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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	**CD-005-97**
Staff:	JRR-SF
File Date:	1/13/97
45th Day:	2/27/97
60th Day:	3/14/97
Commission Meeting:	3/12/97

FEDERAL AGENCY: CORPS OF ENGINEERS

DEVELOPMENT LOCATION: Los Angeles River Estuary, City of Long Beach (Exhibit 1)

DEVELOPMENT DESCRIPTION: Maintenance dredging of existing navigation channel with disposal of contaminated material in contained aquatic disposal site located just offshore of the mouth of the Los Angeles River, City of Long Beach (Exhibit 2)

SUBSTANTIVE FILE DOCUMENTS:

1. Environmental Assessment for Los Angeles River Estuary maintenance dredging and disposal demonstration site, Long Beach California, Department of the Army, Corps of Engineers, January 1997.

2. Los Angeles River Estuary Navigation Channel Alternatives, Moffatt & Nichol Engineers, November 29, 1996.

3. Consistency Determination, CD-043-95, dredging and disposal of Los Angeles River navigational channel sediment by the U.S. Army Corps of Engineers.

4. Coastal Development Permit, 5-96-231, modifications to the former Naval Station Long Beach for the development of Pier T by the Port of Long Beach.

EXECUTIVE SUMMARY

The Corps of Engineers proposes dredging of approximately 100,000 cubic yards of material from the Los Angeles River Estuary navigational channel. The dredging is necessary to maintain the existing navigation channel and reduce its closure from shoaling associated with storm events. The Corps proposes to dispose of that material in a previously excavated "borrow pit" offshore of Island Grissom. The Corps states that the proposed dredged material disposal is a demonstration project for the management of multi-user contained aquatic disposal sites (CADs).

In past dredging projects, the Corps has tested sediment in the Los Angeles River channel and found it to contain elevated levels of contaminates. Based on these past sediment analyses, it is likely that the Corps will dredge contaminated material from the Los Angeles River channel. However, the Corps did not include any analysis of sediment chemistry with the consistency determination for this project. Without that information, the Commission cannot evaluate the project for consistency with the marine resource and water quality policies of the California Coastal Management Program (CCMP). Additionally, the Corps' consistency determination lacks a complete analysis of project alternatives and engineering analysis, environmental characterization, and design of the CAD. Also the project is inconsistent with the CCMP because it does not include 1) adequate measures to minimize water quality impacts from resuspension of contaminates from dredging and disposal activities; 2) immediate placement of a clean-sediment cap over the contaminated sediments; and 3)adequate monitoring of the CAD.

The dredging is necessary to protect recreational boating activities located in Queens Way Marina. Those recreational boating activities include the Catalina transport, whale watching, sports fishing, recreational diving, and small craft recreational boats. The channel shoaling interferes with boating and the dredging would correct the problem. Therefore, the project protects recreational boating in a manner consistent with the CCMP.

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Note:

Prior to the publication of this staff recommendation, the staff received some preliminary sediment testing results. This data is in a form that is difficult to interpret and was received too late to enable the staff to provide adequate analysis for incorporation into this recommendation. Staff will continue to evaluate this data and if necessary will supplement this recommendation at the hearing.

II. Project Description.

The Corps proposes maintenance dredging of a navigation channel within the Los Angeles River estuary to allow for unobstructed passage of vessels in and out of Queens Way Marina. The Corps proposes to dredge approximately 100,000 cubic yards of sediment to provide a minimum depth of approximately -27' MLLW (mean lower low water) at the upstream end of the channel and a depth of -18' to -20' MLLW at the downstream end of the channel. This channel will be approximately 250 feet wide, and 2,500 feet long. The Corps will use a hopper dredge, cutterhead/pipeline, and/or a clamshell/barge to accomplish the dredging. The Corps proposes to complete the dredging by April 1997.

The Corps proposes to dispose of the dredged material in the Los Angeles River borrow pit near the Downtown Shoreline Marina, offshore of Island Grissom. This site has a remaining disposal capacity of approximately 900,000 cubic yards and can accommodate the materials from this project. The disposal site is approximately 30 feet deeper than the surrounding area, and the Corps will fill it to no higher than -40 feet MLLW. The Corps expects the material to remain confined because of the borrow pit's depth and the expected currents of this area.

The Corps proposes to place approximately 200,000 cubic yards of clean material, dredged from the "Pier T" project in Long Beach Harbor, over the contaminated sediment as a "cap" to contain and isolate it from the marine environment. Any dredged material that the Port has determined to be clean (i.e. material that is suitable for ocean disposal) is suitable for the cap. If the Port of Long Beach does not dredge before least tern season (April 1 - September 15), the Corps will not be able to place the cap on the contaminated sediment within the borrow pit until the Fall (i.e. after September 15) of 1997. If Pier "T" dredging does not occur, the Corps will obtain cap material from the next available source.

This project includes monitoring to ensure that the cap remains in place. Even though the absence of strong currents and waves indicates that the material is not likely to migrate,

the Corps will conduct biannual monitoring over the next two (2) years to verify this assumption. Bathymetric monitoring would detect noticeable changes in the bottom profile and movement of the cap or the original disposal mound. Sediment Profile Imaging (SPI) will give an electronic image of the disposal mound and will enable a comparison of SPI surveys over a time. This will reveal any movement of the mound. The Corps used the same disposal site for the emergency dredging of the Los Angeles River estuary navigation channel in 1995. During 1995 and 1996, the Corps monitored that disposal site through the use of SPI and the results indicate that there is no movement of the mound at that time.

III. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has incorporated the Long Beach LCP into the CCMP.

IV. Federal Agency's Consistency Determination.

The Corps of Engineers has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

V. Staff Recommendation:

The staff recommends that the Commission adopt the following resolution:

A. Objection.

The Commission hereby **objects** to the consistency determination made by the Corps of Engineers for the proposed project, finding 1) that the consistency determination does not contain enough information to find the project consistent with the California Coastal Management Program and 2) that the proposed project is not consistent to the maximum extent practicable with the California Coastal Management Program.

VI. Maximum Extent Practicable:

15 CFR Section 930.32 of the federal consistency regulations provide that:

> *The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.*

The Commission recognizes that the standard for approval of Federal projects is that the activity must be "consistent to the maximum extent practicable" (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is "prohibited [by] existing Federal law applicable to the Federal agency's". The Corps has not attempted to demonstrate that this project is consistent to the maximum extent practicable with the CCMP by citing and "statutory provision, legislative history, or other legal authority which limits [its] ... discretion to comply with the provisions of the" CCMP (15 C.F.R. Section 930.32(a)). Therefore, there is no basis for the Commission to conclude that, although the proposed project is inconsistent with the CCMP, it is consistent to maximum extent practicable.

VII. Federal Agency Responsibility:

Section C(a)(i) of Chapter 11 of the CCMP requires federal agencies to inform the Commission of their response to a Commission objection. This section provides that:

> *If the Coastal Commission finds that the Federal activity or development project ... is not consistent with the management program, and the federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.*

VIII. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP.

Section 930.42(a) of the federal consistency regulations (15 CFR Section 930.42(a)) provides that:

> *In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.*

Additionally, Section 930.42(b) of the federal consistency regulations (15 CFR Section 930.42(b)) provides that:

> *If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see Section 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.*

As described in the Marine Resource Section below, the proposed project is inconsistent with the CCMP. Pursuant to the requirements of Section 930.42 of the federal regulations implementing the CZMA, the Commission is responsible for 1) identifying the information required by Section 930.32(a) that is necessary to evaluate the project for consistency with the CCMP and 2) measures, if they exist, that would bring the project into compliance with the CCMP. The Commission believes that the following information is necessary to evaluate the project's consistency with the CCMP:

1. **Sediment Analysis Report**. A complete description of the sediment sampling measures conducting by the Corps and analysis of the physical and chemical characteristics of the sediment sufficient to comply with the requirements of the Clean Water Act and, if necessary, the Marine Protection, Resource, and Sanctuaries Act.

2. **Upland Disposal Alternative Analysis**. A complete analysis of the upland disposal alternative mentioned in the Corps' environmental assessment (EA), Section 3.3(E), page 8, and identified in Figure 4. The analysis must fully describe the upland alternative, the environmental characteristics of the site, and environmental impacts

from disposal of contaminated sediment at that site. If the Corps continues to reject this alternative, it must either demonstrate that impacts from using this site are more environmentally damaging than the proposed disposal site or show that it is not feasible to implement this alternative. If the Corps concludes that the site is not feasible, it must provide an analysis of the environmental, economic, and/or engineering constraints that prevent the Corps from using the upland site.

3. **Engineering and Environmental Analysis of the Contained Aquatic Disposal (CAD)**. A complete characterization of the CAD site that includes description of the geologic, hydrologic, oceanographic, and biological characterizations of the site. In addition to any other oceanographic and hydrological analysis necessary to characterize the site, this analysis should include information on the potential effect on the CAD from significant storm events that include high wave energy and severe river flooding. Additionally, the analysis should provide data that supports the design characteristics of the proposed cap, including sediment grain size and cap thickness, necessary to chemically, physically, hydrologically, and biologically isolate contaminated sediment from the marine environment.

In addition to the necessary information described above, the Corps should incorporate the following measures into the project in order for the Commission to find it consistent with the CCMP:

1. **Water Quality Protection Plan**. The proposed project should include a water quality protection plan that should include, along with water quality monitoring at both the dredging and disposal sites, the use of silt curtains, environmentally sealed clamshell buckets, and/or other technologies or processes to minimize turbidity and the degradation of water quality.

2. **Monitoring Plan**. The proposed project should include a monitoring plan similar to that required by the Commission in its conditional approval of the Port of Long Beach's Pier T Project, 5-96-231. The Corps should use the monitoring to establish that it accurately placed contaminated sediment within the defined boundaries of the site and that it placed the cap over the contaminated sediment in a manner consistent with its design specifications. Specifically, cap monitoring should demonstrate that the cap completely covers the dredge material placed at the site and that the grain size and thickness of the cap fully isolate the contaminated sediment from the marine environment. Once the monitoring establishes that the Corps constructed the CAD consistent with its design specifications, it should continue monitoring on a regular basis for as long as contaminates are stored at that site. The monitoring should include high resolution bathymetry, sediment profiling, sediment cores, and visual inspections. The purpose of the long-term monitoring is to establish that there is no significant degradation of the cap and that there is no significant chemical migration

of contaminates into the cap or outside the CAD. Finally, the monitoring plan should provide for long-term remediation and maintenance of the CAD.

