

CALIFORNIA COASTAL COMMISSION

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STAFF RECOMMENDATIONON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-9-98
Staff:	MPD-SF
File Date:	1/30/98
45th Day:	3/16/98
60th Day:	3/31/98
Commission Meeting:	3/10/98

FEDERAL AGENCY: U.S. Navy

DEVELOPMENTLOCATION:

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

DEVELOPMENTDESCRIPTION:

Modifications to beach replenishment regime for material dredged as part of the previously-concurred-with Navy "Homeporting" project. The modifications consist of disposal of up to 4,000,000 cubic yards (3.1 million cu. meters) of dredged sandy material at LA-5, rather than using the material for beach or nearshore disposal (as had been previously proposed), due to hazardous munitions found in the material

SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Determinations CD-95-95 (Navy, Homeporting), ND-72-96, CD-29-97, ND-62-97, CD-140-97, and CD-161-97 (Navy, Homeporting modifications).
2. Final EIS for the Development of Facilities in the San Diego-Coronado to support the Homeporting of One NIMITZ Class Aircraft Carrier, October 1995.
3. Sand Screening Report, FY '97 MCON Project P-706, Channel Dredging, Naval Air Station North Island, Coronado, California, U.S. Navy, January 29, 1998.

4. Army Corps, Navy, and Coast Guard San Diego Bay Dredging Consistency Determinations CD-71-95, CD-26-94, CD-91-93, CD-53-87, CD-3-87, and CD-33-85.

STAFF NOTE/BACKGROUND: On November 16, 1995, the Commission concurred with the Navy's consistency determination for the "Homeporting" of a NIMITZ class nuclear aircraft carrier in San Diego (CD-95-95). The beach/nearshore disposal portion of that project consisted of placing 7.9 million cu. yds. (6.12 million cu. meters) of suitable clean sandy material at four beaches throughout the County (i.e., nearshore disposal at Imperial Beach, Del Mar, Oceanside, and Mission Beach). The beach and nearshore disposal component subsequently underwent a number of modifications, the first few of which were to the amounts and locations of beach and nearshore disposal, but after munitions were found in the sand, the Navy proposed to place the material at offshore disposal site LA-5.

On November 6, 1997, the Commission objected to Navy consistency determination CD-140-97, to modify the sand disposal for "Area 1" material and place it at LA-5. On November 19, 1997, the Navy informed the Commission that it was proceeding with the modified project for disposal at LA-5, despite the Commission's objection.

On January 28, 1998, the Commission obtained a preliminary injunction from the U.S. District Court, enjoining the Navy from conducting further dredging. The injunction was "... conditioned upon the Commission's expeditious study of proposed alternatives to offshore dumping, including those set forth in the Harris Report, and the good faith of the parties to negotiate a resolution which is the stated goal of both sides."

On January 30, 1998, the Commission's Executive Director wrote the Navy outlining a potential solution involving: (1) obtaining an authorization to use any excess existing project funds not spent by the Navy for beach replenishment; (2) increasing the federal match ratio to allow the Navy to spend up to \$9.6 million in federal funds (to match \$4.7 million in State funds); (3) obtaining additional funding (up to approximately \$10 million) to make up for lost sand, "so that the end result is the placement of approximately the same amount of on-shore and near shore sand as had been originally included in the Navy's project."

On February 10, 1998, the Navy agreed to pursue legislative changes that would allow the use of any remaining channel dredging project funds for beach nourishment, allow the use of alternative sources of sand including borrow site sand instead of channel sand for beach nourishment, include a change in the cost sharing requirements such that the Navy will not be limited to the matching funds requirement. The Navy also agreed to support any legislation or legislative authorization which would provide additional funding for beach replenishment if such legislation provides for a net increase in the Navy's budget

"... up to or equal to the amount needed to provide the total amount of sand identified for beach replenishment in the project as approved by the Commission ..." Consequently, also on February 10, 1998, the Commission and the Navy stipulated to a lifting of the District Court's preliminary injunction, and the Navy subsequently modified its consistency determination to include these agreements.

EXECUTIVE SUMMARY

The Navy seeks Commission authorization to dispose of the as-yet-undredged material from the "Homeporting" project (up to 3.1 million cubic meters; 4 million cu. yds.), at offshore disposal site LA-5, located 5.4 miles offshore of San Diego. As previously concurred with by the Commission in CD-95-95, the material is being dredged from the San Diego Main Channel for harbor deepening necessary to accommodate the Homeporting of a Nuclear Aircraft Carrier at the Naval Air Station North Island (NASNI) in Coronado. Previous Commission authorization was for disposal of most of the dredged material (originally totaling 7.9 million cu. yds. (6.12 million cu. meters) of predominantly clean sand), at various beaches throughout San Diego County (Exhibit 1).

After the Navy commenced dredging in "Area 1" (the southernmost segment of the main channel) during September 1997, the Navy found munitions and live ordnance in the material as it was being placed at South Oceanside Beach. This discovery forced the Navy to reconsider its original proposed for beach or nearshore disposal for the Area 1 material, and, after considering the various possible alternatives for screening or otherwise removing the munitions from the sand, the Navy believes there are no feasible screening alternatives available. The Navy therefore proposes to dispose of all of the material at LA-5. The Commission previously objected to the Navy's proposal to dispose of Area 1 sand containing munitions at LA-5. The Commission found that feasible alternatives were available which would enable the project to be carried out in a manner consistent with these policies, and that while the Navy had concluded it would be expensive to screen the material to a level removing all munitions, the Navy had not documented its cost estimates. Nor had the Navy weighed the risk to the public from beach replenishment against the loss to the public and residents in the area from loss of significant quantities of beach sand.

Since that decision the Navy has completed its "Sand Screening Report" (a.k.a., the Harris Report), which provides more refined cost estimates for implementing alternatives (see Exhibits 4-12). This report indicates that alternatives for placing screened material on the beach or in nearshore areas would significantly increase project costs (by a minimum of \$34 million), and result in delays due to slowed rates of dredging and/or time needed to prepare supplemental environmental analyses. The report concluded that,

within the project's budget and timing constraints, the Navy would not be able to screen sand to the degree specified as necessary by the Navy in order to guarantee public safety.

