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III. Electronic Access

Persons with access to the Internet may obtain the guidance at <http://www.cfsan.fda.gov/guidance.html>.

Dated: September 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-7967-7]

Ocean Dumping; LA-3 Ocean Dredged Material Disposal Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today designates LA-3 as a permanent ocean dredged material disposal site (ODMDS) located offshore of Newport Beach, California, managed at a maximum annual dredged material disposal quantity of 2,500,000 cubic yards (yd³) (1,911,000 cubic meters [m³]), and adjusts the management of the permanently-designated LA-2 ODMDS at an increased maximum annual dredged material disposal quantity of 1,000,000 yd³ (765,000 m³) for the ocean disposal of clean dredged material from the Los Angeles County and Orange County regions. The availability of suitable ocean disposal sites to support ongoing maintenance and capital improvement projects is essential for the continued use and economic growth of the vital commercial and recreational areas in the region. Dredged material will not be allowed to be disposed of in the ocean

unless the material meets strict environmental criteria established by the EPA and U.S. Army Corps of Engineers (USACE).

The action would shift the center of the permanently-designated LA-3 site approximately 1.3 nautical miles (nmi) (2.4 kilometers [km]) to the southeast of the interim LA-3 site, and encompass a region that is already disturbed by dredged material. The permanent site also would be located on a flat, depositional plain, and away from the submarine canyons, that will be more amenable to surveillance and monitoring activities. The LA-2 site is a permanently designated ODMDS that has been historically managed at an average annual disposal quantity of 200,000 yd³ (153,000 m³) for the disposal of material dredged primarily from the Los Angeles/Long Beach Harbor complex. The action will allow an increased volume of dredged material to be disposed annually at this site. The annual disposal quantity has occasionally exceeded the historical annual average due to capital projects from both the ports of Los Angeles and Long Beach. Thus, the new maximum volume designation would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations.

DATES: This final regulation is effective on October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR-8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972-3476 or FAX: (415) 947-3537 or e-mail: ota.allan@epa.gov.

SUPPLEMENTARY INFORMATION: The supporting document for this site designation is the Final Environmental Impact Statement for the Site Designation of the LA-3 Ocean Dredged Material Disposal Site off Newport Bay, Orange County, California. This document is available for public inspection at the following locations:

1. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105.

2. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460.

3. U.S. EPA, Southern California Field Office, 600 Wilshire Boulevard, Suite 1460, Los Angeles, CA 90017.

4. Lloyd Taber-Marina del Rey Library, 4533 Admiralty Way, Marina del Rey, CA 90292.

5. Long Beach Public Library, 101 Pacific Avenue, Long Beach, CA 90822.

6. Los Angeles Public Library, Central Library, 630 West 5th Street, Los Angeles, CA 90071.

7. Los Angeles Public Library, San Pedro Regional Branch Library, 931 South Gaffey Street, San Pedro, CA 90731.

8. Newport Beach Public Library, Balboa Branch, 100 East Balboa Boulevard, Balboa, CA 92661.

9. Newport Beach Public Library, Central Library, 1000 Avocado Avenue, Newport Beach, CA 92660.

10. Newport Beach Public Library, Corona del Mar Branch, 420 Marigold Avenue, Corona del Mar, CA 92625.

11. Newport Beach Public Library, Mariners Branch, 2005 Dover Drive, Newport Beach, CA 92660.

12. U.S. EPA Web site: <http://www.epa.gov/region9>.

13. U.S. Army Corps of Engineers' Web site: <http://www.spl.usace.army.mil>.

A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the LA-3 and LA-2 ODMDS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties in the Los Angeles and Orange County areas seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the LA-3 and LA-2 ODMDS, as well as the USACE itself (when proposing to dispose of dredged material at the LA-3 and LA-2 ODMDS). Potentially affected categories and entities seeking to use the LA-3 and LA-2 ODMDS and thus subject to this Rule include:

| Category | Examples of potentially affected entities |
|---|---|
| Industry and General Public | Ports. Marinas and Harbors. Shipyards and Marine Repair Facilities. Berth owners. |
| State, local and tribal governments | Governments owning and/or responsible for ports, harbors, and/or berths. Government agencies requiring disposal of dredged material associated with public works projects. |
| Federal Government | U.S. Army Corps of Engineers Civil Works and O & M projects. |

| Category | Examples of potentially affected entities |
|----------|--|
| | Other Federal agencies, including the Department of Defense. |

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the LA-3 and/or LA-2 ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations part 227 (40 CFR part 227).

