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

CALIFORNIA COASTAL COMMISSION
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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	**CD-002-98**
Staff:	JRR-SF
File Date:	1/8/1998
45th Day:	2/22/1998
60th Day extended to:	3/20/1998
Commission Meeting:	3/10/1998

FEDERAL AGENCY: CORPS OF ENGINEERS

DEVELOPMENT LOCATION: Marina del Rey, Dockweiler and Venice Beaches, and LA-2, an EPA designated offshore disposal site, Los Angeles County (Exhibits 1-4)

DEVELOPMENT DESCRIPTION: Maintenance dredging of 210,000 cubic meters of material with beach and offshore disposal (Exhibit 5)

SUBSTANTIVE FILE DOCUMENTS:

1. CD-023-88, CD-031-91, CD-053-92, CD-068-94, CD-088-94, ND-112-94, ND-022-96 (previous Commission actions for dredging and disposal of dredged material at Marina del Rey).

2. Draft Environmental Assessment, Marina del Rey Harbor Maintenance Dredging, Department of the Army, Los Angeles District Corps of Engineers, January 1998.

3. Report of Testing of Sediments Collected from Marina del Rey Harbor, California, Vol. I and II, MEC Analytical Systems, Inc., February 1998.

4. Informal Consultation for the Marina del Rey Harbor Maintenance Project, Los Angeles County, California, U.S. Fish and Wildlife Service, January 30, 1998 (Exhibit 6).

EXECUTIVE SUMMARY

The Corps of Engineers submitted a consistency determination for its proposed maintenance dredging of Marina del Rey. The Corps proposes to dispose of material dredged from the entrance and main channels at beach and offshore disposal sites. The beach disposal sites include Dockweiler and Venice Beaches. The Corps will dispose of the remaining material at LA-2, an EPA designated offshore disposal site.

The dredging is necessary to support recreational boating, recreational fishing, and U.S. Coast Guard Search and Rescue activities. Specifically, the proposed dredging will reduce the navigation hazard and improve boating activities in the area. Therefore, the project is consistent with the recreational boating policies of the California Coastal Management Program (CCMP).

The material proposed for ocean disposal has elevated levels of contaminates. The Corps has completed the necessary toxicity and bioaccumulation tests, and has determined that most of the material is unsuitable for ocean disposal. These tests indicate that the material will adversely affect water quality and habitat resources of the coastal zone. Therefore, the Corps' project is inconsistent with the water quality and habitat policies of the CCMP.

The proposed project includes disposal of sand sized sediment on nearby beaches. This material is compatible with the receiver beaches and will benefit sand supply. However, this sediment contains slightly elevated levels of lead. The level is not high enough to indicate an effect on human health or biological resources. Despite the physical and chemical compatibility of the sediment with the receiver beaches, Marina del Rey

material usually contains a large amount of trash and debris. In past projects, the Corps has committed to removing trash and debris from the beach. This consistency determination does not include such a provision. Therefore, beach disposal portion of the project is inconsistent with the sand supply and recreational policies of the CCMP.

Finally, the Corps proposes to dredge during the nesting season of the California least tern and western snowy plover, a federally listed endangered species. The Corps has recently completed its evaluation required by the Endangered Species Act. This evaluation described project modifications necessary to avoid impacts to listed species. Since the Corps has not incorporated these modifications into this consistency determination, the project is inconsistent with the environmentally sensitive habitat policy of the CCMP.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Corps proposes to remove approximately 210,000 cubic meters of sediment from the north and south navigation and entrance channels of Marina del Rey, and from the north jetty fillet (Exhibits 1 and 5). The Corps will dispose much of this material at an EPA designated deep-ocean disposal site, LA-2 (Exhibit 2). The Corps determined, through physical and chemical analyses, that approximately 123,000 cubic meters is suitable for beach or nearshore disposal in the littoral zone. Proposed disposal sites for beach-compatible material include Dockweiler Beach and Venice Beach, in the intertidal or nearshore zones (Exhibits 3 and 4). The Corps proposes to dredge between March and May 1998. Beach or nearshore disposal would conclude by April 1. Dredging with ocean disposal would continue through May. The Corps expects to dredge with either a hopper dredge or a clamshell dredge with disposal barge. However, the Corps may use a hydraulic cutterhead with a pipeline.

For beach disposal, the Corps proposes to use a pipeline with single-point discharge within the intertidal zone (+5 to -2 MLLW), to minimize impacts to grunion. The pipeline would extend from the dredge, along the beach (above the high tide line), to the discharge point. The outlet would consist of a perpendicular section of pipe extending into the intertidal zone. The Corps would move this extension as the disposal meets beach profile specifications.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide

guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has not incorporated the Los Angeles County LCP into the CCMP.

III. Federal Agency's Consistency Determination.

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

IV. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

> *MOTION. I move that the Commission concur with the Corps of Engineers' 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:

A. Objection

The Commission hereby **objects** to the consistency determination made by the Corps of Engineers for the proposed project, finding the project is not consistent to the maximum extent practicable with the California Coastal Management Program.

V. Federal Agency Responsibility:

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

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

provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

VI. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP. Section 930.42(a) of the federal consistency regulations (15 CFR § 930.42(a)) requires that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states that:

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

As described in the Endangered Species, Marine Resources, and Water Quality, Dredging and Filling, Sand Supply and Recreation sections below, the proposed project is inconsistent with the CCMP. Pursuant to the requirements of Section 930.42 of the federal regulations implementing the CZMA, the Commission is responsible to identify measures, if they exist, that would bring the project into compliance with the CCMP. The Commission believes that it may be possible to bring this project into compliance with the CCMP if the Corps implements the following measures:

1. Eliminate from the project description those areas within the channel that did not pass the solid phase bioassay for amphipods;

2. Conduct appropriate analysis on any areas of newly accumulated sediment necessary to demonstrate suitability for disposal at LA-2;

3. Incorporate into the project description, the conditions described in the informal consultation for the Marina del Rey harbor maintenance project, Los Angeles County, California, by U.S. Fish and Wildlife Service, dated January 30, 1998, (Exhibit 6); and

4. Incorporate into the project description, commitments for post-project clean up of trash and debris from the beach disposal sites.

VII. Findings and Declarations:

The Commission finds and declares as follows:

A. Recreational Boating. Section 30220 of the Coastal Act provides that:

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

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

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

Marina Del Rey is one of the larger recreational boat harbors on the West Coast. The land use plan (LUP) for Marina Del Rey describes the area as follows:

The primary use [of the harbor] is recreational boating for which the harbor was designed, providing 6,189 boat slips plus dry storage and launching. (Marina Del Rey LUP, p. I-1)

Shoaling of the entrance and main channels interferes with recreational boating at the Marina. The design depth of the Marina Del Rey's entrance channels is 20 feet below mean lower low water (MLLW). In its consistency determination, the Corps describes the then current situation as follows:

Shoaling occurred far more rapidly than expected last year, after the previous maintenance dredging episode (March 1996). At that time, it was anticipated that dredging would not be required again for another three years. Both the north and the south entrance channel widths have now been reduced by approximately 50%, however, and the depth of the remaining "open" area has been reduced by approximately 10%. Navigation within the north channel is restricted to a relatively narrow passage that is, on average, 200 feet wide and 12-17 feet deep. The south channel is even narrower, and is more likely to close due to its proximity to Ballona Creek. Maintenance efforts, therefore, will be focused primarily on restoring navigation in the north entrance. A potential emergency situation would occur if the north channel shoaled to leave less than 12' of depth and 150' of width.

Since the submittal of the Corps' consistency determination, the navigational hazard within the entrance channels has worsened and has reached near emergency conditions.

Recently, the County of Los Angeles, Beaches and Harbors requested that the Corps declare the Marina del Rey shoaling to constitute an emergency (Exhibit 7). Because of these hazards, the Sheriff's department has, also, closed most of the north and south entrance channels (Exhibit 8). If the Corps makes an emergency declaration, it would suspend all contracting and environmental procedures and immediately go ahead with the dredging.

