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STATE OF CALIFORNIA - THE RESOURCES AGENCY PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
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Hearing Date: July 8-11, 1997
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-97-071

APPLICANT: County of Orange AGENT: Darlene Shelley
CO-APPLICANT: Calif. Dept. of Fish & Game Tettemer & Assoc.

PROJECT LOCATION: Upper Newport Back Bay from Jamboree bridge to 2,000 feet beyond Pacific Coast Highway bridge City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Excavation and removal of a total of 750,000-825,000 c.y. of sediment from Newport Bay. The proposed dredging includes the Unit III sediment basin and access channel, portions of the Unit I access channel, dredging in the entire Unit II access channel from the Unit III sediment basin to an area 2,000 feet downstream of the Pacific Coast Highway bridge, dredging the Dover Shores residential community marina, establishment of a marshaling area downstream of the Pacific Coast Highway bridge, and repair and modification of the Jamboree Road bridge stabilizer structure. The off-shore disposal of the dredged sediment requires a U.S. Army Corps of Engineers consistency determination, which is not a part of this coastal development permit.

Lot area:	NA
Building coverage:	NA
Pavement coverage:	NA
Landscape coverage:	NA
Parking spaces:	NA
Zoning:	NA
Plan designation:	
Project density:	NA
Ht abv fin grade:	NA

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach, Negative Declaration from the Environmental Management Agency of the County of Orange, Resolution No. 96-841 of the County of Orange, California Department of Fish and Game Agreement Regarding Proposed Stream or Lake Alteration, Letter from the California State Lands Commission, Clean Water Act Application for a Section 404 Permit from the Army Corps of Engineers, Application for a Facility Permit/Waste Discharge from the California Regional Water Quality Control Board, Coastal Conservancy Approval File No. 77-038 for Disbursement of Funds for Implementation of the Enhancement Plan

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permits
   P-79-5835 (California Dept. of Fish and Game)
   P-80-7257 (California Dept. of Fish and Game)
   5-81-126 (City of Newport Beach)
   5-82-52A (Amendment to P-80-7257)
   5-83-220 (City of Newport Beach)
   5-84-167 (California Dept. of Fish and Game)
   5-84-560 (Calif. Dept. of Fish & Game, Irvine Co., City of Newport Beach)
   5-84-260 (Calif. Dept. of Fish & Game, Port of Long Beach, Irvine Co.)
   5-86-130 (City of Newport Beach)
   5-89-259 (City of Newport Beach)

2. Related Documents
   Letter from John Tettemer & Assoc. dated June 9, 1997
   Volume 1 Draft Initial Study IP-96-157, Upper Newport Bay Unit III Sediment Control and Enhancement Plan (10-96)
   Volume II, Initial Study Technical Appendices, IP-96-157, Upper Newport Bay Unit III Sediment Control & Enhancement Plan (10-96)
   Chemical Analysis and Toxicity Evaluation of Sediments Proposed for Dredging and Ocean Disposal: Dover Shores, 1995
   Toxicity Re-Evaluation of Sediments Proposed for Dredging and Ocean Disposal, Unit I Sediment Basin (1996)
   Chemical Analysis and Toxicity Evaluation of Sediments Proposed for Dredging and Ocean Disposal: Unit I Sediment Basin and Access Channel, 1995
   Toxicity and Chemical Evaluation of Two Sediments from the Vicinity of the LA-3 Ocean Disposal Site and of One Sediment from the Unit I Sediment Basin (1996)
   Addendum to the EIR, Early Action and Interim Plan, San Diego Creek Comprehensive Storm Water Sedimentation Control Plan (1986)
   Environmental Impact Report, Upper Newport Bay Enhancement/Sediment Management Project (1986)
   Technical Appendices, Upper Newport Bay Enhancement/Sediment Management Project, 1986
   Initial Study, Upper Newport Bay Restoration Project, 1984
   Development and Comparison of Alternative Management Systems, Newport Bay Watershed, San Diego Creek Comprehensive Stormwater Sedimentation Control Plan (1982)
   Volume I, Early Action & Interim Plan, San Diego Creek Comprehensive Storm Water Sedimentation Control Plan, 1981
   Volume II, Technical Appendices, Early Action & Interim Plan, San Diego Creek Comprehensive Storm Water Sedimentation Control Plan, 1981

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with special conditions regarding notification of the Port of Long Beach, protection of salt marsh resources, protection of eel grass resources, timing of the dredging to avoid critical nesting seasons for endangered species, and submittal of a coastal development permit amendment in the event of impacts to salt marsh resources. There are no unresolved issues and staff has not received any objections to the proposed development.

STAFF RECOMMENDATION:

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

STAFF NOTE:

In the past Commission staff have not been active participants in the regional planning process for Upper Newport Bay, due to workload and time constraints. Previous staff reports on major dredging projects in the Upper Newport Bay have not comprehensively described the planning process and history of the site. This staff report documents the history of dredging and the previous Commission actions in reference to the dredging of Upper Newport Bay. It is also an effort to inform the Commission and other interested persons on the regional planning effort undertaken to ease the flow of sediment into Upper Newport Bay.

The purpose of the proposed development is to improve marine navigation and recreation, restore deepwater habitat, improve the tidal prism and maintain water quality by increasing the flow and circulation of tidal waters. When the Coastal Commission approved past dredging projects in Newport Bay, included in the project documentation were projections for the maintenance dredging of accumulated sediment from the bay and in-channel basins. The buildup of sediment in Newport Bay is an adverse impact because it results in the loss of salt water habitat and interferes with navigation. On the other hand, removal of accumulated sediment results in the loss of mudflats which eventually would evolve to riparian habitat. If the intent of the planning process for Upper Newport Bay is to encourage the conversion of salt water habitat to fresh water habitat, then removal of the sediment would be an adverse impact. However, because of the historical loss of and current scarcity of salt water estuarine habitat, the preservation of salt water estuarine habitat is a priority. Therefore, removal of the mudflats is not considered an adverse impact.

Currently staff is actively participating in ongoing meetings with other County, State and Federal resource agencies in the formulation of further habitat enhancement plans for the Upper Newport Bay.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Protection of Salt Marsh

Prior to the commencement of construction the applicant shall submit for the review and approval of the Executive Director the following information concerning the construction of the coffer dam and protection of sensitive salt marsh vegetation. Construction activities shall be carried out in conformance with the approved plans. The information requested shall be submitted with the approval of the California Department of Fish and Game:

a. the construction plans for the installation and removal of the coffer dam which include:

   1. location and placement of silt fencing,
   2. location of construction limits to be staked and flagged
   3. location of construction access routes
   4. the proposed construction time period
   5. measures to be taken to educate contractors
   6. measures to be taken to clean-up the site following construction

2. Mitigation for Impacted Resources

In the event that during the course of construction of the coffer dam or as a result of the construction of the coffer dam the sensitive coastal salt marsh

resources are adversely impacted as a result of sedimentation or direct construction impacts, the following measures shall be taken:

a. the applicants shall immediately notify the South Coast office of the Coastal Commission,
b. the applicants shall stop work and take immediate measures to prevent ongoing damage,
c. the California Department of Fish and Game shall supply an analysis of the damage to salt marsh resources and recommendations for remediation and/or mitigation on a 1:1 ratio,
d. the applicants shall apply for a coastal development permit amendment to get Coastal Commission approval for a mitigation/restoration plan to correct any damage sustained by the salt marsh,

3. Notification of the Port of Long Beach

Prior to issuance of the coastal development permit, the applicant shall notify the Port of Long Beach, in writing, of the proposal to build the coffer dam and inform the Port of the potential for adverse impacts to the Port of Long Beach mitigation site (Basin B) and requesting comments from the port on the coffer dam construction plans specified in special condition 1. A copy of the letter shall be submitted to the Coastal Commission.

4. Nesting Season

No dredging or construction work shall occur in the Unit III basin during the nesting seasons for the California least tern, light-footed clapper rail, Beldings savannah sparrow and California black rail, (i.e., March 1 through September 1).

5. Eel Grass Protection

Prior to commencement of dredging in the main access channel, the applicant shall submit, for the review and approval of the Executive Director, the results of the eel grass survey. If the survey indicates the presence of eel grass in the channel the applicant shall mark those sites so that dredgers can avoid the site.

At the conclusion of the dredging of the main channel, the applicant shall again survey the eel grass sites to determine if any eel grass was adversely impacted. If any eel grass has been impacted, the applicant shall replace the eel grass on a 1:1 ratio. The applicant shall supply the Executive Director the final report, and mitigation plan if required, within three months following the completion of the project and the Executive Director shall make a determination as to whether an amendment to the coastal development permit is necessary to address the eel grass impacts.

IV. FINDINGS AND DECLARATIONS

A. Project Location

The Upper Newport Bay began to take on an estuarine condition approximately 10,000 to 12,000 years ago. Marshes and sand bars began to form, fed by alluvium contributed by the Santa Ana River and erosion from surrounding bluffs. The Santa Ana River historically flowed into Upper Newport Bay, fed

by a number of creeks, including San Diego Creek. The Santa Ana River changed course several times, sometimes flowing to Alamitos Bay, sometimes to Upper Newport Bay. By 1770 the Santa Ana River had cut a new channel between Newport Beach and Huntington Beach mesas, returning to Alamitos Bay during large floods. The river never returned to Upper Newport Bay. Between 1825 and 1828 a sandspit formed down the coast from the Santa Ana River mouth, turning flows southeast through what became the lower bay and is now Newport Harbor.

The Upper Newport Bay is the largest functioning saltmarsh ecosystem in southern California, comprising 1,300 acres of mixed estuarine and upland habitat within the jurisdiction of the City of Newport Beach, the City of Irvine, the County of Orange and the California Department of Fish and Game. 752 of the acres of the estuary and upland are managed by the California Department of Fish and Game as the Upper Newport Bay Ecological Reserve.

The Upper Newport Bay includes submerged marine and estuarine areas, as well as mudflats and vegetated freshwater and salt marsh. Two-hundred and one species of birds have been recorded in and around the Upper Newport Bay, the largest group being migratory shorebirds and waterfowl. Mudflats provide foraging habitat for shorebirds, ducks, sandpipers, dowitchers, godwits, avocets, plovers and more. The deeper water habitat in the channel provides foraging habitat for diving birds, such as scoters, cormorants, terns and brown pelicans. Among the many sensitive plants and animals in the Upper Newport Bay area are the salt marsh bird's beak, brown pelican, American peregrine falcon, light-footed clapper rail, western snowy plover, California least tern, Beldings savannah sparrow and the California gnatcatcher.

A Department of Fish and Game study in 1985 documented 72 species of fish in the Upper Newport Bay, which serves as a spawning and nursery ground. Some of the fish found in the bay include halibut, turbot, basses, yellowfin croaker, mullet, gobies, topsmelt, and anchovy.

Vegetation found at the bay includes cordgrass (Spartina foliosa), pickleweed (Salicornia virginica), saltwort, limonium, frankenia and the salt marsh birds-beak. Surrounding upland land uses consist of residential, park and open space with coastal sage scrub vegetation.

