Diego Water for prior review and written approval. If the San Diego Water Board is not notified of a significant change to the Project, it will be considered a violation of this Certification.
- H. Certification Distribution Posting.** During Project construction, the Applicant must maintain a copy of this Certification at the Project site. This Certification must be available at all times to site personnel and agencies. A copy of this Certification shall also be provided to any contractor or subcontractor performing construction work, and the copy shall remain in their possession at the Project site.
- I. Inspection and Entry.** The Applicant must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents as may be required under law, to:
1. Enter upon the Project site(s) premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Certification;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Certification;
 3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and

4. Sample or monitor, at reasonable times, for the purposes of assuring Certification compliance, or as otherwise authorized by the Clean Water Act or Water Code, any substances or parameters at any location.

J. Enforcement Notification. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.

K. Certification Actions. This Certification may be modified, revoked and reissued, or terminated for cause including but not limited to the following:

1. Violation of any term or condition of this Certification;
2. Monitoring results indicate that continued Project activities could violate water quality objectives or impair the beneficial uses of Dana Point Harbor and the Pacific Ocean;
3. Obtaining this Certification by misrepresentation or failure to disclose fully all relevant facts;
4. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; and
5. Incorporation of any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

The filing of a request by the Applicant for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Certification condition.

L. Duty to Provide Information. The Applicant shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Certification or to determine compliance with this Certification.

M. Property Rights. This Certification does not convey any property rights of any sort, or any exclusive privilege.

N. Petition. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

III. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Approvals to Commence Construction.** The Applicant shall not commence Project construction until all necessary federal, state, and local approvals are obtained.
- B. **Personnel Education.** Prior to the start of the Project, and annually thereafter, the Applicant must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and BMP implementation and maintenance measures.
- C. **Spill Containment Materials.** The Applicant must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- D. **General Construction Storm Water Permit.** Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity*, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities.
- E. **Waste Management.** The Applicant must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, state, and local laws and regulations. Waste management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff. The storage, handling, treatment, or disposal of waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050. Upon Project completion, all Project generated debris, building materials, excess material, waste, and trash shall be removed from the Project site(s) for disposal at an authorized landfill or other disposal site in compliance with federal, state and local laws and regulations.
- F. **Waste Management.** Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited.

- G. **Construction Equipment.** All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.
- H. **Process Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm water runoff flows. Pollutants discharged to areas within a stream diversion must be removed at the end of each work day or sooner if rain is predicted.
- I. **Hazardous Materials.** Except as authorized by this Certification, substances hazardous to aquatic life including, but not limited to, petroleum products, unused cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.
- J. **Limits of Disturbance.** The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.
- K. **On-site Qualified Biologist.** The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist's activities shall be kept on-site and made available for review upon request by the San Diego Water Board.
- L. **Beneficial Use Protection.** The Applicant must take all necessary measures to protect the beneficial uses of waters of Dana Point Harbor and the Pacific Ocean. This Certification requires compliance with all applicable requirements of the Ocean Plan and the Basin Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately and the San Diego Water Board shall be notified in accordance with Notification Requirement VII.A of this Certification. Associated Project activities may not resume without approval from the San Diego Water Board.
- M. **Sand Composition.** The dredged material used for beach replenishment or near shore disposal must have at least 80% sand and no more than 10% difference in sand composition from the receiving beach, and must not have significant chemical

contamination. The Project must not impact the aesthetic characteristics of the receiving beaches and/or adjacent ocean waters.

N. **Trash.** The dredged material deposited on the beach must be free of trash and debris.

IV. POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

A. **Post-Construction Discharges.** The Applicant shall not allow post-construction discharges from the Project site to cause or contribute to onsite or off-site erosion or damage to properties or ocean habitats.