It is EPA's policy to publish an EIS for all ODMDS designations (63 FR 58045, October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.*, land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Remaining alternative sites are evaluated using EPA's ocean disposal criteria at 40 CFR part 228 and compared in the EIS. Of the sites which satisfy these criteria, the

site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** does not constitute approval of dredged material for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Ocean disposal is only allowed when EPA and USACE determine that the proposed activity is environmentally acceptable according to the criteria at 40 CFR part 227. Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation testing (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal.

The interim LA-3 disposal site is located on the continental slope of Newport Submarine Canyon at a depth of about 1,475 feet (ft) (450 meters [m]), approximately 4.3 nmi (8 km) southwest of the entrance of Newport Harbor. This region is characterized by a relatively smooth continental slope (approximately two-degree slope) incised by a complicated pattern of meandering broad submarine canyons that can be up to 98 ft (30 m) deep and 656–2,625 ft (200–800 m) wide. The circular interim site boundary is centered at 33°31'42" N and 117°54'48" W, with a 3,000 ft (915 m) radius.

The interim LA-3 site has been used for disposing sediment dredged from harbors and flood channels within the County of Orange since 1976. Prior to 1992, LA-3 was permitted by the USACE as a designated ocean disposal site for specific projects only. In 1992, the EPA approved LA-3 as an interim disposal site; this interim status expired January 1, 1997 (Water Resources Development Act [WRDA] 1992). The expiration date was extended to January 1, 2000, through the 1996 WRDA (1996). In 1999, this interim status was extended for another three years and expired December 31, 2002. The action designates LA-3 as a permanent

ODMDS for disposal of dredged materials generated from ongoing dredging activities, such as dredging to preserve the wetland habitat within the Upper Newport Bay or to maintain navigation channels at Newport and Dana Point Harbors.

The action also shifts the center of the LA-3 site approximately 1.3 nmi (2.4 km) to the southeast of the interim LA-3 site. The circular boundary of the permanently designated LA-3 site would be centered at 33°31'00" N and 117°53'30" W and would have a 3,000 ft (915 m) radius. The depth of the center of the site would be approximately 1,600 ft (490 m). At this location the site boundary would be farther away from the submarine canyons that run through the interim site, thus simplifying surveillance and monitoring activities.

The LA-2 ODMDS was designated as a permanent disposal site on February 15, 1991. The LA-2 site is located on the outer continental shelf, margin, and upper southern wall of the San Pedro Sea Valley at depths from approximately 360–1,115 ft (110 to 340 m), about 5.9 nmi (11 km) south-southwest of the entrance to Los Angeles Harbor. The relatively flat continental shelf occurs in water depths to about 410 ft (125 m) with a regional slope of 0.8 degree. Then the slope becomes steep at about 7 degrees seaward to the shelf break. The southern wall of the San Pedro Sea Valley drops away with slopes steeper than 9 degrees. The site boundary is centered at 33°37'6" N and 118°17'24" W with a radius of 3,000 ft (915 m).

The LA-2 ODMDS does not have an annual disposal volume limit. However, the site designation EIS evaluated potential impacts based on a historical annual average of 200,000 yd³ (153,000 m³). Since 1991, the annual disposal quantity occasionally has exceeded the pre-designation historical annual average because of capital projects from both the ports of Los Angeles and Long Beach.

The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as on estimates of future average annual dredging. An overall average of approximately 390,000 yd³ (298,000 m³) per year of dredged material requiring ocean disposal is expected to be

generated in the area. The purpose of the action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated in the greater Los Angeles County-Orange County area.

EPA and USACE encourage the use of dredged material for beach replenishment in areas degraded by erosion. The grain size distribution of dredged material must be compatible with the receiving beach, and biological and water quality impacts must be considered prior to permitting of beach disposal. EPA and USACE evaluate the selection of appropriate disposal methods on a case-by-case basis for each permit. Additionally, opportunities arise periodically to use dredged material for marine landfilling projects, also referred to as the creation of "fastlands." When the need arises, the use of dredged material for the creation of fastlands is considered a viable alternative to ocean disposal. Other potential beneficial uses for dredged material include construction fill, use as cap material in aquatic remediation projects, wetland creation, wetland restoration, landfill daily cover, and recycling into commercial products such as construction aggregate, ceramic tiles, or other building materials. Each of these disposal management options is evaluated when permits are issued for individual dredging projects.