3. **Clean Sediment Cap**. The Corps should redesign the proposed project to include the placement of a clean sediment cap, meeting the design specifications to isolate the contaminated sediment from the marine environment immediately after tie completion of the dredging.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Background. In 1995, the Corps dredged the Los Angeles River estuary navigational channel. The material removed from the river was placed in a pit that was excavated many years ago as a source of material for the construction of one of the offshore energy islands (Island Grissom). This borrow pit is located just offshore of the mouth of the Los Angeles River (Exhibit 2). The Corps conducted the dredging pursuant to its emergency authority, which allows the Corps to exempt itself from complying with environmental regulations, including the National Environmental Protection Act, the Clean Water Act, and Coastal Zone Management Act. The Corps complied with these laws, including the submittal of an after-the-fact consistency determination (CD-43-95), after the completion of the project. Through its permit process, the Corps required the Port of Long Beach to use material the Port was proposing to dredge as a cap of clean sediment over the contaminated material removed from the Los Angeles River estuary navigational channel.

At the request of EPA, the Corps agreed to collect samples of the sediment it dredged during the operation. The chemical analysis of that sediment occurred after completion of the dredging. The results of those tests indicated that the sediment had elevated levels of contaminates. In response to concerns raised by EPA, the Corps agreed to place a clean sediment cap on top of the disposal site. Concurrent with that decision, the Port of Long Beach was seeking approvals for its dredging operation (CC-41-95 and 5-95-111). The Corps decided to use sediment from that project to place a temporary cap over the contaminated sediment. The Commission staff raised concerns about this concept, because the cap thickness, 1.75 to 5 feet, may not be enough to fully isolate the contaminated material and the grain size of the cap material may be too small to assure its permanence. Additionally, the Corps had not conducted any of the studies necessary to assure that it designed the cap to isolate the sediments from disturbance associated with ocean currents, wave energy, Los Angeles River flood flows, or benthic infauna (burrowing organisms).

Because of Commission staff concerns, the Corps, EPA, and the Commission staff negotiated modifications to that project. Those modifications included placement of a temporary cap, monitoring it, and designing a permanent contained aquatic disposal site at this location. The Corps agreed to submit a new consistency determination for the permanent contained aquatic disposal site within three years (Exhibit 3).

B. Marine Resources. Section 30230 of the Coastal Act provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act provides that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:...

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

1. Sediment Characterization. The Corps proposes to maintain an existing navigational channel within the Los Angeles River estuary. The Corps proposes to dispose of the dredged material in an area, offshore of the Los Angeles River, excavated for the creation of an energy island. This site, known as the "Los Angeles River borrow pit," was previously used by the Corps for a similar disposal project. Although the Corps proposes to place a "cap" of clean material over the sediment dredged from the Los Angeles River to isolate it from the marine environment, the Commission has concerns over the water quality effects from the project. Material previously dredged from this channel has contained elevated levels of contaminates and is not usually suitable for unconfined ocean disposal. In this case, however, the Corps consistency determination does not include any information on the physical and chemical characteristics of the sediment. Without this information, the Commission is unable to assess the quality of the sediment and its effect on water quality resources. Therefore, the Commission finds that consistency determination does not contain enough information to evaluate the activity's consistency with the water quality policies of the CCMP. Despite this finding, the Commission will assume, for the sake of additional analysis below, that the material removed from the channel is similar to the last two dredging projects and is unsuitable for unconfined ocean disposal.

2. Dredge and Fill Projects. Section 30233(a) of the Coastal Act imposes a three-part test on dredging and filling projects: (1) an allowable use test; (2) an alternative test; and (3) a mitigation test.

a. Allowable Use. Since the project restores previously dredged depths of the navigation channel, it complies with the first test because maintenance dredging of existing navigation channels is an allowable use for dredging and filling.

a. Alternatives. In evaluating the proposed project, the Corps considered several alternatives: no project alternative, beach or nearshore disposal, LA-2 disposal, port landfill construction, and upland disposal. The Corps rejected the no-project alternative because it would not benefit recreational boating resources in the area. With respect to LA-2 disposal, the Corps rejects the alternative below because the dredged material may have elevated levels of contaminates. Although the Corps has not completed the testing results, based on past sediment tests for this channel, the Commission agrees that the material may contain elevated levels of contaminates. However, without the

testing results confirming this assumption, the Commission believes that it is premature to reject this alternative.

The Corps rejects both the beach nourishment and port land fill alternatives, because it believes that the material is predominately silt and clay and would not be suitable for either beach nourishment or land creation. The Commission believes that the Corps' consistency determination lacks the data to support this conclusion. The consistency determination bases its grain size analysis on sediment analysis of previous dredging projects. Although Corps is in the process of evaluating the physical and chemical characteristics of the sediment, that information is not currently available. Therefore, the Commission believes that it is premature to reject this alternative.