Newport Bay receives fresh water from San Diego Creek and also from Bonita Creek, which flows into San Diego Creek inland of Jamboree Road. Except where impacted by the San Joaquin Hills Transportation Corridor, Bonita Creek is not channelized and has been the beneficiary of freshwater wetland riparian enhancement and creation due to mitigation projects conducted by the Transportation Corridor Agency. San Diego Creek, which primarily feeds the Upper Newport Bay is channelized. The Transportation Corridor Agency's San Joaquin Transportation Corridor was conditioned to provide mitigation, for adverse impacts to wetland coastal resources, in the form of a salt marsh on the northern boundary of San Diego Creek near Jamboree, and enhanced and restored riparian habitat along Bonita Creek. Located inland of the Upper Newport Bay adjacent to University of California Irvine is the San Joaquin Marsh, a component of the University of California Reserve System. Finally, the Irvine Ranch Water District is proposing habitat changes in the wetlands area it owns adjacent to the San Joaquin Marsh.

Upper Newport Bay offers passive and active recreational opportunities in the form of hiking, running, bicycling, bird watching and enjoyment of natural estuarine open space habitat in the midst of a highly urbanized area.

B. Project Description

The proposed development consists of six related elements (see Exhibit 2): 1) excavation of sediment from the Unit III basin, 2) excavation of sediment from the main access channel in Units I and III, 3) excavation of the Unit II access channel from the termination of Unit III to an area 2,000 feet below Pacific Coast Highway, 4) excavation of sediment from the Dover Shores community marina, 5) repair and extension of the Jamboree Road bridge stabilizer structure, and 6) off-shore disposal of dredged sediment at the LA-3 site. However, the off-shore disposal of the dredged sediment is not included in the project description of this permit because it requires an Army Corps of Engineers application for a consistency determination.

The proposed development involves dredging of sediment in areas which have been previously dredged. In addition, the stabilizer structure for the bridge over Jamboree Road was approved under permit 5-81-126 (City of Newport Beach).

Unit III Basin -- The Unit III basin was originally dredged to an invert elevation of -7.0 feet mean sea level (MSL) with wide slopes of 10:1. The proposal for the Unit III basin is to dredge to an elevation of -14.0 MSL with side slopes between 20:1 to 25:1 ratios.

Main Access Channel -- The main channel is proposed to be dredged to an elevation of -14.0 MSL to create a 100 foot wide channel with side slopes varying from 3:1 to 10:1, depending upon the adjacent vegetation. The area to be dredged includes portions of Unit 1 and Unit III and the entirety of Unit II. The channel would be dredged in Unit II from the Basin III to an area 2,000 feet below the Pacific Coast Highway bridge.

Dover Shores -- Dredging within the Dover Shores Community marina would extend from the private residential bulkheads and transition into the main access channel. From the bulkheads to 40 feet into the channel would be dredged to -10.0 feet MSL with side slopes of 3:1. Currently the depth is -4.0 to -6.0 feet MSL. Approximately 75,000 c.y. of material is proposed to be removed.

Jamboree Road Bridge -- The existing Jamboree Road bridge stabilizer structure, which was constructed as part of the Newport Bay Early Action Plan in 1982, is proposed to be extended 30 feet into the bay. A coffer dam will be constructed, the existing structure would be covered with geo-fabric and four feet of grouted rip-rap will be placed upon it, and then the coffer dam would be removed. Improvements to the structure are necessary because the Unit III basin will be excavated from -7.0 MSL to -14.0 MSL and the increased depth would undercut the existing stabilizer structure, and because the existing structure has been damaged by storms and needs reinforcement.

Ocean Disposal -- All the dredged materials removed by this project are proposed to be taken to LA-3, the off-shore ocean dump site. Under either of the two dredging scenarios, hydraulic dredge or clamshell dredge, dredged material would be placed onto a barge or scow, taken to the marshalling area 2,000 feet seaward of Pacific Coast Highway, and then taken by tugboat out to the LA-3 dump site. Disposal of the dredged sediment requires a permit from

the Army Corps and a consistency determination from the California Coastal Commission. The consistency determination is not a part of this coastal development permit.

The primary objective of the proposed development is to improve and protect local deep water and salt marsh habitat for navigation, recreation and environmental purposes. Implementation of the project will result in the improved tidal flushing of Upper Newport Bay which will stabilize salinities, increase water turnover and improve habitat quality for marine fish species.

Accumulation of sediment is a major problem in lower Newport Bay because it presents problems for recreational boating and navigation. If left undredged, the sediment will build up to the point where it interferes with boat navigation. In upper Newport Bay build-up of sediment creates mudflats and if left alone would eventually lead to the creation of freshwater riparian and eventually terrestrial habitat. The end result would be loss of deep salt water and salt water estuarine habitat, leading to a reduction of the open water resources available for fish and marine invertebrates.

The effort to reduce sedimentation accelerated in the 1970's and 1980's due to the passage of the Federal Clean Water Act and the development of a 208 plan for the Upper Newport Bay.

The regional planning process for Newport Bay focuses on the interception of sediment prior to entry into the bay, creation of basins to capture the sediment once it enters the bay, dredging of the access channel and lower marinas to remove accumulated sediment, and eventual removal of sediment from the basins, access channel and marinas to maintain, preserve and restore deep water and salt water marsh habitat values.

Of the two sediment basins in the bay, one is completely filled and the other is 75% filled. In a related development, the Irvine Ranch Water District is proposing to remove 75,000 cubic yards of sediment from the #3 in-channel sediment basin in San Diego Creek to be used to reconfigure the duck ponds on Irvine Ranch Water District property.

The sedimentation basins and access channel in the Upper Newport Bay are the final components of a multi-jurisdictional sedimentation control plan for the San Diego Creek watershed which includes Best Management Practices for construction and agricultural activities in the watershed, sediment and debris basins in the watershed foothills, and channel lining, channel stabilization, and in-channel basins in the San Diego Creek. The in-channel basins (see Exhibit 6) are estimated to collect 17,000 c.y. of sediment annually.

The Coastal Conservancy supports the proposed development and has approved a $140,000 grant to the County of Orange to prepare bid documents, obtain permits and approvals, and other activities recommended in the enhancement plan. One condition of the grant was that the County submit the project to the Coastal Commission for a determination of the project's conformity with the policies and objectives of the Coastal Act.

C. Project History

In 1933 a salt evaporation operation or saltworks involving a series of dikes and evaporation ponds was established in the eastern portion of Upper Newport

Bay near Jamboree Road. The saltworks enterprise was destroyed during the 1969 storms. In 1975 the site was acquired by the State of California which then created the Upper Newport Bay Ecological Reserve.

Following the passage of the 1972 Federal Water Pollution Control Act eight area jurisdictions under the leadership of Southern California Association of Governments (SCAG) joined together to formulate a 208 plan to control sediment deposition in the Upper Newport Bay. The number "208" refers to Section 208 of PL 92-500 (Federal Water Pollution Control Act of 1972) which establishes the framework for the study, planning, and control of discharge of pollutants into navigable waters. Sediment in water is a form of pollutant. One offshoot of the 208 planning process was the formulation of the San Diego Creek Comprehensive Stormwater Sedimentation Control Plan.

An environmental assessment in 1981 included the following description of the effects of sedimentation:

> The portion of the Bay within a few thousand feet of Jamboree Road has become filled in as dry land, with only a narrow channel for San Diego Creek existing as wetlands habitat. The area is not subject to tidal action, and a well developed riparian community including mature willows has become established along the northerly side of the creek channel.

The Early Action and Interim Plan portion of the 208 plan called for two in-channel sediment basins in San Diego Creek and a third basin in the Upper Newport Bay (see Exhibit 5). The in-channel basins were constructed with a grade stabilization structure, a deepened channel, and a weir structure. The two basins are 2100 linear feet and 4800 linear feet, respectively and have a total storage area of 180 acre feet below the invert elevation of the flood control channel. Basin #3, seaward of where the San Diego Creek meets the Upper Newport Bay, has a total surface area of 20 acres and involved the excavation of 250,000 c.y. of sediment. The depth of the basin was proposed at -7 feet MSL.

Since 1982 there have been three separate dredging projects in the Upper Newport Bay area: the San Diego Creek Comprehensive Storm Water Sedimentation Control Plan -- Early Action & Interim Plan; the Early Action Interim Plan EIR Addendum -- Unit I Sediment Management and Restoration Program; and the Upper Newport Bay Unit II Enhancement/Sediment Management Project. The dredging amount figures cited in this section pertain to the initial projections and may not exactly conform with the dredging amount figures cited in the section on Coastal Development Permit History.

The San Diego Creek Comprehensive Storm Water Sedimentation Control Plan evaluated the environmental effects of the proposed excavation and disposal of 350,000 cubic yards (c.y.) of dredged material to create two in-channel silt basins as well as the removal and disposal of 500,000 c.y. of sediment in Upper Newport Bay. This 1981 EIR project description included the provision for a rock stabilizer structure at the Jamboree Road bridge.

The Unit I Sediment Management and Restoration Program was a 1984 addendum to the Early Action and Interim Plan EIR which evaluated the excavation and removal of 800,000 c.y. of dredged material from portions of the Upper Newport Bay and the access channel for one mile downstream. This project involved enlarging the 1981 in-Basin, removing the island at the mouth of San Diego Creek, and creating least tern nesting islands as proposed in the 1981 EIR.

The 1986 Upper Newport Bay Unit II project involved the excavation and removal of 500,000 to 1.15 million c.y. of material from the Upper Newport Bay, the main access channel, and creation of a new side channel. This dredging was located downstream of the Unit I Basin and extended to the Pacific Coast Highway bridge. Dredged materials were proposed to be disposed at the LA-3 disposal site.

Coastal Commission Permit History

Coastal Development Permit P-80-7257 was approved on November 10, 1980 for the dredging of 238,000 c.y. of sediment from the Upper Newport Bay. The permit included a special condition for placement of dredge materials on the Irvine landfill site. This permit was amended in 1982 to change the scope of the project, the method of dredging and the location of where dredging was to be conducted.

Coastal Development Permit 5-81-126 (City of Newport Beach) was approved for the construction of sediment basins upstream in San Diego Creek and removal of sediment at the terminus of San Diego Creek with the Upper Newport Bay. 35,000 cubic yards of sediment were to be excavated and deposited on the southern seaward side of the intersection of MacArthur Blvd. and the San Diego Creek.

Coastal Development Permit 5-84-260 was approved with a special condition in May 1984. This dredging project was undertaken by the Port of Long Beach to restore tidal influence to the old salt ponds. This project involved the excavation of 199,679 c.y. and 81,419 c.y. from two separate areas in the Upper Bay (see Exhibit 7). Area A (199,679 c.y.) involved the excavation of an intertidal/subtidal area of 21.021 acres to mean sea level and an intertidal area of 1.13 acres between mean sea level and mean high water. Area "B" involved the excavation of 7.06 acres to below mean sea level and 0.32 acres between mean sea level and mean high water. A 3.32 acre portion was left as a least tern nesting site. The special condition required provision of information and monitoring reports on the restoration of the old salt ponds area. In return for this restoration project the Port of Long Beach received mitigation bank credits of 31.53 for area "A" and 10.59 credits for area "B". No dredging is being proposed for mitigation areas "A" or "B".