While the Commission does not conclude that the legal test applicable to this matter, namely, whether the project is consistent to the maximum extent practicable with the California Coastal Management Program, allows deviation from full compliance based on the Navy's stated funding and timing constraints, if the Navy can assure that equivalent sand will be placed on the beach or nearshore areas to offset sand lost to LA-5, the Commission would consider the Coastal Act policy requiring suitable dredged material to be placed on beaches or littoral systems to be met. The Navy has now agreed to pursue legislative changes to allow the use of any remaining channel dredging project funds for beach nourishment, providing for alternative sources of sand including borrow site sand instead of channel sand for beach nourishment, as well as to support efforts to seek additional funds for beach nourishment "... up to or equal to the amount needed to provide the total amount of sand identified for beach replenishment in the project as [originally concurred with] by the Commission ...". The Navy has modified its consistency determination to include these commitments. Assuming the Navy fulfills its commitments, the project can be found consistent with the sand supply and public access and recreation policies of the Coastal Act (Sections 30233(b), 30210-30213, and 30220).

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

STAFF SUMMARY AND RECOMMENDATION

I. Project Description. The Navy proposes to dispose up to 3.1 million cu. meters (approximately 4 million cu. yds.) of material dredged from the main channel in San Diego Bay (Exhibit 2) at LA-5 (the EPA-designated offshore disposal located 5.4 miles southwest of Point Loma, San Diego (Exhibit 1)). The material was originally proposed for nearshore disposal (and subsequently modified to include on-beach replenishment). As described below, in the process of disposing of the sand at Oceanside, the Navy discovered hazardous munitions including large pieces of live ordnance in the dredge material, in both Area 1 and Area 4 of the main channel (Exhibit 2). Based on this discovery, the Navy assumes that no portions of the main channel could be guaranteed to be free of munitions, and, therefore, due to public health risks, the Navy proposes to dispose of all the main channel material at LA-5. The proposed project would not use a 3-inch ordnance grate (as the Corps and EPA required for Area 1 material once the munitions were discovered), but rather a 12-inch debris grate as originally proposed in CD-95-95 for the dredging operation. The size of the grate determines the maximum

sized ordnance (and other debris) that can enter the barge and be transported to the disposal site.

As of January 11, 1998, the Navy states that 2.2 million cu. yds. (1.7 million cu. meters) of material, or 35% of the total project quantity, have been dredged. Exhibits 3 shows areas and quantities already dredged, as well as disposal locations and the as-yet-undredged amounts for each San Diego Main Channel segment. These amounts do not including the Turning Basin, which the Navy recently re-incorporated into the project (see chart below for amount for Turning Basin).

The Navy further states: "Quantities ... requested in this Consistency Determination ... do not include quantities already dredged" and would consist of the following:

<u>Location</u>	<u>Cu. Yds.</u>	<u>Cu. Meters</u>
Outer Channel (Area 1)	1,700,000	1,300,000
Inner Channel (Areas 2-10)	1,962,000	1,500,000
<u>Turning Basin</u>	<u>582,000</u>	<u>445,000</u>
<u>Total</u>	<u>4,244,000</u>	<u>3,245,000</u>

II. Background/Project History. On November 16, 1995, the Commission concurred with the Navy's consistency determination for the relocation of one NIMITZ class aircraft carrier from the Naval Air Station in Alameda, San Francisco Bay, to the Naval Air Station, North Island (NASNI) in San Diego Bay (CD-95-95). The beach/nearshore disposal portion of that project, as originally concurred with by the Commission, consisted of placing 7.9 million cu. yds. (6.12 million cu. meters) of suitable clean sandy material at four beaches throughout the County (i.e., nearshore disposal at Imperial Beach, Del Mar, Oceanside, and Mission Beach). The Commission subsequently concurred with Negative Determination ND-72-96, which further refined the dredge/disposal quantities. After additional discussions between the Navy, the San Diego Association of Governments (SANDAG), various Countywide local coastal governments, and including commitments for State matching funds to be added to improve the beach replenishment benefits, the Navy broadened the number of beaches to receive sand and agreed to place sand on beaches instead of only using nearshore disposal. Based on these discussions, the beach disposal plan was modified in two phases, as follows:

Phase I (CD-29-97):

<u>Location</u>	<u>Cu. Yds.</u>	<u>Cu. Meters</u>
South Oceanside	530,000 cu. yds.	410,000 cu. meters
Solana Beach	570,000 cu. yds.	442,000 cu. meters

Phase II (ND-62-97):

South Oceanside	748,000 cu. yds.	580,000 cu. meters
North Carlsbad	542,000 cu. yds.	420,000 cu. meters
South Carlsbad	918,000 cu. yds.	712,000 cu. meters
Torrey Pines North	361,000 cu. yds.	280,000 cu. meters
Torrey Pines South	280,000 cu. yds.	500,000 cu. meters

In addition to these two phases, another 3 million cu. yds. (2.3 million cu. meters) were still to be placed in nearshore areas at Mission Beach and Imperial Beach.

The Navy commenced disposal operations in September 1997, beginning with South Oceanside beach disposal and Mission Beach nearshore disposal. After disposing of about 50,000 cu. yds. (39,000 cu. meters) of sand at South Oceanside, the Navy discovered hazardous munitions (including live ordnance) in the dredge material. On September 21, 1997, the Navy found twenty .50 caliber casings, a 20 mm mk-2 unfired shell, and three .50 caliber blanks on the beach. On September 25, the Navy discovered an 81 mm mortar on the beach. On September 28, the Navy found a 40 mm M25 shell casing, a 20 mm M2 1944 shell casing, and a 45-70 MK12 shell casing, on its hopper dredge screens. No ordnance was found in investigations of nearshore disposal at Mission Beach, where about 7,000 cu. yds (9,000 cu. meters) were disposed.

