

CALIFORNIA COASTAL COMMISSION

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STAFF RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No. **CD-140-97**

Staff: MPD-SF

File Date: 10/3/97

45th Day: 11/17/97

60th Day: 12/2/97

Commission Meeting: 11/6/97

FEDERAL AGENCY: U.S. Navy

DEVELOPMENT

LOCATION:

"Area 1" of the main channel of San Diego Bay, various beaches throughout San Diego County, and the EPA-designated offshore disposal site LA-5, located 5.4 miles southwest of Point Loma, San Diego County (Exhibits 1-2)

DEVELOPMENT

DESCRIPTION:

Disposal of 2.5 million cu. yds. of "Area 1" dredged material at LA-5, rather than using the material for beach or nearshore disposal (as had been previously proposed), due to hazardous munitions found in the material

SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Determinations CD-95-95 (Navy, Homeporting), ND-72-96, CD-29-97 and ND-62-97, (Navy, Homeporting modifications).

2. Final EIS for the Development of Facilities in the San Diego-Coronado to support the Homeporting of One NIMITZ Class Aircraft Carrier, October 1995.

Staff Note: In the process of disposing of sand from the Homeporting dredging at Oceanside in late September 1997, the Navy discovered hazardous munitions, including large (up to 80 mm) pieces of potentially explosive ordnance in the dredge material. Concerned about public health but not wishing to incur substantial costs in delaying the dredging project, the Navy ceased disposal at Oceanside and requested emergency authorization from the Corps and EPA to dispose of the material at LA-5. On October 1, 1997, the also Navy requested interim authorization from the Commission to dispose of 435,000 cu. yds. of Area 1 material at LA-5. October 3, 1997, the Executive Director authorized this interim disposal, pending the Navy's consideration of what action to take for the remainder of the Area 1 material. This authorization was based in part on the Navy's commitment to submit a consistency determination for the current proposal.

On October 14, 1997, the Navy requested Commission authorization for disposal of all Area 1 material at LA-5. While this Navy letter requests Commission concurrence, the Navy has not yet completed its environmental analysis for the changes. The Navy expects to complete a "Decision Document" addressing the current proposal, including an analysis of consistency with the applicable Coastal Act policies, by approximately October 24, 1997. Since that is one week **after** the mailing of staff reports for the November Commission meeting, this Commission staff report is necessarily incomplete. At this point the staff has no option but to recommend that the Commission object, based on lack of information. The staff expects to publish an addendum as soon as possible after receiving the Navy's Decision Document and consistency determination.

EXECUTIVE SUMMARY

The Navy seeks Commission authorization to dispose of approximately 2.5 million cubic yards of material at offshore disposal site LA-5, located 5.4 miles offshore of San Diego (Exhibit 1). As previously concurred with by the Commission in CD-95-95, the material is being dredged from the San Diego Main Channel for harbor deepening necessary to accommodate the Homeporting of a Nuclear Aircraft Carrier at the Naval Air Station North Island (NASNI) in Coronado. Previous Commission authorization was for disposal of most of the dredged material, 7.9 million cu. yds. of predominantly clean sand, at various beaches throughout San Diego County (Exhibit 1).

Dredging in "Area 1," the southernmost segment of the main channel in San Diego Bay (Exhibit 2), commenced in September 1997. The Navy found munitions and live ordnance in the material as it was being placed at South Oceanside Beach (see page 4). This discovery forced the Navy to reconsider its original proposed for beach or nearshore disposal for the Area 1 material, and Navy currently proposes disposal at LA-5.

While the munitions clearly constitute a human health hazard, the Commission has inadequate information with which to determine the project's consistency with the sand supply and public access and recreation policies of the California Coastal Management Program (CCMP) (Coastal Act Sections 30233(b), 30210-30213, and 30220). Specifically, the Navy has not analyzed the feasibility of alternatives that would allow some or all of the Area 1 material to continue to be used for beach replenishment as originally proposed. Additionally, the Navy has not submitted an analysis showing why all the Area 1 material is considered potentially hazardous (i.e., likely to contain munitions), or why it would either be infeasible to adequately screen the material to keep hazardous munitions off the beach, or to conduct post-disposal beach surveys to find and remove munitions. In addition, the Navy has not determined which beaches will receive what quantities of sand from the remaining dredged material (beyond Area 1, in Areas 2-10) under the current proposal (and, therefore, the project description itself is incomplete at this time).