V. PROJECT IMPACTS

- A. **Project Impact Avoidance and Minimization.** The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.
- B. **Project Impacts.** Unavoidable Project impacts to Dana Point Harbor and the Pacific Ocean within the San Juan Watershed shall not exceed 17.1 acres.
- C. **Temporary Project Impact Areas.** The Applicant must restore all areas of temporary impacts and all other areas of temporary disturbance. The Applicant must implement all necessary BMPs to control erosion and runoff from areas associated with the Project.
- D. **Eelgrass.** Prior to impacts, a pre-dredging survey to identify the location of eelgrass within the Project area must be conducted. All patches of eelgrass must be marked and all dredging and disposal operations must avoid the eelgrass identified to the extent practicable. A post-dredging eelgrass survey must be completed to confirm that eelgrass was not impacted during the Project. If the post-dredging eelgrass survey determines that eelgrass was impacted during the Project, the Applicant must replace the eelgrass by transplanting eelgrass in the impacted area at a ratio of 1.2:1, as described in the *Southern California Eelgrass Mitigation Policy*¹.

Sediment Placement at Capistrano Beach. If the near shore sediment placement method is used at Capistrano Beach, qualified biologists must survey the offshore reefs before placement and 2 weeks after placement to determine whether disposal operations have caused sand inundation of the reefs. Results of the reef surveys must be submitted to the San Diego Water Board in accordance with section VI.O of this Certification. Should the post placement reef survey indicate that sediment inundation has occurred; the Applicant must complete the following within 2 weeks of post placement reef survey:

1. Evaluate the effectiveness of discharge site BMPs;
2. Notify the San Diego Water Board contact by telephone or email;
3. Provide pre- and post-reef survey results to the San Diego Water Board; and

¹ An electronic copy of the Southern California Eelgrass Mitigation Policy can be found at the follow web page:
http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/eelpolrev11_final.pdf

4. Comply with any measures identified by the San Diego Water Board in consultation with other responsible agencies, as appropriate, to mitigate project related reef inundation, including modifying or halting the discharge.
- E. **Caulerpa Taxifolia.** If *Caulerpa taxifolia* is found prior to or during implementation of dredge and fill activities, the Applicant must not begin or continue dredge and/or fill activities until authorized by the San Diego Water Board. If the invasive seaweed is discovered, it must not be disturbed and the San Diego Water Board must be notified within 24 hours of the discovery.
- F. **Western Snowy Plover.** From March 1 through September 30, no construction or maintenance activities authorized under this Certification shall be conducted within 300 feet of breeding Western snowy plovers. The Western snowy plover (*Charadrius alexandrinus nivosus*) is a federally threatened species and a State species of concern that has the potential to be found in the project area. An on-site qualified biologist shall document the presence or absence of breeding Western snowy plovers.
- G. **California Least Tern.** No activities authorized under this Certification shall be conducted within 1,000 yards of a California least tern (*Sterna antillarum browni*) breeding colony from April 1 through September 30.
- H. **California Grunion.** No excavation, construction, or maintenance activities authorized under this Certification shall be conducted within potential spawning habitat of the California grunion (*Leuresthes tenuis*), except as provided below. California grunion is a State managed species, and the intertidal zone at the Project site is potential spawning habitat. A fact sheet describing the unique reproductive behavior of grunion is available at: <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=36316&inline=true>.
1. To the greatest extent possible, any work seaward of the semilunar high tide line must be scheduled to occur outside of the grunion spawning season, which is March 1 through August 31.
 2. If work during grunion spawning season is essential for Project effectiveness, the following conditions shall apply from March 1 through August 31:
 - a. **Four-Day Predicted Runs.** No project activity that entails sand disturbance seaward of the semilunar high tide line shall be conducted during the four-day periods of predicted grunion runs that are posted by the California Department of Fish and Game (<http://www.dfg.ca.gov/marine/grunionschedule.asp>). As an example, if a predicted run series starts on July 18, no sand-disturbance activity seaward of the semilunar high tide line would be allowed on July 18, 19, 20, or 21.
 - b. **Day before the First Date of a Run Series.** Project activity that entails sand disturbance seaward of the semilunar high tide line can be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been

flushed by the previous night's high tide, and new eggs likely won't be deposited for at least 24 hours. As an example, sand disturbance seaward of the semilunar high tide line could occur on July 17, which is the day before the first date of the predicted run series that starts July 18 (the predicted four-day run series is July 18, 19, 20, and 21). Sand-disturbance activity performed on the day before the first date of a predicted run series allows time for the intertidal spawning zone to be smoothed by one high tide subsequent to the sand disturbance and prior to the first predicted spawning.