Concerned about public health, but wishing to proceed expeditiously with the project, the Navy immediately ceased its beach and nearshore disposal operations and, on October 1, 1997, sought Commission authorization for disposal at LA-5 of the Area 1 material. The Commission staff asked the Navy to request only the minimum necessary disposal at LA-5, since at that time the Navy was still considering whether any of the Area 1 material could be safely used for beach replenishment. Consequently, the Navy requested interim authorization from the Executive Director to dispose of 435,000 cu. meters (561,000 cu. yds.) of Area 1 material at LA-5, pending submittal of the matter to the full Commission for a public hearing. On October 3, 1997, the Executive Director informed the Navy that "In the interim the Commission staff does not oppose the Navy's current request to proceed to place at LA-5 the Area 1 material ...". This authorization was based in part on the Navy's commitment to submit a consistency determination for Commission review of any further LA-5 disposal.

On October 3, 1997, the Navy also received authorization from the U.S. Army Corps of Engineers (Army Corps) and EPA, to take the entire Area 1 volume (3.44 million cu. yds.; 2.67 million cu. meters) to LA-5, subject to certain conditions agreed to by the Navy, including that the Navy would screen the material using a 3-inch grating attached to the dredge pipeline intake.

On October 14, 1997, as a follow-up to its interim request to the Commission for disposal of 561,000 cu. yds. (435,000 cu. meters) at LA-5, the Navy wrote to the Commission stating its intent to dispose of the remainder of the Area 1 material at LA-5, but still put a substantial amount of sand onto beaches (i.e., the sand from the "inner channel" (i.e., Areas 4, 5, 6, 8 and 10). The Navy estimated this remaining amount to be approximately 1.5 million cu. yds. (1.2 million cu. meters) of beach suitable material.

On November 6, 1997, the Commission objected to the Navy Consistency Determination CD-140-97, which had originally been submitted as a request to dispose of up to 2.61 million cu. yds. (2.24 million cu. meters) of "Area 1" material at LA-5, but which was modified during the public hearing, to a request to dispose of up to 645,000 cu. yds. (500,000 cu. meters) and for a one month period. On November 13, 1997, the Navy submitted Consistency Determination CD-161-97, again for disposal of Area 1 material at LA-5 (this time for up to 871,000 cu. yds. (675,000 cu. meters)). This submittal was withdrawn prior to any Commission vote.

On November 17, 1997, in dredging Area 4 and placing material on the beach at South Oceanside, the Navy discovered additional munitions, and subsequently suspended all beach/nearshore disposal. On November 19, 1997, the Navy informed the Commission that it was proceeding with the modified project for disposal at LA-5, despite the Commission's objection.

After the Commission filed a lawsuit, on January 28, 1998, the U.S. District Court issued a preliminary injunction enjoining the Navy from conducting further dredging. The injunction was "... conditioned upon the Commission's expeditious study of proposed alternatives to offshore dumping, including those set forth in the Harris Report, and the good faith of the parties to negotiate a resolution which is the stated goal of both sides."

On January 30, 1998, the Navy submitted the subject consistency determination. Also on January 30, 1998, the Commission's Executive Director wrote the Navy outlining a potential solution involving: (1) obtaining an authorization to use any excess existing project funds not spent by the Navy for beach replenishment; (2) increasing the federal match ratio to allow the Navy to spend up to \$9.6 million in federal funds (to match \$4.7 million in State funds); (3) obtaining additional funding (up to approximately \$10 million) to make up for lost sand, "so that the end result is the placement of approximately the same amount of on-shore and near shore sand as had been originally

included in the Navy's project." This letter indicated that the staff could recommend that the Commission remove its opposition to continued dredging and concur with a revised consistency determination containing these features. The letter further stated that:

If the Navy agrees to vigorously seek this Congressional authorization, and if we can secure the firm support of the San Diego Congressional delegation for this initiative in the form of new legislation or an amendment to an existing bill, that would probably be as much assurance as we can reasonably expect.

On February 10, 1998, the Navy agreed to pursue legislative changes to allow the use of any remaining channel dredging project funds for beach nourishment, providing for alternative sources of sand including borrow site sand instead of channel sand for beach nourishment, as well as to support efforts to seek additional funds for beach nourishment "... up to or equal to the amount needed to provide the total amount of sand identified for beach replenishment in the project as approved [i.e., originally concurred with] by the Commission ...". Based on this agreement the Commission and the Navy jointly stipulated to a lifting of the District Court's preliminary injunction. The Navy subsequently modified its consistency determination to include these commitments.

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

IV. Federal Agency's Consistency Determination. The Navy has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

V. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

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

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

Concurrence

The Commission hereby concurs with the consistency determination made by the Navy for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

VI. Applicable Legal Authorities:

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

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

The federal consistency regulations implementing the CZMA include the following provision:

Section 930.44. Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program; or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may seek the Secretarial mediation services provided for in Subpart G.

VII. Practicability:

The federal consistency regulations also provide:

Section 930.32 Consistent to the maximum extent practicable.

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

The Navy's consistency determination appears to infer that several "practicability" issues are relevant to this case. The Navy states:

The Navy ... [has] presented and discussed the latest information on its efforts to identify practicable alternatives to Commission staff and the Commission's executive director. The key items discussed included project description, the need to complete dredging in time for the arrival of the USS JOHN C. STENNIS, budget constraints, funding and legislative requirements for the offshore borrow site beach nourishment alternative, consequences to the project from a preliminary injunction, difficulties of reprogramming the project, descriptions and cost estimates of alternatives considered in the Sand Screening Study, and submission of the Final Sand Screening Study for Commission consideration at a meeting in February or March. ...

Public safety has been the Navy's major decision factor. The Navy does not find it acceptable to place even small amounts of ordnance onto or near public beaches. ...

Technical feasibility, both theoretical and from a practical standpoint, has been another major evaluation factor. However, it is not the only other factor. Dredging must be completed in time for the arrival of the USS JOHN C. STENNIS in August of 1998. Dredging must be completed within legally imposed budget restraints. ... [E]xcess [project funds] can only be used to put sediment nearshore. Funds which may be legally used by the Navy for onshore placement are limited by amounts contributed by the State and municipalities. The Navy can only match their contribution. ... As is outlined in the Sand Screening Report (Navy, 1998), none of the alternatives studied fit within legally imposed budget constraints, thereby prohibiting the Navy's dredging project from achieving full consistency with the California Coastal Management Program (CCMP).