Regardless of whether the Corps declares an emergency, the proposed project will remove these shoals, and thus protect recreational boating. However, the proposed dredging could interfere with recreational boating during operation of the dredge. This impact will be temporary, lasting for the duration of the project, and is insignificant when compared to the benefit from removing the shoaling hazard. Therefore, the Commission finds the project consistent with the recreational boating policies of the CCMP.

B. Water Quality and Biological Resources. Section 30230 of the Coastal Act provides that:

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

Section 30231 of the Coastal Act provides that:

> *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.*

1. Ocean Disposal. The proposed project includes disposal of dredged material at LA-2, an EPA designated dredged material disposal site. The technical guidance for determining the suitability of dredged material involves a tiered-testing procedure, which includes four levels of testing. Tiers I and II apply to existing or easily obtained information and require limited chemical testing to predict effects. If these

predictions indicate that the dredged material has any potential for significant adverse effects, EPA will elevate the sediment analysis to a higher tier. Tiers III and IV use water column and benthic bioassay and bioaccumulation tests to determine effects on representative marine organisms. Specifically, EPA requires bioassay tests on suspended particulate and solid phases of the material before allowing the disposal (Tier III testing). (40 C.F.R. Section 227.6[c].) These tests allow EPA to evaluate the acute and chronic toxicity of the contaminated material on biological resources. EPA also measures bioaccumulation potential of contaminates. The intent of that test is to determine if organisms are concentrating chemicals in their tissues to levels that might prove harmful to either themselves or their predators. Both the bioassay and the bioaccumulation tests measure the biological effect of contaminated dredge spoils. Although these tests are not precise predictors of environmental effects, they provide quantitative estimators of impacts. The Commission also uses the results from the EPA process to evaluate ocean disposal activities for consistency with the CCMP. These tests allow the Commission to determine if the ocean disposal activity will adversely affect water quality or biological resources of the coastal zone.

The Corps' initial bulk chemistry evaluation for the Marina del Rey sediment shows that the material contains elevated levels of heavy metals, pesticides, phthalates, and polynuclear aromatic hydrocarbons. Based on these results, EPA elevated the analysis of the sediment to Tier III testing. As part of the sediment toxicity tests, the Corps re-evaluated the bulk chemistry of the sediment within the channels. In re-sampling for the bulk chemistry, the Corps avoided deeper sediments that contain significant amounts of contaminates and are not currently proposed for dredging. In this test, the Corps sampled from mudline to -17 feet mean lower low water (MLLW) to -22 feet MLLW. In the previous test, the Corps' core samples were from mudline to -24 to -25.5 feet MLLW. Since the Corps does not propose to dredge the sediments at the lower depths, the modifications to the testing procedures are reasonable. The results of the revised testing indicate upper depths of the sediment contains high levels of lead. However, the levels of total detectable PAHs and pesticides were lower in the second test.

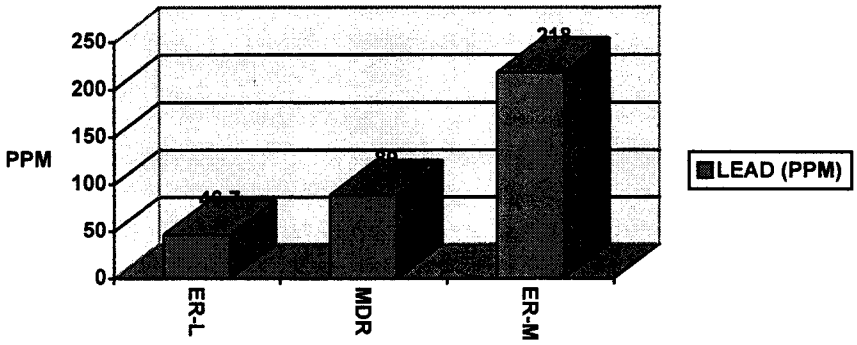
The Corps also analyzed the toxicity of the sediments through suspended-particulate phase and solid phase bioassays and tissue bioaccumulation tests. For the suspended-particulate phase bioassays, the Marina del Rey sediment had low mortality and sub-lethal effects and is statistically comparable to tests on reference material. In addition, for all the tissue bioaccumulation tests, the Marina del Rey material was statistically comparable to the reference material.

However, the results of the solid phase bioassays are not as conclusive. Significant mortality relative to the LA-2 reference material occurred in amphipods from exposure to most of the sediment from Marina del Rey. Only the area adjacent to the north jetty, known as "area 6," had a low enough mortality to pass ocean dumping criteria. This area

may be suitable for ocean disposal at LA-2. However, significant volume of new sediment has accumulated within this area. The Corps has not tested this sediment for contaminates or toxicity, and therefore, the Corps cannot dispose of it in the ocean. If the Corps can demonstrate that the newly accumulated sediment is clean, than area six, the shoal off the north jetty, would be suitable for ocean disposal. Also, it is possible that some of the new sediment in other parts of the channels are suitable, but must be tested to make such a determination. In conclusion, most of the sediment accumulated in the Marina del Rey channels is either unsuitable for ocean disposal because it failed the solid phase bioassays or the Corps has not tested it. Therefore, the Commission finds that the ocean disposal of Marina del Rey material is inconsistent with the water quality policies of the CCMP.

2. **Impacts at the Dredging Site.** The Commission has concerns about the water quality impacts from the dredging operation. The dredging of the channels would increase the amount of sediment in the water column. Under normal conditions, this increase in turbidity has minor and temporary effects on light penetration and dissolved oxygen. However, since the material in these channels has elevated levels of contaminates, the project would make these pollutants more biologically available. In its consistency determination, the Corps concludes that this impact is not significant because the Corps will conduct the activity according to requirements of the Los Angeles Regional Water Quality Control Board. However, the Board has not yet reviewed the project and, obviously, has not developed its requirements. In past projects, the Corps has agreed to use silt curtains, environmentally sealed buckets, or other appropriate technology when dredging contaminates. The Corps has not committed to any of these methods to minimize re-suspension of contaminates at the dredge site. If the Corps commits to these technologies or limits its dredging to clean material, the Commission could find the project consistent with the CCMP. However, until the Corps makes such commitments, the dredging is inconsistent with the water quality policies of the CCMP.

3. **Beach Disposal.** The material proposed for beach replenishment contains elevated levels of lead. Specifically, the bulk chemistry shows that the area proposed for beach replenishment contains lead at 89.0 parts per million. This level is above National Oceanic and Atmospheric Administration's (NOAA) ER-L (effects range low) level for lead, 46.7 parts per million, but below the ER-M (effects range median), 218.0 parts per million.

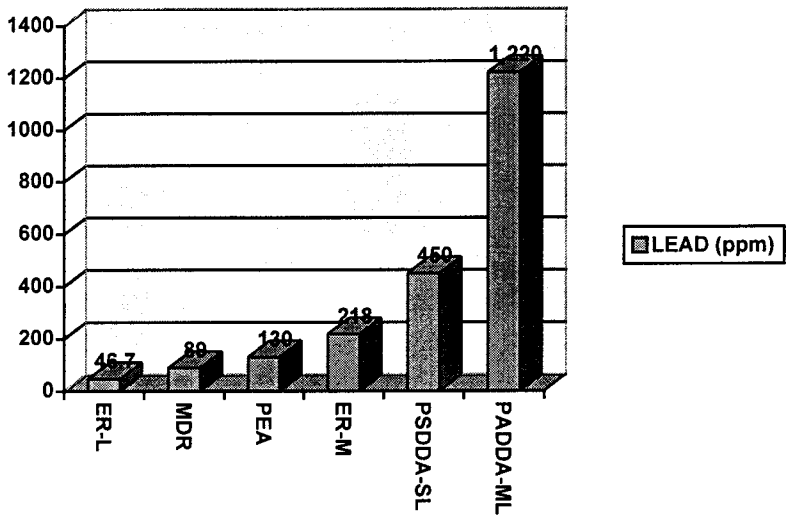


If the levels of contaminates are higher than the ER-L, then it is **possible** that there will be a biological effect from the contaminate. If the level is above the ER-M, then it is **likely** that there will be an adverse effect. Therefore, based on the NOAA guidance, it is possible that the material may have a biological effect. However, the Commission is reluctant to make a conclusion based on this information alone. The NOAA did not intend for its guidance to be a regulatory standard, rather it is a general benchmark to indicate possible concerns. To fully address this issue, the Commission requires more information on the biological and human health effects of lead.