- c. **Other Days.** Prior to Project activity that entails sand disturbance seaward of the semilunar high tide mark on other days during the spawning season, the presence or absence of egg nests in or near the work area must first be determined by monitoring for the presence of adult grunion on the beach during predicted runs.
- i. A qualified biologist or appropriately trained personnel shall monitor for the presence of adult grunion during the predicted grunion runs. Monitoring must be done on all four nights of the predicted run series prior to the work activity, except if grunion are observed spawning within the work area or a 10-yard buffer on a given night, the presence of egg nests can be assumed and surveys on subsequent nights are not required. For example, if grunion are observed in the work area or the 10-yard buffer on night 1, then monitoring on nights 2, 3, and 4 would not be required. If grunion are not observed within the work area or the 10-yard buffer on night 1, then night 2 must be surveyed and so forth.
 - ii. Monitoring must start at the time of the high tide and continue for two hours or until the grunion stop running, whichever is later. For each night of monitoring, recorded information must include the time period monitored, grunion run time and duration, approximate grunion density within the work area and 10-yard buffer, and approximate grunion density in a broader area (i.e., within approximately 50 yards up-coast or 50 yards down-coast of the work area).
 - iii. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then Project activity that entails sand disturbance seaward of the semilunar high tide line shall be postponed until after the egg incubation period (i.e., until the day before the first date of the next predicted run, as described above in section V.I.2.b above).
 - iv. If grunion spawning is *not* observed within the work area or 10-yard buffer on all four nights of a predicted run series, then the absence of egg nests and incubation activity near the work area can be assumed and, if needed, Project activity that entails sand disturbance can be conducted seaward of the semilunar high tide line up to and including the day before the date of the next predicted run. For example, if no grunion were observed during the predicted runs on July 4, 5, 6 and 7, and the date of the next predicted run is July 18, then work can occur seaward of the semilunar high tide line from July 8 through July 17.

- d. **April and May.** To protect grunion during their peak spawning season (and closed season for the recreational fishery), Project activity that entails sand disturbance seaward of the semilunar high tide line shall be scheduled to avoid work during April and May.

VI. MONITORING AND REPORTING REQUIREMENTS

- A. **Representative Monitoring.** Samples and measurements taken for the purpose of monitoring under this Certification shall be representative of the monitored activity.
- B. **At least 10 days prior to the commencement of each annual dredge and disposal event,** the Applicant must notify the San Diego Water Board, in writing, of the scheduled start and stop dates for dredge and dredged material disposal activities.
- C. **USEPA Test Procedures.** Monitoring must be conducted according to United States Environmental Protection Agency (USEPA) test procedures approved under Title 40, Code of Federal Regulations (CFR), Part 136, *Guidelines Establishing Test Procedures for Analysis of Pollutants Under the Clean Water Act* as amended, unless other test procedures have been specified in this Certification.
- D. **Monitoring Instruments.** All monitoring instruments and devices which are used by the discharger to fulfill the prescribed monitoring program must be properly maintained and calibrated as necessary to ensure their continued accuracy.
- E. **Certified Laboratory.** All laboratory analyses must be performed in a laboratory certified to perform such analyses under the State Water Resources Control Board's Environmental Laboratory Accreditation Program or a laboratory approved by the San Diego Water Board.
- F. **Monitoring Reports.** Monitoring results shall be reported to the San Diego Water Board at the intervals specified in section VI of this Certification.
- G. **Noncompliance Reports.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the discharger becomes aware of the circumstances. A written submission shall also be provided within **five days** of the time the discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- H. **Monitoring and Reporting Revisions.** The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

- I. **Retain Records.** The Applicant must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Certification, and records of all data used to complete the application for this Certification. Records must be maintained for a minimum of five years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the San Diego Water Board.

- J. **Records of Monitoring Information.** Records of monitoring information shall include:
 1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The individual(s) who performed the analyses;
 5. The analytical techniques or methods used; and
 6. The results of such analyses.

- K. **Dredged Material Evaluation.** Dredged material must be sampled and tested according to the document entitled "*1991 Evaluation of Dredge Materials Proposed for Ocean Disposal*" under the direction and approval of the U.S. Army Corps of Engineers and USEPA.