Coastal Development Permit 5-84-560 (Dept. of Fish and Game, Irvine Co., City of Newport Beach) was approved without special conditions for the excavation and disposal of 740,000 c.y. of sediment. This permit involved the excavation of the channel, removal of an existing island in the northern part of Upper Newport Bay, construction of a proposed island in the southern part of Upper Newport Bay, and disposal of dredged materials inland of Jamboree Road (see Exhibit 8). This permit corresponds to the Upper Newport Bay Unit I project described above.

Coastal Development Permit 5-86-009 (Dept. of Fish and Game, City of Newport Beach) was approved without any special conditions for the dredging and removal of 1,100,000 c.y. of sediment from the Upper Newport Bay to create a basin and side channels and access channel (see Exhibit 9). This permit corresponds to the Upper Newport Bay Unit II project described above. The dredged materials were taken to the EPA LA-3 offshore dumpsite.

Additional coastal development permits have been approved for maintenance dredging in Newport Bay between the mean high tide line and the U.S. Pierhead line (5-86-130, 5,000 c.y., and 5-89-259, 20,000 c.y.). The 5-86-130 permit included dredging of the Dover Shores area.

D. Dredge and Fill of Wetlands

Section 30233 of the Coastal Act strongly limits the fill of wetlands. The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes is permitted only where there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and if limited to one of the delineated allowable uses in Section 30233(a)(1)-(8).

The specific uses allowed under Section 30233(a)(1)-(8) are:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

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

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines. (emphasis added)

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes. (emphasis added)

(8) Nature study, aquaculture, or similar resource dependent activities.

(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.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division. (emphasis added)

1. Allowable Use

Exhibit 2 illustrates the three segments of the dredging plan, Units I, II and III. Unit I is located on the south side of Upper Newport Bay and extends from the Jamboree Road bridge to the main dike. Unit II, basin and channel, extend from the main dike to 2,000 feet below the bridge over Pacific Coast Highway. Unit III is located in the northern portion of Upper Newport Bay from the Jamboree Road bridge to the main dike. The Dover Shores community is located on the northern side of the bay channel just west of Shellmaker Island (see Exhibit 3).

Dredging is proposed in Units I, II and III, and the Dover Shores marina. The proposed project consists primarily of dredging in areas of Upper Newport Bay which have been previously dredged, i.e., the Unit III Basin, the access channel in Units I, II and III, and Dover Shores.

CDP P-80-7257, which corresponds to the Early Action and Interim Plan portion of the 208 plan which created the two in-channel basins and the dredging of Basin III, was approved by the Commission for the dredging of 238,000 c.y. of sediment from Unit III or Basin 3. CDP 5-84-260 was approved by the Commission for the dredging and removal of 199,679 c.y. from the Unit I basin area and the dredging and removal of 81,419 c.y. of material from the Unit III basin area. This project is known as the Port of Long Beach mitigation plan (see Exhibit 7). CDP 5-84-560 involved the excavation of the access channel to the main dike, the removal of an island in the Unit III area, and the creation of an island in the Unit I area (see Exhibit 8).

CDP 5-86-009 (Exhibit 9) involved the excavation of a 17-acre sedimentation basin to -14 MSL directly west of the main dike, the creation of side channels in the area of the proposed basin (6 acres to -9 MSL) and the access channel (100 feet wide to -14 MSL from the basin to below the PCH bridge).

Additionally, CDP 5-86-130 was approved by the Commission for the maintenance dredging of 5,000 c.y. of material from marina areas, including the dredging of the Dover Shores marina.

Section 30233 of the Coastal Act provides for 8 allowable uses for which the dredging or filling of coastal waters is acceptable. The allowable uses for the proposed development include dredging for navigation purposes, dredging for restoration purposes and filling as an incidental public use.

a. Dredging for navigation purposes

Section 30610(c) of the Coastal Act states that no coastal development permit is required for:

> Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

Section 13252 of the California Code of Regulations states that any method of routine dredging that involves the dredging of 100,000 cubic yards or more within a 12 month period or where dredged spoils are to be placed within an environmentally sensitive habitat area requires a coastal development permit. Section 13252(a)(2)(C) concerns the disposition of suitable dredged materials for beach nourishment.

The proposed dredging requires a permit because it is not simply maintenance dredging of navigation channels. It is a part of a comprehensive plan for sediment removal in the entire Newport Bay that involves both navigation and habitat restoration. In addition, it involves dredging more than 100,000 cubic yards within a 12 month period.

The Dover Shores project was dredged under permit 5-83-130 for a portion of 5,000 c.y. of sediment. The current proposal is for the removal of 75,000 c.y. in the marina and access channel. The proposed dredging is a larger scale dredging project than was previously approved in 5-83-130 because it involves incorporating the marina dredging with the larger access channel dredging. The current proposal is to dredge from the bulkhead to 40 feet bayward from a depth of -4.0 MSL to a depth of -10.0 MSL and transition the side slopes at a ratio of 3:1 to transition into the main access channel. The main access channel will be returned to its dredged depth of -14.0 MSL.

Dredging in Dover Shores and the access channel in the lower Newport Bay is dredging necessary for navigation purposes (see also section 2 of this staff report on feasible alternatives). Subparagraph (a)(2) of Section 30233 of the Coastal Act states that "Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps." is an allowable use.

The dredging for the lower Newport Bay (i.e., Dover Shores marina and main access channel) is primarily dredging for navigation purposes and is therefore an allowable use under 30233(a)(2).

b. Dredging for restoration purposes

The dredging for Basin III will be expanded from that originally done in the 1980's (5-84-260). The depth of the basin will be increased from -7.0 MSL to -14 MSL. The side slopes ratio will be changed from the original 10:1 to 20 or 25:1. In addition, the access channel in Units I, II and III will be dredged to its former depth of -14 feet MSL. The dredging in the Upper Bay is for restoration and not navigation purposes.

The accumulation of sediment in Upper Newport Bay is an ongoing problem requiring periodic dredging. When the creek enters the bay, the water velocity is slowed and the sediment settles out. Sedimentation is a natural

process and only becomes a problem when the amount of sediment being deposited exceeds the ability of the tidally influenced estuary to remove it. Currently the amount of sediment deposited exceeds the ability of the estuary to tidally flush it. The in-channel basins in San Diego Creek and the sedimentation basins in the Upper Newport Bay are designed to trap the sediment either before it enters the Bay or after. To be effective, the basins must be periodically cleaned out.

If the basins, access channels and marinas are not periodically dredged the inflow of sediment would cause some habitat to convert from open salt water to mudflat to marshland and eventually to disturbed uplands and freshwater riparian habitat. Deep water habitat would be lost. In conjunction with the decrease in water circulation caused by sedimentation and resultant shallowing of the bay would be an increase in algal blooms and eutrophication. In the lower bay sedimentation would cause loss of navigability for recreational boats.

The dredging proposed in this development, both in the Upper and Lower Newport Bay, is necessary to restore deep water estuarine habitat, increase the tidal prism, improve the overall water quality and prevent the sedimentation of saltwater habitat and conversion of saltwater habitat to mudflats and freshwater habitat. For additional analysis, please refer to the sections on feasible alternatives and section "E" on water quality.

Therefore, the proposed development conforms with Section 30233(c) of the Coastal Act which states:

> In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.

The proposed development will restore and enhance the functional capacity of the Upper Newport Bay as a deep water habitat and is clearly an allowable use under 30233(a)(7) which allows the dredging of wetlands for restoration purposes.

c. Incidental Public Use

The Jamboree Road stabilizing structure was constructed as a joint project between the City of Newport Beach and the County of Orange in 1982 as part of the Newport Bay Early Action Plan facilities. A 1993 report entitled "Evaluation Report on the Implementation of the Newport Bay Watershed, San Diego Creek Comprehensive Stormwater Sedimentation Control Plan" by John M. Tettemer & Associates, Ltd. included an assessment that the existing stabilizer was failing and "...in need of repair."

The construction of the extension of the Jamboree Road stabilizer structure involves the placement of 10,000-20,000 c.y. of fill for a coffer dam, dewatering behind the coffer dam, repair of the existing structure, the placement of geo-fabric and 5,400 c.y. of rip-rap and 1,600 c.y. of grout to secure the rip-rap. At the conclusion of the repairs the coffer dam will be removed. The existing stabilizer structure will be extended 30 feet into the bay.

The extension of the stabilizer structure and the placement of the coffer dam and rip-rap are measures to protect the structural integrity of the Jamboree Road bridge. The Jamboree Road bridge is located at the terminus of San Diego Creek with the Upper Newport Bay. The San Diego Creek channel widens out at the bay connection and the bridge is subject to scour from creek flooding (see Exhibit 4). The scour from previous floods is eroding the current stabilizer structure which was permitted under CDP P-80-7257. The original protective measures for the Jamboree Road bridge were deemed necessary because of potential adverse impacts from the creation of Basin III. The 1981 Interim Plan states:

> Approximately 250,000 cubic yards would be excavated to form the basin. Slope protection would be installed at the upper end of the basin to protect the Jamboree Bridge foundations. This protection will take the form of rip-rap with backing material and filter fabric, and will not be visible once revegetation occurs.

The Final Mitigated Negative Declaration IP 96-157 states:

> The structure has been damaged by high storm flows over the past several years, with two sections of rock washed out. Repairs are necessary to allow this structure to perform as originally intended. In addition, the existing stabilizer structure would require modification to accommodate the proposed deepening of the Unit III Basin.

A letter submitted by John Tettemer & Assoc. Ltd. dated June 9, 1997, states that construction of the proposed coffer dam will temporarily impact one-half an acre but will not adversely impact any vegetated habitat because both the coffer dam and the stabilizer structure repair and expansion will be constructed entirely within the tidal prism of the bay immediately adjacent to the bridge. The coffer dam impacts are temporary because the dam will be constructed out in the water, the water will be pumped out, the construction will take place, and then the coffer dam will be removed. Temporary impacts will result be from sediment entering the bay during the installation and removal of the coffer dam.

Construction of the coffer dam and the extension of the stabilizer structure is necessary to prevent undercutting of the existing stabilizer structure when the basin is dredged from -7 to -14 MSL. Fortification of the stabilizer structure is also necessary because of the existing damage from storms and the existing scour holes. Placement of fill for the coffer dam is necessary to protect an existing bridge supporting a critical regional transportation roadway. Therefore, the Commission finds that extension of the stabilizer structure is an allowable incidental public use under Section 30233(a)(5).

2. Feasible Environmental Alternatives

Section 30233 of the Coastal Act requires that filling and dredging of wetlands, open coastal waters and estuaries be permitted only where there is no feasible less environmentally damaging alternative.