A Zone of Siting Feasibility (ZSF) analysis estimates that after consideration of upland disposal and other beneficial uses, an average of approximately 390,000 yd³ (298,000 m³) per year of dredged material will require ocean disposal. This material would be proposed for ocean disposal by project proponents because it is not of an appropriate physical quality (e.g., it is predominantly fine-grained material) for reuse or because a reuse opportunity cannot be found that coincides with the timing of the dredging projects.

The LA-2 ODMDS is approximately 5.9 nmi (11 km) offshore from the entrance to the Port of Los Angeles and approximately 8.4 nmi (15.5 km) from the entrance to the Port of Long Beach. The majority of suitable dredged material from USACE and port dredging projects in the Los Angeles County area that could not be beneficially reused has traditionally been disposed of at this site. When EPA originally designated LA-2 as a permanent disposal site in 1991, it evaluated the past history of disposal at the site up to that time and determined that significant adverse

environmental impacts were unlikely to occur if similar levels of disposal continued there in the future.

Most dredging projects from the Orange County area have not used the LA-2 site because of the extra costs and increased environmental impacts (such as increased air emissions) associated with transporting dredged material the longer distance to this site. Instead, projects traditionally have used the LA-3 interim site, located approximately 4.3 nmi (8 km) offshore from Newport Bay. The LA-3 interim disposal site was originally scheduled to close down on January 1, 1997, but the interim designation was extended by Congress until January 1, 2000 to allow a major Newport Bay dredging project to be completed (the approximately 1,000,000 yd³ [765,000 m³] project to restore depth to sediment basins located in Upper Newport Bay). LA-3 was the only interim site in the nation specifically extended in this manner. Most recently, via the WRDA of 1999, Congress extended the status of LA-3 as an interim ODMDS for another three years (until December 31, 2002) to allow time for site designation studies and completion of the site designation EIS.

The action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated in the greater Los Angeles County-Orange County area by permanently designating the LA-3 ODMDS.

C. Disposal Volume Limit

The action is final designation of the LA-3 ODMDS managed at a maximum annual dredged material disposal quantity of 2,500,000 yd³ (1,911,000 m³) and the management of LA-2 at an increased maximum annual dredged material disposal quantity of 1,000,000 yd³ (765,000 m³) for the ocean disposal of dredged material from the Los Angeles and Orange County region. The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as estimates of future average annual dredging.

D. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the action. The main purpose of the SMMP is to provide a structured framework for resource agencies to ensure that dredged

material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (section 103(a) of the MPRSA). Three main objectives for management of both the LA-2 and LA-3 ODMDSs are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS.

The EPA and USACE Los Angeles District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that the material that is deposited is landing where it is supposed to land, as well as chemical monitoring to confirm that the sediment chemistry conforms to the pre-disposal testing requirements. Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed of, and the time, rates, and methods of disposal; and (2) recommending changes for site use, disposal amounts, or designation for a limited time based on periodic evaluation of site monitoring results.

E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

General Selection Criteria

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

Dredged material disposal activities have occurred at the LA-2 and LA-3 sites since the late 1970s. Historical disposal at the interim LA-3 site has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. Disposal at the LA-2 site, while located

within the U.S. Coast Guard Traffic Separation Scheme, has not interfered with these activities. The continued use of these sites would not change these conditions.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

The LA-2 and LA-3 sites are sufficiently removed from shore and limited fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

Evaluation of the LA-2 and LA-3 sites indicates that they presently do and would continue to comply with these criteria. Additionally, compliance will continue to be evaluated through implementation of the Site Monitoring and Management Plan (SMMP).

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The LA-2 and LA-3 disposal sites are circular areas with a 3,000 ft (915 m) radius. The size of the sites has been determined by computer modeling to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations. The designation of the size, configuration, and location of sites was determined as part of the evaluation study.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and

other such sites that have been historically used.

The LA-3 site is located beyond the continental shelf, near a canyon on the continental slope, in an area that has been used historically for the disposal of dredged material. LA-3 is the only site in the vicinity that fully meets the above criteria. The LA-2 site, which has been permanently designated and has been used for the ocean disposal of dredged material since 1977, is located near the edge of the continental shelf at the 600 ft (183 m) contour.