- L. **Turbidity Monitoring.** Turbidity must be monitored in nephelometric turbidity units (NTU). If natural turbidity is between 0 to 50 NTUs, the maximum increase from dredge activities must not exceed 20 percent of the measured natural turbidity. If natural turbidity is between 51 to 100 NTUs, the maximum increase from dredge activities must not exceed 10 NTUs. If the turbidity increase exceeds 10 NTUs when turbidity is high or exceeds 20% when turbidity is between 0-50 NTUs, the Applicant shall report the noncompliance pursuant to Monitoring Provision VI.G. The Applicant must take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

- M. **Water Quality Sampling.** The Applicant shall perform water quality sampling and analysis at the dredge site in Dana Point Harbor and at the active shoreline beach disposal areas.
 1. Sampling shall occur at four sampling stations at the dredge site as specified below:
 - a. Station A is within 100 feet of the dredging operations;
 - b. Station B is 100 feet down current of the dredging operations;

- c. Station C is 300 feet down current of the dredging operations; and
 - d. Station D is the control site in a nearby area not affected by the dredge and disposal operations.
2. Sampling must occur at four sampling stations at each active beach disposal site:
 - a. Station E is 100 feet north of the disposal site;
 - b. Station F is 100 feet south of the disposal site;
 - c. Station G is 300 feet south of the disposal site; and
 - d. Station H is the control site 300 feet north of the disposal site.
 3. During dredging, weekly sampling shall occur at the four locations outlined in section VI.N.1 above. Sampling and analyses will, at a minimum, include: temperature; salinity; pH; turbidity; total suspended solids (TSS); total recoverable petroleum hydrocarbons (TRPH); and dissolved oxygen. Turbidity must be reported in percent transmittance and NTUs. Samples collected for TSS and TRPH must be mid depth grab samples. All other data must be collected at one-meter intervals from the water's surface to the seafloor. The results of the water quality assessment must be submitted with the Annual Project Progress Report.
 4. During disposal, weekly sampling must occur at the four locations outlined in section VI.N.2 above for each site. Sampling and analyses must, at a minimum, include: temperature; salinity; pH; turbidity; TSS; TRPH; dissolved oxygen; and Total Coliform, Fecal Coliform, Enterococcus (collectively TFE). Turbidity must be reported in percent transmittance and NTUs. Samples collected for TSS and TRPH must be mid depth grab samples. All other data must be collected at one-meter intervals from the water's surface to the seafloor. The results of the water quality assessment must be submitted with each Annual Project Progress Report.
 5. Bacteria sampling must occur at the active beach disposal sites for TFE as described above. Bacterial Water-Contact Standards are contained in the Ocean Plan and are hereby incorporated in this Certification as if fully set forth herein. If the mean weekly water samples are found to contain bacteria in levels that exceed Bacterial Water-Contact Standards, the Applicant must report the exceedance pursuant to Monitoring Provision VI.G. If persistent exceedances occur, the San Diego Water Board may direct that Applicant to modify or halt discharging onto the beach until water quality improves. When no materials are being deposited directly on the beach, no disposal bacteria monitoring is required.
- N. Visual Observations.** During sample collection conducted pursuant to this monitoring and reporting program, visual observations must also be made and recorded and submitted as part of the required Annual Project Progress Reports. The following observations must occur and be recorded:
1. Speed and direction of the currents;
 2. Tidal stage;
 3. Appearance of rubbish or refuse (including cans, bottles, paper, plastic, etc.), garbage, trash or any other solid waste;

4. Appearance of oil or other materials of petroleum origin;
5. Discoloration and extent of any visible turbidity plume;
6. Presence of nuisance odors attributable to the dredge activity or dredged material discharge to the beach disposal area; and
7. Photo documentation of the Project activities. Photo documentation must be conducted in accordance with the State Water Resources Control Board Standard Operating Procedure 4.2.1.4². The Applicant must conduct photo documentation of the Project site and shoreline disposal areas prior to, during, and after Project construction. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced. The report must include a compact disc that contains digital copies of all required photos (jpeg or similar file type).