The applicants submitted an alternatives analysis with the CDP application. The alternatives considered were a no project alternative and a reduced project alternative.

No Project Alternative

Under the no project alternative the status quo would be maintained, the navigable channels at Dover shores and the access channel would eventually fill. With less sediment being trapped in the basins and channels, more sediment would be deposited in lower Newport Bay and Harbor and would cause problems with recreational boating. Increased sedimentation would cause the loss of deep water habitat by the conversion of aquatic systems to mudflats and terrestrial systems and reduction of the tidal prism and tidal flushing and conversion of salt marsh to freshwater marsh. The Bay's usefullness as a fishery and marine estuary would be reduced with significant adverse impact to sensitive wildlife dependent upon deep water habitat. In addition, deepening and widening of the Unit III basin will reduce the long-term adverse environmental impacts from increased sedimentation because it will trap more sediment and increase the time period between maintenance dredging intervals. A decrease in the number of times maintenance dredging is necessary reduces the actual and potential environmental impacts.

If the stabilizer structure is not repaired it will continued to be damaged and eventually require closure of the road. The no project alternative would not accomplish the project's goals, would result in an increasing loss of salt water habitat and is not the least environmentally damaging alternative.

Reduced Project Alternative

The reduced project alternative would involve maintenance dredging and maintenance repair to the Jamboree Bridge. Under this scenario the basin would be dredged to its original depth of -7.0 MSL and therefore extension of the stabilizer structure would not be necessary. Temporary impacts to the Upper Bay water quality from the construction of the coffer dam would not occur.

The reduced project alternative would not be as successful in trapping sediment and would result in reduced water quality and change in habitat types. In addition, implementation of the reduced project alternative would reduce the time interval between dredging periods (see no project alternative) and increase the amount of environmental disruption to habitats and wildlife.

Disposition of Dredged Material

The alternatives analysis also included a discussion of disposal of the dredged material. The mitigated Negative Declaration states that the dredged material is clayey silts and would not be acceptable for beach nourishment. This finding is affirmed by the December 1996 Coastal Conservancy report on the proposed project. Therefore, the disposal of dredged materials to an off-shore dump site does not conflict with the provisions of Section 30233(b) which requires that dredge spoils suitable for beach replenishment be utilized for beach nourishment. Additionally, dredged materials from the last CDP issued for bay dredging, 5-86-009, included depositing the materials at LA-3.

The two alternatives are either land or ocean disposal. The preferred alternative calls for disposal of dredged material at LA-3. Disposal of the dredged material at LA-3 is not included in this coastal development permit because it requires an Army Corps of Engineers consistency determination, which is a separate action. However, a discussion of disposal options is

necessary because the Coastal Act contains provisions for the disposition of suitable dredged materials for beach nourishment.

Previously, dredged material (early 1980's) has been deposited on vacant land in and around Upper Newport Bay. The alternatives analysis notes that two land sites were available in 1986, a 13-acre parcel between Jamboree and MacArthur for processing but not disposal, and the Bee Canyon landfill. The Coyote Canyon landfill is closed and no longer available for disposal. The above-mentioned 13-acre parcel could only be used as a temporary drying area and the material would then be hauled to a landfill. The drying of the material is estimated to take 7.75 years, which would also mean the dredging and its adverse impacts would be strung out over 7 years. Also, taking the material to Bee Canyon landfill would cost more than the dredging project itself and would create other adverse environmental impacts in the form of noise and air pollution from transportation of the materials.

The option of carrying the dredged material by hydraulic pipe to the Newport Canyon was also examined. However, this site is not an EPA approved dump site and is prime commercial fishing grounds. Therefore, it is not an acceptable alternative.

Conclusion

The essential difference between the reduced alternative and the preferred alternative is the deepening of the Unit III basin to -14.0 MSL from its original design of -7.0 MSL. The difference of 7 feet would deepen the tidal prism, allow sediment to fall out sooner and not enter the reserve, would increase water quality and deep salt water habitat and lengthen the time interval between maintenance dredging.

Therefore, the Commission finds that the preferred alternative is the least environmentally damaging alternative.

3. Mitigation Measures

Section 30233 of the Coastal Act also requires that where fill is permitted, feasible mitigation measures are provided to minimize adverse impacts.

a. Impacts Analysis

1. Temporary Impacts: Temporary adverse impacts to water quality from dredging are unavoidable. The Unit III Basin was originally dredged to a depth of -7 MSL. The basin has been filled in so that it currently is at a depth of as shallow as +1 MSL in some places. This basin is proposed to be dredged to a depth of -14 MSL. When the initial dredging was conducted periodic maintenance was anticipated. The dredging maintenance schedule predicted by the City of Newport Beach was that the basins be cleaned out at 3, 6, 11, and 22 years, with subsequent clean out at 13 year intervals. In fact, as part of the project the applicants are intending to provide perpetual maintenance financing for the predicted basin cleanouts to keep the basins at a depth of -14 MSL. Estimates are that 167,000 tons of sediment enter the bay annually from San Diego Creek, which causes an increase in water turbidity, shallowing of the open water, and decrease in water circulation.

As stated in the technical appendices, the proposed project is expected to create a temporary local increase in sediment deposition below the stabilizer structure associated with the construction of the temporary coffer dam. The northeast end of the Upper Newport Bay consists of the Long Beach basin mitigation site (see exhibit 6) which is separated from the Unit III basin by a dike and salt marsh vegetations seaward of the basin. When constructed, the coffer dam is expected to tie into this dike. The appendix notes that there is potential for significant adverse impacts to the salt marsh area and to the mitigation basin from construction of the coffer dam, as described above. Potential damage can result if the project is constructed during the rainy season, a storm occurs, and sediment from the coffer dam is carried into the mitigation basin and the salt marsh. In addition, if the construction workers are not educated as to staking the salt marsh and limiting work areas, damage can result from construction. However, the appendix also notes that the potential impacts are mitigable through construction control measures, seasonal timing of work, and contractor education and monitoring.

In other areas of dredging the potential adverse impacts are temporary, localized and not significant, creating a short term elevation in turbidity at local dredge sites. The existing RWQCB standards require that turbidity at 100 feet from the dredging project be limited to an elevation of not greater than 20% over existing conditions and that dissolved oxygen may not be depressed to a level below 5mg/l. The water quality will be monitored for turbidity and the RWQCB will intervene if the turbidity exceeds these standards.

The appendices states on page 37 that turbidity conditions in Upper Newport Bay are normally high and that species inhabiting the bay are used to these fluctuating turbidity conditions. It further states:

> Because the greatest effects of the generated turbidity plume are expected to be localized around the immediate dredging area and within the central channel, only limited impacts resulting in complete and prolong sessile invertebrate community disturbance are anticipated. For this reason, impacts of the dredging on turbidity related damage to invertebrate communities are not considered to be significant.
>
> ...
>
> ...the project dredging may result in localized turbidity around the work area; however, the remaining waters would not be expected to be substantially impaired. The effects of turbidity on fish behavior, distribution, and avian foraging are considered to be adverse but not significant.

In relation to birds, the species which are most likely to be impacted by the dredging construction activity and noise are those located in the Upper Bay. The lower bay already has significant disruption due to recreational boat traffic. The appendix states on page 38:

> As a result of the high level of nesting by shorebirds in the vicinity of the Unit III basin and channel, dredging within these areas is anticipated to result in significant disruption to nest site use or increase nest failures by both sensitive as well as non-sensitive species.

The report concludes that the temporary impacts are short term, local and do not constitute a significant adverse impact. Therefore, no mitigation is required for the short term impacts from dredging.

2. Long-Term Impacts: Removal of the approximately 750,000 cubic yards of sediment is expected to produce some long term changes in habitats and change the character of the existing communities in impacted areas. For instance, the plan proposes the removal of approximately 50 acres of mudflats which, in turn, reduces the amount of this habitat available to shorebirds and ducks for foraging. However, as the appendix points out, the entire Unit III area was previously dredged and that future maintenance dredging was anticipated. The 1985 EIR for the Upper Newport Bay Enhancement/Sediment Management project estimated that 40 acres of mudflats would be removed and that the major impact would be to shorebirds who forage in the mudflats.

The primary purpose of the dredging program in the Newport Bay is to maintain and restore deep salt water habitat, maintain or increase the tidal prism, and increase the flow of salt water to flush the estuary. There will be no significant adverse impacts to these goals from the dredging program. Therefore, if the project proceeds as described and with the mitigation measures proposed, there will be no significant adverse impacts.

However, the one area of the project which does involve a potential long-term impact to estuary resources is the 30 foot extension of the bridge stabilizer located at the point where the San Diego Creek enters into the bay. As was stated in the discussion of incidental public use, this location is subject to scour and disruption during flooding and storm events. The grouted rip-rap will displace some bay bottom, but there are is no vegetation which will be impacted and the site will continue to be subject to scour during flood events. Therefore, extension of the stabilizer will not involve any long-term impacts to sensitive coastal resources.

The potential for an adverse impact lies in the timing and construction of the coffer dam. For instance, if constructed during the rainy season, it is possible that sediment from the coffer dam could be swept into the Port of Long Beach's area "B" mitigation basin or could inundate salt marsh resources nearby.

As conditioned, the Commission finds that the proposed project will not have significant adverse impacts on coastal resources (see also the following section on mitigation measures).

b. Mitigation Measures

Section 30233 also requires that feasible mitigation measures be provided to mitigate adverse environmental impacts.

A summary of previous mitigation measures was included in the Mitigated Negative Declaration dated October 23, 1996, as well as a summary of mitigation measures for the proposed project.

In conjunction with state and CEQA monitoring requirements, a Mitigation Monitoring and Reporting Program (MMRP) was designed for the proposed project. The project was evaluated in the Initial Study and potential adverse impacts and mitigation measures were identified. The Initial Study

incorporated by reference prior analyses for previous dredging projects in the Upper Newport Bay and subsequent mitigation measures. Those prior mitigation measures and any proposed mitigation measures were incorporated into the Mitigation Monitoring Program for the proposed project. The City of Newport Beach and the County of Orange are the lead agencies under CEQA and are responsible for identifying mitigation compliance coordinators to oversee implementation of the MMRP.

The mitigation measures proposed by the applicants concern hydrology and water quality, roadway circulation, harbor circulation, air quality, noise, biology and aesthetics and specific mitigation measures. Of particular concern to the Commission are the mitigation measures regarding water quality and biology. These mitigation measures include:

1. incorporation of conditions required by RWQCB and CDFG
2. monitoring of pollution measures and remedial action if elevated pollution levels are detected,
3. stake & flag construction limits to protect resources, to be inspected and adjusted by field biologist or project engineer,
4. silt fencing adjacent to marshlands,
5. coffer dam installation and removal to be conducted outside of the rainy season
6. access to the construction work sites will be limited to routes along the central access channel or alternative routes as directed by CDFG,
7. dredging within the Unit III basin will be prohibited during the nesting seasons for the California least tern, light-footed clapper rail, Beldings savannah sparrow and California black rail, i.e., from March 1 through September 1,
8. dredging may be conducted in the Unit III channel if the CDFG and USFWS determine that adequate measures can be taken to protect sensitive bird species from March 1 through July 1,
9. all construction activities to be closely coordinated with the Upper Newport Bay Reserve Manager to ensure that resources are protected,
10. prior to implementation of dredging within the access channel a survey for eelgrass will be conducted and if eelgrass is found, those sites will be marked and avoided. A post-construction survey will be taken to ensure that no eelgrass habitat was adversely impacted.