Finally, the Corps rejects the upland disposal alternative because of it believes that the upland alternative is infeasible due to its cost. Specifically, in its Environmental Assessment, the Corps states that:

> *Another alternative is to dispose some of the material in an upland location. It has been determined, however, that the very significant expense of moving material to an upland site is not justified, since environmental impacts would not be significantly reduced. This alternative, therefore, will not be carried forward for further analysis.*

The Corps does not provide any documentation of the "significant expenses" associated with upland disposal or its conclusion that the "environmental impacts would not be significantly reduced." The upland disposal site identified in the EA is next to the Los Angeles River (Exhibit 4), and it appears that the Corps can transport material to this site via a pipeline without adding significant costs or delays. In reviewing the 1995 emergency dredging project, the Commission found that the upland site had potential. Specifically, the Commission found that:

> *The Commission does not necessary agree with the Corps. .... [T]he Corps' consistency determination did not consider redesigning the proposed project in light of its potential water quality impact. For example, it may have been less damaging to dredge a smaller channel, reducing the amount of contaminated sediment and transporting it to an upland site. If Commission review of this project was not through an "after-the-fact" consistency determination, the Commission would probably have found the proposed disposal method* ***not*** *to be the least damaging alternative. However, the Commission recognizes that implementation of another alternative would require re-suspending contaminated sediment and further degrading the water quality of the area. Thus, considering the environmental effects of re-dredging the*

contaminated sediment and disposing of it elsewhere, the Commission has no choice but to find the proposed project consistent with Section 30233(a)'s alternative test.

In the after-the-fact EA for the emergency dredging, the Corps rejected the upland alternative because the site lacked the capacity to contain the amount of material, 300,000 cubic yards, dredged from the channel. That EA stated that the upland site had the capacity to hold approximately 100,000 cubic yards. Since the Corps' current project allows for dredging of 100,000 cubic yards, it appears that the upland site is a feasible alternative. Since the Corps's EA did not provide either an economic or an environmental analysis of the upland site, the Commission does not have enough information to evaluate that alternative.

c. Mitigation. Regarding the third (mitigation) test, the Corps committed to mitigating potential impacts from the proposed dredging and the disposal. The potential impacts include degradation of water quality from resuspension of sediment and contaminates and from disposal of contaminated sediment into the marine environment, and impacts to marine benthic organisms.

The Commission does not expect impacts to the benthic habitat to be significant. The project will disturb benthic resources at both the dredge and disposal sites. However, within a short time, these organisms will re-colonize the areas. On the other hand, the project's impact to water quality may be more significant. The Corps proposes to mitigate impacts to water quality by requiring its contractor to monitor turbidity and mitigate it, if turbidity, at either the dredging or disposal sites, increases to 20 percent over background. Although this type of mitigation is appropriate for dredging clean material, it will not minimize the impacts from dredging contaminated material. Contaminates bind to small grained particles and, because of that, are easily resuspended during the dredging operation. This fine grained material also remains in suspension longer than heavier grained material and may drift far off site. In past similar projects, the Commission has required the use of silt curtains, environmentally sealed clamshell buckets, or other appropriate technologies when projects involve dredging of contaminated material. For example, the Commission required (and the Corps agreed to) similar modifications to the Marina del Rey dredging project, CD-088-94. The Commission also imposed similar requirements on the Port of Long Beach's recent "Pier T" dredging project 5-96-231. Without such mitigation, the proposed project would adversely affect water quality resources and is inconsistent with the mitigation resources of Section 30233.

Finally, the Corps proposes to mitigate impacts to water quality and habitat resources from the disposal of contaminated sediments through the placement of a clean-sediment cap over the contaminated material. By placing the contaminated material into a borrow pit and placing a clean-sediment cap over the material, the Corps is creating a CAD site. The

Corps characterizes this CAD as a demonstration project to evaluate issues surrounding management of multi-user CAD sites. This will be the second CAD site created in this borrow pit. The Corps constructed the first CAD site as part of the emergency dredging of the Los Angeles River channel in 1985. In reviewing the after-the-fact consistency determination for that emergency project, the Commission found that:

> *Had the Corps presented this project as a regular maintenance dredging project and the chemical analysis indicated that the material contained contaminated sediment, the Commission would probably have objected to this project. The Commission might have considered the placement of this contaminated material into a contained aquatic disposal site. However, the Corps would have had to complete a thorough analysis of the site, demonstrating that it is the best location for the construction of a contained aquatic disposal site. Additionally, in designing that facility, the Corps should have evaluated all relevant biological, geological, oceanographic, and hydrologic constraints. Because of the emergency nature of this project, the Corps did not conduct those evaluations.*

Similar to the Corps submittal for the emergency project, the Corps did not submit any supporting information documenting the adequacy of the site and factors, such as wave climate and benthic infauna, that might affect the design of the cap. The Corps has described the preliminary monitoring of the disposal site, which indicates that the site is an accretional area. However, the Corps has not submitted any monitoring data or reports that document this conclusion. The Commission believes that the Corps data does not include monitoring of the CAD during storm and flood events when the cap is most susceptible to erosion. The Commission finds that without a complete analysis of the physical and biological characteristics of the area, the Commission cannot determine if the CAD adequately mitigates for the impact associated with disposal of contaminated sediment in the marine environment.

