

July 17, 1996
96-1102099.99

Ms. Karen Mason
LTMS EIS Coordinator
c/o U.S. Environmental Protection Agency
Region 9 (W-3-3)
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject: DRAFT EIS/EIR COMMENTS - Long-Term Management Strategy (LTMS)
Dredged Material Placement
San Francisco Bay Region

Dear Ms. Mason:

The two volume Draft EIS/EIR represent an extensive compilation of data, findings and a comprehensive discussion of the three alternatives to the existing "No Project" alternative for dredging in the San Francisco Bay Region. The agencies are to be commended for the preparation of this two volume document. We fully support the LTMS process to develop and implement a strategy that will result in the predictable and economical management of dredging and the placement of dredged materials without significant adverse environmental impacts and we appreciate your efforts to accomplish the LTMS.

As requested in your letter of June 5, 1996 The Mark Group, Inc. (MARK) has the following comments concerning the Draft EIS/EIR:

1. As indicated in the draft EIS/EIR a "preferred alternative" has not been identified. However, the LTMS agencies requested comments on the approach that transitions from Alternative 1 (40% In-Bay Disposal) to Alternative 3, (20% In-Bay Disposal). We believe the transition from the "No Project" alternative (80% In-Bay Disposal) to Alternative 1 (40% In-Bay Disposal) alone represents such a major transition from In-Bay to ocean and upland disposal and represents a more significant economic impact. The change in volume of In-Bay disposal from 80% to 40% is much more significant, and the institutional parts of regulation and testing of materials for the increased ocean disposal in Alternative 1 still need to be developed first.

To develop an approximation of the economic impact of the transition from "No Project" alternative to Alternative 1, we suggest that the actual dredged volumes and sites of the 1995 dredged material be allocated as formulated in Alternative 1 (40% In-Bay Disposal, 40% Ocean Disposal and 20% Upland Reuse) and compared to the actual costs incurred for the 1995 dredged materials. This comparison should be performed as a minimum to evaluate

July 17, 1996

96-1102099.99

Ms. Karen Mason

LTMS EIS Coordinator

c/o U.S. Environmental Protection Agency

Region 9 (W-3-3)

Subject: DRAFT EIS/EIR COMMENTS - Long-Term Management Strategy (LTMS)
Dredged Material Placement
San Francisco Bay Region

Page 2

2 the economic impacts. A similar comparison could be made with Alternative 1 to Alternative 3. Actual costs of ocean disposal and upland disposal that incurred in 1995 could be used for the comparison. These comparisons would be for the sum of the disposed volumes and would provide meaningful information for the impact of (1) where each of the volumes would be disposed, and (2) the 1995 costs. It is expected that these comparisons will also provide additional information concerning the number and size of projects and will focus on which items should be studied to obtain a practical and implementable LTMS.

2.3 It is very important that the implementation plan to accomplish this large transition from "No Project" Alternative to Alternative 1 as part of the LTMS is developed in a partnership process as stated in Paragraph 1.1 (Page 1-2) among the following entities:

- Federal agencies;
- State agencies;
- Navigation interests;
- Fishing groups;
- Environmental interests; and
- The public.

4 MARK is very familiar with the partnership process and the effort to complete an implementable LTMS will require a significant effort by all of the entities listed above. Four specific areas where the partnership process is specifically needed are: (1) Review the purpose of the LTMS as stated in the Draft EIS/EIR; (2) Development of sediment evaluation and acceptance criteria for SUAD^(a) and NUAD^(b) materials; (3) Cost estimates of methods of deposition; and (4) Regulatory process for acceptance of projects through the Dredged Materials Management Office (DMMO).

(a) (SUAD) Suitable for unconfined aquatic disposal; and

(b) (NUAD) Not suitable for unconfined aquatic disposal.

July 17, 1996
96-1102099.99
Ms. Karen Mason
LTMS EIS Coordinator
c/o U.S. Environmental Protection Agency
Region 9 (W-3-3)
Subject: DRAFT EIS/EIR COMMENTS

- Long-Term Management Strategy (LTMS)
Dredged Material Placement
San Francisco Bay Region

Page 3

We note that in Paragraph 1.6.2 (Page 1-7) Policy-Level Mitigation measures only the LTMS agencies (State and Federal) are involved. To provide for an effective partnering process all of the entities should be involved to develop an LTMS.