The proposed mitigation measures are intended to minimize any potential adverse impacts from dredging to water quality and biological resources. Volume II of the Initial Study, Technical Appendices, includes a biological and water quality impact assessment which discusses temporary and long-term impacts.

The project documentation states that if the mitigation measures are followed, any potential impacts to the Port of Long Beach sedimentation basin and salt marsh resources adjacent to the coffer dam will be reduced to a level of insignificance. However, in order to ensure that these measures are carried out and to mitigate any impacts which occur during construction the Commission is requiring that the applicant submit a coffer dam construction plan indicating the limits of construction and sites to be flagged. If there are impacts to the salt marsh which occur during construction then the applicant

shall submit an amendment to this permit with a mitigation plan to offset those impacts. In addition, the applicant shall notify the Port of Long Beach that construction will be taking place adjacent to their salt marsh mitigation site both before construction and in the event that damage occurs.

The mitigation measures include measures to survey for the presence of eel grass, to protect eel grass if found and to conduct a final eel grass survey when the dredging in the channel is complete. However, the mitigation measures do not include any provision for the replacement of any eel grass which may be adversely impacted by dredging. Therefore, the Commission has included a special condition requiring the replacement of any adversely impacted eel grass.

Finally, the Commission is imposing a special condition that no construction will take place during the nesting season of the endangered species in the Upper Newport Bay. Prior to issuance of the CDP, the applicant shall submit a letter demonstrating agreement with this condition.

Only as conditioned, does the Commission find that the proposed development conforms with the mitigation provisions of 30233(a) of the Coastal Act.

E. Water Quality

Sections 30230 and 30231 of the Coastal Act pertain to water quality and biological productivity. They state:

Section 30230

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

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.

Implementation of the proposed development will have beneficial impacts on both water quality and biological productivity. The mitigation measures required by the CDFG will ensure that sensitive resources are protected, particularly during the nesting season of the on-site endangered species. Measures will be taken to survey and protect eel grass. Silt fences will be installed to protect existing salt marsh from turbidity. Monitors will oversee the habitat protection measures to ensure they are being enforced.

Although removal of the mud flats will eliminate some foraging habitat, implementation of the project will create more deep salt water habitat for marine fish and diving birds. Removal of the accumulated sediments will create short term turbidity impacts but in the long run will improve the circulation of bay waters and result in improved water quality.

In addition, measures have been taken through the 208 program to improve conditions in the San Diego Creek watershed and minimize the flow of sediment into the San Diego Creek and Upper Bay. The channelization of San Diego Creek and the installation of in-channel sediment basins are designed to catch sediment before it enters the way. So there has been a comprehensive watershed approach to the sedimentation problem in Upper Newport Bay.

The proposed development is necessary to maintain the productivity and quality of coastal waters and maintain and enhance marine resources. Without the dredging program the Upper Newport Bay would continue to degrade, to fill in and to transition more and more from salt water to freshwater habitat and dry land, as was happening in 1981. Therefore, the Commission finds the proposed development conforms with Sections 30230 and 30231 of the Coastal Act.

F. Recreational Boating

Sections 30234 and 30234.5 pertain to recreational boating and commercial fishing. They state:

Section 30234

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The mitigated negative declaration states that the proposed development is anticipated to result in increased tidal prism, improved water circulation and quality and an improvement of habitat for marine fisheries and invertebrates.

In addition, dredging in the Dover Shores marina and the main access channel will facilitate recreational and commercial boating, by maintaining deep water channels and removing accumulated sediments which cause shallowing of the marina waters. Therefore, the Commission finds that the proposed development conforms with Sections 30234 and 30234.5 of the Coastal Act.

G. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability

of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program [Implementation Plan] for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

H. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the marine resource and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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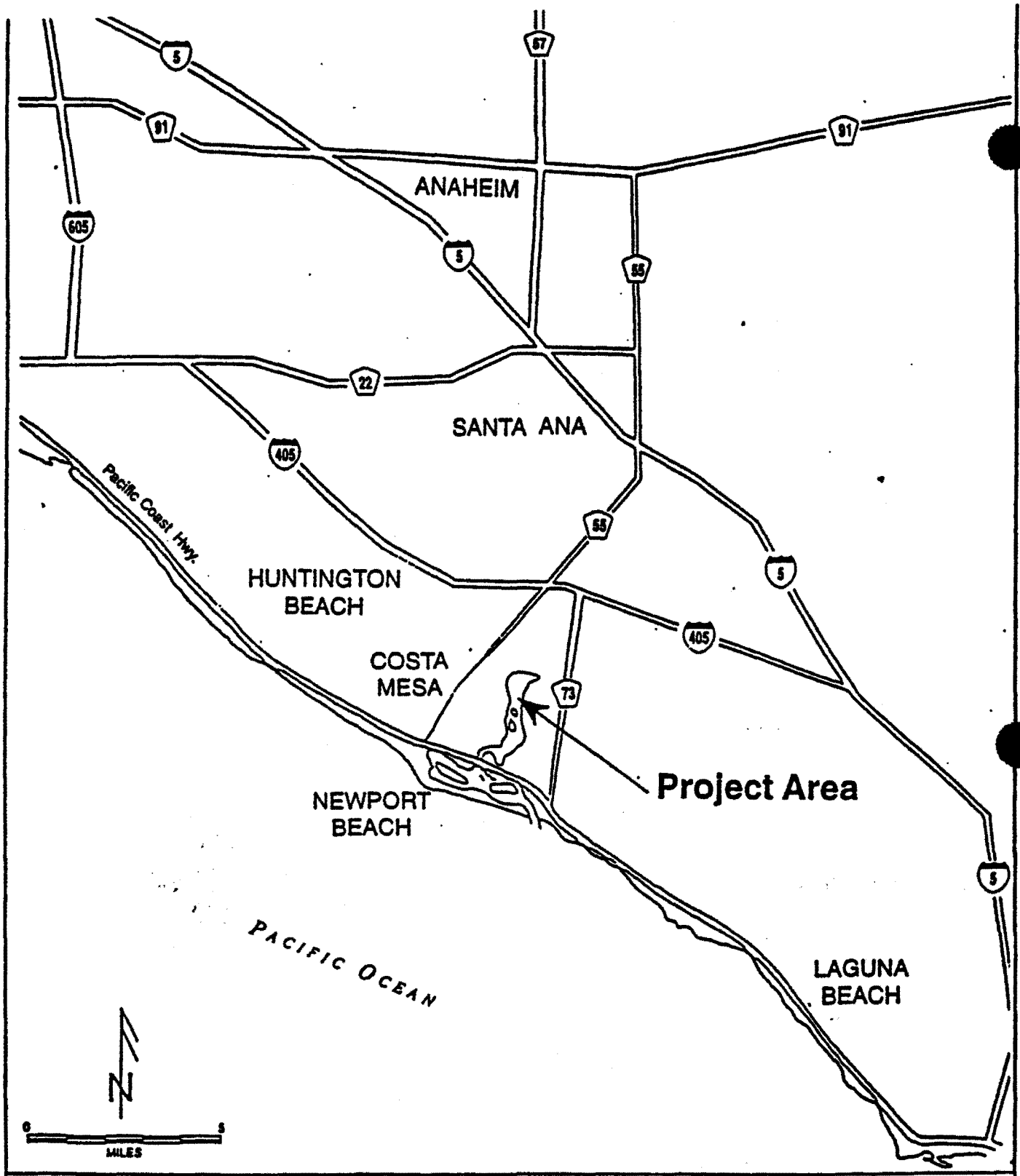


Source:

Regional Location Map

HELIX ENVIRONMENTAL PLANNING, INC.