All of the known alternatives were summarized in the January 1998 Sand Screening Report (Navy, 1998), which is submitted with this CD. ... In short, no technologies or processes for sand screening were found to be practicable within the schedule and funding constraints of this project.

Based on our schedule and budget constraints, and the findings of the Sand Screening Report, we believe that the proposal to dispose of remaining channel sand at LA-5 is consistent to the maximum extent practicable with the California Coastal Management Program.

The Commission does not believe the Navy has established in this case that compliance with the CCMP is prohibited based upon the requirements of existing law applicable to its operations. The Navy's cited budget and fiscal constraints are not tantamount to any requirement of existing law applicable to the Federal agency's operations that prohibits the Navy from complying with the CCMP.

Allowing a "maximum extent practicable" argument to include funding considerations undercuts the intent of the CZMA, and could be argued to allow many direct federal activities to escape the requirement for full consistency, since many federal agencies receive Congressional appropriations on a project-specific basis. In addition, this section removes any incentive to budget for achieving consistency with enforceable state coastal zone management policies.

The Commission finds substantial support for its contention that Congress did not intend funding to be used to limit "maximum extent practicable" in the language in the 1990 revisions to the CZMA (§307(c)(1)(B), last sentence), regarding Presidential overrides, and which constrains *even the President of the United States* in considering funding limitations (except in the case of a Congressional rejection of a specific Presidential funding request) when approving an override of a state's objection.

The Commission therefore concludes the standard before it is whether the project is fully consistency with the CCMP.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

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

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

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

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

Section 30212 provides, in part, that:

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

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

Section 30213 provides in part that "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." Section 30220 provides that: "Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses."

Section 30233(b) quoted above provides that where dredge material is suitable, it should be used to replenishment beaches or be placed within littoral sand systems. Prior to discovery of munitions in the dredged material, as detailed on pages 4-7 above, the material proposed for dredging was considered by the Navy, the Commission, and other

regulatory agencies to be clean sandy material suitable for beach replenishment. The discovery of munitions in the material clearly calls into question this suitability, given that it poses a human health hazard, especially from live ordnance that has cleared the entire dredge disposal system intact. While the incidence of ordnance has been small, the Navy is extremely concerned about the health hazard, and even the perception of a hazard may discourage or deter public access at the receiver beaches. The primary issues before the Commission include: (1) determining whether the material can be adequately screened, either during or after dredging and disposal, to remove the material and eliminate the hazard; (2) determining whether a way can be found to identify whether the remaining as-yet-undredged material may be all or partly free of munitions; (3) determining whether nearshore disposal could be conducted safely (i.e., avoiding the potential for munitions to be carried up onto beaches by wave action); and (4) if the material cannot be feasibly screened, whether alternatives are available that would replace the sand lost to the littoral system. The Commission has also asked the Navy for: (1) a risk analysis weighing hazards to the public from munitions against with the public hazard to homeowners and other shoreline development from damage from storms and wave action if the material is not disposed on the beach; and (2) any records the Navy has or is aware of (if any) regarding any historic dumping of munitions in Area 1, to attempt to determine what can be estimated about the likelihood of significant amounts of additional munitions in the main channel.

While the Navy has not responded to these last two questions, since the Commission's previous objection to disposal of the material at LA-5 decision the Navy has completed a Sand Screening Report ("Harris Report"), dated January 29, 1998. This report is the culmination of the Navy's efforts to document all potential feasible options for beach replenishment and attempt to determine their feasibility. This report looked at technical feasibility and fiscal considerations using a number of different technologies available to screen or otherwise remove munitions from the sand (Exhibits 4-11). The Navy states:

The Navy's attempts to find a method to safely put sand on the beaches, within the constraints of project resources and schedule, have been extensive. The Navy contacted dredging experts such as the ACOE HQ office of dredging research and development, the ACOE Waterways Experiment Station in Vicksburg Mississippi, the Naval Facilities Engineering Service Center and many others. A list of contacts and public input is given in Appendix C of the Sand Screening Report (Navy, 1998) submitted with this CD. None of the experts knew of any equipment available that could screen the volumes and flow rates of the dredged sand proposed for onshore placement. Under the October 1997 contract, FR Harris began to conduct a world-wide search to look for all alternatives for processing (screening) sand to remove ordnance and to address cost and schedule impacts. This effort included FR. Harris Engineers in the

United States and in the Netherlands where they teamed up with the Stuyvesant home office engineers. This first Sand Screening Report produced by FR Harris was issued on November 19, 1997. After the Navy and Sand Diego Association of Governments (SANDAG) reviewed the first Sand Screening Report, the Navy commissioned a more extensive Sand Screening Report to help evaluate the new alternatives that Navy personnel and others were coming up with.

Among other points, the Sand Screening report indicates that:

1. The only level of screening considered acceptable by the Navy would be to use 5/16 inch screen, which would significantly increase the cost and time for dredging and disposing the material.

2. The least expensive screening option would be screening during dredging and at the point where material was being placed into the barge would add approximately \$35 million to project costs. Screening at the receiver beaches would add approximately \$41 million to project costs. The Navy states these are not feasible alternatives in that it has already spent and obligated \$44.5 million for project completion, and that with its original budget of \$49.8 million, less than \$5 million remains available for screening or other alternatives.

3. Nearshore disposal cannot be guaranteed safe for the public. The report states:

There has been some public input that material placed nearshore would not allow ordnance to migrate onto the beach. The US Army Corps of Engineers (USACOE) has been studying the behavior of ordnance in the nearshore and is in the second year of a three year study program. This program includes tracking ordnance in the field and modeling ordnance behavior. The results to date indicate that ordnance, even on the larger end of what has been found on this project, is highly mobile in the nearshore. The USACOE is confident that no assurance can be made that ordnance will not move from the nearshore to the beach.

