

# PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

BUILDING STRONG®

## APPLICATION FOR PERMIT Newport Marina Maintenance Dredging

**Public Notice/Application No.:** SPL-2012-00246-JDG

**Project:** Newport Marina Maintenance Dredging

**Comment Period:** May 11, 2012 through June 11, 2012

**Project Manager:** Jim Green; 213-452-3419; James.D.Green@usace.army.mil

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### Applicant

Ron and Allyson Presta  
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2888 Bayshore Drive  
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(949) 548-1501

### Contact

Adam Gale  
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### Location

The proposed maintenance dredging project is located in Lower Newport Bay, fronting a residential complex located at 2888 Bayshore Drive at Newport Beach, California. Disposal of the dredged material would occur offshore at the LA-3 Ocean Dredged Material Disposal Site (ODMDS) near the City of Newport Beach, Orange County, California.

### Activity

The proposed work is to conduct maintenance dredging around an existing moorage dock to restore and maintain safe navigation within the project area. The work would include mechanically dredging up to 10,000 cubic yards (cy) of sediment in order to restore the original design depth of -7.0 feet mean below lower low water (MLLW). The volume would include up to 6,000 cy of sediment to achieve the original project depth and up to 4,000 cy of allowed overdepth (based on 1 foot of overdepth allowance). A clamshell mounted on a barge would be utilized to accomplish the dredging. The dredged material would be disposed of at the LA-3 ODMDS, a U.S. Environmental Protection Agency (USEPA) –approved open-ocean disposal site located offshore of Newport Beach, using a bottom-dump barge.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawings. We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that support the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. A permit will be issued, issued with special conditions, or denied under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Act. Comments should be mailed to:

LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
ATTN: James D. Green (SPL-2012-00246-JDG)  
Regulatory Division  
P.O. BOX 532711  
LOS ANGELES, CA 90053-2325

Alternatively, comments can be sent electronically to: James.D.Green@usace.army.mil.

The mission of the Corps of Engineers Regulatory Program is to protect the nation's aquatic resources while allowing reasonable development through fair, flexible, and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects and makes permit decisions that recognize the essential values of the nation's aquatic ecosystems to the general public as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, State, and local agencies; interest groups; and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

### **Evaluation Factors**

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that may be reasonably expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the USEPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to

determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

### **Preliminary Review of Selected Factors**

**EIS Determination** A preliminary determination has been made that an Environmental Impact Statement is not required for the proposed work.

**Water Quality** The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the Santa Ana Regional Water Quality Control Board (RWQCB). Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps prior to permit issuance. The applicant has applied for 401 Water Quality Certification.

**Coastal Zone Management** The applicant has certified that the proposed activity would comply with and would be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission that the project is consistent with the State's Coastal Zone Management Plan. The Applicant believes the project is exempt from requirements to obtain a Coastal Development Permit from the California Coastal Commission pursuant to Section 30610(c) of the California Coastal Act and as detailed in Section 13252(a)(2)(A) of the Commission's administrative regulations because the work entails maintenance dredging with disposal outside the Coastal Zone. Federal Coastal Zone Management Act consistency is being requested.

**Cultural Resources** The proposed work involves maintenance dredging within the footprint of the existing project area. Dredging would not occur in previously undisturbed areas. The project would have no impact to cultural resources.

**Endangered Species** Federally listed endangered species potentially present in the project vicinity include the California least tern (*Sterna antillarum browni*). No individuals of this species have been recorded within the immediate project area and their potential presence is unlikely. As listed in the Department of Fish and Game California Diversity Database, California least terns nest on Tern and Skimmer islands in the northeast corner of Newport Bay, more than 3 miles from the project area. To prevent the potential for adverse effects to the foraging opportunities for the least tern, a silt curtain would be deployed around active dredging areas. Given this prevention measure, the short duration of the project, the small area of project impacts, and the distance from least tern breeding colonies, adverse effects to foraging are not anticipated. Thus, the Corps has determined that there would be no impact to the California least tern.

**Essential Fish Habitat** The project site is located within a general area designated as Essential Fish Habitat (EFH) by two Fisheries Management Plans (FMPs): the Coastal Pelagic Species and the Pacific Coast Groundfish FMPs. Newport Bay is also considered estuarine habitat, which is considered a Habitat Area of Particular Concern (HAPC) for EFH. Potential dredging-related impacts to EFH would be temporary with minor increases in turbidity in the immediate vicinity of active dredging during construction. Dredging may temporarily remove benthic infauna from the dredged

area but overall fish and benthic biota at the site is sparse, and infaunal communities would rapidly recolonize following dredging. Silt curtains would be deployed around the dredge area during construction to prevent any off-site migration of turbidity. Because of the temporary nature of the disturbance, the localized area of construction, and the use of best management practices (BMPs; such as silt curtains), dredging would have minimal impacts to EFH and species managed under the Coastal Pelagic Species and the Pacific Coast Groundfish FMPs.