Despite the elevated levels of lead, EPA concluded that the material in the sand trap is chemically suitable for beach disposal. EPA based its conclusion on comparison of the level of lead in this material to other acceptable standards. The California Department of Toxic Substances Control uses Preliminary Endangerment Assessment (PEA) to screen hazardous material clean-up sites to determine that no further action is necessary. The PEA for unrestricted land uses, which includes residential uses, for inorganic lead is 130 parts per million. In other words, if a site tests for less than 130 parts per million for inorganic lead, the Department of Toxic Substances Control would recommend no further clean-up action for that site. Since the level of lead in Marina del Rey sand trap is 89 parts per million, it is below the PEA for lead, which is an indication that the sediment will not affect human health.

Additionally, EPA compared the level of lead in the Marina del Rey sediment to the Puget Sound Dredge Disposal Analysis (PSDDA) screening levels. PSDDA describes the screening level (SL) as a guideline to identify chemical concentrations below which there is no reason to believe that dredged material disposal would result in unacceptable adverse effects. The recently revised PSDDA SL for lead is 450 parts per million. PSDDA bases its screening levels on "apparent effects thresholds" (AET) databases. The AET are developed using observations of effects on marine organisms from particular contaminates. The AET for lead is also 450 parts per million. Finally, the PSDDA defines its maximum level (ML) as the concentration of a chemical in dredged material above which there is reason to believe that the material would be unacceptable for

unconfined, open-water disposal. The revised ML for lead is 1,220 parts per million. Chemical concentrations present at levels between the SL and ML require additional biological information for decision-making. Since the level of lead in the Marina del Rey sediment is significantly below the PSDDA SL and ML and the AET, it appears that the concentration of lead will not have a significant biological effect.



In conclusion, the EPA determined that the material within the sand trap is chemically suitable for beach disposal. EPA based its conclusion on a comparison of the lead level in the Marina del Rey sediments with various human health and biological screening levels. Except for NOAA's ER-L, the Marina del Rey sediments are significantly less than other screening levels. Since the Marina del Rey sediments barely exceeded the ER-L, EPA concluded that the sediment is chemically suitable for beach disposal. The Commission agrees with EPA's analysis and finds that the sand within the Marina del Rey sand trap is chemically suitable for beach disposal. Therefore, the beach disposal portion of the proposed project is consistent with the water quality policies of the CCMP.

C. <u>Endangered Species</u>. Section 30240 of the Coastal Act provides that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project potentially affects habitat for three federally listed species. These species include California least tern (Sterna antillarum browni); California brown pelican (Pelecanus occidentalis californicus); and the western snowy plover (Charadrius alexandrinus nivosus). The snowy plover has not recently nested on Dockweiler or Venice beaches. However, these areas include suitable plover nesting and wintering habitat. The brown pelican is a regular visitor to the area. However, the pelicans do not breed in or have other critical ecological ties to Marina del Rey. Noise and turbidity may temporarily disturb the brown pelican. Several species of marine mammals and sea turtles may also be transient visitors to the harbor and the LA-2 disposal site. Since they will avoid the harbor and disposal site during the dredging and these areas are not a critical part of their habitat, the impact will be insignificant.

The proposed project will most likely affect the California least tern. The bird nests on Venice Beach just north of Marina del Rey (Exhibit 1) and forages in and near the marina. In its consistency determination, the Corps describes the habitat needs of this species as follows:

> ***California Least Tern (Sterna antillarum browni).*** *The California least tern migrates from Mexico and Central and South America to coastal south-central California to breed. During their stay in California, the birds forage for fish in the nearshore coastal waters and embayments. Most foraging occurs within two miles of breeding colonies (Massey and Atwood, 1982). A nesting colony is known to occur at Venice Beach, immediately north of the entrance to the Marina (see Figure 1). The Venice Beach least tern nesting area is surrounded by a chain-link fence, in an attempt to protect the colony from small mammal predation and human disturbance. In the past, nesting also occurred on Dockweiler Beach, but that nesting area is no longer protected, and nesting has not occurred on that beach in recent years.*
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> *The least tern's nest usually occurs in the open expanse of lightly colored sand or dirt or dried mud, next to lagoons or estuaries or on open sandy beaches. The nest generally consists of merely a small depression or scrape in the soil or sand, and is lined with pebbles or sea shell fragments. Nesting usually concludes by mid-August, with post-breeding groups still present into September (USFWS 1980).*
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> *Foraging behavior of least terns in the project area and other locations was studied for several years in the late 1970's and early 1980's. Reports on foraging and nesting ecology include Atwood and Minsky (1983), and Massey and Atwood (1980 and 1983). Massey and Atwood (1980)*

> *observed that the majority of feeding activity during courtship, incubation, and rearing of chicks occurred in nearshore ocean waters; an average of 7% of observed foraging activity from May through July of that year occurred within the harbor's entrance channel.*

According to the Fish and Wildlife Service, the tern nesting colony on Venice Beach next to Marina del Rey is one of the largest and most productive in the state. (Pers. comm., John Hanlon, U.S. Fish and Wildlife Service, 1/15/98.) The Service has concerns about proximity of the dredging to the tern nesting colony. Noise, turbidity, re-suspension of contaminates, and impacts to prey species could result in significant impacts to the tern. In most dredging projects, the Corps would avoid these impacts by completing the operation before the beginning of the tern's nesting season, April 1. However, for this project, the Corps proposes to complete dredging for beach disposal by April 1, and to continue dredging for ocean disposal through May 1998. Therefore, the proposed project is likely to affect nesting and foraging habitat for the tern.

The U.S. Fish and Wildlife Service evaluated the significance of these impacts pursuant to Section 7 of the Endangered Species Act. The Service identified all the impacts to listed species, the significance of those impacts, and necessary mitigation measures in its informal consultation, dated January 30, 1998 (Exhibit 6). The Commission incorporates, by reference, that consultation into these findings. Potential effects identified by the Service include beach sloughing, turbidity, redistribution of forage species, and human activity and machinery noise. The Service recommended the following mitigation measures to avoid impacts on listed species:

1. Complete all dredging north of the north jetty and along the south side of the Entrance Channel and all beach disposal by April 1.

2. Use a single-point discharge for all beach disposal.

3. Employ silt curtains around the dredge plant from the commencement to the cessation of dredging.

4. Lower all cranes and/or support arms to the maximum while machinery is idle.

5. Restricted dredging to daylight hours.

6. Hire a qualified California least tern and western snowy plover monitor from March 1 to the cessation of dredging. The monitor's duties shall include beach disposal site inspections, noise measurements, bird observations, and turbidity measurements.

The Commission agrees that these mitigation measures are necessary to avoid significant effects on the plover, tern, and other listed species in the area. The Corps, however, has not incorporated these modifications into its consistency determination. Therefore, the project does not include the appropriate mitigation measures. Without these measures, the Commission finds that the proposed project is not consistent with the habitat policies of the CCMP.

D. Dredging. Section 30233(a) of the Coastal Act provides, in part, that:

> *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
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> ....
>
> *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

Section 30233(a) of the Coastal Act imposes a three-part test on dredging and filling projects: (1) an allowable use test; (2) an alternatives test; and (3) a mitigation test. The project complies with the first test because maintenance dredging of existing navigation channels is an allowable use for dredging and filling.

The Commission finds that the project is not consistent with the alternatives and mitigation tests of Section 30233(a), because the some of the material proposed for disposal has elevated levels of contaminates, the project does not incorporate mitigation measures required by the U.S. Fish and Wildlife Service, and the project does not include trash and debris removal from the beach disposal sites. The Commission fully discusses these issues in the Water Quality, Endangered Species, and Recreation sections above and below. The Commission finds that Corps could avoid the water quality effects by (1) avoiding dredging of areas of elevated contaminates as indicated by bulk chemistry and or bioassay tests, or (2) dredge contaminated areas using silt curtains, environmentally sealed bucket, or other appropriate technology to reduce turbidity and dispose of contaminated material either in an upland site appropriate for such material or in an approved contained aquatic disposal site. Additionally, the Commission finds that the Corps could mitigate for endangered species impacts by incorporating the mitigation measures suggested by U.S. Fish and Wildlife Service in its informal consultation, dated January 30, 1998 (Exhibit 6). Finally, the Commission finds that the Corps could mitigate for the discharge of trash and

debris as part of the beach disposal project by providing for post-project beach clean-up. Therefore, the Commission finds that the proposed project is not consistent with the dredging and filling policies of the CCMP.