3. Paragraph 1.1 states, "A fundamental aspect of the LTMS is to minimize cumulative environmental impacts and to maximize cumulative environmental benefits to the region as a whole." A statement also should be provided to recognize that shipping is an important contribution to the San Francisco Bay Region economy and that dredging is necessary to maintain the economic viability of ports and other navigational interests. To develop the LTMS only to minimize cumulative environmental impacts and maximize cumulative environmental benefits to the region could restrict or reduce the continued economic status of the San Francisco Bay Region. In essence, the ports must be able to provide economically viable conditions of shipping or the shipping business will move to other areas of the West Coast.
4. The development of sediment evaluation and acceptance criteria of SUAD and NUAD material is a key element of the LTMS, and should be discussed in the Draft EIS/EIR. The sediment evaluation and acceptance criteria should be developed as soon as possible for early implementation of Alternative 1 and the other alternatives. The acceptance criteria for SUAD and NUAD materials should be completed on a realistic timetable. The Regional Implementation Manual (RIM - Page 7-2) has been mentioned, but goals and a schedule for development need to be defined. The partnership process is essential to resolve testing issues and develop acceptance criteria.
5. Appendix P (last page) - Derivation of Dredging and Disposal Costs states that "These cost estimates should be used as a relative, not absolute, measure of the costs associated with each alternative. They are meant to be descriptive." The costs are detailed, have many assumptions, and represent an effort to evaluate the alternatives. There have been several dredging projects (i.e., Port of Oakland) in the Bay Region that can provide actual costs of disposal. These actual project costs can provide a comparison to those costs used in the draft EIS/EIR. This comparison could be relatively straight forward. It has been our experience that the review of costs usually results in clarification and modification of alternatives to produce practical, and feasible alternatives. Both the costs of draft EIS/EIR and actual project costs could be evaluated jointly in a partnership process for inclusion in the draft EIS/EIR.

July 17, 1996
96-1102099.99

Ms. Karen Mason
LTMS EIS Coordinator

c/o U.S. Environmental Protection Agency
Region 9 (W-3-3)

Subject: DRAFT EIS/EIR COMMENTS - Long-Term Management Strategy (LTMS)
Dredged Material Placement
San Francisco Bay Region

Page 4

6. There are numerous LTMS agencies and entities involved in dredging. To streamline the approval process, we suggest that one office or group be designated to provide approvals for dredging projects. The pilot Dredge Materials Management Office (DMMO) was created for this purpose. A memorandum of understanding (MOU) for the DMMO has been signed on July 11, 1996. We view the MOU as a significant and positive step to implement the DMMO to approve all dredging permits, and suggest that a 12 month schedule be developed to allow DMMO the authority to sign all permits for the LTMS agencies. In this manner the DMMO will function as stated in the goals, objectives and principles (Appendix M) and will be part of the partnership process used for development of the LTMS.

These brief comments are made in good faith to improve the draft EIS/EIR and are based on our review of the draft and our previous experience with other complex projects.

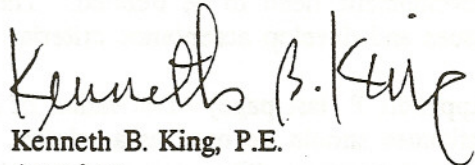
This Draft EIS/EIR should be considered as an opportunity for all of the entities to come together to develop an LTMS with long range solutions for alternatives that maximize environmental benefits and minimize cumulative environmental impacts and are practical and feasible. We support your efforts to produce an implementable LTMS.

Sincerely,

The MARK Group, Inc.