O. Annual Project Progress Reports. The Applicant must submit Annual Project Progress Reports describing status of Project implementation and compliance with all requirements of this Certification to the San Diego Water Board prior to **March 1** of each year following the issuance of this Certification, until the Project has reached completion. The monitoring period for each Annual Project Progress Report shall be January 1st through December 31st of each year. The report must include the following information:

1. The names, qualifications, and affiliations of the persons contributing to the report;
2. The status, progress, and anticipated future schedule for Project activities including dredging and soil placement activities;
3. A description of Project delays encountered or anticipated that may affect the schedule for Project completion;
4. A description of each incident of noncompliance during the annual monitoring period and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;
5. Calculations of the daily volume (in cubic yards) of dredge material, the location from which the material was removed, and the disposal location of the material;
6. The total volume (in cubic yards) of dredged material removed during the Project and the total volume (in cubic yards) of material deposited at each final disposal location;
7. The results of the turbidity monitoring required under section VI.L of this Certification;

² Available at

http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf

8. The results of the ambient transmissivity conditions monitoring required under section VI.M of this Certification;
 9. The results of the water quality sampling required under section VI.N of this Certification; and
 10. The results of the visual observations monitoring required under section VI.O of this Certification.
- P. Reporting Authority.** The submittal of information required under this Certification, or in response to a suspected violation of any condition of this Certification, is required pursuant to Water Code section 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to Water Code sections 13268 or 13385.
- Q. Electronic Document Submittal.** The Applicant must submit all reports and information required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes (MB) will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. R9-2014-0053:PIN 805802
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. R9-2014-0053:PIN 805802.

- R. Document Signatory Requirements.** All applications, reports, or information submitted to the San Diego Water Board must be signed as follows:
1. For a corporation, by a responsible corporate officer of at least the level of vice president.
 2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
 3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
 4. A duly authorized representative may sign applications, reports, or information if:
 - a. The authorization is made in writing by a person described above.

- b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
- c. The written authorization is submitted to the San Diego Water Board Executive Officer.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

- S. **Document Certification Requirements.** All applications, reports, or information submitted to the San Diego Water Board must be certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VII. NOTIFICATION REQUIREMENTS

- A. **Twenty Four Hour Non-Compliance Reporting.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- B. **Hazardous Substance Discharge.** Except for a discharge which is in compliance with this Certification, any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of Orange, in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of

the Water Code unless the Applicant is in violation of a Basin Plan prohibition.

- C. **Oil or Petroleum Product Discharge.** Except for a discharge which is in compliance with this Certification, any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.
- D. **Anticipated Noncompliance.** The Applicant shall give advance notice to the San Diego Water Board of any planned changes in the Project which may result in noncompliance with Certification conditions or requirements.
- E. **Transfers.** This Certification is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:
1. **Transfer of Property Ownership:** The Applicant must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Applicant has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the San Diego Water Board **within 10 days of the transfer of ownership.**
 2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
 3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Applicant assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred

the Applicant must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Applicant must provide such notification to the San Diego Water Board within **10 days** of the transfer of BMP maintenance responsibility.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Applicant will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Applicant of this Certification in the event that a transferee fails to comply.

- F. **Discharge Commencement.** The Applicant must notify the San Diego Water Board in writing **at least 10 days prior to** the start of Project construction.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

- A. The County of Orange is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and promulgated a Notice of Exemption on January 14, 2014 under CEQA Guidelines Title 14, California Code of Regulations. The County of Orange has determined the project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301.
- B. The San Diego Water Board is a Responsible Agency under CEQA (Public Resources Code section 21069; CEQA Guidelines section 15381). The San Diego Water Board has independently determined that the Project is categorically exempt pursuant to CEQA Guidelines section 15301 and 15304 because the Project consists of maintenance of existing structures to restore structural stability for the purpose of public safety, does not expand the existing use of the structures, will not have a significant effect on the environment, and consists of maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.
- C. As a Responsible Agency under CEQA, the San Diego Water Board will file a Notice of Exemption in accordance with CEQA Guidelines section 15062.