The Commission also has concerns about the adequacy of the proposed cap. The EA for the proposed project includes the following description:

> *Approximately 200,000 cubic yards of cap material will come from the Pier "T" dredging project, in Long Beach Harbor. Although no specific area within the Pier T dredge limits has been designated for cap material, any dredged material deemed suitable (i.e. material that is suitable for disposal in LA-2) may be used for the cap. If the Port of Long Beach is restricted from dredging during least tern season (April 1 - September 15) they will be unable to place cap material in the borrow pit until the Fall (i.e. after September 15) of 1997. If Pier "T" dredging is not authorized, cap material will be obtained from the next available source.*

The Commission finds that consistency determination does not provide enough information to determine the adequacy of the proposed cap. First, the Corps does not provide any information on the thickness or grain size of the proposed cap. Although the Commission recognizes that 200,000 cubic yards would probably create an adequate cap, without additional information such a conclusion would be pure speculation. The thickness and grain size of a cap is an important issue in designing CADs. The purpose of a cap is to isolate the material from the marine environment. To accomplish that goal, the cap must be thick enough to isolate the contaminated material from the water column, prevent marine organisms from burrowing through the cap and into the contaminated sediment, and allow for potential erosion of the cap. The grain size is important because it relates to the erodability of the cap and may effect the type of organisms that burrow into it. Second, the Corps did not provide any information that indicates that the Corps conducted the necessary physical, hydrologic, and biological analysis of the area to determine the appropriate design of the cap. Without that information, the Commission cannot determine if the CAD would adequately mitigate for the water quality impacts from the proposed project.

Additionally, the Commission has concerns about the timing of the cap construction. The Corps states in its EA that it will use material dredged by the Port of Long Beach from the Port's "Pier T" project. The EA also recognizes that the "Pier T" project may not begin until the fall (the proposed project would begin in April) and that it has not received all of its permits. The Corps also states that if the "Pier T" project does not occur, it will "obtain cap material from the next available project." The Commission believes that any delay in cap construction may result in unnecessary water quality and habitat effects. Although the Commission encourages the Corps to use other dredging projects for a source of cap material, the priority must be on capping the contaminated sediment, even if it requires the Corps to dredge clean sediment from an offshore sources. Without a commitment to immediately cap the contaminated sediments, the project would degrade the water quality of the area in a manner inconsistent with the CCMP and, therefore, would not adequately mitigate adverse effects from the disposal of contaminated sediments into the marine environment.

Finally, the Commission believes that the proposed project is also inconsistent with the mitigation requirement of Section 30233(a) because the proposed monitoring is inadequate. The Corps proposes to monitor for two years using bathymetry and sediment profile imaging. The Commission recognizes that it is difficult to determine if the site is adequately containing the contaminates through biological and sediment quality tests. However, it is feasible and appropriate to monitor the physical state of the CAD. The proposed monitoring will allow the Corps to determine if the cap continues to contain the contaminated material and whether erosion or burrowing organisms are degrading the cap. The Commission believes that a two-year monitoring program is insufficient for an

activity that involves the permanent storage of contaminated material within the marine environment. After the Corps completes the two-year monitoring program, the CAD will continue to hold contaminated sediment. Therefore, the Corps must continue to monitor to ensure that the CAD is functioning. The long-term monitoring does not necessarily need to be as extensive as the initial monitoring, but it must provide for regular (at least annual) monitoring of the cap and for emergency monitoring after significant seismic and storm events for as long as the site contains contaminated sediment.

Additionally, the Corps' monitoring program does not provide for long-term maintenance and remediation of the site. The Commission believes that if erosion, a catastrophic event or other factors adversely affects the CAD, it may no longer contain the contaminated sediment, and therefore, would degrade water quality and marine resources. The Commission believes that a necessary component of any CAD project is long-term monitoring that also provides for maintenance and remediation. These commitments are needed to ensure that the site will contain contaminated sediment for as long as the Corps uses it for that purpose. Since the proposed project does not provide for long-term monitoring, maintenance, and remediation, the Commission finds that it will not adequately protect the water quality of the area and will not fully mitigate for the disposal of contaminated material into the marine environment.

3. Demonstration Project. Finally, the Commission notes for the record that it has concerns about the adequacy of the proposal as a demonstration project. As stated above, the Corps characterizes the project as a demonstration project to aid in the understanding of CAD design and management of multi-user CAD sites to support the efforts of the Los Angeles Basin's Contaminated Sediment Taskforce. The Commission strongly supports the concept of demonstration projects to support the effort of the taskforce. However, the consistency determination does not provide any information on how this CAD will function as a demonstration project. There are no additional monitoring or other studies proposed that will provide useful information for the taskforce. Other than a statement in the EA that the CAD is a demonstration project, there is nothing that supports such a conclusion.

4. Conclusion. In conclusion, the Commission finds that the proposed maintenance dredging is an allowable use. However, the Corps consistency determination does not contain enough information to conclude that the activity is the least damaging feasible alternative. Additionally, the project will adversely affect water quality and marine resources of the coastal zone. The project does not include mitigation for those adverse effects. Therefore, the Commission finds the project inconsistent with marine resource and water quality policies of the CCMP.