UPPER NEWPORT BAY

EXHIBIT NO. 1

APPLICATION NO. 5-97-071

VICINITY

California Coastal Commission

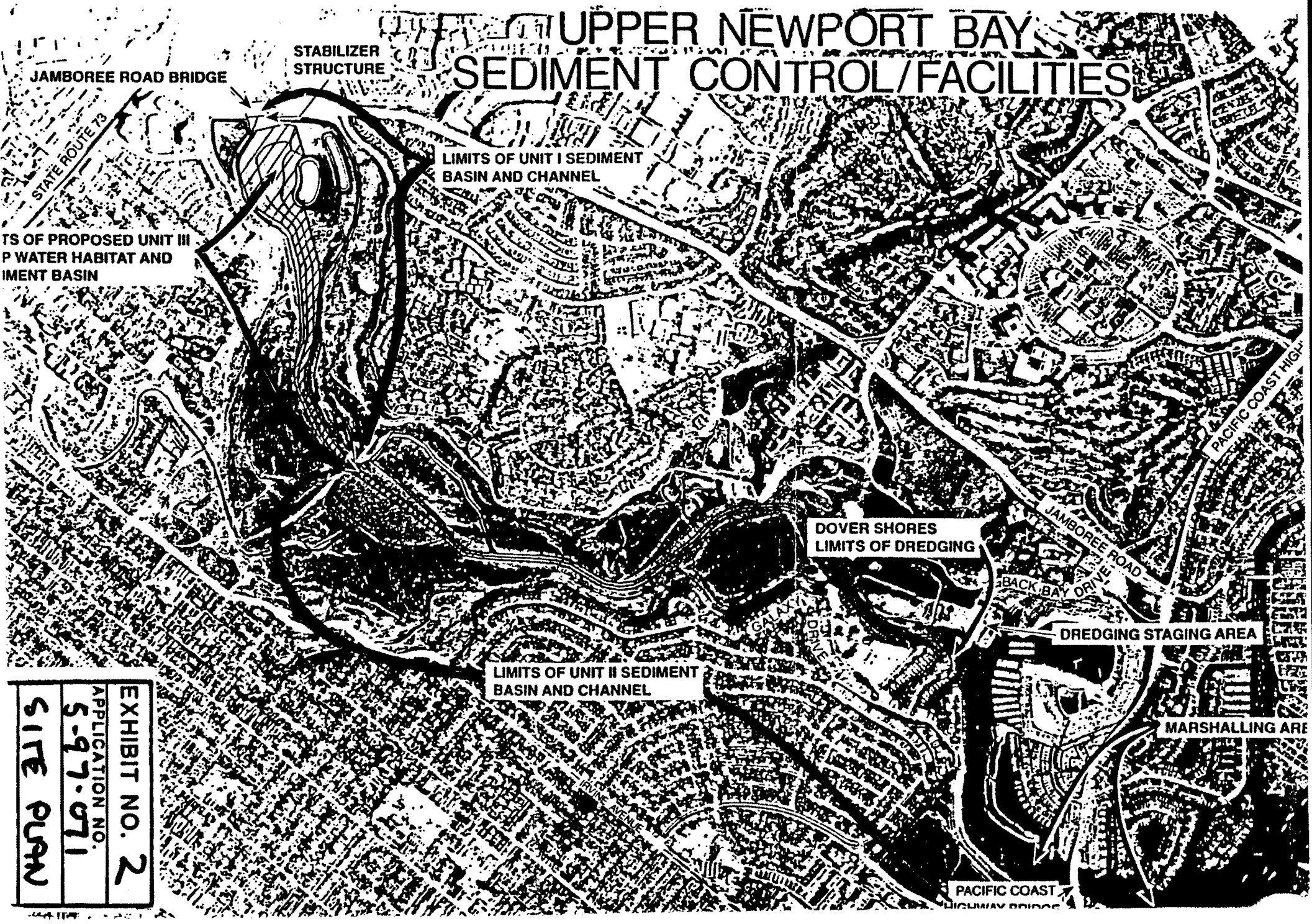


EXHIBIT NO. 2
APPLICATION NO.
5-97-071
SITE PLAN

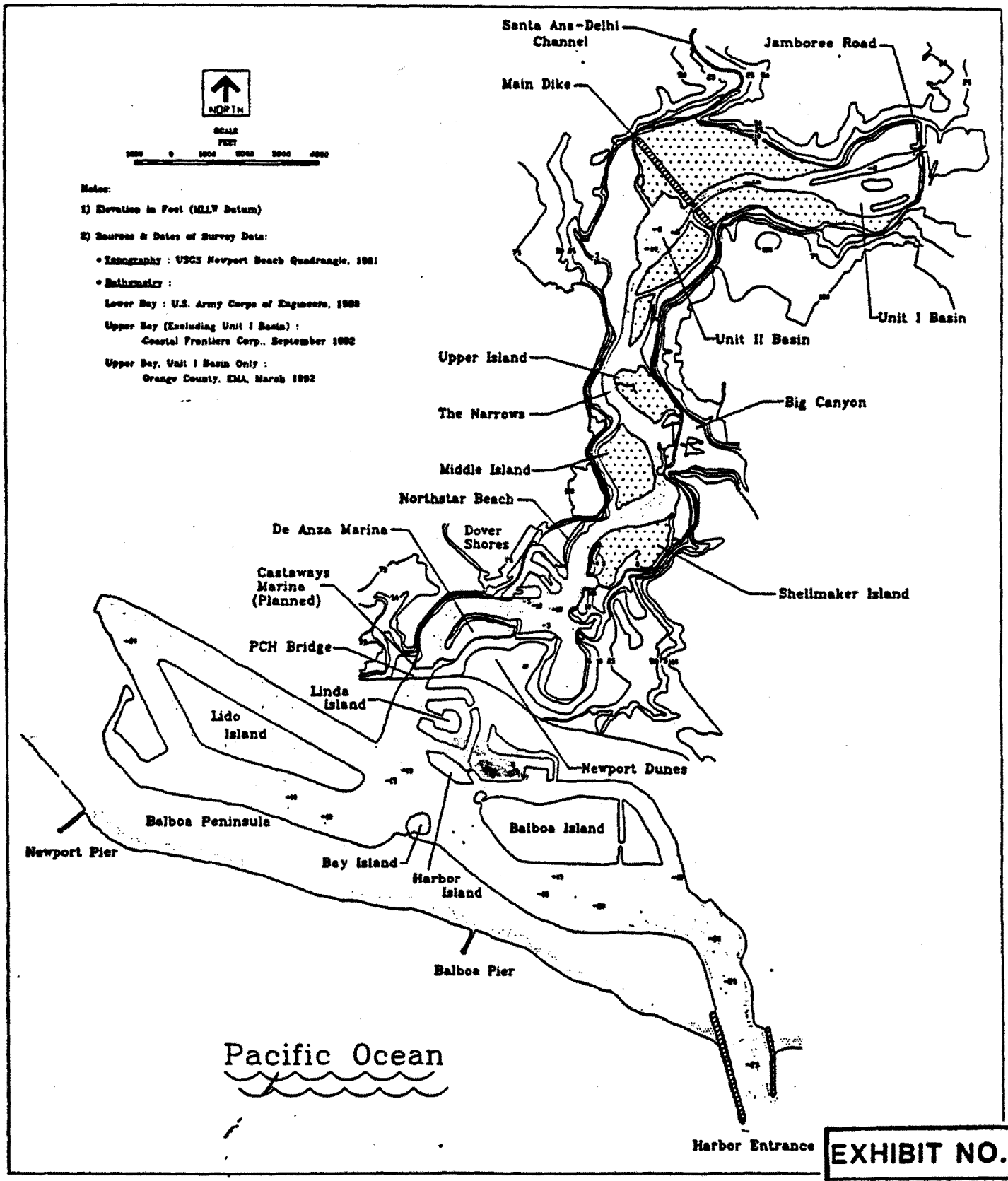


FIGURE 1: NEWPORT BAY LOCATION MAI

EXHIBIT NO. 3
APPLICATION NO. 5-97-071
NEWPORT BAY
California Coastal Commission

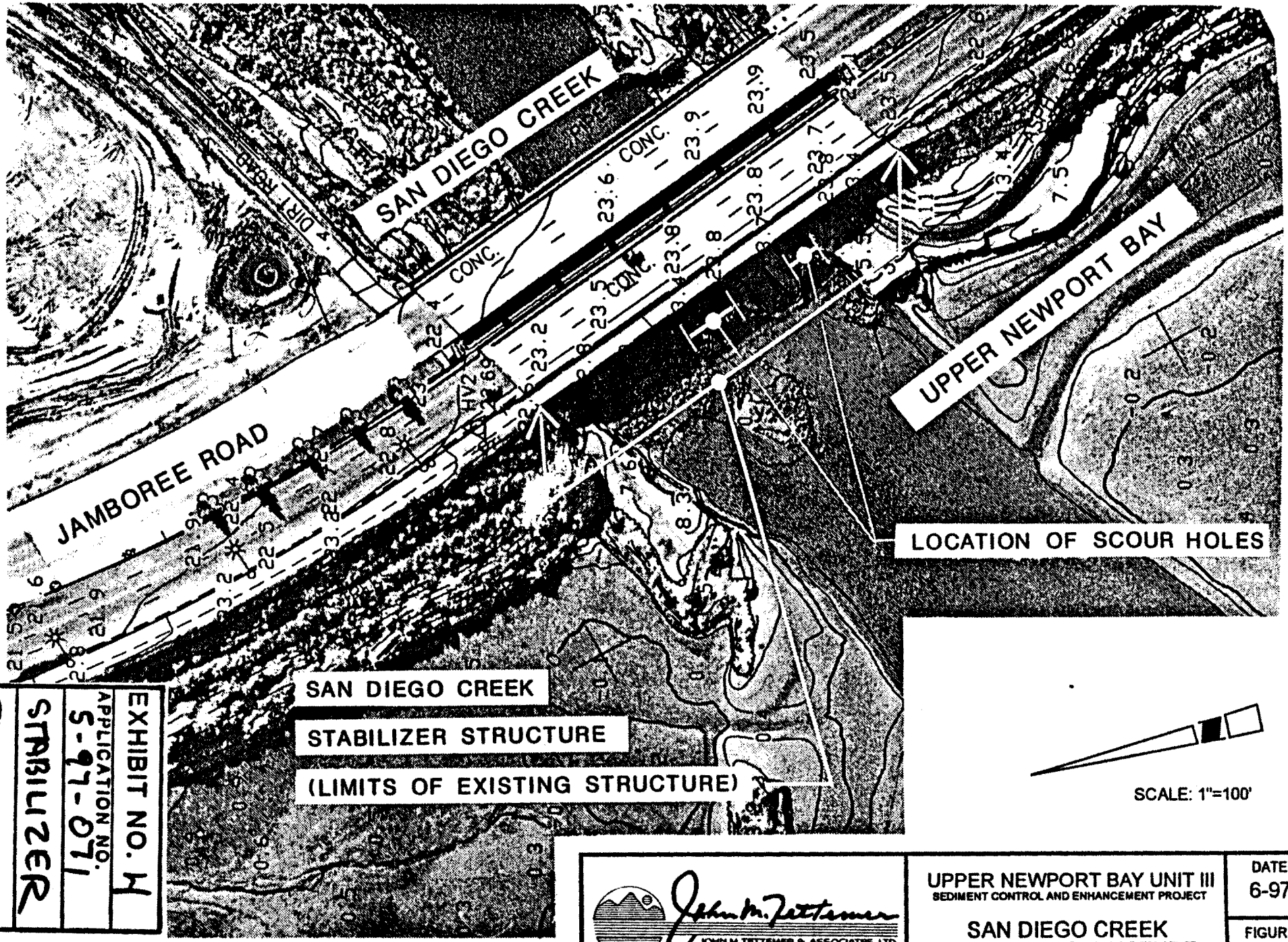


EXHIBIT NO. H
APPLICATION NO. 5-97-071
STABILIZER

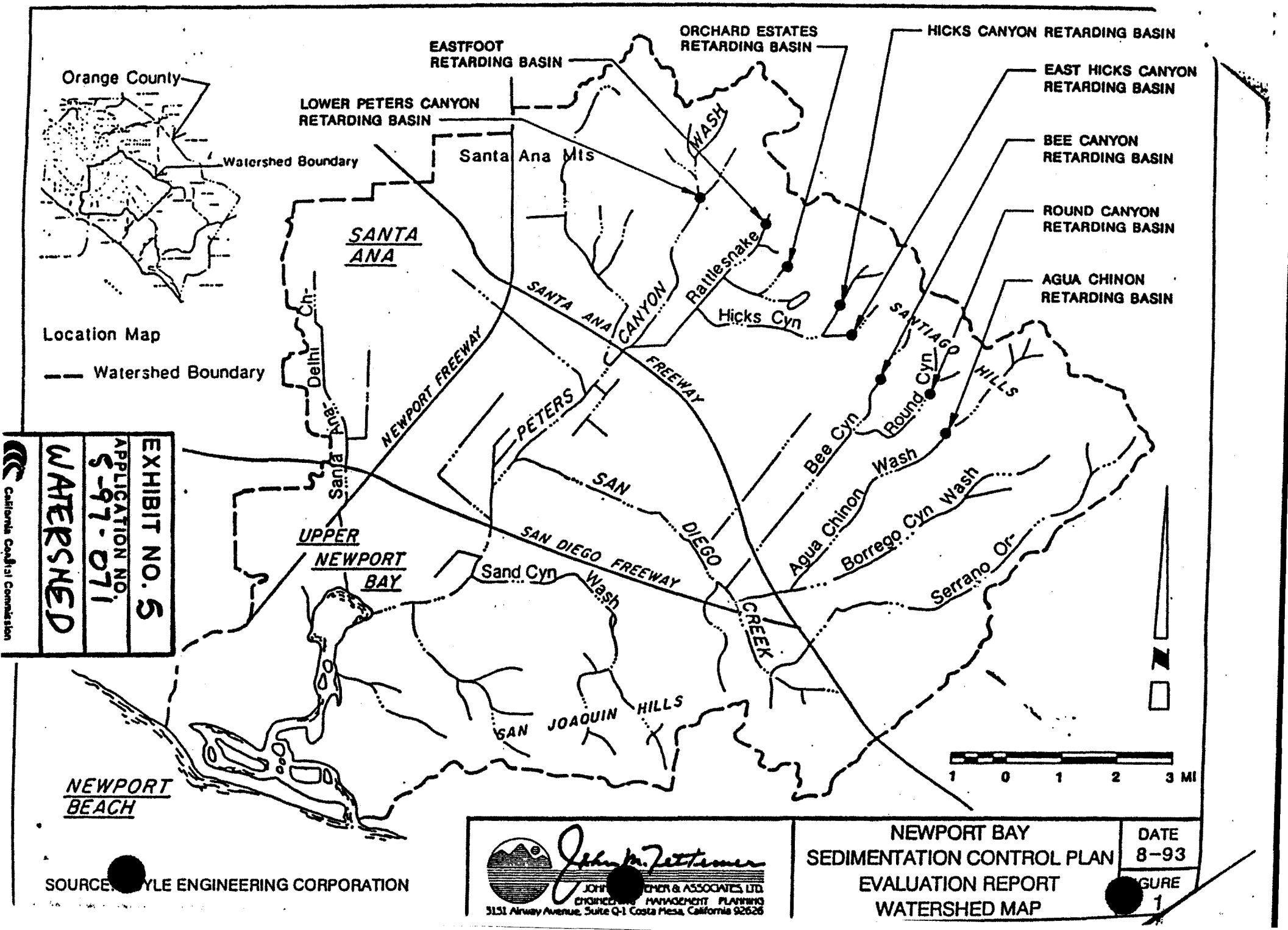
John M. Tettemer & Associates, Ltd.
Engineering Management Planning