IX. SAN DIEGO WATER BOARD CONTACT PERSON

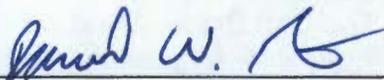
Darren Bradford, Environmental Scientist
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108
Telephone: (619) 521-3356
Email: darren.bradford@waterboards.ca.gov

X. WATER QUALITY CERTIFICATION

I hereby certify that the proposed discharge from the **Dana Point Harbor Maintenance Dredging Project** (Certification No. R9-2014-0053) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue individual waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited to, and all proposed mitigation being completed in strict compliance with, the applicants' Project description and/or the description in this Certification, and (b) compliance with all applicable requirements of the Basin Plan.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Certification No. R9-2014-0053 issued on October 7, 2014.



DAVID W. GIBSON
Executive Officer
San Diego Water Board

7 Oct. 2014
Date

ATTACHMENT 1

DEFINITIONS

Activity - when used in reference to a permit means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and restoration which may result in any discharge to waters of the state.

Buffer - means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

California Rapid Assessment Method (CRAM) - is a wetland assessment method intended to provide a rapid, scientifically-defensible and repeatable assessment methodology to monitor status and trends in the conditions of wetlands for applications throughout the state. It can also be used to assess the performance of compensatory mitigation projects and restoration projects. CRAM provides an assessment of overall ecological condition in terms of four attributes: landscape context and buffer, hydrology, physical structure and biotic structure. CRAM also includes an assessment of key stressors that may be affecting wetland condition and a "field to PC" data management tool (eCRAM) to ensure consistency and quality of data produced with the method.

Compensatory Mitigation Project - means compensatory mitigation implemented by the Applicant as a requirement of this Certification (i.e., applicant -responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Discharge of dredged material – means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States and/or State.

Discharge of fill material – means the addition of fill material into waters of the United States and/or State.

Dredged material – means material that is excavated or dredged from waters of the United States and/or State.

Ecological Success Performance Standards – means observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Enhancement – means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment – means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist. Creation results in a gain in aquatic resource area.

Fill material – means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Isolated wetland – means a wetland with no surface water connection to other aquatic resources.

Mitigation Bank – means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing mitigation for impacts authorized by this Certification.

Preservation - means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/ historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/ historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Start of Project Construction - For the purpose of this Certification, "start of Project construction" means to engage in a program of on-site construction, including site clearing, grading, dredging, landfilling, changing equipment, substituting equipment, or even moving the location of equipment specifically designed for a stationary source in preparation for the fabrication, erection or installation of the building components of the stationary source within waters of the United States and/or State.

Uplands - means non-wetland areas that lack any field-based indicators of wetlands or other aquatic conditions. Uplands are generally well-drained and occur above (i.e., up-slope) from nearby aquatic areas. Wetlands can, however, be entirely surrounded by uplands. For example, some natural seeps and constructed stock ponds lack aboveground hydrological connection to other aquatic areas. In the watershed context, uplands comprise the landscape matrix in which aquatic areas form. They are the primary sources of sediment, surface runoff, and associated chemicals that are deposited in aquatic areas or transported through them.

Water quality objectives and other appropriate requirements of state law – means the water quality objectives and beneficial uses as specified in the appropriate water quality control plan(s); the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act; and any other appropriate requirement of state law.

Orange County Dana Point Harbor
Dana Point Harbor Maintenance Dredging Project
Certification No. R9-2014-0053