E. Sand Supply. Section 30233(b) of the Coastal Act provides that:

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.

As described above, the beach disposal portion of this project is inconsistent with endangered species policies of the Coastal Act (see Endangered Species Sections above). Such a conclusion makes it necessary to find that the project is inconsistent with the sand supply policy of the Coastal Act, because Section 30233(b) requires the project "to avoid significant disruption to marine and wildlife habitats." However, the Commission does note that the proposed project would benefit sand supply resources. The Corps would dredge the material proposed for beach disposal from the sand trap north of the north jetty. Through its physical analysis, the Corps concludes that the sediment in the sand trap is between 86 and 99 % sand. The grain size of the material from the sand trap is also relatively comparable to the sand on nearby beaches. Therefore, if not for the impact to endangered species, the proposed project would improve sand supply in this area. However, because the project would adversely affect endangered species, the Commission finds that the project is inconsistent with the sand supply policy of the CCMP.

F. Recreation and Public Access. Section 30210 of the Coastal Act provides, in part, that:

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

Section 30220 of the Coastal Act provides that:

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

The Corps proposes to place approximately 123,000 cubic meters of sediment dredged from Marina del Rey in the surf zone for sand replenishment purposes. The Commission generally supports this type of beneficial reuse of dredged material because it improves sand supply, resulting in wider beaches and improved coastal recreation. However, beach disposal of dredged material can result in some adverse recreational impacts. The effects include blocking vertical access by placement of a pipeline necessary to transport sand to the disposal site, temporary odd color and smell of dredged material, trash and debris disposed on the beach along with the sand, and possible increased noise pollution associated with the operation of the dredge and auxiliary pumps, if necessary.

The Corps will partially mitigate any interference with beach recreational use by requiring the beach disposal portion of the project to conclude on April 1, and thus avoiding the peak recreational season. Noise impacts will be temporary during project operation. The smell and discoloring will dissipate quickly as the dredged material oxidizes. Therefore, these impacts will not be significant. The Corps will mitigate any impacts to vertical access caused by the placement of the pipeline by constructing sand ramps over the pipeline.

Finally, in previous projects, the Corps avoided significant impacts from trash and debris by requiring post-project clean-up of the beach. However, in this project, the Corps has not provided for trash and debris clean-up. It may be that the material used for beach disposal is relatively free of trash and debris or the Corps has committed to beach clean-up, but the Corps did not identify that commitment in its consistency determination. Regardless, without incorporating these clean-up measures into the consistency determination, the Commission cannot find the project consistent with the Recreational Policies of the CCMP. Therefore, the Commission finds that the proposed project is not consistent with the access and recreation policies of the CCMP.