UPPER NEWPORT BAY UNIT III
SEDIMENT CONTROL AND ENHANCEMENT PROJECT

SAN DIEGO CREEK
STABILIZER STRUCTURE

DATE
6-97

FIGURE


EASTFOOT RETARDING BASIN
ORCHARD ESTATES RETARDING BASIN
HICKS CANYON RETARDING BASIN
EAST HICKS CANYON RETARDING BASIN
LOWER PETERS CANYON RETARDING BASIN
BEE CANYON RETARDING BASIN
ROUND CANYON RETARDING BASIN
AGUA CHINON RETARDING BASIN
Orange County
Watershed Boundary
Location Map
Watershed Boundary
Santa Ana Mts
WASH
SANTA ANA
SANTA ANA CANYON
Rattlesnake
Hicks Cyn
SANTIAGO HILLS
Round Cyn
Bee Cyn
Agua Chinon Wash
Borrego Cyn Wash
Serrano Cr-
Ch-
Delhi
Santa Ana
NEWPORT FREEWAY
PETERS
SAN DIEGO FREEWAY
SAN DIEGO CREEK
UPPER NEWPORT BAY
Sand Cyn Wash
SAN JOAQUIN HILLS
NEWPORT BEACH
1 0 1 2 3 MI
EXHIBIT NO. 5
APPLICATION NO. 5-97-071
WATERSHED
California Coastal Commission
SOURCE: HYLE ENGINEERING CORPORATION
JOHN M. JETTMER & ASSOCIATES, LTD.
ENGINEERING MANAGEMENT PLANNING
3151 Airway Avenue, Suite Q-1 Costa Mesa, California 92626
NEWPORT BAY SEDIMENTATION CONTROL PLAN EVALUATION REPORT WATERSHED MAP
DATE 8-93
FIGURE 1

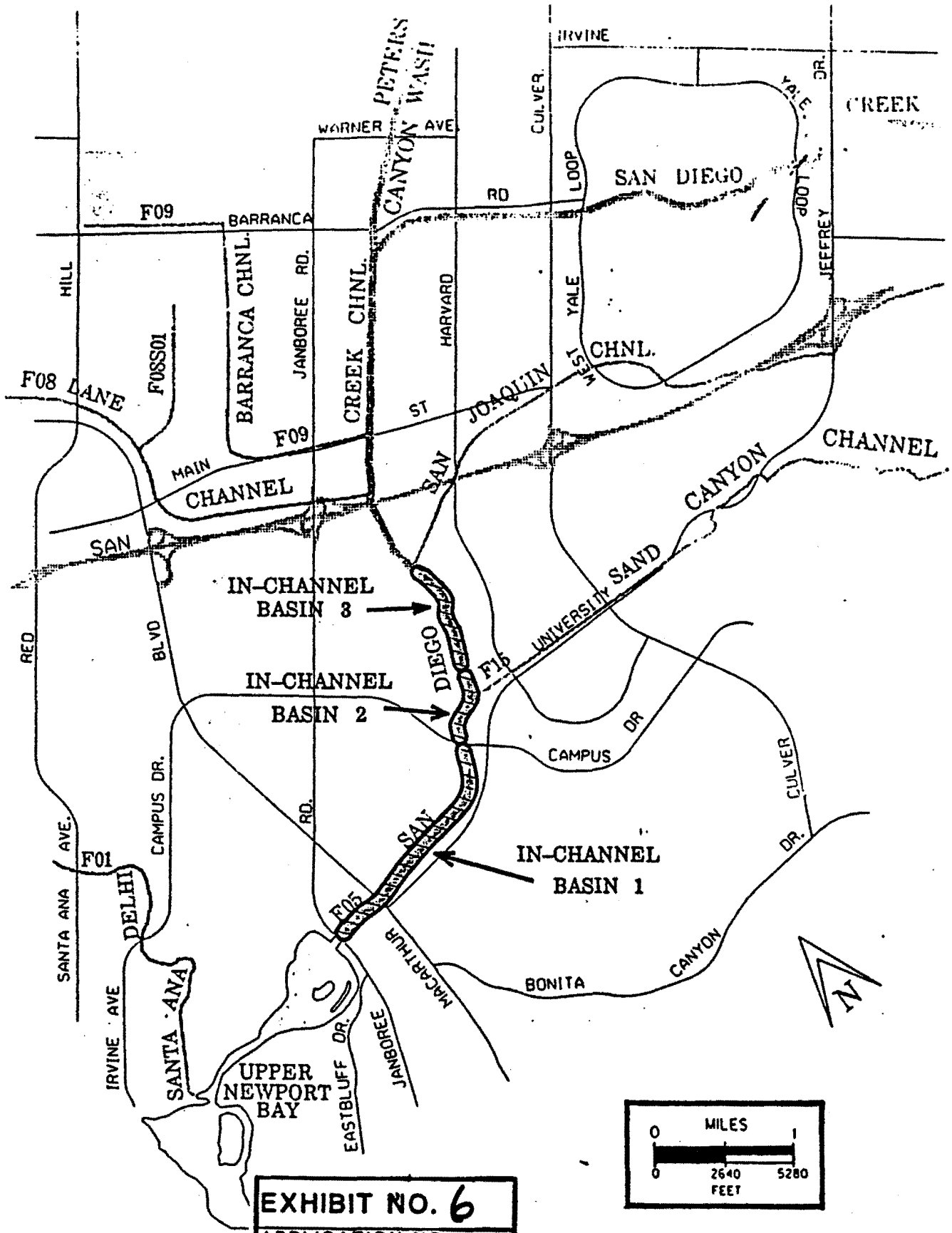


EXHIBIT NO. 6

APPLICATION NO. 5-97-071

CREEK BASINS

California Coastal Commission

SOURCE: OCEMA

3151 Airv

NEWPORT BAY SEDIMENTATION CONTROL PLAN EVALUATION REPORT IN-CHANNEL SEDIMENT BASINS

DATE 8-93

FIGURE 3

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5-84-260

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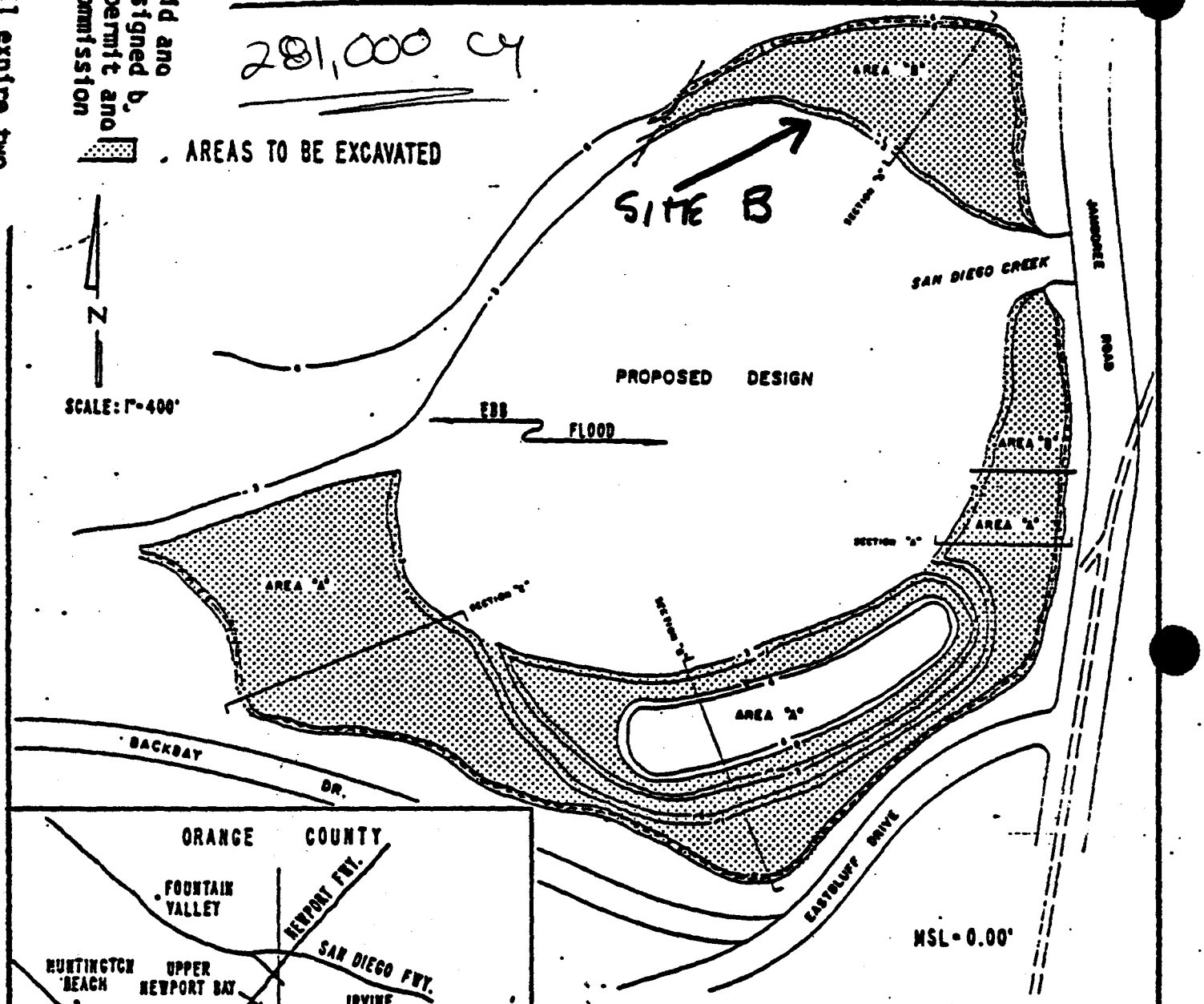