Specific Selection Criteria

1. Geographical position, depth of water, bottom topography, and distance from the coast.

Centered at 33°31'00" N, 117°53'30" W, the LA-3 site bottom topography is gently sloping from approximately 1,500 to 1,675 ft (460 to 510 m). Situated near the slope of a submarine canyon, the site center is approximately 4.5 nmi (8.5 km) from the mouth of Newport Harbor. The LA-2 site is at the top edge of the continental slope in approximately 360 ft to 1,115 ft (110 to 340 m) of water. Centered at 33°37'06" N and 118°17'24" W, the LA-2 site is located just south of the San Pedro Valley submarine canyon, approximately 5.9 nmi (11 km) from the entrance to Los Angeles Harbor.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

The LA-2 and LA-3 sites are located in areas that are utilized for feeding and breeding of resident species. The LA-3 site is located in the gray whale migration route area, while the LA-2 site is located near the migration route. The California gray whale population was severely reduced in the 1800s and 1900s due to international whaling. However, protection from commercial whaling initiated in the 1940s has allowed the population to recover. There is no indication that disposal activities at LA-2 or LA-3 have adversely affected the gray whale. There are no known special breeding or nursery areas in the vicinity of the two disposal sites.

3. Location in relation to beaches and other amenity areas.

The LA-3 site boundary is located over 3.5 nmi (6.5 km) offshore of the nearest coast in the Newport Beach and Harbor area. The LA-2 site boundary is located over 4.6 nmi (8.5 km) offshore from the nearest coast in the Palos Verdes area. Other beach areas are more distant. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Dredged material to be disposed of will be predominantly clays and silts primarily originating from the Los Angeles/Long Beach Harbor area and from Newport Bay and Harbor. Average annual disposal volumes at LA-3 range from 0 to approximately 337,000 yd³ (0 to 258,000 m³). Average annual disposal volumes at LA-2 range from 68,000 yd³ to approximately 405,000 yd³ (52,000 to 310,000 m³).

Dredged material is expected to be released from split hull barges. No dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the LA-3 and LA-2 sites.

5. Feasibility of surveillance and monitoring.

The EPA (and USACE for federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring the disposal sites is feasible but somewhat complicated by topography. At LA-3, this complication is reduced by relocation of the permanent LA-3 site away from submarine canyons.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Currents and vertical mixing will disperse unconsolidated fine grained dredged sediments in the upper water column in the vicinity of ODMDS boundaries. Prevailing currents are primarily parallel to shore and flow along constant depth contours. Situated near the slope of a submarine canyon, the LA-3 area would be expected to receive sedimentation from erosion and nearshore transport into the canyon. At LA-2, some sediment transport offshore occurs due to slumping. Overall, the seabed at both sites are considered to be non-dispersive, and sediments at both sites are expected to settle and remain offshore, with no impact expected on shore areas.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

Localized physical impacts have occurred to sediments and benthic biota within the disposal sites due to past disposal operations. However, these activities have not resulted in long-term significant adverse impacts on the local

environment. No interactions with other discharges are anticipated due to the distances from the discharge points.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

Continued use of the LA-2 and LA-3 sites would result in minor interferences with commercial shipping and fishing vessels due to disposal barge traffic. Sites are not located within active oil or natural gas tracts. Continued disposal operations are not anticipated to adversely impact existing nearby oil and gas development facilities or tracts, or other socioeconomic resources. Overall, no significant interferences associated with this criterion are expected to result from continued use of the LA-2 and LA-3 sites.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

Water quality at the two disposal areas is good, but temporary, localized physical impacts have occurred to sediments and benthic ecology due to past disposal operations. Additionally, dredged material deposited in the past at the two disposal areas was chemically screened prior to disposal, and no known dredged material was disposed of for which chemical concentrations exceeded the range of chemical concentrations approved for ocean disposal.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The potential is low due to depth differences between the disposal sites and the likely sources of dredged material.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

No known shipwrecks or other cultural resources occur within 2.7 nmi (5 km) of either the LA-2 or LA-3 disposal sites.

F. Responses to Comments

Comments to the Draft EIS

The draft EIS was published in the **Federal Register** on January 21, 2005. A 45-day public review and comment period extended from the publication date through March 7, 2005. Six comment letters from various individuals, organizations, and agencies were received during the public review and comment period. In addition to the six comment letters, two public

meetings were held on Wednesday, February 9, 2005, to solicit comments from interested parties. The comments, and associated responses, are summarized topically below.