David K. Rogers, P.E., C.E.G.
Principal



Kenneth B. King, P.E.
Associate

LTMS.LTR
DKR:KBK:blm

Responses to the TMG — Mark Group, The, letter dated July 17, 1996

1. Please see the response to Department of Commerce comment 1. Alternative 3 would be phased in over time and that transition will be discussed in the Management Plan; see also the new discussion of the transition to Alternative 3 in the Final EIS/EIR (section 6.5). Economic impacts will be evaluated on a site-specific and project-specific basis. Clean Water Act 404(b)(1) Guidelines (40 CFR Part 230) will determine the practicability of specific projects. Sediment testing requirements for ocean disposal (i.e., Green Book) of suitable dredged material has been developed and in place for several years now.
2. Although this would be interesting information it would not impact the programmatic decision the LTMS agencies have made regarding the preferred alternative. More specific economic evaluation is appropriate during project-specific reviews. The programmatic economic information in the EIS/EIR generally presents a worst-case scenario, but should assist project proponents in determining where their costs may fall, depending on their particular circumstances. Please see the response to NHI comment 19a.
3. The LTMS will continue to seek input from and involve all interested parties as the draft Management Plan is prepared. Following public review, a final Management Plan will be adopted. Note that the Management Plan will be reviewed and revised as appropriate every 3 years, and the overall program will be reviewed every 6 years; see the new discussion of the transition to the preferred alternative (Alternative 3) in the Final EIS/EIR (section 6.5). These Management Plan and program reviews will also include public involvement and comment.
4. The purposes of the LTMS overall, as well as the more focused purposes of this programmatic EIS/EIR, as discussed in Chapter 2, were developed through a scoping process that involved public input. The LTMS agencies do not anticipate revising these basic goals.

A Management Plan will be developed that includes sediment evaluation and acceptance criteria for SUAD and NUAD materials. Development of this document will include public review and comment opportunities. Please also see the response below to TMG comment 7.

The programmatic EIS/EIR cost estimates were provided for planning purposes, and do not necessarily reflect actual costs for any specific project. Please also see the response below to TMG comment 7.

The DMMO operates within the established authorities and regulatory requirements of the member agencies. Any significant changes to the agencies' authorities or requirements would occur with all appropriate opportunities for public input, per the relevant existing legal requirements.
5. All interested parties have been encouraged to provide scoping comments, and to review and comment on this EIS/EIR. Public review and comment will also be sought on the LTMS Management plan, its subsequent revisions, and during periodic program-wide reviews. Also, see the response immediately above to TMG comment 4.
6. Chapter 2 includes a general statement about the importance of dredging to the Bay Area economy. In addition, Chapters 4, 5, and 6 discuss dredging-related economic sectors. Also, the fundamental goals of LTMS, described in Chapter 2, include the concept of supporting necessary dredging in an economically sound manner.
7. Sediment evaluation and acceptance criteria for SUAD and NUAD material exist overall but need to be standardized. Please see the responses above to DOC comment 5 and CDWR comment 3a. With respect to the Regional Implementation Manual (RIM), goals for the RIM are presently being considered and defined by the LTMS agencies. In addition, a process for involving the public will be followed to allow for public review of this manual.

8. The LTMS agencies agree that for a project-level analysis, the review of actual project costs usually results in the definition of practical and feasible disposal alternatives. However, a review of actual project costs in a programmatic document is less helpful because the cost information provided is for disposal site comparison purposes only. The cost information provided in this document allows a relative comparison of costs between different disposal options for long-term planning purposes and is not intended to represent actual project costs.

9. The DMMO has been in an official 12-month “pilot” phase, broken into two 6-month periods. The first and second six-month reports for the pilot phase of the DMMO are included in Appendix M; copies of these reports are also available from the San Francisco District of the COE. The *Six Month Pilot Phase Review Report*, which includes the MOU establishing the DMMO, was published by the LTMS agencies on March 28, 1997 (LTMS 1997) and is available at the COE — San Francisco District. The *Second Six Month Pilot Phase Review Report* was completed in January 1997, and is also available at the COE offices. Within the Second Six Month Report, consensus was reached among agency staff to continue the DMMO as a pilot project for an additional year following concurrence by the Dredging Management Committee. The DMMO does not currently have the authority to “sign” permits, but rather is intended to efficiently make consensus recommendations regarding sediment sampling, and suitability of sediments for various disposal options.