The Harris Report also includes detailed cost estimates and scheduling implications for the various alternatives reviewed in the report. Exhibits 1-11 of this staff report were all taken from the Harris Report. Exhibit 4 lists the various alternatives considered, and Exhibits 5-7 summarize the economic and timing considerations for these alternatives. Exhibits 8-11 illustrate a few of the technologies considered.

The Navy also states in its consistency determination that:

Public safety has been the Navy's major decision factor. The Navy does not find it acceptable to place even small amounts of ordnance onto or near public beaches. The danger that someone might accidentally contact the ordnance is only part of the problem. Our experience in the San Diego Area has shown that some members of the public, especially children, are actually attracted to items of ordnance. They look for it, and when they find it they will often pick it up, and sometimes kick, throw or otherwise abuse it. At times individuals have even subjected found items of ordnance to stresses such as placing them in a vice and hitting them with a hammer. The results have been tragic.

Technical feasibility, both theoretical and from a practical standpoint, has been another major evaluation factor. However, it is not the only other factor. Dredging must be completed in time for the arrival of the USS JOHN C. STENNIS in August of 1998. Dredging must be completed within legally imposed budget restraints. P-706 has a project budget of forty nine million eight hundred seventy two thousand dollars (\$49,872,000.00) of which about forty five million dollars (\$45,000,000.00) will be required just to dredge the channel and get the dredged material to LA-5. The excess can only be used to put sediment nearshore. Funds which may be legally used by the Navy for onshore placement are limited by amounts contributed by the State and municipalities. The Navy can only match their contribution. They have committed four million seven hundred thousand dollars (\$4,700,000.00) through SANDAG. As is outlined in the Sand Screening Report (Navy, 1998), none of the alternatives studied fit within legally imposed budget constraints, thereby prohibiting the Navy's dredging project from achieving full consistency with the California Coastal Management Program (CCMP).

All of the known alternatives were summarized in the January 1998 Sand Screening Report (Navy, 1998), which is submitted with this CD. Over half of all the alternatives were eliminated from further investigation because they are not technologically feasible. The remaining alternatives have environmental and safety implications that require varying degrees of environmental impact analysis that affect project schedule. Thus, extensive delays due to environmental considerations and permitting may necessitate contract termination to avoid excessive standby costs. Alternatives for screening involve technologies that are untested and unproven for the quantities, flow rates and material characteristics of this

project. In short, no technologies or processes for sand screening were found to be practicable within the schedule and funding constraints of this project.

Based on our schedule and budget constraints, and the findings of the Sand Screening Report, we believe that the proposal to dispose of remaining channel sand at LA-5 is consistent to the maximum extent practicable with the California Coastal Management Program.

While the Commission acknowledges that munitions constitute a potential human health hazard, the Commission does not agree that the Navy has demonstrated screening the sand to be infeasible. With respect to alternatives other than nearshore disposal, while the Navy maintains that it would be expensive to screen the material to a level removing all munitions, the Navy has simply documented that screening would exceed current funds budgeted for the project. The Commission does not agree that exceeding previously-budgeted amounts renders the screening alternative infeasible. The Commission also believes the Navy has provided no compelling evidence that nearshore disposal cannot be performed safely, and the Commission further believes the public risk would be small from placing material in -15 to -20 ft. water depths, as the density of munitions would tend to minimize their transport up onto public beaches. Historically, the Commission has reviewed numerous Army Corps, Navy, and Coast Guard Consistency Determinations for San Diego Bay dredging with nearshore disposal (including CD-71-95, CD-26-94, CD-91-93, CD-53-87, CD-3-87, CD-33-85), without any known incidence of any munitions washing ashore. If the munitions are as widespread as the Navy currently maintains in its assumption that all ten reaches of the main channel are likely to contain munitions, then the odds are high that previous San Diego Bay dredging projects also included dredging of munitions. Nevertheless, the Navy maintains that it cannot guarantee that no munitions would be transported onto beaches, and the Navy therefore rejects the nearshore disposal alternative as unsafe.

However if the Navy agrees to replace sand losses this disagreement can become moot. Pursuant to the "Stipulation Regarding Lifting of Preliminary Injunction and Order Thereon," the Navy has now agreed to the following commitments:

4. The Navy will pursue legislative changes in the authorization for the USS Stennis homeporting project which will allow the Navy to use all funds in excess of the actual dredging project costs for beach replenishment, the \$4,700,000 in so-called matching funds provided by SANDAG and any cost-savings realized through disposal at LA-5 instead of on shore or near shore disposal as originally authorized. This legislation will allow the use of any remaining channel dredging project funds for beach nourishment, allow the ability to use alternative sources of

sand including borrow site sand instead of channel sand for beach nourishment, and include a change in the cost sharing requirements such that the Navy will not be limited to the matching funds requirement.

5. In accordance with and to the extent allowed by applicable law, the Navy will restrict the use of the excess funds identified in paragraph 4 for beach replenishment as mitigation for the impacts of the USS Stennis homeporting project, as required by the Commission's concurrence in Consistency Determination 95-95.

6. The Navy will support any legislation or legislative authorization which would provide additional funding for beach replenishment if such legislation provides for a net increase in the Navy's budget up to or equal to the amount needed to provide the total amount of sand identified for beach replenishment in the project as approved by the Commission in Consistency Determination 95-95, Consistency Determination 29-97 and Negative Determination 62-97.