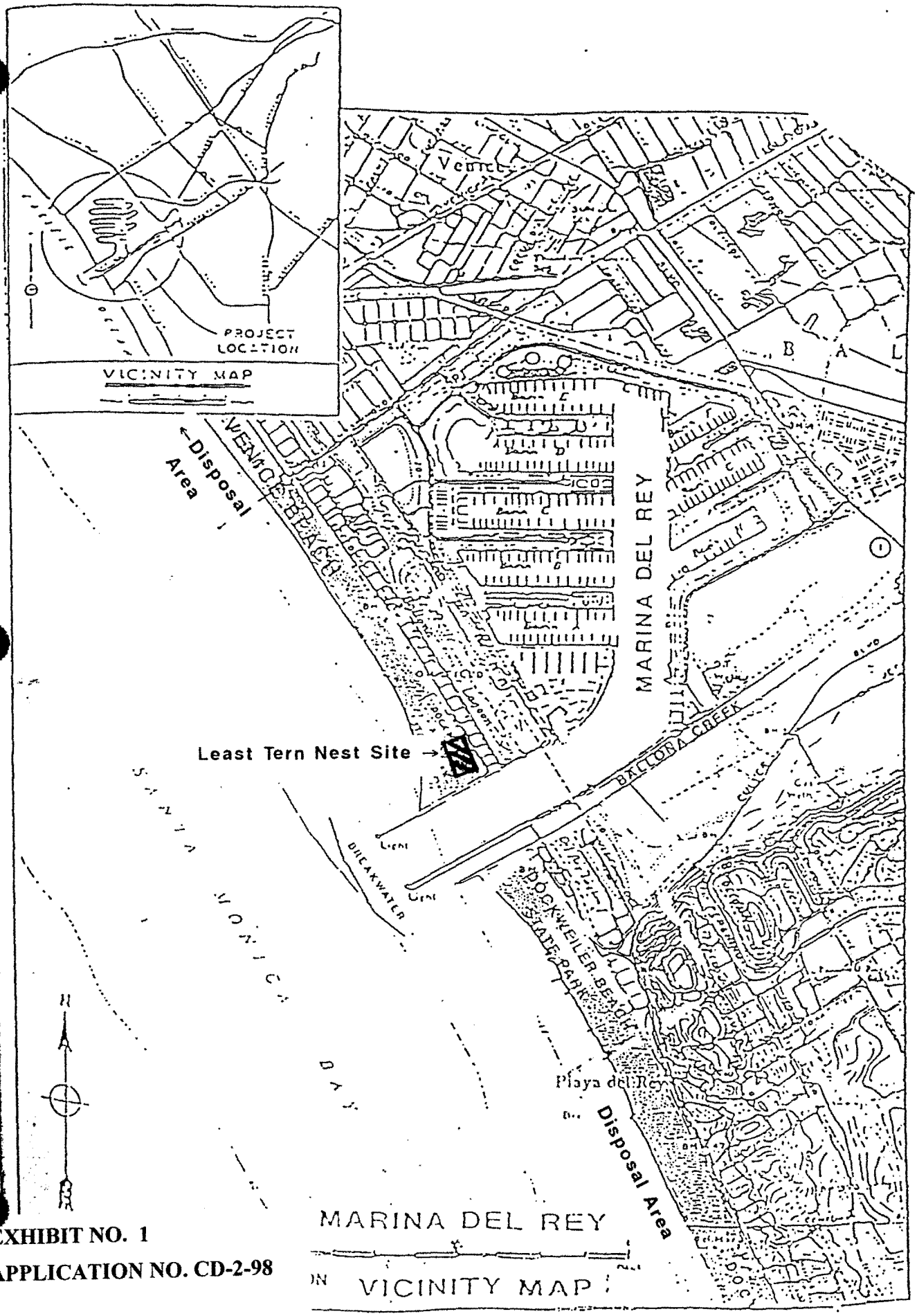


EXHIBIT NO. 1

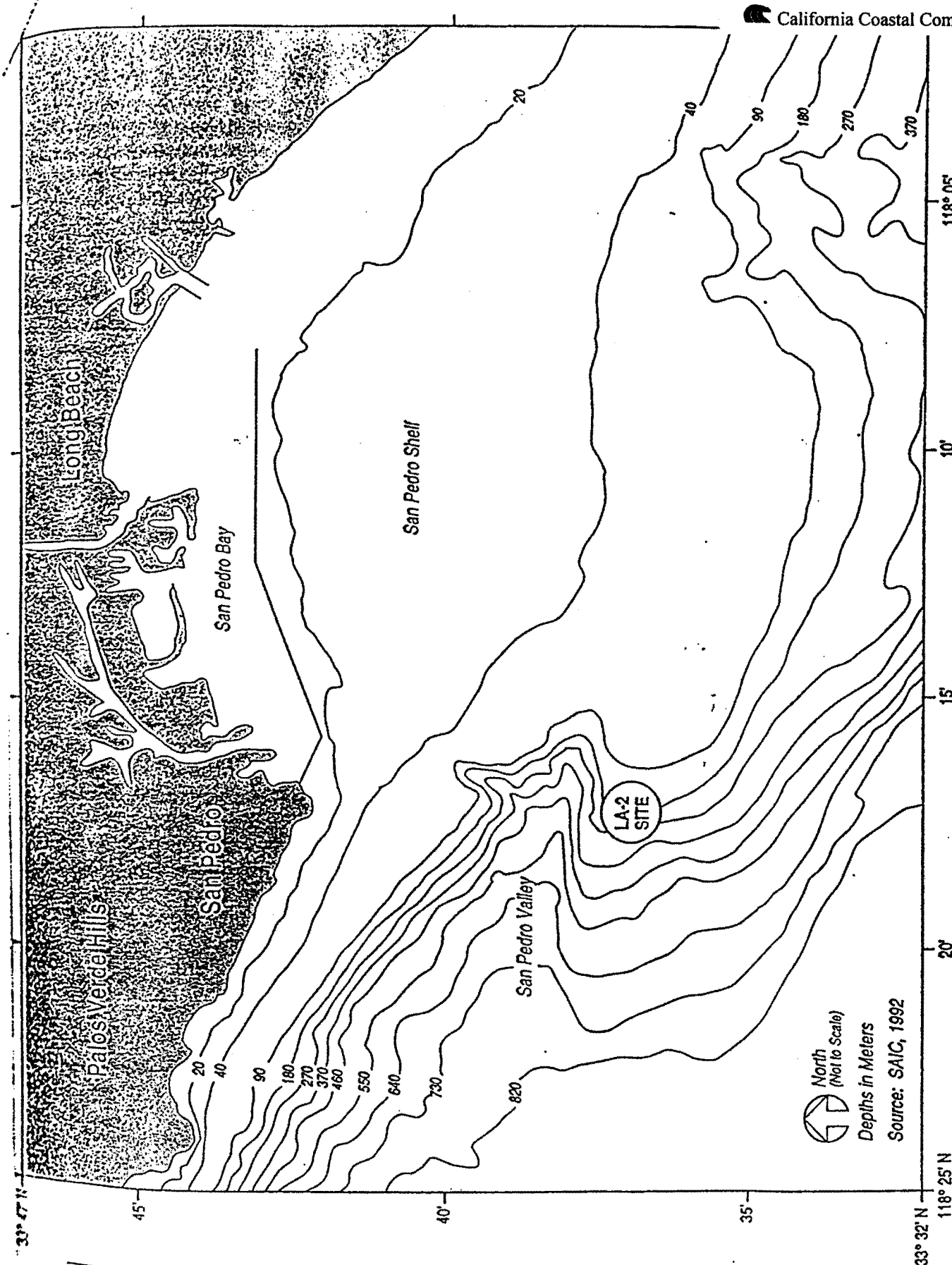
APPLICATION NO. CD-2-98

California Coastal Commission

EXHIBIT NO. 2

APPLICATION NO. CD-2-98

California Coastal Commission



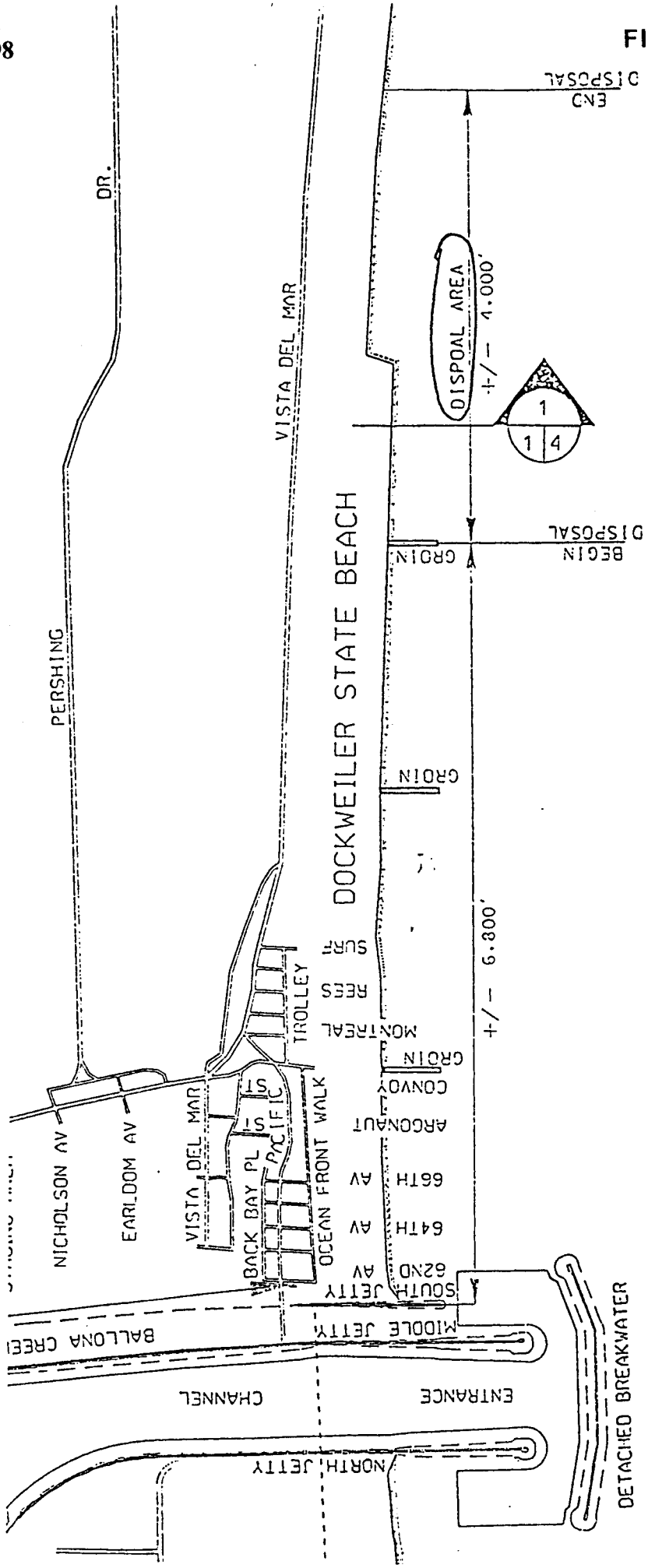
LA-2 Ocean Dredged Material Disposal Site Vicinity Map.