Preferred Alternative

Two commenters concurred with the preferred alternative selected in the EIS.

Site Boundaries for the LA-3 ODMDS

One commenter questioned the boundary of the LA-3 site relative to the expected deposition pattern for dredged materials on the seafloor. The boundaries of the disposal site were chosen based on historical usage and to ensure that the majority of dredged material falls within the site boundaries given the 1,000 ft (305 m) radius disposal target for the disposal barges. Instantaneous sediment accumulation rates in excess of 1 ft (30 cm) per disposal event were assumed to result in the loss of the existing infaunal community. However, for assessing impacts, the EIS conservatively assumed that the infaunal community would be lost if the deposition rate exceeded 1 ft (30 cm) over a one-year period (this is conservative because the infaunal community is expected to rapidly recover for instantaneous deposition rates of less than 30 cm [1 ft] per disposal event). For all modeled scenarios, the worst-case 1 ft (30 cm) annual deposition contour lies well within the 3,000 ft (915 m) radius site boundary. While a certain quantity of material is expected to settle outside of the site boundary, it is impractical and undesirable to extend the site boundary beyond this distance in an attempt to encompass all of the dredge material that will settle on the ocean bottom. Extending the site boundaries to encompass all of the material expected to settle on the ocean bottom would not alter the conclusion of significance (or lack thereof) concerning adverse impacts on the benthic community determined in the EIS. The 3,000 ft (915 m) radius is considered appropriate for site management purposes.

Estimates of Future Disposal Volumes Relative to Site Capacity

Two commenters asked for clarification of projected disposal volumes at the LA-2 and LA-3 sites. For both management and environmental impact considerations, the dredged material volume capacities specified for LA-2 and LA-3 were based on conservative estimates of the worst-case maximum amount of dredged material requiring ocean disposal in any given year. These estimates account for all known and reasonably anticipated

capital and maintenance dredging projects in the Los Angeles and Orange County regions. It is unlikely that all potential projects would occur simultaneously in any given year. Therefore, the environmental impact analysis considered both the potential worst-case conditions and a more reasonable annual average condition.

For each potential dredging project, the Zone of Siting Feasibility (ZSF) Study evaluated whether disposal at the LA-2 or LA-3 ODMDSs would be economically feasible. For the purposes of establishing the maximum analyzed annual dredged material quantities that could be placed at LA-2 or LA-3, it was assumed that the Los Angeles County projects identified in the ZSF Study (USACE 2003a) would utilize LA-2, and that the Orange County projects would utilize LA-3.

Accordingly, based on the projected dredging volumes from the ZSF study, as well as site management considerations, the LA-2 site would be designated for an annual maximum of 1,000,000 yd³ (765,000 m³) and the LA-3 site would be designated for an annual maximum of 2,500,000 yd³ (1,911,000 m³). These maximum volume designations would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations. Thus, the Final Rule will amend use of the existing LA-2 site for a higher maximum annual quantity to manage disposal of dredged material generated primarily from the Los Angeles County region, and it would permanently designate the LA-3 ODMDS with an annual quantity adequate to manage disposal of dredged material generated locally from projects to preserve the wetland habitat within the Upper Newport Bay and/or to maintain navigation channels at Newport and Dana Point Harbors.

However, designation of the sites does not preclude material generated in Orange County from being disposed of at LA-2 or material generated in Los Angeles County from being disposed of at LA-3. The choice of which site to use for the disposal of dredged material for individual dredging projects will be based on both economic and environmental factors. Decisions to allow ocean disposal for individual dredging projects are made on a case-by-case basis through the Marine Protection, Research and Sanctuaries Act (MPRSA) Section 103 permitting process or its equivalent process for USACE's Civil Works projects and are subject to subsequent environmental review and documentation.

Site Monitoring and Management Plan

One commenter expressed support for the SMMP, but requested clarification on opportunities for public input to the SMMP. A SMMP has been developed that contains approaches for monitoring impacts to marine organisms, as well as verification of model predictions. Development of this SMMP was based on a review of other SMMPs prepared for similar ocean disposal sites.

The site monitoring reports described in the SMMP will be public documents that will be made available either through posting on the EPA Web site or direct mailing upon request. EPA will accept public comments regarding those reports, although there will not be a formal comment period. Additionally, the public will get an opportunity to comment on any SMMP implementation manual that is prepared by EPA subsequent to this action. No revisions to the SMMP as written are necessary to allow for this level of public input.