If the Navy complies with these commitments, the Commission can find the project consistent with the dredging, sand supply, and public access and recreation policies of the Coastal Act (Sections 30233(b), 30210-30213, and 30220). This conclusion is based on the expectation that these legislative and other efforts will be successful in providing the total amount of sand identified for beach replenishment in the project as approved by the Commission in CD-95-95 (and/or as subsequently modified to equal the total amount of sand actually dredged by the Navy). If the Navy does not fully comply with its commitments, the Commission retains the authority under Section 930.44 of the federal consistency regulations (quoted on pages 9-10 above), which provides for a reopening of federal consistency review for a project which was:

(1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program... [Emphasis added]

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

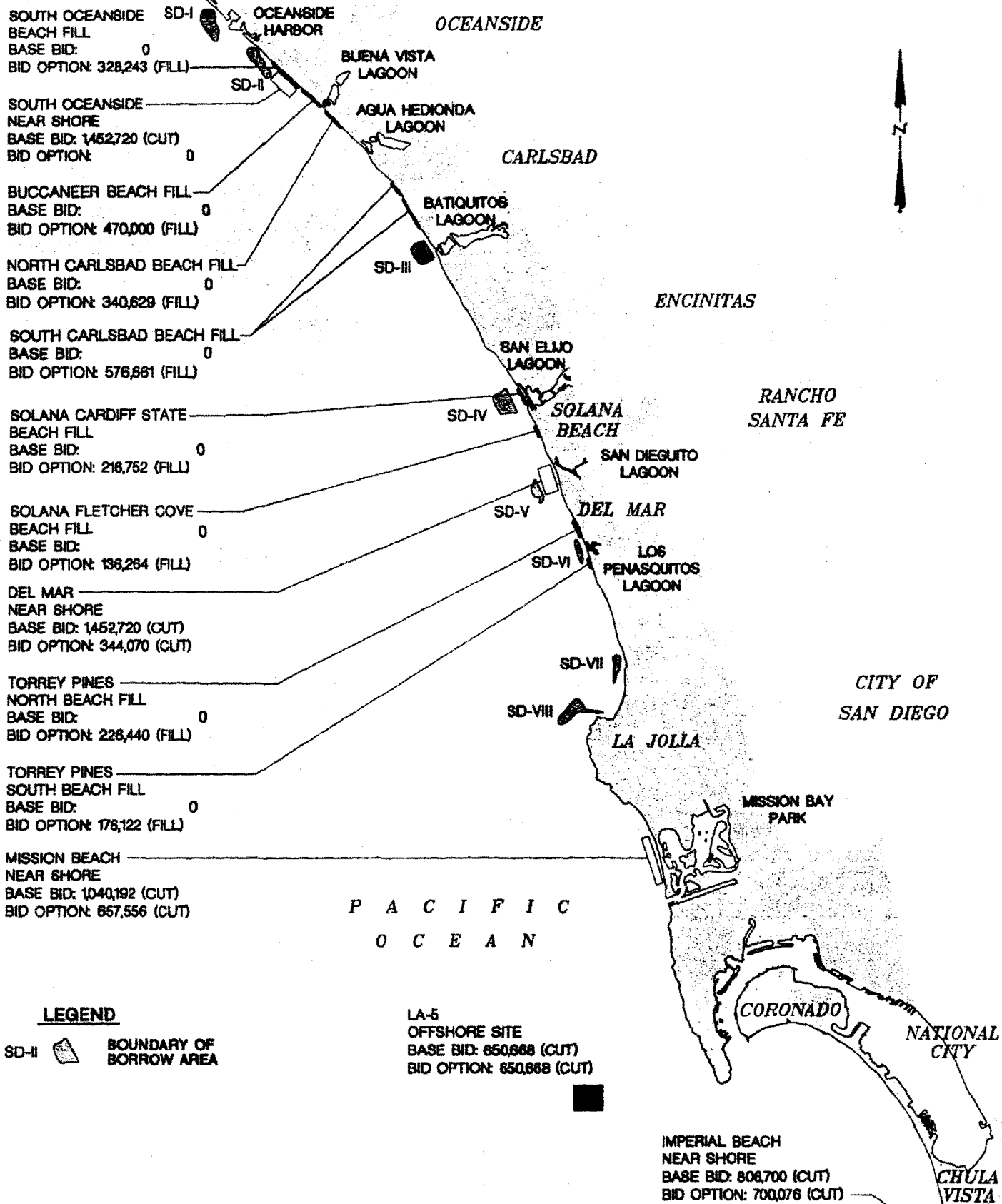
Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will

maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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

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

The Commission also found that the project provided for beach replenishment, as required under Section 30233(b) of the Coastal Act where dredged material is suitable for such use. While some concerns had been raised about sediment contamination potential, the Navy undertook a comprehensive testing program to assess physical and chemical composition of the sediments to be dredged. The test results were also independently reviewed by EPA, the U.S. Army Corps of Engineers (Corps), and the Regional Water Quality Control Board (RWQCB), San Diego Region. Based on the information in the record, the Commission determined that approximately 7.9 million cu. yds. (6.12 million cu. meters) of the dredged sediment were suitable for beach replenishment. As discussed in the previous section of this report, a human health hazard is posed by the presence of munitions in the dredge spoils. However the Navy believes that disposal of the material at LA-5, given the testing that it already conducted on the material, will not adversely affect marine resources. EPA and the Corps have scrutinized the test results based on previous concerns over potential contamination effects raised during the original Homeporting project review (including a court challenge) and concluded that the munitions do not raise contamination concerns for marine resources at or in the vicinity of LA-5. Compared to the overall volume of material being disposed, the ordnance materials represent an extremely small percentage of the material dredged, such that they could not contain sufficient concentrations of contaminants to adversely affect the marine environment. In addition, the munitions are encased in solid metal casings, and thus not in a form where their constituents could easily dissolve into the marine environment. The Commission concludes, based on the evidence presented to date, that the material is suitable for disposal at LA-5, and that disposal at LA-5 would not adversely affect marine resources and would be consistent with Section 30230 of the Coastal Act.



DREDGE PLACEMENT SITES AS

NO SCALE



FY-1997 MCON PROJECT P-7C
MILITARY CONSTRUCTION PROJECT
CHANNEL DREDGING AT N.
CORONADO, CALIFORNIA

EXHIBIT NO. 1

APPLICATION NO.