For the original Homeporting project, the Navy tested the material for suitability for open ocean disposal, and, other than the sand supply issue discussed in the previous paragraph, disposal at LA-5 will not adversely affect marine resources and is consistent with Section 30230 of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION

I. Project Description. The Navy proposes to dispose of 2.5 million cu. yds. of material dredged from "Area 1" (Exhibit 2) at LA-5 (the EPA-designated offshore disposal located 5.4 miles southwest of Point Loma, San Diego (Exhibit 1)). The material was originally proposed for beach replenishment. As described below, in the process of disposing of the sand at Oceanside, the Navy discovered hazardous munitions including large pieces of live ordnance in the dredge material. Due to public health risks, the Navy believes that the material is unsuitable for beach or nearshore disposal.

II. Background/Project History. On November 16, 1995, the Commission concurred with the Navy's consistency determination for the relocation of one NIMITZ class aircraft carrier from the Naval Air Station in Alameda, San Francisco Bay, to the Naval Air Station, North Island (NASNI) in San Diego Bay (CD-95-95). The beach/nearshore disposal portion of that project, as originally concurred with by the Commission, consisted of placing 7.9 million cu. yds. of suitable clean sandy material at four beaches throughout the County (i.e., nearshore disposal at Imperial Beach, Del Mar, Oceanside, and Mission Beach). The Commission subsequently concurred with a Negative Determination (ND-72-96) which further refined the dredge/disposal quantities. After additional discussions between the Navy, the San Diego Association of Governments (SANDAG), various Countywide local coastal governments, and including commitments

for State matching funds to be added to improve the beach replenishment benefits, the Navy broadened the number of beaches to receive sand and agreed to place sand on beaches instead of only using nearshore disposal.

Thus, the disposal plan was modified in two phases, as follows:

Phase I, which the Commission concurred with on April 8, 1997 (CD-29-97), consisted of placing sand at South Oceanside (530,000 cu. yds.) and Solana Beach (570,000 cu. yds.); and

Phase II which the Executive Director concurred with on May 22, 1997 (ND-62-97), consisted of placing sand at South Oceanside (Buccaneer Beach) (748,000 cu. yds.), North Carlsbad (542,000 cu. yds.), South Carlsbad (918,000 cu. yds.), Torrey Pines North, (361,000 cu. yds.), and Torrey Pines South (280,000 cu. yds.).

The Navy commenced disposal operations in September 1997, beginning with South Oceanside beach disposal and Mission Beach nearshore disposal. After disposing of about 50,000 cu. yds. of sand at South Oceanside, the Navy discovered hazardous munitions (including live ordnance) in the dredge material. On September 21, 1997, the Navy found twenty .50 caliber casings, a 20 mm mk-2 unfired shell, and three .50 caliber blanks on the beach. On September 25, the Navy discovered an 81 mm mortar on the beach. On September 28, the Navy found, on its hopper dredge screens, a 40 mm M25 shell casing, a 20 mm M2 1944 shell casing, and a 45-70 MK12 shell casing. No ordnance was found in investigations of nearshore disposal at Mission Beach, where about 9,000 cu. yds. were disposed. Pre-dredge magnetometer surveys that had been conducted by the Navy in the Main Channel in May 1997 had only found large (i.e., significantly larger than "ordnance" sized) metal debris.

Concerned about public health, and not wishing to incur the substantial economic costs of delaying the dredging project (which the Navy estimates to be approximately \$125,000 per day), the Navy immediately ceased its beach and nearshore disposal operations and sought authorizations for disposal at LA-5 of the Area 1 material (by letters dated October 1, 1997 to the Commission and the U.S. Army Corps of Engineers ("Corps") (and, through the Corps, EPA)). As it has throughout the process, the Navy also coordinated with and sought input from SANDAG. Both EPA and the Corps agreed with the Navy that the material was suitable for open ocean disposal at LA-5 and would not pose risks for marine resources.