Eelgrass and other habitats present within Newport Bay are considered HAPC for EFH. Besides occurring in the Bay, no other HAPC are found within the project area. An eelgrass survey was conducted on April 1, 2012. Approximately 66.5 square feet of several disjunct patches of eelgrass were observed within the dredge footprint. The Southern California Eelgrass Mitigation Policy (SCEMP; Revision 11) allows for an exclusion from the mitigation requirements for projects impacting less than 10 square meters (108 square feet) of eelgrass. Impacts to the approximately 66.5 square feet of eelgrass within the dredge footprint fall under the "de minimus" threshold waiver in the SCEMP. The proposed project would also allow more light to penetrate below the boats tied up at the marina by restoring the design depths to -7 feet below MLLW.

**Public Hearing** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

#### **Proposed Activity for Which a Permit is Required**

The proposed work requiring a Department of the Army Permit is the maintenance dredging of sediments at an existing moorage dock and disposal of the dredged material at the LA-3 Ocean Dredged Material Disposal Site (ODMDS).

**Basic Project Purpose** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). The project is water dependent.

**Overall Project Purpose** The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose of the proposed work is to restore and maintain safe navigation within the project area by removing excess sediments.

#### **Additional Project Information**

**Alternatives Information** The applicant has considered several alternatives to the proposed project. This includes the no Federal action alternative, reduced dredge volume, alternative dredging methods, and alternative disposal/reuse options. Because the overall project purpose is restore and maintain safe navigation at the specific project site, off-site dredging alternatives are not practicable and were not considered. The following is a brief description of possible no action and on-site alternatives.

**No Federal Action:** With the no Federal action alternative (i.e., no permit issued by the Corps), temporary impacts associated with dredging operations would not occur. The existing sediment above the -7.0 foot (MLLW) design depth proposed for removal would remain and improvements to the navigable capacity of the project area would not occur under this alternative.

**Reduced Dredge Volume:** Reducing the volume of dredging would proportionally lessen the degree of temporary impacts. However, as with the no federal action alternative, accumulated sediment would remain within the project area and continue to impair navigation.

**Alternative Dredging Methods:** Hydraulic dredging would be an alternative to mechanical dredging with a clamshell bucket. A hydraulic dredge consists of a large suction pipe mounted on a barge and supported and moved about by a boom; a mechanical agitator or cutterhead, which churns up earth in front of the pipe; and centrifugal pumps mounted on a dredge to suction water and loose solids. Using a hydraulic dredge, compatible material would be excavated and pumped through a temporary pipeline to a nearshore disposal site. With hydraulic dredging, barge transport of sediment is not needed. Barge transport impacts are therefore avoided. However, at this time a dredged material disposal site does not exist within a manageable distance from the project area. The LA-3 ODMDS is too far from the dredge site and not considered a practicable disposal alternative. Hydraulic dredging would require identification or creation of a suitable disposal site nearby, such as a confined aquatic disposal (CAD) site, or upland disposal.

Hydraulic dredging produces a high volume of excess water with the sediment requiring disposal or management. In addition, hydraulic dredging is less precise than mechanical dredging. Precise dredging along the shoreline and in close proximity to in-water structures is more readily accomplished through mechanical dredging.

**Alternative Disposal/Reuse Options:** Under this alternative, sediments would be dredged, barged to an offloading area, dewatered and dried, and transported to a mine or landfill for disposal. Marine dredging projects utilizing upland landfills and disposal sites are typically required to use private landfills, which is costly. The costs for landfill disposal can be high ranging between \$100 and \$250 per cubic yard. In addition, upland disposal would require the use of a large upland area adjacent to Lower Newport Bay for dewatering of the sediment prior to loading into trucks for transportation to a landfill. Trucking the sediment would result in an increase in traffic of heavy trucks on surface streets and through residential areas for the duration of the project, which could adversely affect traffic and air quality.

**Proposed Mitigation** No mitigation is proposed for this project.

### **Proposed Special Conditions**

The following list is comprised of proposed Permit Special Conditions, which are required of similar types of projects:

Construction BMPs, such as contractor education on the terms and conditions of the permits, trash and debris control, and control of equipment staging and maintenance areas, will be applied to further minimize temporary, construction-related impacts.