CD-9-98

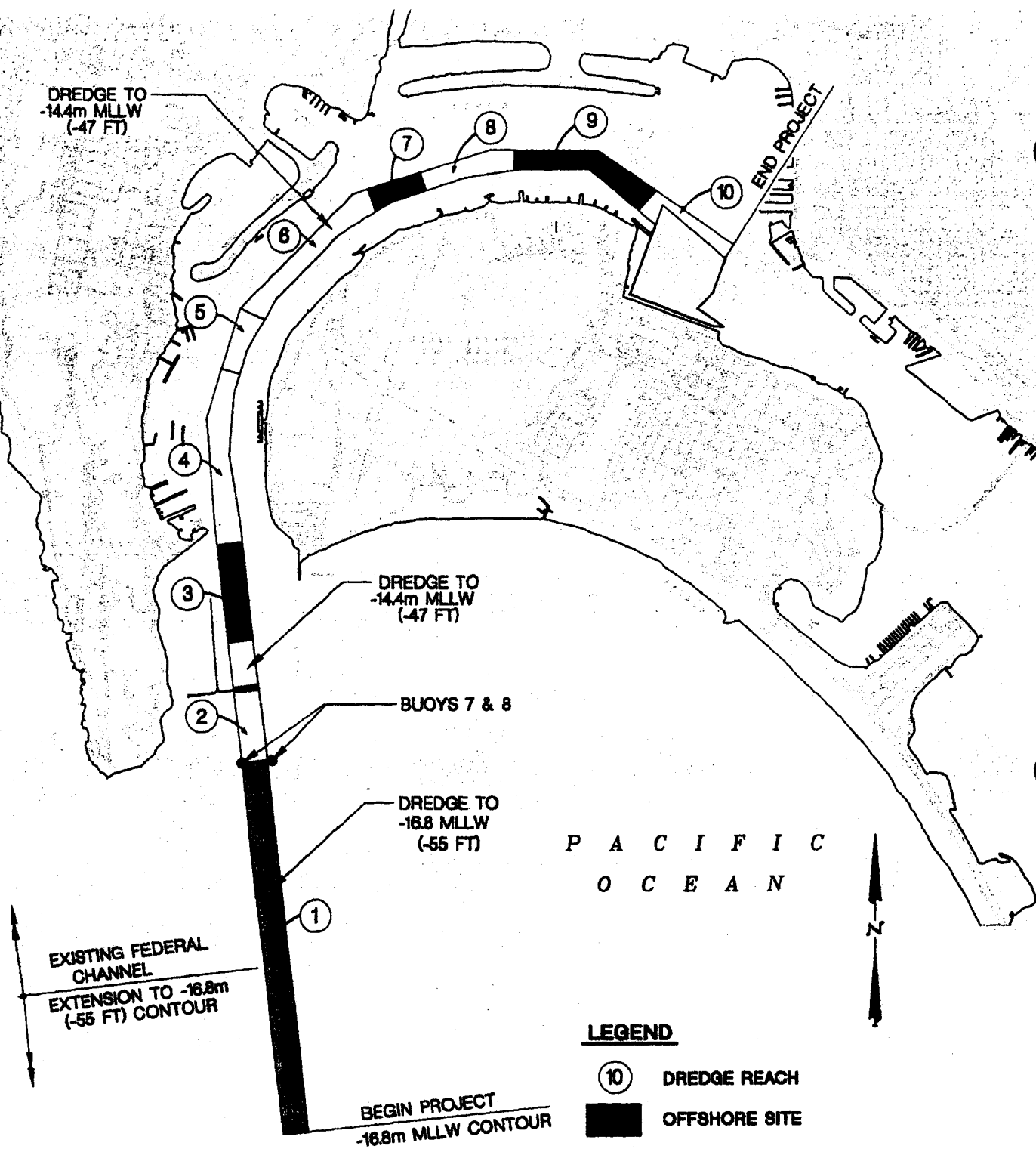
U.S. NAVY

California Coastal Commission

IMPERIAL BEACH

SCREENING

RE 1.2 1



CHANNEL DREDGING PLAN

NO SCALE



FY-1997 MCON PROJECT P-706
 MILITARY CONSTRUCTION PROJECT DATA
 CHANNEL DREDGING AT N.A.S.N.I.
 CORONADO, CALIFORNIA

EXHIBIT NO. 2

APPLICATION NO.

CD-9-98

California Coastal Commission

FY 97 MCON PROJECT P-706 CHANNEL DREDGING
SAND SCREENING REPORT

reported by the public over the 13 December weekend. It should be noted that there are likely additional cases of ordnance discovery by the public which have gone unreported.

1.5 Project Status as of 11 January 1998

Approximately 1.66 million m³ (2.2 million cy) of material or 35% of the total project quantity has been dredged. This material, from the inner and outer channels, has been placed at LA-5, South Oceanside, Mission Beach and Del Mar as indicated in Table 1.1.

TABLE 1.1A - APPROXIMATE QUANTITIES DREDGED AS OF 11 JANUARY 1998 (m ³)						
DREDGE AREA	LA-5	SOUTH OCEANSIDE	MISSION	DEL MAR	TOTAL DREDGED	REMAINING
1	1,184,000	66,000			1,250,000	1,254,000
2					0	412,000
3	224,000				224,000	0
4		12,000			12,000	291,000
5					0	154,000
6			9,000	130,000	139,000	301,000
7	127,000				127,000	0
8					0	256,000
9	187,000				187,000	0
10					0	184,000
TOTAL	1,722,000	78,000	9,000	130,000	1,939,000	2,852,000

TABLE 1.1B - APPROXIMATE QUANTITIES DREDGED AS OF 11 JANUARY 1998 (cy)						
DREDGE AREA	LA-5	SOUTH OCEANSIDE	MISSION	DEL MAR	TOTAL DREDGED	REMAINING
1	1,549,000	86,000			1,635,000	1,640,000
2					0	539,000
3	293,000				293,000	0
4		16,000			16,000	381,000
5					0	201,000
6			12,000	170,000	182,000	394,000
7	166,000				166,000	0
8					0	335,000
9	245,000				245,000	0
10					0	241,000
TOTAL	2,253,000	102,000	12,000	170,000	2,537,000	3,731,000

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SAND SCREENING REPORT

TABLE 3.1 - BEACH NOURISHMENT ALTERNATIVES

Category-1 : Screening at the Channel Bottom

Alternative 1.1 A/B: Screening at the Suction Head

Alternative 1.2 A/B: Survey Channel Using Magnetometer Equipment and Dive Surveys