The Commission staff asked the Navy to request only the minimum necessary disposal at LA-5, since at that time the Navy was still considering whether any of the Area 1 material could be safely used for beach replenishment. Consequently, the Navy requested interim authorization from the Executive Director to dispose of 435,000 cu. yds. of Area 1

material at LA-5, pending submittal of the matter to the full Commission for a public hearing. On October 3, 1997, the Executive Director informed the Navy that "In the interim the Commission staff does not oppose the Navy's current request to proceed to place at LA-5 the Area 1 material ...". This authorization was based in part on the Navy's commitment to submit a consistency determination for Commission review of the current proposal.

On October 3, 1997, the Navy also received authorization from the Army Corps (and EPA), for the entire Area 1 volume (2.5 million cu. yds.), subject to certain conditions agreed to by the Navy, including that the Navy would:

- 1. screen the material using a 3-inch grating attached to the dredge pipeline intake, to screen out debris (including hazardous ordnance) and remove it from the disposal material;*
- 2. visually inspect all material passing through the grating, and remove debris and report any ordnance found to the Corps and EPA;*
- 3. dispose of the material at the center of LA-5 and submit vessel transit plots to the Corps and EPA; and*
- 4. conduct a bathymetric survey and submit it, along with a post-dredging/disposal report, to the Corps and EPA after project completion;*

The Corps permit also stipulated that in the event the Navy were to shift back to beach disposal of any Area 1 material, the Navy would need to:

... include documentation that these material[s] are free of unsuitable debris, including all known or expected explosive ordnance, and a monitoring plan to check for and remove any unsuitable debris, including all known or expected types of ordnance.

Also, the Corps permit stated that the permit would not be valid absent Coastal Commission concurrence with the current proposal.

On October 14, 1997, as a follow-up to its interim request to the Commission for disposal of 435,000 cu. yds., the Navy wrote to the Commission stating:

Since our October 3, 1997 letter, we have continued to carefully consider our options with regard to Area 1. Our analysis has been driven by our need to complete the channel dredging to support the Homeporting project, balanced against our strong commitment to benefit area beaches.

Although we find that the risk posed to human health and safety by possible ordnance in the Area 1 material is extremely small, we do not believe it is acceptable. Moreover, our attorneys have counseled against incurring the potential for liability. This has led us to propose an alternative plan by which we would send the remainder of the Area 1 material to LA-5, but still put a substantial amount of sand onto beaches.

The alternative plan would place all beach suitable material from the inner channel onto local beaches. This includes areas 4, 5, 6, 8 and 10. According to our calculations these areas comprise approximately 1.5 million cu. yds. of beach suitable material.

We have suspended the nearshore deposition of material in order to save as much sand as possible from the inner channel for the beaches. We regret that we will not be able to place as much material nearshore as originally planned. However, the Navy and SANDAG remain committed to getting sand directly onto local beaches.

While this Navy letter (Exhibit 3) requests concurrence by the Commission with its current proposal, the Navy has not yet completed its environmental and/or economic analysis of the proposal. The Navy expects to complete a "Decision Document" addressing the proposal, including an analysis of consistency with the applicable Coastal Act policies, by approximately October 24, 1997. As stated in the above "Staff Note," since that date is one week after the mailing of staff reports for the November Commission meeting, this Commission staff report is necessarily incomplete, and the Commission staff expects to publish an addendum as soon as possible after receiving the Navy's Decision Document and consistency determination.

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) or Port Master Plan (PMP) of the affected area. If the LCP or PMP has been certified by the Commission and incorporated into the CCMP, it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP or PMP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The City of Oceanside's, San Diego's, and Coronado's LCPs and the Port of San Diego's PMP have been certified by the Commission and incorporated into the CCMP.

IV. Federal Agency's Consistency Determination. The Navy has determined the project consistent to the maximum extent practicable with the California Coastal Management Program, although to date the Navy not submitted the necessary analysis to support this determination.

V. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission concur with the Navy's consistency determination.

The staff recommends a **NO** vote on this motion. Failure to receive a majority vote in the affirmative will result in adoption of the following resolution:

Objection

The Commission hereby **objects** to the consistency determination made by the Navy for the proposed project, finding that the consistency determination does not contain sufficient information to enable the Commission to determine whether the project is consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program (CCMP).