NATURAL HERITAGE INSTITUTE

LAW AND CONSULTING FIRM IN RESOURCE CONSERVATION
114 SANSOME STREET, STE. 1200
SAN FRANCISCO, CA 94104
(415) 288-0550
FAX: (415) 288-0555
E-MAIL: CKOEHLER@ECONET.ORG

EAST COAST OFFICE
333 E STREET, N.E.
WASHINGTON, D.C. 20002

July 18, 1996

LTMS EIS/EIR Comments
c/o U.S. Environmental Protection Agency
Region IX (W-3-3)
75 Hawthorne Street
San Francisco, CA 94947

RE: Long-Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region Policy Environmental Impact Statement/ Programmatic Environmental Impact Report

To the Comment Clerk:

These comments on the above referenced EIS/EIR are submitted on behalf of the Natural Heritage Institute (NHI) and our clients in this matter, the Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Half Moon Bay Fisherman's Marketing Association (HMBFMA). PCFFA is an association of west coast commercial fishing groups, including HMBFMA, and represents about 3,000 fishermen on the Pacific Coast. NHI staff has represented these commercial fishing organizations on dredging issues associated with the LTMS for the last eight years. We hereby incorporate by reference all of our prior written submissions to the LTMS agencies regarding dredged material disposal in full.

I GENERAL COMMENTS

A. Project Description

A clear and accurate project description is a basic requirement of both CEQA and NEPA. CEQA defines a "project" as "the whole of an [agency] action which has a potential for resulting in a physical change in the environment directly or ultimately." 14 CCR 15378. CEQA provides that a project description in an EIR must contain, among other things, the project's location, a statement of objectives and the project's basic physical characteristics. 14 CCR 15124. Similarly, NEPA broadly defines a "proposal" for NEPA purposes as an agency goal. 40 CFR 1508.23. NEPA requires a statement of the purpose and the need for the proposed action. Both of these statutes draw a distinction between the purpose of the EIS and the purpose of the project.

1 This critical distinction is blurred in the LTMS draft EIS/EIR. The "project" or "proposal" that is the subject of the LTMS EIS/EIR is straightforward: the LTMS agencies are proposing to dispose of a projected 6 mcy of dredged sediment in the Bay Area every year for fifty years. However, the document fails to clearly identify this proposal as the subject of the EIS/EIR. Instead it defines the proposed action as "selection of a long-term strategy that will guide the regional agencies' dredged material management decisions" over the next decades. (2-11) This is of course a statement of the purpose of the programmatic EIS/EIR itself.

This confusion affects the document throughout. The document never fulfills the basic requirement that it demonstrate a need for the project -- that is, a need for the disposal of 6 mcy annually. This determination is the heart of the document and drives all of the analysis from the development of the alternatives, to the evaluation of "environmental effects" through the economic projections. (As discussed in detail below, we believe the evidence establishes a need for a substantially lower level of disposal over time.) The other identified "project needs" are in essence implementation issues that must be addressed regardless of which project alternative is ultimately adopted to address the dredged material disposal requirements.

We recommend that the EIS/EIR be revised to identify the proposed disposal as the "project"/"proposal" under review.

B. Planning Horizon

2 The EIS/EIR establishes a 50-year planning horizon for the dredging policy. We have for the last five years consistently objected to this period as unreasonable. Far too little is known about future environmental impacts, costs, dredging requirements to assess accurately these issues. Indeed, the lack of reliable information over this lengthy period becomes the predominant factor in the analysis, effectively flattening out meaningful evaluation. Thus, we do not and cannot know whether there will be substantial ocean impacts from dumping over the course of fifty years, but we cannot say there will be. We do not know if costs will go down precipitously, but we cannot say that they will. Recognizing the limits of what we currently know is extremely important in a programmatic document purporting to establish a long-term policy. As recently as several years ago it was assumed that upland reuse of dredged sediment was 20 times as costly as open water disposal. This assumption was ultimately demonstrated to be erroneous; basing a long-term policy upon it obviously would have had very detrimental social, economic and environmental impacts.

Despite criticism from NHI, our clients and others on this crucial point, the LTMS agencies have never satisfactorily provided the public or decision makers with a basis for insisting upon a 50-year planning horizon. Surely there is no precedent for assuming that any federal, state or regional policy involving specific environmental and economic actions have remained static over such a lengthy history.