C. Recreational Resources. Section 30210 of the Coastal Act provides, in part, that:

> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30220 of the Coastal Act provides that:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30224 of the Coastal Act provides, in part, that:

> *Increased recreational boating use of coastal waters shall be encouraged....*

This portion of the Los Angeles River provides access to Queens Way marina, which supports recreational boating activities. The land use plan (LUP) for the City of Long Beach describes the area as follows:

> *The existing uses in this area shall remain. These are the Catalina Cruises terminal and parking lot, the City Recreation Department, the California Department of Fish and Game, the headquarters of the State University and Colleges (Chancellor's office), and the Golden Shore small boat launch ramp.*
>
> *Permitted new uses are tour boats, marina-related activities, water recreation activities, recreation vehicle park, and office uses for marine oriented public agencies and activities.*

In addition, according to the environmental assessment for the emergency dredging, the Queens Way marina provides for berthing for other recreational charters including whale watching, scuba diving, sports fishing, and harbor tours. The recreational boating uses in this area are clearly a significant coastal resource. Shoaling in the river channel adversely affects this resource by interfering with boat traffic in and out of the Queens Way marina. The proposed project will remove those shoals, and restore recreational boating activities to this area. Therefore, the Commission finds the project consistent with the recreational boating policies of the CCMP.