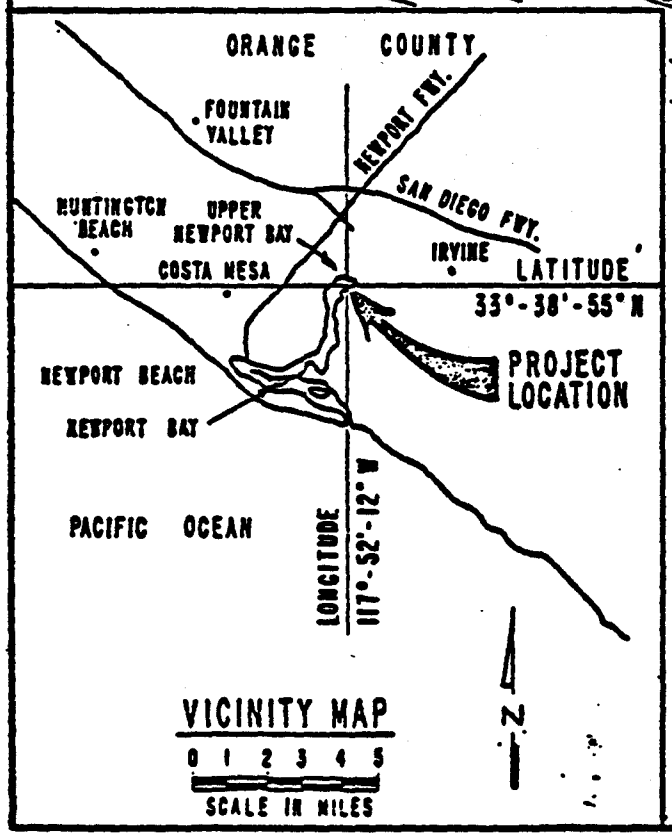

MARINE ENVIRONMENT MITIGATION
IN UPPER NEWPORT BAY FOR
PORT OF LONG BEACH EXPANSION
COUNTY OF ORANGE
STATE OF CALIFORNIA
APPLICATION BY PORT
SHEET 1 OF 3 DAT

EXHIBIT NO. 7
APPLICATION NO.
5-97-071
5-84-260

5-84-560

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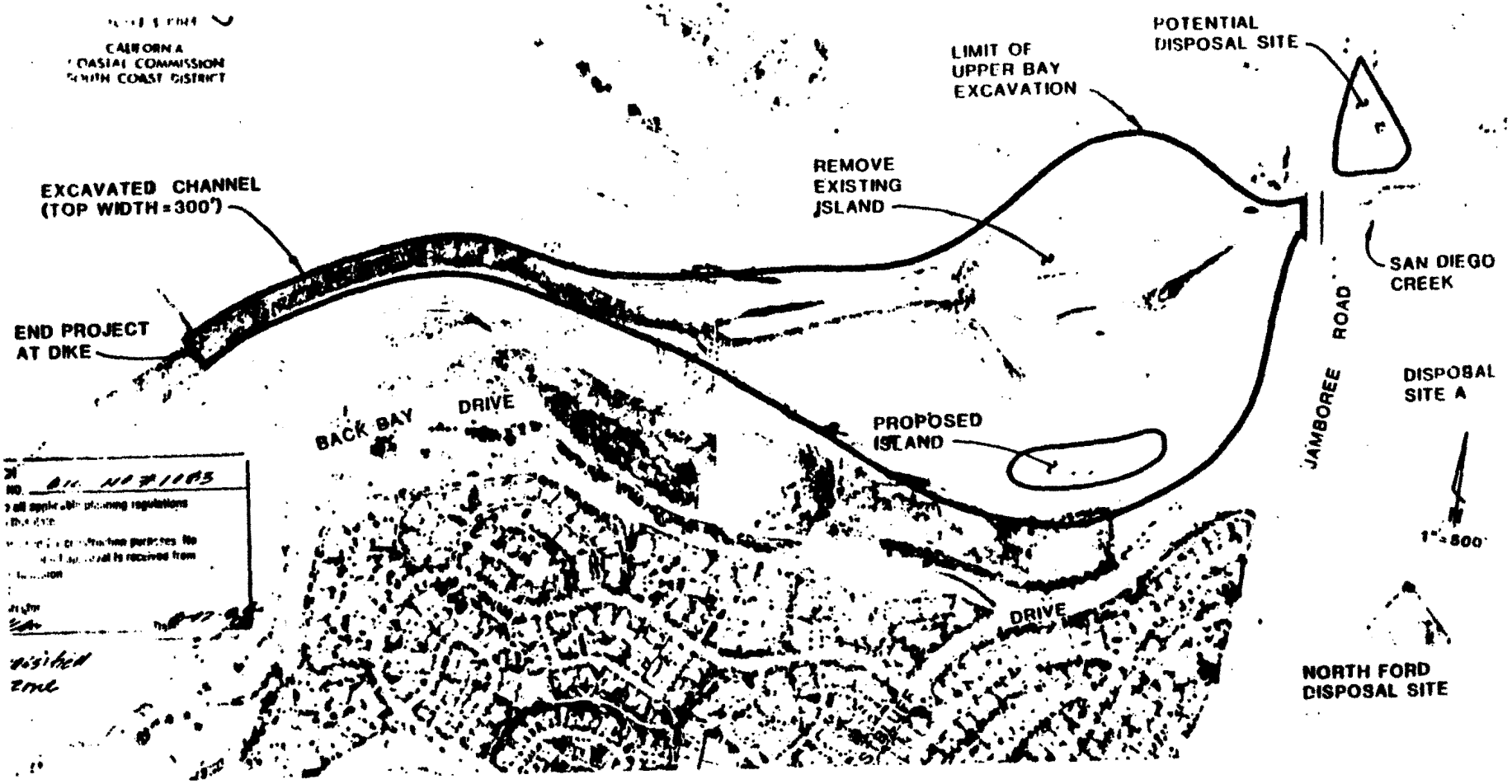

EXHIBIT NO. 8
APPLICATION NO.
5-97-071
5-84-560
California Coastal Commission

Exhibit 2
5-84-560

CITY OF NEWPORT BEACH
UNIT II
UPPER NEWPORT BAY SEDIMENTATION CONTROL PLAN
COUNTY OF ORANGE - STATE OF CALIFORNIA

EXHIBIT NO. 9
APPLICATION NO.
5-97-071
5-86-009

BIOLOGICAL COMMUNITIES & ASSOCIATIONS

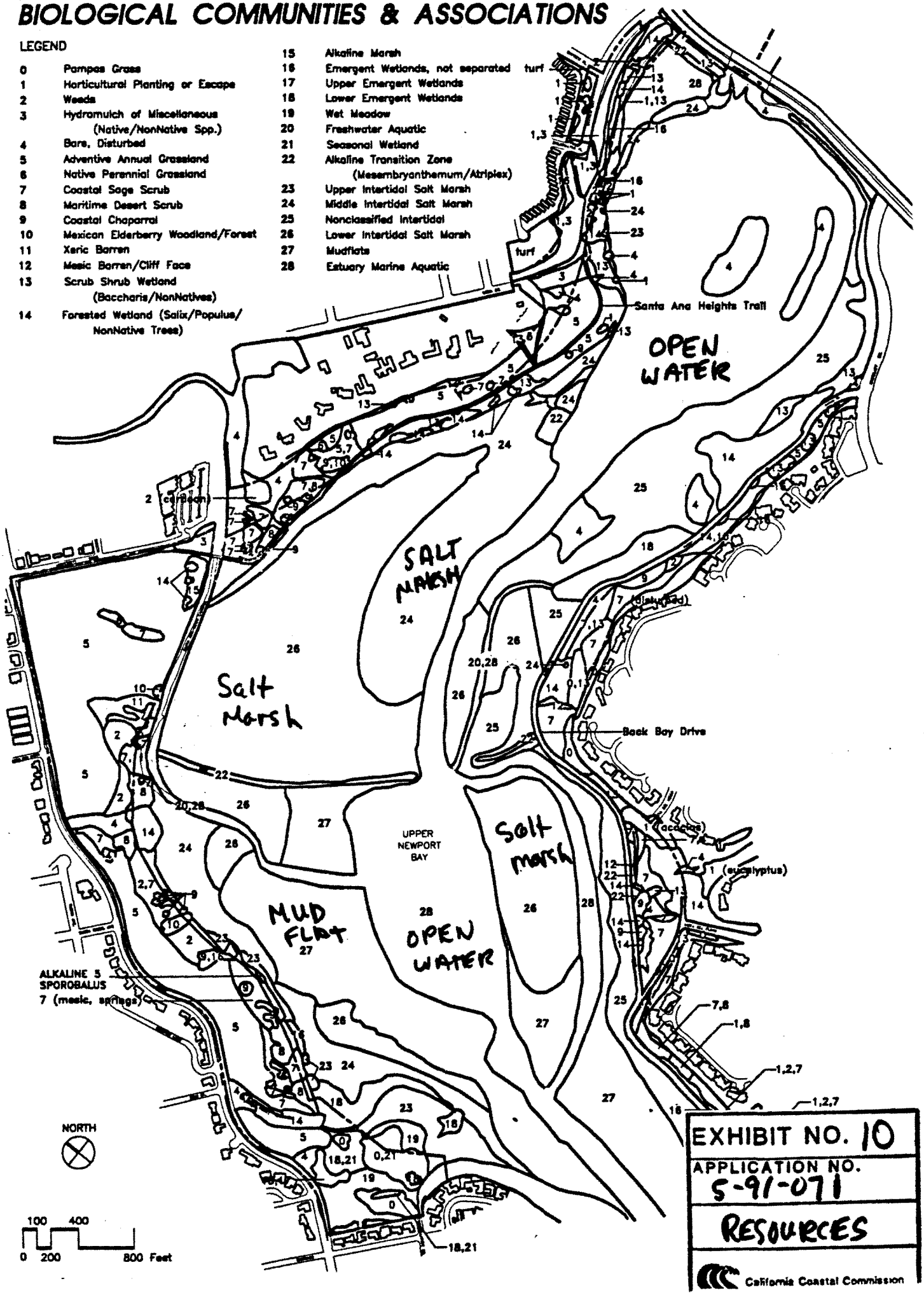

EXHIBIT NO. 10

APPLICATION NO. 5-91-071

RESOURCES

California Coastal Commission