VI. Applicable Legal Authorities:

Section 307 of the Coastal Zone Management Act provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

The informational requirements of the federal consistency regulations (15 CFR Part 930) provide:

Section 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

The federal consistency regulations also provide:

Section 930.42 State Agency disagreement.

(b) 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.

VII. Practicability:

The federal consistency regulations provide:

Section 930.32 Consistent to the maximum extent practicable.

(a) 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.

Since no issue of practicability has been raised by the Navy, the standard before the Commission is full consistency with the CCMP. The Navy has not attempted to assert in this case that compliance with the CCMP is prohibited based upon the requirements of existing law applicable to its operations.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Sand Supply/Public Access and Recreation. The sand supply policy (Section 30233(b) of the Coastal Act) provides:

(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.

The public access and recreation policies provide for public safety considerations in the implementation of Coastal Act policies. Section 30210 provides:

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 30212 provides, in part, that:

Section 30212: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

Section 30213 provides in part that "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." Section 30220 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 30233(b) quoted above provides that where dredge material is suitable, it should be used to replenishment beaches or be placed within littoral sand systems. Prior to discovery of munitions in the dredged material, as detailed on page 4 above, the material proposed for dredging was considered by the Navy, the Commission, and other regulatory agencies to be clean sandy material suitable for beach replenishment. The discovery of munitions in the material clearly calls into question this suitability, given that it poses a human health hazard, especially from live ordnance that has cleared the entire dredge disposal system intact. While the incidence of ordnance has been small, the Navy is extremely concerned about the health hazard, and even the perception of a hazard may discourage or deter public access at the receiver beaches. The primary issue before the Commission is whether the material can be adequately screened, either during or after dredging and disposal, to remove the material and eliminate the hazard, and/or whether there is a way to determine whether the remaining as-yet-undredged material may be all or partly free of munitions.

Unfortunately, at this time the Commission has inadequate information with which to resolve this issue and determine the project's consistency with the sand supply, public access, and recreation policies of the Coastal Act. Specifically, the Navy has not analyzed the feasibility of alternatives that would allow some or all of the Area 1 material to continue to be used for beach replenishment as originally proposed. Additionally, the

Navy has not analyzed: (1) why all the Area 1 material is considered potentially hazardous (i.e., likely to contain munitions); (2) why it would be infeasible to adequately screen the material to keep hazardous munitions off the beach; or (3) the feasibility of conducting post-disposal beach surveys to find and remove the munitions. Finally, the Navy has not determined which beaches will receive what quantities of sand from the remaining dredged material (beyond Area 1) under the current proposal, and therefore the project description itself is incomplete at this time. Without this information, the Commission is unable to determine the current project consistent with Sections 30233(b), 30210-330213, and 30220 of the Coastal Act.

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.