**ATTACHMENT 2
PROJECT LOCATION MAPS**

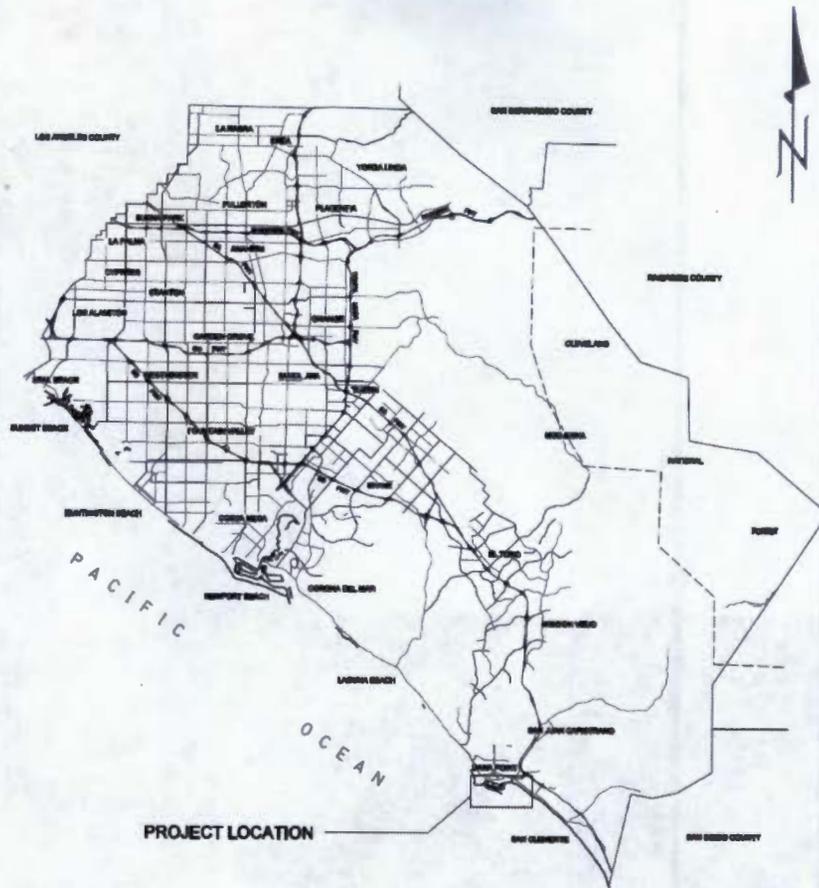


Figure 1. Dana Point Harbor Vicinity Maps.

Receiving Sites Sample Locations

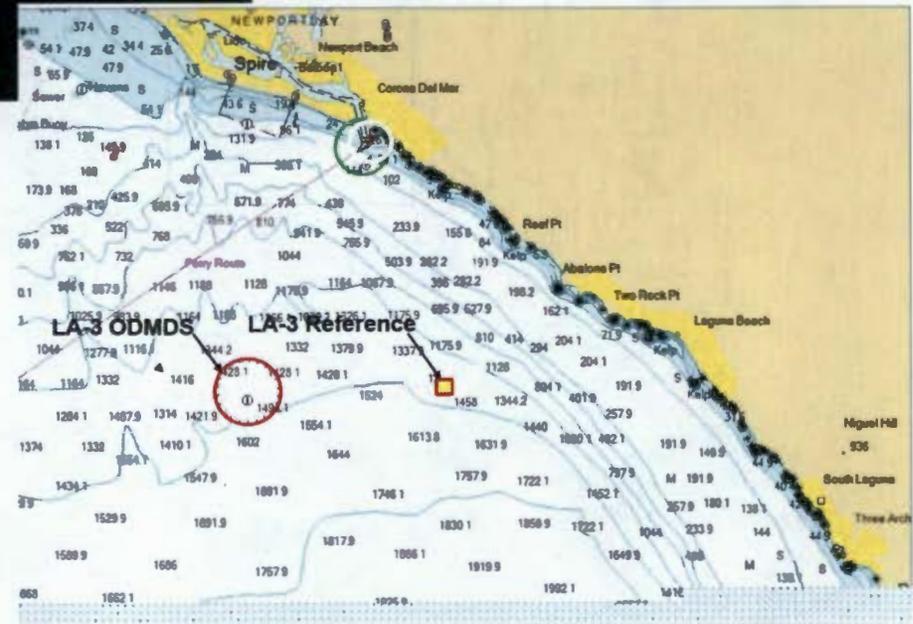


Figure 2

Orange County Dana Point Harbor
Dana Point Harbor Maintenance Dredging Project
Certification No. R9-2014-0053

**ATTACHMENT 3
PROJECT SITE PLANS**

Proposed Dredging Areas and Quantities



Total Volume with 2 ft overdredge allowance and 25% contingency factor: 158,000 CY

Previous dredge cycle in 2008/2009: total volume of ~78,000 CY, of which over 70% used for beach nourishment

Figure 4