EXHIBIT NO. 3

APPLICATION NO. CD-2-98

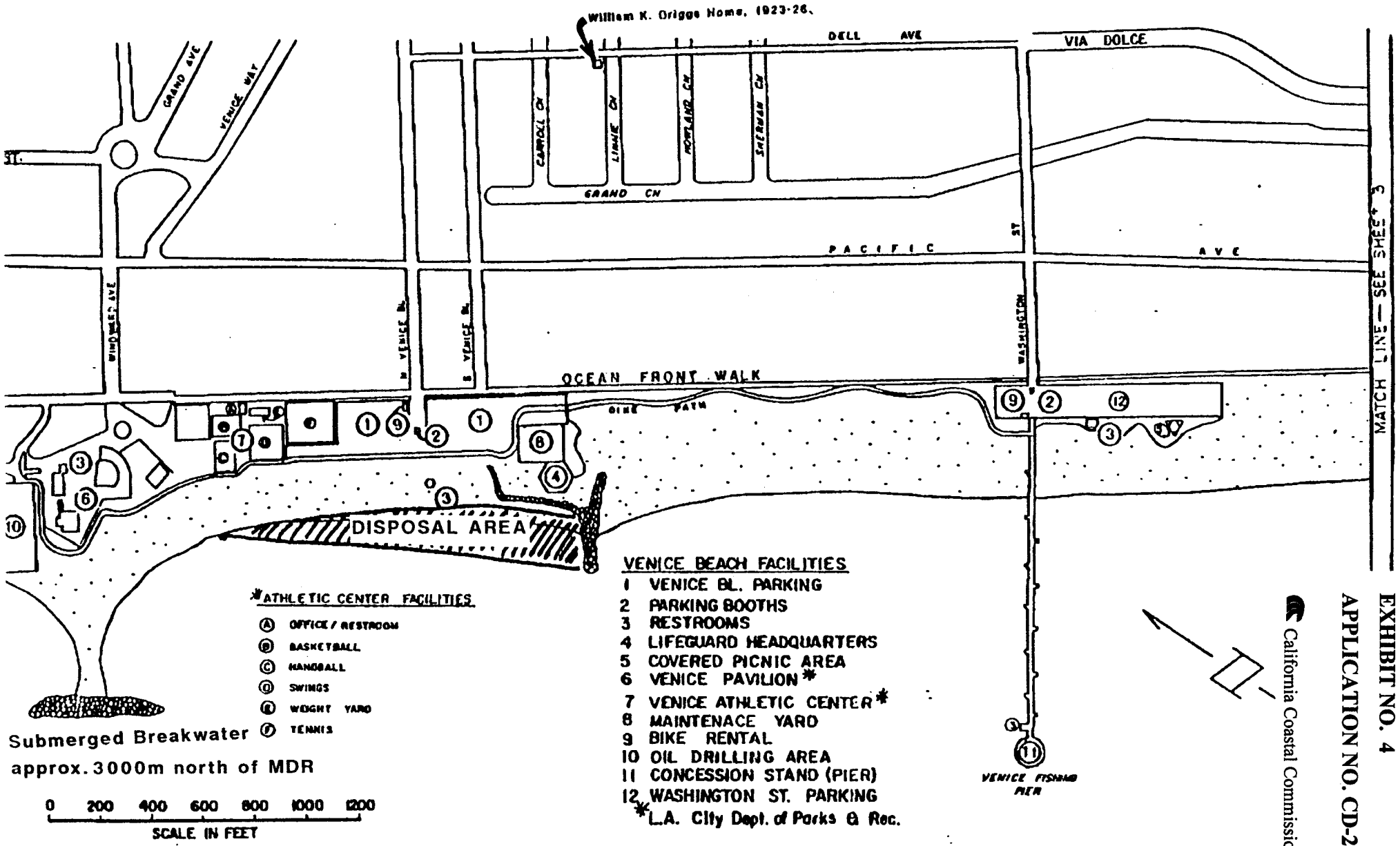
California Coastal Commission

FIGURE 4



LOCATION MAP

NOT TO SCALE



VENICE CITY BEACH
WINDWARD AV. to WASHINGTON ST.

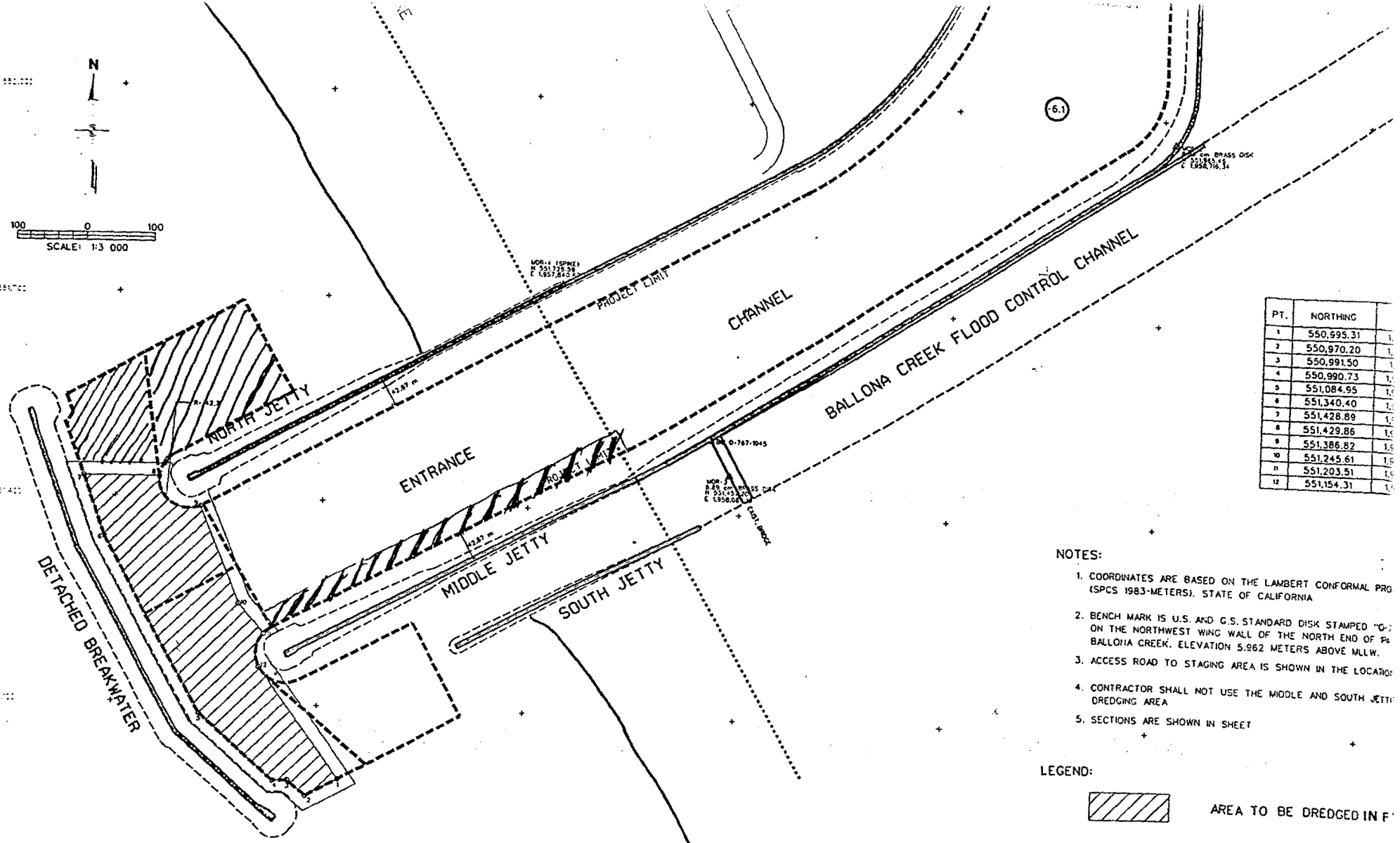
1/2/86 | S. DRIGGS

LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBOR

2 OF 3

California Coastal Commission

EXHIBIT NO. 4
APPLICATION NO. CD-2-98



PT.	NORTHING	
1	550,995.31	1,
2	550,970.20	1,
3	550,991.50	1
4	550,990.73	1,
5	551,084.95	1,
6	551,340.40	1,
7	551,428.89	1,
8	551,429.86	1,
9	551,386.82	1,
10	551,245.61	1,
11	551,203.51	1,
12	551,154.31	1,

NOTES:

1. COORDINATES ARE BASED ON THE LAMBERT CONFORMAL PRO (SPCS 1983-METERS). STATE OF CALIFORNIA
2. BENCH MARK IS U.S. AND G.S. STANDARD DISK STAMPED "O- ON THE NORTHWEST WING WALL OF THE NORTH END OF Pe BALLONA CREEK. ELEVATION 5.962 METERS ABOVE MLLW.
3. ACCESS ROAD TO STAGING AREA IS SHOWN IN THE LOCATIO
4. CONTRACTOR SHALL NOT USE THE MIDDLE AND SOUTH JETTI DREDGING AREA
5. SECTIONS ARE SHOWN IN SHEET

LEGEND:

AREA TO BE DREDGED IN F

-6.1 PROJECT DEPTH

FEDERAL PROJECT LIMITS

EXHIBIT NO. 5

APPLICATION NO. CD-2-98

California Coastal Commission

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

JAN 30 1998

RECEIVED
FEB 02 1998

EXHIBIT NO. 6

APPLICATION NO. CD-12-98
FOUR PAGES
California Coastal Commission

FP/COE-042

Colonel Robert L. Davis
District Engineer, Los Angeles District
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

Attn: Hayley Lovan, Environmental Resources Branch

Re: Informal Consultation for the Marina del Rey Harbor Maintenance Dredging Project, Los Angeles County, California (1-6-98-I-008)

Dear Colonel Davis:

The Fish and Wildlife Service (Service) has reviewed the Biological Assessment for the referenced project dated December 1997, transmitted by letter dated December 29, 1997, and received by us on December 31, 1997. The purpose of this informal consultation is to identify mitigation measures to be implemented during construction that would eliminate adverse impacts to the brown pelican (*Pelecanus occidentalis californicus*), California least tern (*Sterna antillarum browni*), and western snowy plover (*Charadrius alexandrinus nivosus*).