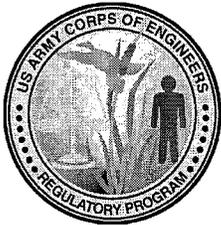
Dredging may result in temporary, minor water quality impacts due to re-suspension of some sediment in the immediate vicinity of the dredging. Water quality BMPs and monitoring will be implemented at the site, such as:

- Encompassing the dredge and disposal scows in a continuous floating silt curtain
- Monitoring for changes in dissolved oxygen (DO), pH, and turbidity as a result of dredging activities

- Stopping project until proper avoidance or minimization measures can be met, if DO, pH, or turbidity are measured outside of the acceptable range as a result of project activities
- Inspecting dredged material disposal scows to ensure proper loading and leakage avoidance during transport
- Using a trash boom
- Implementing daily site inspections (performed by the construction manager)
- Implementing a contractor education program

The Corps may incorporate additional standard dredging and special conditions, as appropriate.

For additional information please call Jim Green of my staff at 213-452-3296 or via e-mail at James.D.Green@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



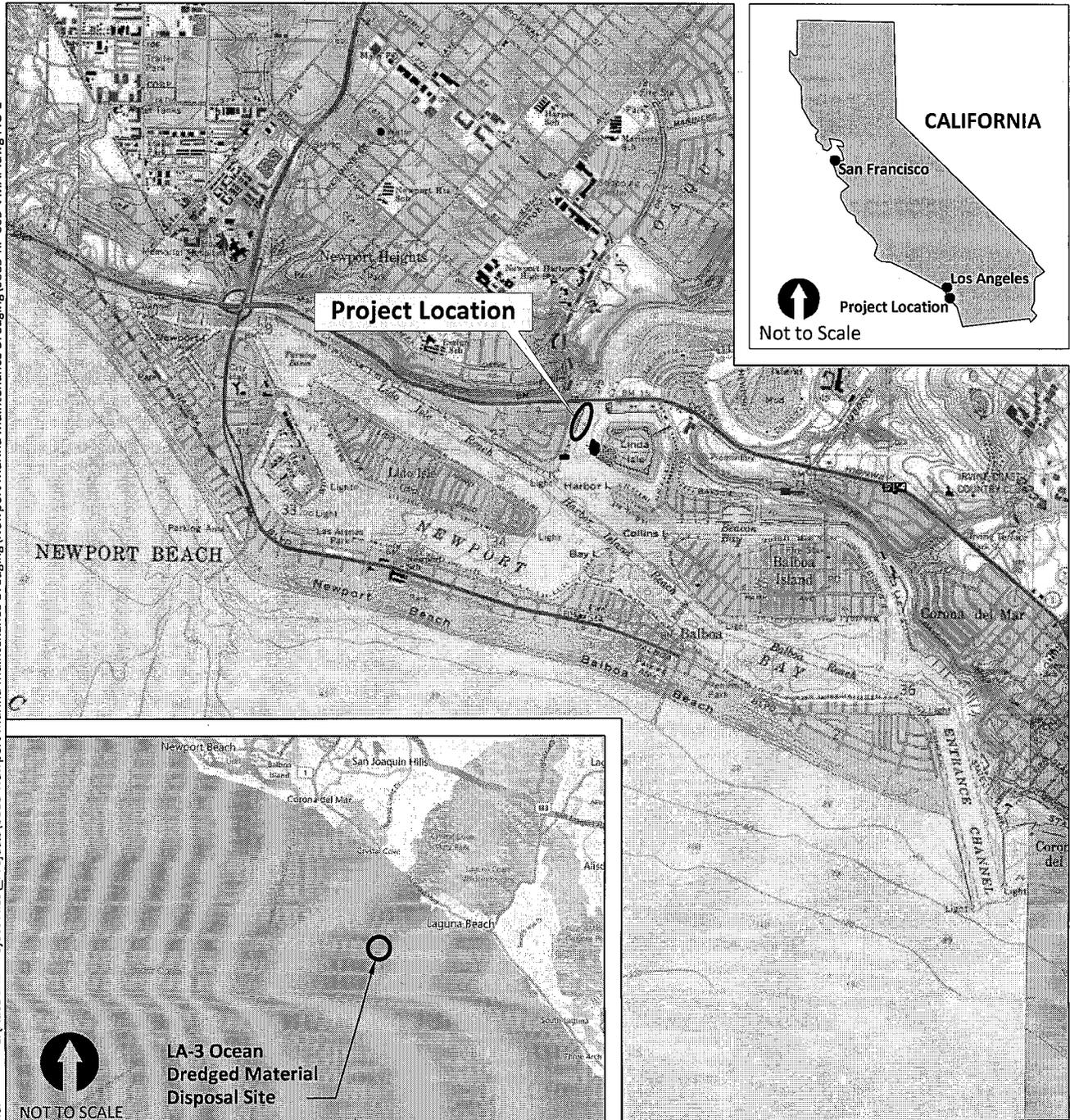
*Regulatory Program Goals:*

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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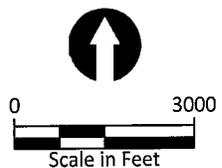
**U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT**  
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L:\AutoCAD Project Files\Projects\0885-Newport Marina Maintenance Dredging\Newport Marina Maintenance Dredging\0885-RP-003-VMAP.dwg FIG-1  
May 01, 2012 12:16pm mpratschner