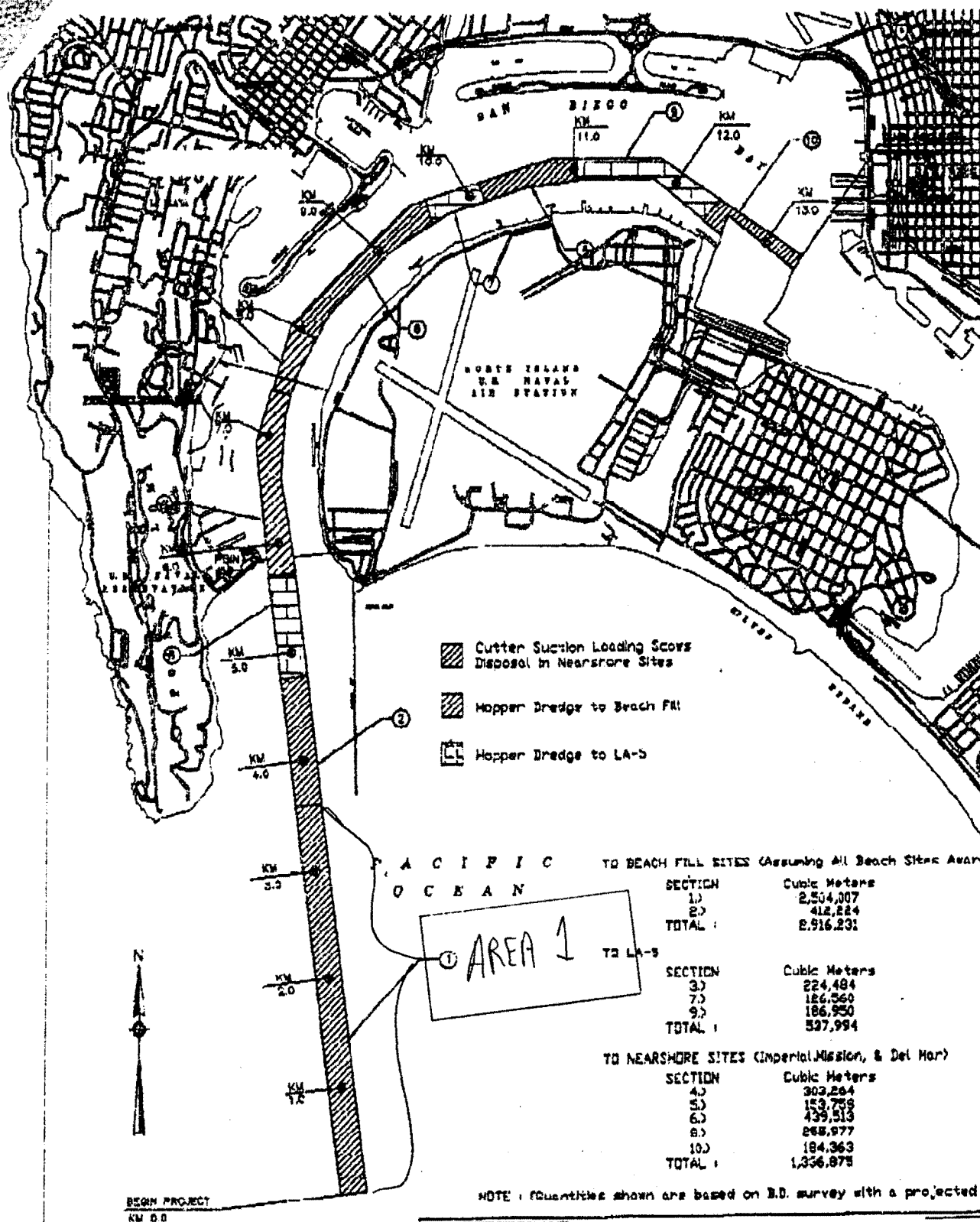
In reviewing CD-95-95, the "Homeporting" consistency determination, the Commission found that the project would not adversely affect marine resources and other environmentally sensitive habitat. In reviewing that project, the Commission found:

[W]ith the mitigation and monitoring measures ..., the proposed project represents the least environmentally damaging feasible alternative. Homeporting a CVN at a port other than San Diego is not a feasible alternative. The fill proposed is the minimum area and least damaging feasible location. Dredge materials that are suitable for aquatic disposal will be placed in a manner traditionally determined the least damaging alternative by the Commission, either as beach replenishment where materials are predominantly sand, or at LA-5 where they are not. Dredge materials unsuitable for aquatic disposal will be removed and isolated from the marine environment. Therefore, the Commission finds the CVN Homeporting and associated dredging, filling, and other project facilities and activities are consistent with the alternatives test of Section 30233(a).

The Commission also found that the project provided for beach replenishment, as required under Section 30233(b) of the Coastal Act where dredged material is suitable for such use. While some concerns had been raised about sediment contamination potential, the Navy undertook a comprehensive testing program to assess physical and chemical composition of the sediments to be dredged. The test results were also independently reviewed by EPA, the U.S. Army Corps of Engineers (Corps), and the Regional Water

Quality Control Board (RWQCB), San Diego Region. Based on the information in the record, the Commission determined that approximately 7.9 million cu. yds. of the dredged sediment were suitable for beach replenishment.