Relocation of the LA-3 ODMDS

One commenter indicated that relocating LA-3 was inconsistent with EPA site selection criteria. Although the permanent LA-3 site lies outside of the boundaries of the interim LA-3 site, the permanent site has been disturbed by historical dredged material disposal events. During reviews performed by the U.S. Geological Survey in 1998, a substantial amount of dredged material was noted outside of the interim site boundaries, particularly to the north, northeast, and southeast of the site. This was primarily attributed to disposal short of the targeted disposal area and errors in disposal generally resulting from inaccurate navigation.

Locating the permanent site boundary at the new location (away from the interim site) would redirect future dredged material disposal to an area historically used for disposal (and thus already undisturbed). Additionally, due to the nature of the local topography, the permanent site would be more amenable to monitoring via precision bathymetry. Further, as described in the SMMP, enhanced vessel tracking and monitoring will ensure that future disposal activities occur accurately within the designated target area of the permanent site.

Extension of the Interim Designation of LA-3

One commenter recommended extending the interim designation of LA-3. Congressional authorization for the interim site designation expired December 31, 2002. Requests for another extension would have to be made to

Congress. In any event, the action obviates the need for an extension. Thus, an extension of LA-3's interim site designation is not necessary.

Impacts to Areas of Special Biological Significance

One commenter noted potentials for impacts to Crystal Cove State Park and Area of Special Biological Significance (ASBS) if dredged materials placed at LA-3 were transported shoreward by currents. Dispersion and transport of dredged material disposed at LA-3 was modeled using measured current data collected in the disposal site and nearshore area. Results from the sediment fate model indicated that the dredged material disposed at LA-3 would settle within and immediately adjacent to the disposal site and no appreciable sediment transport toward the nearshore areas is anticipated, particularly given the depth of the LA-3 site. Water quality impacts during dredged material disposal operations at the LA-3 site will be temporary and localized and are not expected to extend to the shallower, nearshore area. Further, the location of the permanent LA-3 site relocates the site away from the Newport submarine canyon. Thus, any potential influences of currents within the canyon would be reduced at the permanent site.

Comments to the Final EIS and Proposed Rule

The Final EIS and Proposed Rule were published in the **Federal Register** on July 18, 2005. A 30-day public review and comment period extended from the publication date through August 18, 2005. No formal comments were received from the public or agencies.

G. Regulatory Requirements

1. Consistency With the Coastal Zone Management Act

Consistent with the Coastal Zone Management Act, EPA prepared a Coastal Zone Consistency Determination (CCD) document based on information presented in the site designation EIS. The CCD evaluated whether the action—permanent designation of LA-3 and management of LA-2 at a higher annual disposal volume—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing June 9, 2005. The Commission staff report recommended that the Commission concur with EPA's CCD, which the Commission did by a unanimous vote. The Final Rule is

consistent with the Coastal Zone Management Act.

2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any federally listed species. This consultation process is fully documented in the site designation EIS. NMFS and FWS concluded that use of the disposal sites for disposal of dredged material meeting the criteria for ocean disposal would not jeopardize the continued existence of any federally listed species.

H. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to OMB review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Final Rule should have minimal impact on State, local or tribal governments or communities. Consequently, EPA has determined that this Final Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act

requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year.

This Final Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The Final Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government

entities. Thus, the requirements of section 203 of the UMRA do not apply to this Final Rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This Final Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this Final Rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This Final Rule does not have tribal implications, as specified in Executive Order 13175. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this Final Rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act

This Final Rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Final Rule is not likely to have any adverse energy effects.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Final Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This Final Rule will be effective October 12, 2005.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: August 31, 2005.

Alexis Strauss,
Acting Regional Administrator, Region IX.

■ In consideration of the foregoing, EPA is amending part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (l)(11) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(11) Newport Beach, CA, (LA-3) Ocean Dredged Material Disposal Site—Region IX.

(i) Location: Center coordinates of the circle-shaped site are: 33°31'00" North Latitude by 117°53'30" West Longitude (North American Datum from 1983), with a radius of 3,000 feet (915 meters).

(ii) Size: 0.77 square nautical miles.

(iii) Depth: 1,500 to 1,675 feet (460 to 510 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) Period of Use: Continuing use.

(vi) Restrictions: Disposal shall be limited to dredged materials that comply with EPA's Ocean Dumping Regulations.

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