The Los Angeles District Corps of Engineers (Corps) proposes to dredge approximately 210,000 cubic meters of sediment from the north and south navigation and entrance channels of Marina del Rey Harbor and from the north jetty fillet. Potential dredged material disposal sites include LA-2, Dockweiler Beach, and Venice Beach. Chemical and biological testing is underway to verify the compatibility of the dredged material with the proposed disposal sites. If the dredged material is determined to be suitable, dredging and disposal operations are expected to occur between March and May 1998. If the dredged material is determined to be unsuitable for ocean disposal, environmental documents will be revised if and when funding is available to pursue an upland or confined disposal site.

The brown pelican is a Federal and State endangered species. It is a year round resident in the Southern California Bight, including the project area. Pelicans use breakwaters, jetties, groins, piles, docks, etc. for day and night roosting. They prefer structures, such as breakwaters, that are detached from land and surrounded by water for night roosts for protection from predators. Isolated nighttime roost structures in the Southern California Bight are scarce. The offshore breakwater that protects the entrance channel from oceanic waves serves as both a day and night roost. The brown pelican is tolerant of human presence and activities during the day but less

tolerant at night because of their inability to observe predators and their surroundings. Because of the brown pelican's reduced tolerance to nighttime human activities and more sensitive to disturbance, including lights and noise, dredging should be restricted to daylight hours. The close proximity of the dredging activity to the offshore breakwater would disturb the brown pelican at night.

The California least tern is a Federal and State endangered species. It is a migratory species that winters in Mexico, Central America, and South America and breeds along the coast of southern and central California. They arrive in southern California in early to mid-April at the Venice Beach colony and depart in September. This colony is one of the largest in the numbers of breeding pairs as well as one of the most productive in numbers of fledglings in California.

The Venice Beach colony has the potential of being adversely impacted from the proposed maintenance dredging project. The colony is located approximately 1,000 feet northeast of the proposed dredging area immediately north of the north jetty. The potential impacts include 1) sloughing of the beach between the dredging area north of the north jetty and the Venice Beach colony, 2) turbidity plumes, 3) redistribution of forage species, and 4) human activity and machinery noise and presence.

Sloughing of the beach would occur as the result from the nearshore beach adjusting to a new equilibrium profile. This would narrow the buffer area between the surf zone and the Venice Beach colony, thus, increasing the risk of damage to the colony. This risk is heightened this year because of the potential for increased storm activity as a result of the El Nino oceanic condition.

The California least tern is a sight feeder. Turbidity reduces its ability to see small forage fish near the water surface. Turbidity plumes as a result of dredging and beach disposal activities also redistribute forage fish, potentially making them unavailable. If the forage base becomes unavailable locally, the California least tern must fly greater distances to forage, leaving eggs and young unattended for longer periods of time thereby increasing the risk of predation.

Forage fish species are affected by turbidity and underwater noise. Fish tend to avoid turbid waters. They may redistribute laterally or may descend to deeper waters, making them unavailable to the California least tern and the brown pelican. Underwater noise caused by the dredging plant also causes a redistribution of fish. The effect is the same as for turbidity in that they will be unavailable.

Human presence and activities cause uneasiness in the Venice Beach colony. The presence of machinery and noises caused by the dredging plant may affect the California least tern at the Venice Beach colony resulting in abandonment of the colony, eggs, and young, increased metabolic rate due to unsettling environs, and general disturbance. These stresses may be particularly pronounced this year in that the abundance of a food base may be significantly

reduced as a result of the El Nino oceanic condition. This has generally been the case in the past. The presence of the dredging plant and other machinery with tall support arms and cranes provide roosting platforms for raptor predators to overlook the Venice Beach colony. The presence of raptor predators themselves create uneasiness in the Venice Beach colony.

The western snowy plover is a Federal threatened species. It breeds from mid-March through mid-September in loose colonies on flat open areas with a sandy or saline substrate. The coastal population consists of both resident and migratory birds. The western snowy plover forages for invertebrates in the wet sand in the intertidal zone amongst surf-cast kelp and other debris. The dredging activity would not have an adverse affect on the western snowy plover, however, the beach disposal of dredged material may have an adverse impact. The two beach disposal sites are typical of western snowy plover nesting habitat.

In order to avoid adverse impacts to the brown pelican, California least tern, and the western snowy plover from the proposed maintenance dredging project at Marina del Rey and beach disposal of dredged material at Dockweiler Beach and Venice Beach, the Service recommends the following conditions to be implemented during construction. Based upon the Corps' project description in the Biological Assessment, implementation of these recommendations could avoid the need for formal section 7 consultation. However, if during the biological monitoring, affects to these three species are observed, the construction activity causing the affect must cease and formal section 7 consultation initiated with this office of the Service.

1. All dredging north of the north jetty (Area 1) and along the south side of the Entrance Channel (Area 2) and all beach disposal shall be completed by April 1.

2. A single-point discharge for all beach disposal shall be constructed.

3. Employ silt curtains around the dredging plant from the commencement to the cessation of dredging.

4. Lower all cranes and/or support arms to the maximum while machinery is idle.

5. Dredging shall be restricted to daylight hours.

6. A qualified California least tern (least tern) and western snowy plover (snowy plover) monitor shall be hired from March 1 to the cessation of dredging. The monitor shall:

    A. Inspect the beach disposal sites for snowy plover prior to any beach disposal of dredged material.

    B. Measure noise levels at the Venice least tern colony (Venice Colony) from commencement of dredging to the cessation of dredging.

C. Note unusual or uncharacteristic least tern behavior at the Venice Colony or nearshore (i.e., nest abandonment, uneasiness, predators, foraging as a result of turbidity, etc.).

D. Immediately report to the Corps and the Service of all unusual behavior and/or adverse conditions at the Venice Colony.

E. Have the authority to halt the construction activity that appears to be affecting the least tern and/or snowy plover.

F. Measure all turbidity plumes emanating from the silt curtains and the turbidity within the silt curtains from the commencement of dredging and the cessation of dredging. Turbidity measurement shall follow the protocol agreed to by the Corps and the Service for Oceanside Harbor.

G. Provide the Corps and the Service a monitoring report at the completion of the maintenance dredging project within 30 days.

If you have any questions, please feel free to contact John Hanlon, Chief, Branch of Federal Projects, at (760) 431-9440.

Sincerely,

Elizabeth H. Stevens
Acting Field Supervisor

1-6-98-I-008

cc: CDFG, Long Beach, CA (Attn: P. Wolfe)
NMFS, Long Beach, CA (Attn: R. Hoffman)
CCC, San Francisco, CA (Attn: J. Raives)

COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

February 11, 1998

Colonel Robert L. Davis
District Engineer
United States Army Corps of Engineers
Post Office Box 532711
Los Angeles, California 90053-2325

Dear Colonel Davis:

MARINA DEL REY EMERGENCY DREDGING

This letter is to request that you make an emergency declaration for dredging the entrances of Marina del Rey. On February 9, 1998, the Sheriff's Harbor Master surveyed the entrances and issued the attached news release and local notice to mariners. The Harbor Master's concern is that last week's storms reduced the south entrance's navigable channel to approximately 20%. In addition, a shoal is growing into the harbor from the breakwater, which is restricting traffic lanes in both entrances. As evidence of the danger, two boats have gone aground in the south entrance since this past weekend.