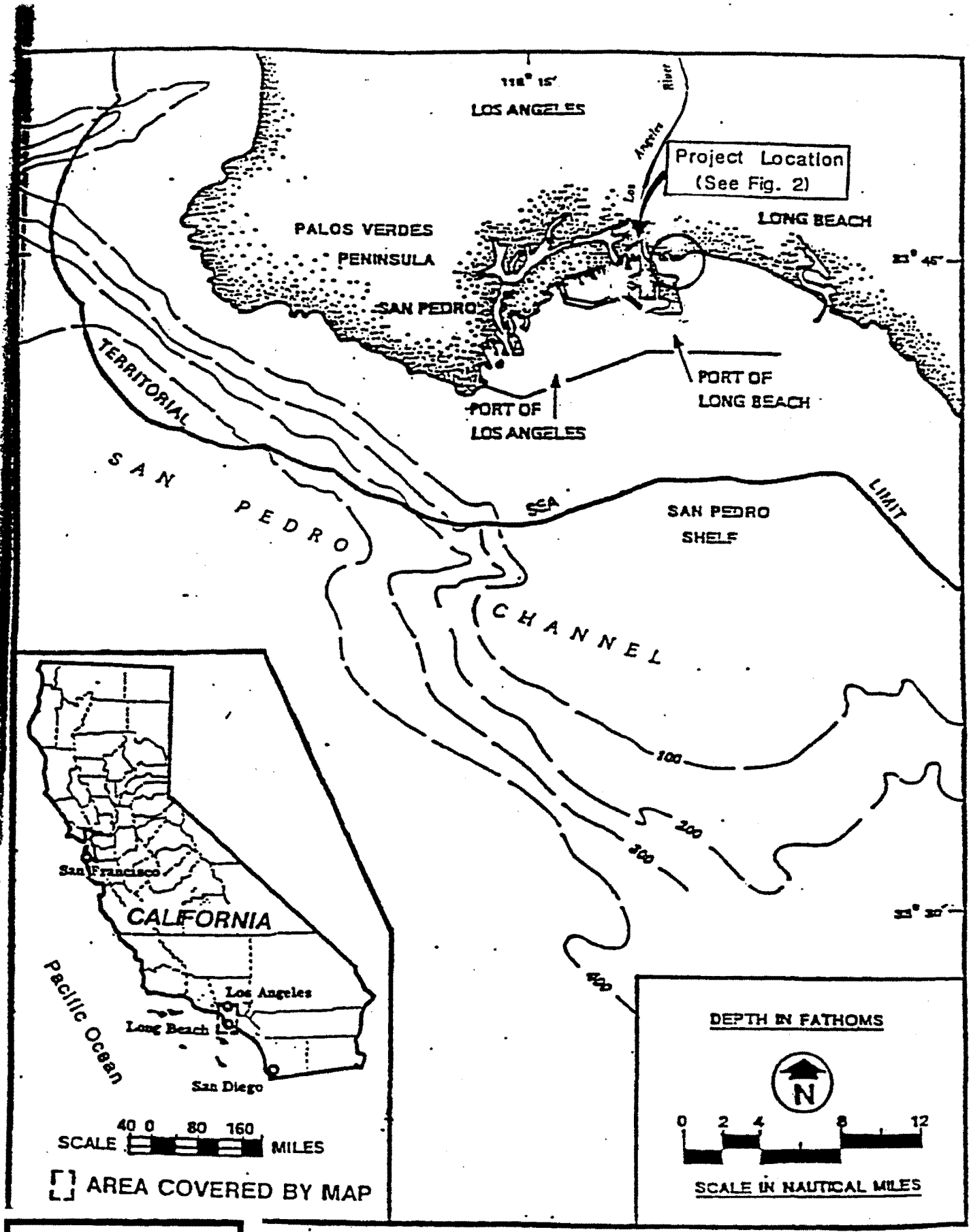

EXHIBIT NO. 1
APPLICATION NO. CD-005-97

PROJECT VICINITY

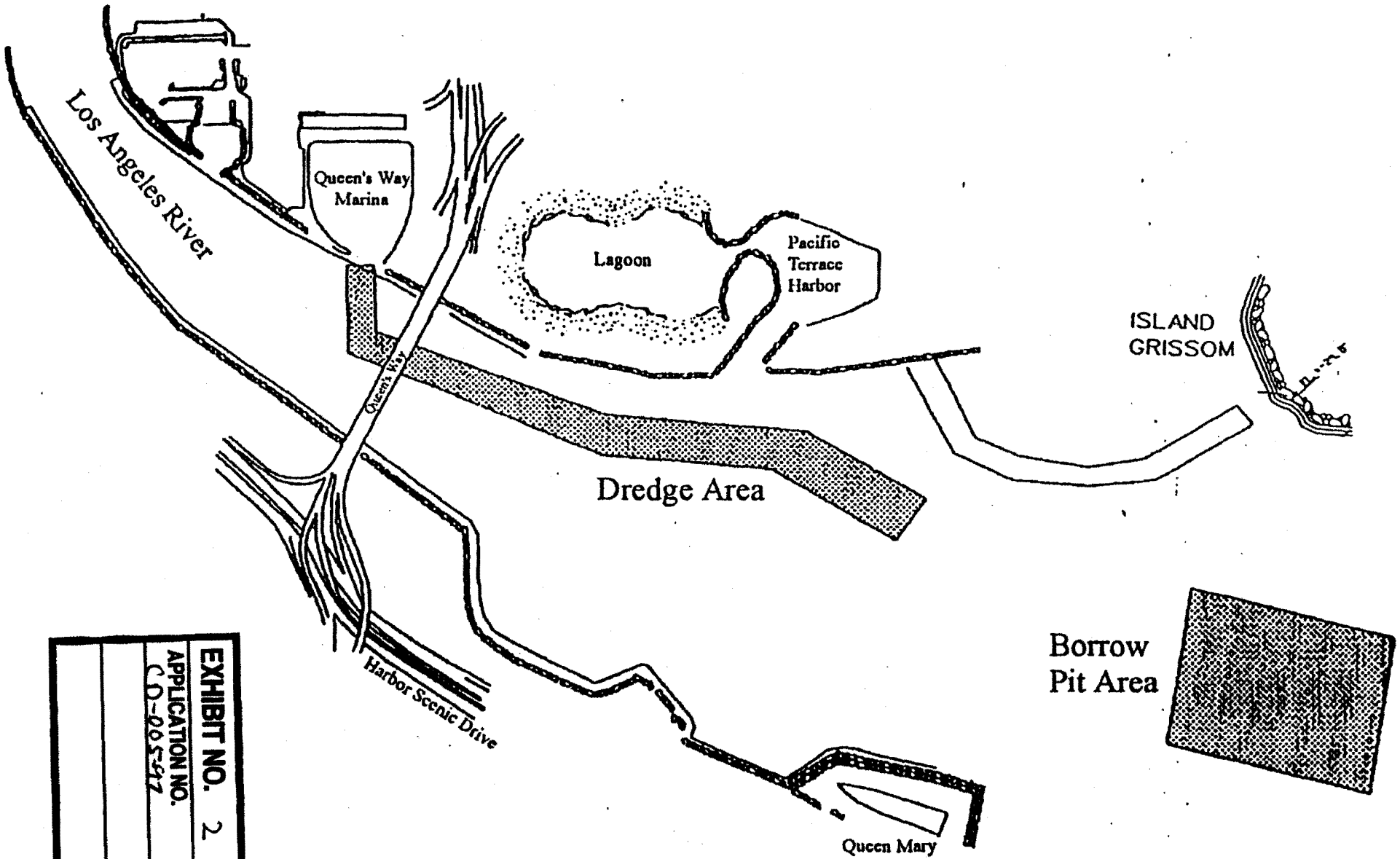

FIGURE 2: PROJECT LOCATION MAP

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO ATTENTION OF:

June 30, 1995

Office of the Chief
Environmental Resources Branch

EXHIBIT NO. 3
APPLICATION NO. CD-005-97
2 pages

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Freemont, Suite 2000
San Francisco, California 94105-2219

Dear Mr. Douglas:

The Corps of Engineers (Corps) performed emergency maintenance dredging of 300,000 cubic yards from the Los Angeles River Estuary during February and March, 1995. All dredge sediments were disposed into an aquatic borrow-pit located immediately downstream of the dredge site. Chemical analysis of sediment samples obtained prior to dredging indicates that some of this material is contaminated. As requested by Mr. James Raives of your staff, this letter provides additional information regarding the Corps' proposed capping operation at the borrow pit. This information supplements the June 16, 1995 letter and memorandum amending the May 1995 Environmental Assessment (EA) and Consistency Determinations (CDs) prepared for this project, and for the Los Angeles Harbor Maintenance Dredging Project.

Additional information must be acquired before the Corps can fully assess the value of this capping operation as a permanent solution to isolate potentially contaminated sediments in the borrow pit. We therefore request that the Commission approve this project as a temporary solution to improve existing conditions while this information is being obtained. The Corps will submit a new CD within three years and either: (1) provide data to demonstrate that the cap is expected to perform adequately as a permanent solution, or (2) submit a proposed design for a new cap or an alternative solution. If it is determined that the temporary cap is not adequate, and additional data are required to appropriately design a permanent cap, then the Corps may request an extension of the three-year permit.

Data gathered over the next three years will include results from detailed bathymetric monitoring of the temporary cap. This monitoring will be conducted at least once a year (after the winter storm season). Biannual monitoring will occur whenever funds are available. Bathymetric monitoring would detect the noticeable changes in the

bottom profile, which will lead to detecting movement of the cap or the original disposal mound. The Corps also plans to install current meters within the vicinity of the borrow pit to measure the intensity of forces that could potentially cause the cap to migrate.