We recommend that the environmental impact and analyses be revised over a 20 or 25-

year planning horizon, or at least that such additional analysis be provided in the next iteration of the EIS/EIR. 2

C. HMBFMA Litigation

The EIS/EIR should be revised to include reference to the agencies' 1988 attempt to designate a disposal site on the near shore Continental Shelf and the successful litigation precluding such disposal. The SEIS for that proposal is a major part of the LTMS administrative record. The document should also discuss the role of this episode in the designation of the deep ocean disposal site. 3

II. NEED FOR ACTION

A. Dredging Volumes -- LTMS Planning Estimates 4

It is vital that the EIS/EIR contain an accurate and defensible volumetric determination. All of the alternatives were developed around the assumption that 6 mcy annually would have to be met. Alternatives were eliminated from further consideration when it was felt that they could not achieve this requirement in all years. Analyses of environmental impacts all were developed based on the 300 mcy/6mcy figures. Perhaps most critically for purposes of the agencies' ultimate decision, the disposal requirement number serves as the basis for the entire economic analysis.

The draft EIS/EIR adopts a planning estimate of 300 mcy over fifty years and 6 mcy annually for purposes of this programmatic review. Although an improvement over prior estimates, we believe these figures are still too high, have not been adequately justified in the document and serve to skew the evaluation and analysis of the alternatives in the EIS/EIR.

Virtually from its inception, the LTMS agencies have defined dredge material disposal requirements over the 50-year planning horizon as 400 mcy, or about 8 mcy annually. The draft EIS/EIR attributes these figures to a 1992 estimate of dredged material disposal by the San Francisco Estuary Project. (Section 3.1.2) This is a serious misrepresentation and should be corrected in the next iteration of this document. In fact, the Army Corps was the source of these estimates which have been hotly contested since the beginning of the LTMS process. Given the importance of this issue, we include here some of the history of the long-disputed volume estimates for Bay Area dredging requirements.

In 1990, the Army Corps prepared a report entitled "LTMS Phase I Report" that containing the 8 mcy annual/400 mcy 50 yr. figures. (Dec. 1990, Table 2, page 33). No source or documentation for these numbers was provided in this 1990 document. Nevertheless, they were reiterated in a 1992 report prepared for the LTMS agencies by a consultant, citing to the 1990 Corps report. (Ogden, Beeman, Final Alternative Disposal Options Study, 1992.) This study was cited in turn by EPA in its EIS for ocean disposal one 5

4 year later as justification for the volumetric proposal for ocean dumping. To our knowledge, these figures were never supported or documented or independently reviewed.

These unsubstantiated estimates gained no more credibility or accuracy through their repetition in various reports over time, or by the fact that they were relied upon in a document prepared for the Estuary Project. The LTMS EIS/EIR should be revised to accurately reflect this history and should delete the repeated reference to the SFEP as the source of the original dredged material disposal requirement estimates.

5 We appreciate that the LTMS agencies have now revised the total volume of projected dredged material disposal requirements over the next 50 years down to 6 mcy annually reflecting a 50-year projected total of 300 mcy. Several problems remain in this regard. First, the agencies appear to have relied primarily on estimates of historic disposal to generate the new 50-year figure. (3-11) However, this technique is not regarded as particularly reliable, even within the inherently uncertain realm of forecasting. Indeed, in its 1990 report, the Corps acknowledged:

Planning estimates of future dredging requirements from historic dredging records tend to have large standard deviations due to confounding factors such as amount of rainfall, upstream erosion, freshwater diversions and the degree and extent of sediment resuspension. (LTMS Phase I Report at 31.)

These standard deviations do not appear to be reflected in the draft EIS/EIR's approach to forecasting future dredged material disposal requirements.

Second, the draft adopts the highest possible estimate based on the assumption that additional requirements will develop. However, such projections are precisely the point of forecasting. Presumably, the possibility that there will be new development requiring further dredging was folded into the new estimate. The point of the EIS/EIR should be to develop a *reasonable* estimate of future dredging requirements. This point is crucial since the LTMS agencies have made fulfilling such reasonable expectations one of the three evaluation criteria. Thus, the higher the long-term projected requirements, the more or less adequate the various options under review will be. We believe that NEPA and CEQA dictate that the agencies adopt a reasonableness standard toward future needs instead of the worst case standard included in the draft EIS/EIR. Note that the low end of the range is 173 mcy or only 3.47 mcy annually. There is little reason for the public to adopt a programmatic approach to Bay Area dredged material disposal designed to accommodate about two times as much dredged sediment as may reasonably be required.

Third, we object to the document's suggestion that adoption of the high end figure is justified since it is less than previously estimated by the SFEP [sic]. As discussed above, these Corps estimates were never subjected to independent review, were never documented and were never established as in any way reliable.