As discussed in the previous section of this report, a human health hazard is posed by the presence of munitions in the dredge spoils. However the Navy believes that disposal of the material at LA-5, given the testing that it already conducted on the material (see previous paragraph), will not adversely affect marine resources. EPA and the Corps have scrutinized the test results based on previous concerns over potential contamination effects raised during the original Homeporting project review (including a court challenge) and concluded that the munitions do not raise contamination concerns for marine resources at or in the vicinity of LA-5. This conclusion is based in part on the Navy's agreement to further screen the material and remove debris, as well as to submit monitoring reports to the Corps and EPA for the disposal operation. (see Corps permit conditions summarized on page 5 above). Compared to the overall volume of material being disposed (2.5 million cu. yds.), the ordnance materials represent an extremely small percentage of the material dredged, such that they could not contain sufficient concentrations of contaminants to adversely affect the marine environment. In addition, the munitions are encased in solid metal casings, and thus not in a form where their constituents could easily dissolve into the marine environment. The Commission concludes, based on the evidence presented to date, that the material is suitable for disposal at LA-5, and that disposal at LA-5 would not adversely affect marine resources and would be consistent with the marine resource policy (Section 30230) of the Coastal Act.



FILE NAME : SB-VOL
DATE : 7/23/97

SCALE 1m : 50000m

NAVAL AIR STATION
PROJECT

GREAT LAKES / STUYVES

EXHIBIT NO. 2

APPLICATION NO.

CD-140-97

NAVY



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

11000
Ser 543.KX/420
14 OCT 1997

Mr. Mark Delaplaine
Federal Consistency Unit
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Delaplaine:

The purpose of this letter is to request your concurrence to divert all the dredge material from Area 1 to the open ocean disposal site LA-5 as outlined in our letter of October 3, 1997. Additionally, we request placement of this matter on the November agenda in Agoura Hills. We appreciate your emergency approval of 435,000 cubic meters of material to LA-5 in order to prevent substantial delay costs that would have been incurred between now and your November meeting.

Since our October 3, 1997 letter, we have continued to carefully consider our options with regard to Area 1. Our analysis has been driven by our need to complete the channel dredging to support the Homeporting project, balanced against our strong commitment to benefit area beaches. Although we find that the risk posed to human health and safety by possible ordnance in the Area 1 material is extremely small, we do not believe it is acceptable. Moreover, our attorneys have counseled against incurring the potential for liability. This has led us to propose an alternative plan by which we would send the remainder of the Area 1 material to LA-5, but still put a substantial amount of sand onto beaches. This plan is not without risk of delay for us. But it is a manageable level of delay, that we find acceptable in light of the benefits to area beaches.

The alternative plan would place all beach suitable material from the inner channel onto local beaches. This includes areas 4, 5, 6, 8 and 10. According to our calculations these areas comprise approximately 1.5 million cubic yards of beach suitable material.

We are working with the Corps of Engineers to document the diversion of the inner channel material to the beaches. In the meantime, you have our commitment that we will do everything feasible to get material on the beaches. We have suspended the nearshore deposition of material in order to save as much sand as possible from the inner channel for the beaches. We regret that we will not be able to place as much material nearshore as originally planned. However, the Navy and SANDAG remain committed to getting sand directly onto local beaches.

EXHIBIT NO. 3
APPLICATION NO.
CD-140-97
Navy

11000

Ser 543.KX/420

14 OCT 1997

A formal decision document is being prepared by the Navy which will clearly document the decision process and produce a consistency determination. This document will be completed no later than October 24, 1997 and will immediately be forwarded for your review.

Please understand our situation. Our mission and our reason for dredging is to deepen the channel to support the Homeporting project. We ask for your concurrence in sending the Area 1 material to LA-5, so that we can perform our mission. Please be assured that in the meantime we are continuing our efforts to utilize the byproduct of our inner channel dredging to enrich area beaches. We appreciate your time and understanding of this matter. If you have any questions, please contact Kevin McKeag, South Bay Area Focus team, Code 543.KX at (619) 556-7773 or via the internet (kjmckeag@efdsouthwest.navy.mil).

Sincerely,



DAVID P. NELSON

South Bay Area Focus Team Leader
By direction of the Commander

Copy to:
District Engineer
U.S. Army Corps of Engineers
Attn: David Zoutendyk
10845 Rancho Bernardo Road, Suite 210
San Diego, CA 92127

MEMORANDUM
FOR THE RECORD
DATE: 10/1/58
SUBJECT: [illegible]