Materials dredged from the Port of Long Beach (POLB) and/or the Port of Los Angeles are proposed to be used to form a cap in the borrow pit. The Long Beach material includes clay that could form clumps during dredging, adversely affecting the capping operation. The Corps would, therefore, require the POLB to instruct its contractor to pulverize any clumps of clay prior to disposal in the borrow pit.

Some of the material deposited in the borrow pit last March formed a mound that extends to the top of the pit. This material is still at a minimum depth of -38 Mean Lower Low Water (MLLW). Some agencies have expressed concern, however, that this material, as well as the cap that would cover it, is more likely to migrate or become resuspended than material within the confines of the pit. To reduce this possibility, the Corps will either: (1) ask the POLB to include a "knock-down" operation in its specifications or instructions to the dredging contractor, or (2) inquire whether the City of Long Beach has the necessary equipment to push the mound into the borrow pit, and if so, request that they perform this operation.

If you have any questions or concerns regarding the proposed revisions, please respond as soon as possible so we can resolve any issues before the July 11-14 Coastal Commission hearing. You may contact Ms. Hayley Lovan, Environmental Coordinator, Environmental Resources Branch, at the above address, or at (213)894-0237.

Thank you for your attention to this document.

Sincerely,

Robert S. Joe
Chief, Planning Division

Copy Furnished:

Environmental Protection Agency
California Regional Water Quality Control Board (Los Angeles Region)

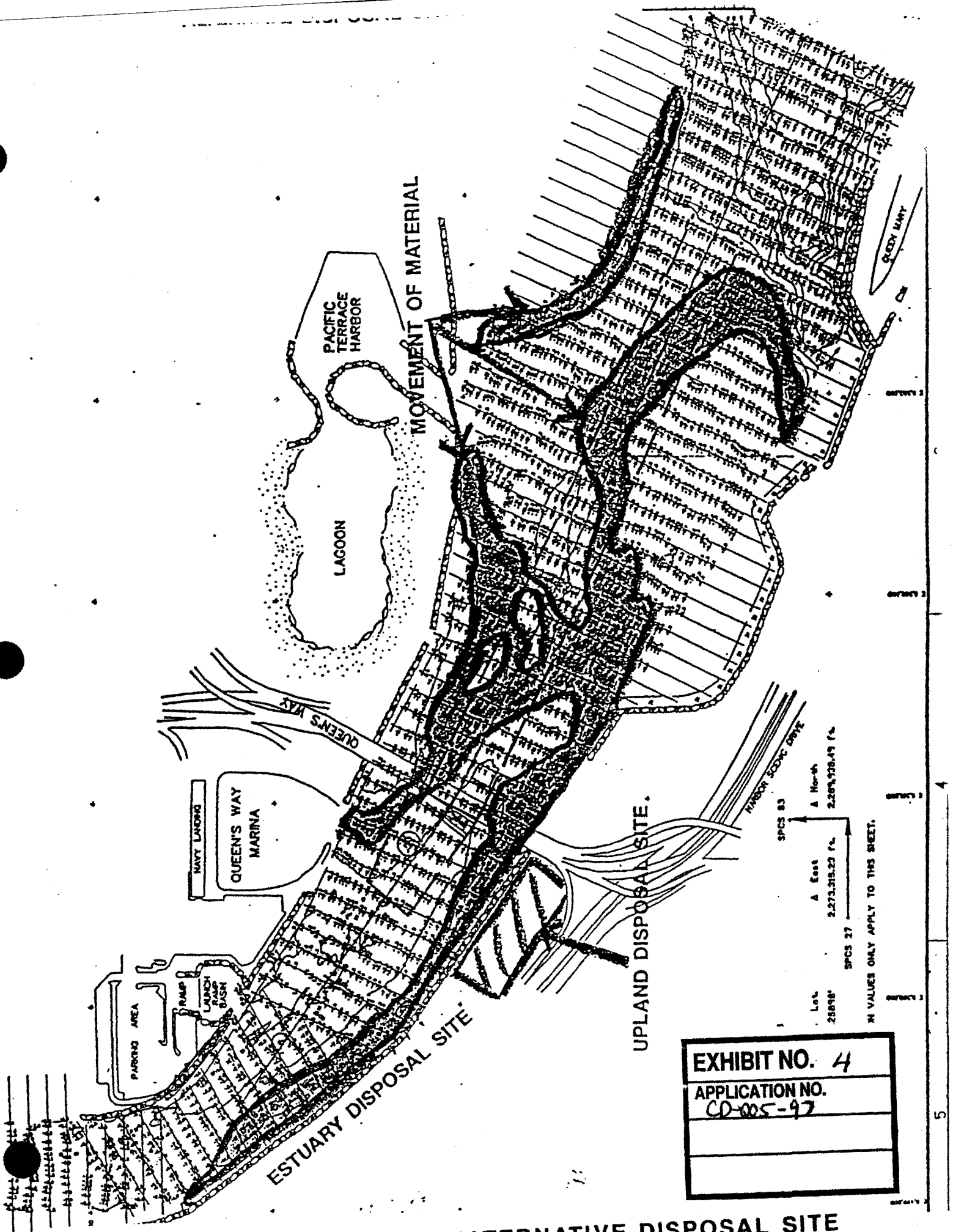

EXHIBIT NO. 4
APPLICATION NO.
CD-005-97

FIGURE 4: UPLAND ALTERNATIVE DISPOSAL SITE