**SOURCE:** Image prepared from USGS data.  
**HORIZONTAL DATUM:** California State Plane, Zone 6, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW) = 0.0' - N.O.S. datum

Approximate Project Location:  
33° 36.900', 117° 54.380



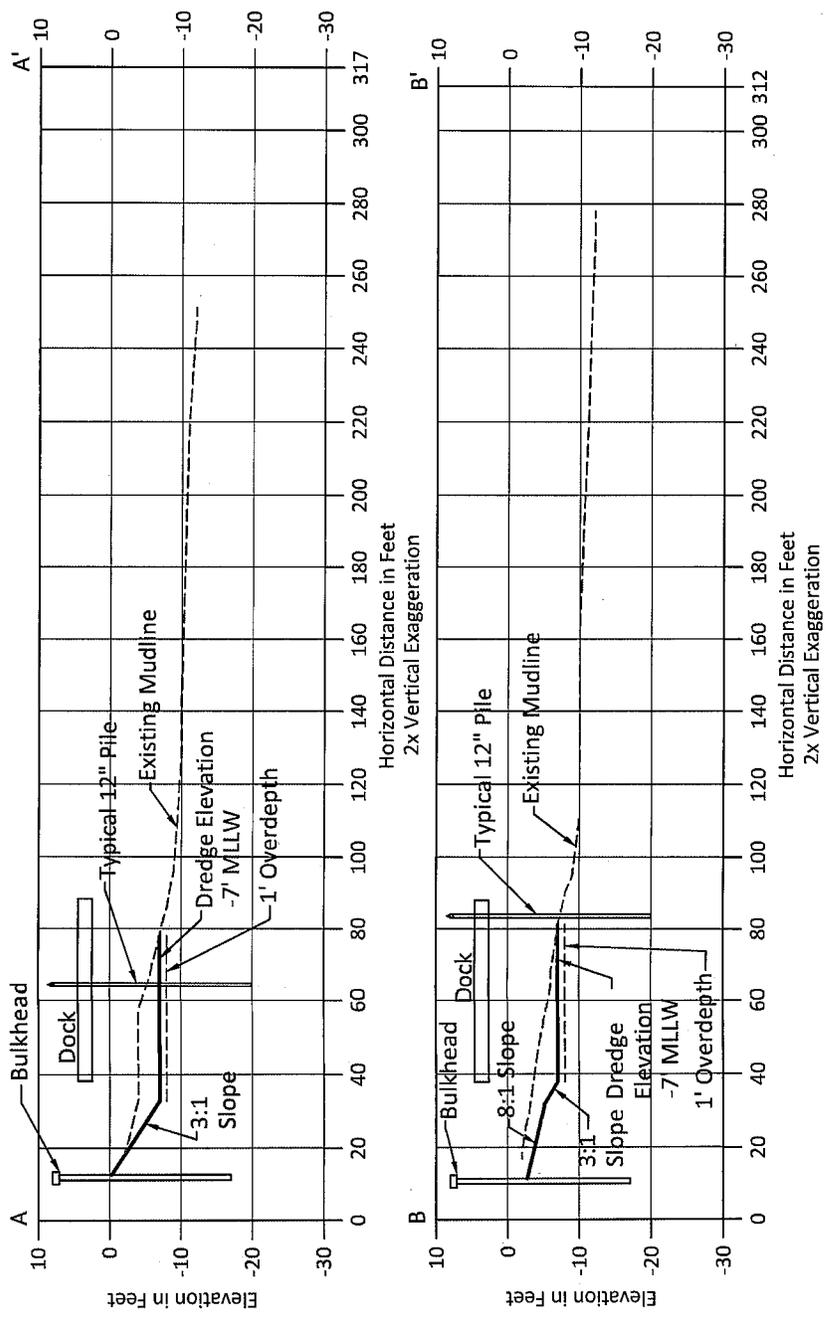
SPL 2012 - 00246



Application By: Newport Marina  
Proposed Dredging & Disposal  
1 May 2012

**Figure 1**  
Vicinity Map  
Newport Marina Maintenance Dredging





**SOURCE:** Bathymetric survey, site features, and dredge plan from survey performed by Atlas Engineering Co., dated March 26, 2012.  
**HORIZONTAL DATUM:** California State Plane Zone 6, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

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SPL-2012-00246



**Figure 3**  
 Cross Sections  
 Newport Marina Maintenance Dredging