Because the navigable channel in the south entrance is now dangerously narrow, only approximately 100 feet wide, you will note in the attachments that the Harbor Master is advising boaters to use only the north entrance. Unfortunately, the Harbor Master advised on this date that the north entrance channel itself has been reduced in width to 25%. With all traffic being forced through this narrowed entrance, collisions and groundings are inevitable. A further concern is that the south entrance is so restricted as to preclude emergency response to air-sea disasters off of LAX.

Maintenance of the entrances and navigation channels in Marina del Rey is the statutory responsibility of the Corps. Although Congress was only able to appropriate $500,000 for dredging this year, it is hoped that the Corps can reprogram funds from the District, Division, or National level to accomplish this critical project.

FAX: (310) 821-6345
905-9503 13837 FIJI WAY, MARINA DEL REY, CALIFORNIA 90292
INTERNET: http://www.co.la.ca.us/beaches

I am very appreciative of your staff's efforts to plan a dredging project for this spring and to develop environmentally acceptable and economically feasible disposal alternatives. The emergency condition that now exists clearly adds a sense of urgency to accomplish this dredging as a matter of public health and safety. I am confident that your excellent staff can successfully manage this very difficult task.

Thank you for your consideration of this request. If you have any questions, please feel free to call me at (310) 305-9522.

Very truly yours,

Stan Wisniewski

Stan Wisniewski, Director

SW:KG:DRS:kg
Attachments
c: Each Supervisor
Congresswoman Jane Harman
U. S. Coast Guard
Harbor Master
L. A. County Fire Department/Lifeguards
Each Small Craft Harbor Commissioner

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

MEMORANDUM

DATE: 02-9-98
FILE:

FROM: DEPUTY FRED PAUSCH
MARINA DEL REY STATION
HARBOR MASTER'S OFFICE

TO: CHIEF HOWK, U.S.C.G.
AIDS TO NAVIGATION
SECTION

SUBJECT: LOCAL NOTICE TO MARINERS

Please include the following information in a future edition of the Notice to Mariners due to recent changes in navigation hazards at Marina del Rey.

All mariners should use extreme caution when navigating the entrance to Marina del Rey.

"Shoaling conditions from recent storms have closed 80% of the Marina Del Rey South Entrance and 50% of the North Entrance. Shoaling buoys have been re-established at 10' M.L.L.W. surrounding the shoal areas."

"The Harbor Master is advising all mariners to use the Marina del Rey North Entrance until further notice as shoaling conditions may change with future storm activity."

"Mariners can contact the Marina del Rey Sheriff's Harbor Patrol on VHF-FM Channel 16 (monitored 24 hrs.) for updated information on conditions."

If you have any questions, please contact me at 310-823-7762 ext. 233.

Thank you for your assistance.

(Faxed 2-9-98, 1130 hrs. 562-980-4414)

EXHIBIT NO. 8

APPLICATION NO. CD-12-98
THREE PAGES

California Coastal Commission

NEWS RELEASE

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

Marina Del Rey Sheriff's Station
(310) 823-7762

ADVISORY

HAZARDOUS CONDITIONS FORMING AT MARINA DEL REY ENTRANCES

Marina del Rey Sheriff Station Harbor Master, Lt. Rod Lyons is advising that shoaling and silting conditions from recent storms have closed 80% of the Marina del Rey South Entrance and 50% of the Marina del Rey North Entrance.

Shoaling buoys are being placed in the marina entrances at 10' M.L.L.W. (Mean Lower Low Water) to provide 10' of navigable channel depth for Marina boaters.

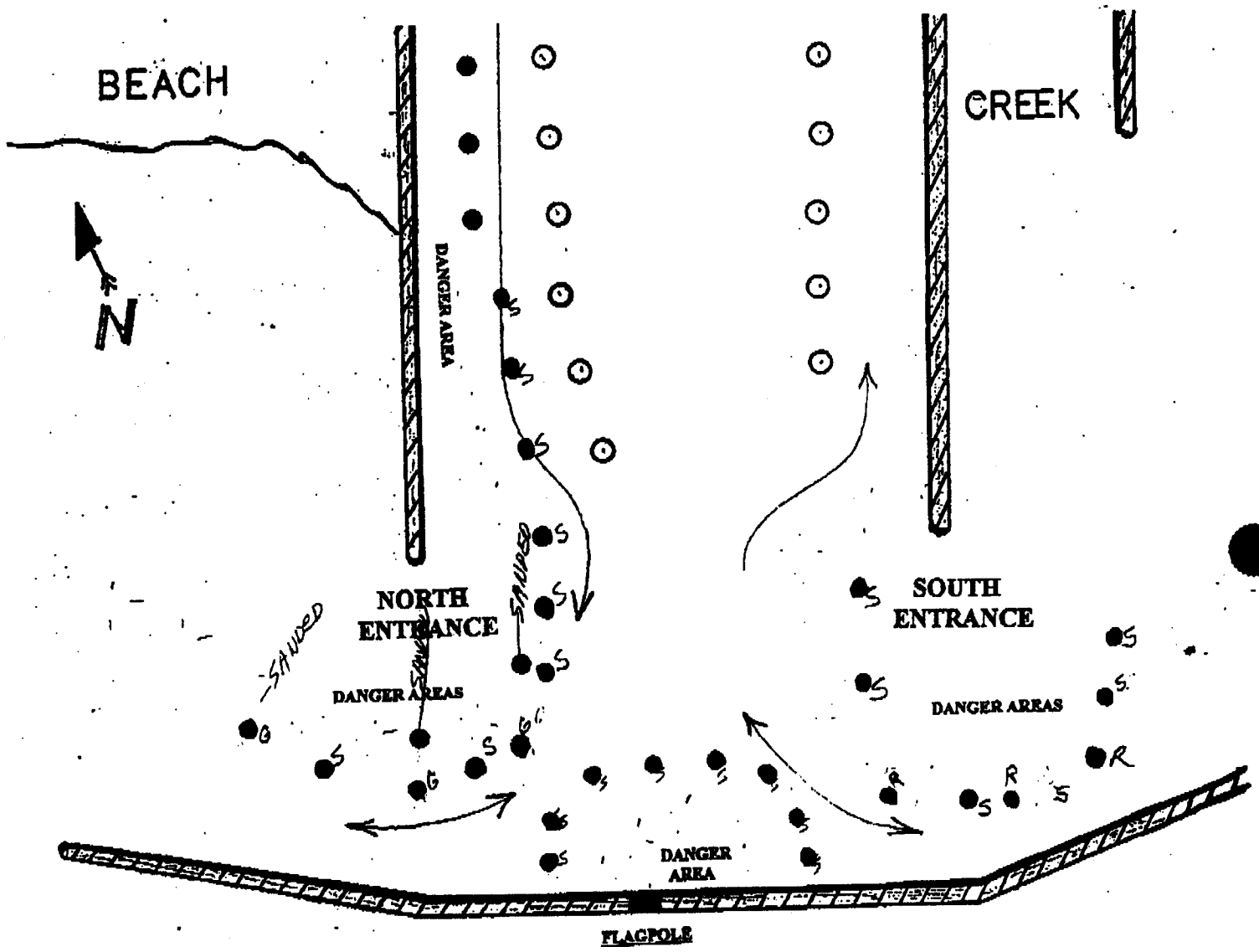
The Harbor Master is advising all mariners to use extreme caution in this area and use the Marina del Rey North entrance until further notice as shoaling conditions may change with future storm activity. The United States Coast Guard has also been informed of current conditions and have been requested to issue a "Local Notice To Mariners" advising of the hazard.

Mariners may contact the Marina del Rey Sheriff's station Harbor Patrol on VHF-FM Channel 16 (monitored 24 hours) or by telephone for updated information on entrance conditions.

FOR FURTHER INFORMATION, CONTACT THE MARINA DEL REY SHERIFF'S STATION AT (310) 823-7762.

FEBRUARY 9, 1998

2-12-98



All buoys are shown at 10' M.L.L.W.. Boaters may contact the Marina del Rey Sheriff's Harbor Patrol on VHF-FM Channel 16 or 310-823-7762 (monitored 24 hours) for current conditions.
Diagram not to scale and not to be used for navigation purposes.

⊙ - "NO SAIL" TRAFFIC CONTROL BUOYS

● - "SHOAL" BUOYS

2-9-98