Category-2 : Screening in the Hopper/Material Barge

Alternative 2.1 A/B: Screen at Material barge

Alternative 2.2 A/B: Screen at Hopper Dredge

Category-3 : Screening on or Near the Beach

Alternative 3.1 A/B: Angled Screen on the Beach

Alternative 3.2 A/B: Vibrating Screen on the Beach

Alternative 3.3 A/B: Spiral Classifier on the Beach

Alternative 3.4 A/B: Settling Basin/Sluice Box on the Beach

Alternative 3.5 A/B: Screen at Other Location

Alternative 3.6 A/B: Geotextile Tubes Retain Fill for UXO Sweep

Category-4 : Other Methods of Screening

Alternative 4.1 A/B: In-Line Debris Box

Alternative 4.2 A/B: Rotating Flow Vane

Alternative 4.3 A/B: Nuclear Density/Magnetometer Sensor

Alternative 4.4 A/B: Other Methods

Category-5 : Do Not Screen Dredged Material

Alternative 5.1: Return Gift Funds to SANDAG for them to Pursue Beach Nourishment

Alternative 5.2: Place Material Nearshore without Screening

Alternative 5.3: Place Material On-Shore without Screening

Alternative 5.4: Help SANDAG Buy Dredge to Dredge Sand from Borrow Pits onto Beaches

Alternative 5.5: Navy Contractor Dredge Sand from Borrow Pits onto Beaches

Note: "A" indicates continue with existing contract; "B" indicates terminating contract

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TABLE E.1: "A" ALTERNATIVES-CONTINUE WITH EXISTING CONTRACT


TABLE E.1: "A" ALTERNATIVES-CONTINUE WITH EXISTING CONTRACT								
ALTERNATIVES	EVALUATION CRITERIA							
	Technologically Viable	Cost	Quantity	Schedule	Legislation / Funding	Environmental Impacts	Permitting	Contractual
Category-1: Screen at Channel Bottom								
1.1A - Suction Head	No	These alternatives not technologically viable						
1.2A - Survey Methods	No							
Category-2: Screen at Hopper/Barge								
2.1A - Screen at Material Barge	Yes	\$80M	3.1Mm³ Nearshore	10 Months Delay	Re-programming Required	EA Required	ACOE, Water, Air Permits Required	Change Order Required
2.2A - Screen at Hopper Dredge	No	This alternative not technologically viable using the existing contract equipment						
Category-3: Screen at or near Beach								
3.1A - Angled Screen	Yes	\$86M	1.6 Mm³ On-Beach 1.5 Mm³ Nearshore	6 Months Delay	Re-programming Required	EA Required	ACOE, Water, Air Permits Required	Change Order Required
3.2A - Vibrating Screen	Yes							
3.3A - Spiral Classifier	Yes							
3.4A - Settling Basin/ Sluice Box	Yes							
3.5A - Screen at Other Location	Yes	\$92M	1.6Mm³ On-Beach 1.5Mm³ Nearshore	6 Months Delay	Re-programming Required	EA Required	ACOE, Water, Air Permits Required	Change Order Required
3.6A - Geotextile Tubes	No	This alternative not technologically viable						



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SAND SCREENING REPORT

BEACH NOURISHMENT ALTERNATIVES - COST ESTIMATE
SUMMARY

ALTERNATIVE # - DESCRIPTION	TOTAL COST		CONTINGENCY		TOTAL COST
	\$	%	\$	w/ cont. \$	
Alt. 2.1A: Screen at Material Barge	74,114,000	7	5,447,400	79,561,400	
Alt. 2.1B: Screen at Material Barge	79,414,000	7	5,307,400	84,721,400	
Alt. 2.2B: Screen at Hopper Dredge	84,264,000	7	5,982,400	90,246,400	
Alt. 3.1A: Screen on Beach	81,314,000	6	5,117,400	86,431,400	
Alt. 3.1B: Screen on Beach	82,064,000	6	5,242,400	87,306,400	
Alt. 3.5A: Screen at Other Location	86,314,000	7	5,617,400	91,931,400	
Alt. 3.5B: Screen at Other Location	87,064,000	7	5,742,400	92,806,400	
Alt. 5.1: Return Funds to SANDAG, Dredged Material to LA-5	43,814,000	6	2,647,400	46,461,400	
Alt. 5.5: Navy Dredge Sand from Borrow Pits onto Beaches	57,314,000	5	2,647,400	59,961,400	

 California Coastal Commission	EXHIBIT NO. 6
	APPLICATION NO. CD-9-98



FY 97 MCON PROJECT P-706 CHANNEL DREDGING
SAND SCREENING REPORT

BEACH NOURISHMENT ALTERNATIVES - COST ESTIMATE
Alt. 2.1A: Screen at Material Barge

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST \$	CONTINGENCY %	CONTINGENCY \$	TOTAL COST w/ cont. \$
21.00	Screen Channel Sand at the Material Barge							
21.01	Project Cost to Date	1	LS	17,340,000.00	17,340,000	0		17,340,000
21.02	Modify Contract	1	LS	200,000.00	200,000	20	40,000	240,000
21.03	Screen Equipment Fabrication Mobilization and Setup	1	LS	3,200,000.00	3,200,000	0		3,200,000
21.04	Dredge/Vessel Equipment Mobilization	1	LS	1,474,000.00	1,474,000	10	147,400	1,621,400
21.05	EA Process/Permitting	1	LS	200,000.00	200,000	10	20,000	220,000
21.06	Dredge Inner Channel / Place Nearshore	2,000,000	CY	12.00	24,000,000	10	2,400,000	26,400,000
21.07	Power Connection for Outer Channel	1	LS	500,000.00	500,000	20	100,000	600,000
21.08	Dredge Outer Channel / Place Nearshore	2,000,000	CY	13.00	26,000,000	10	2,600,000	28,600,000
21.09	Dredging Clean-up	1	LS	1,000,000.00	1,000,000	10	100,000	1,100,000
21.10	Dispose of Debris	200,000	CY	1.00	200,000	20	40,000	240,000
TOTAL					74,114,000	7	5,447,400	79,561,400

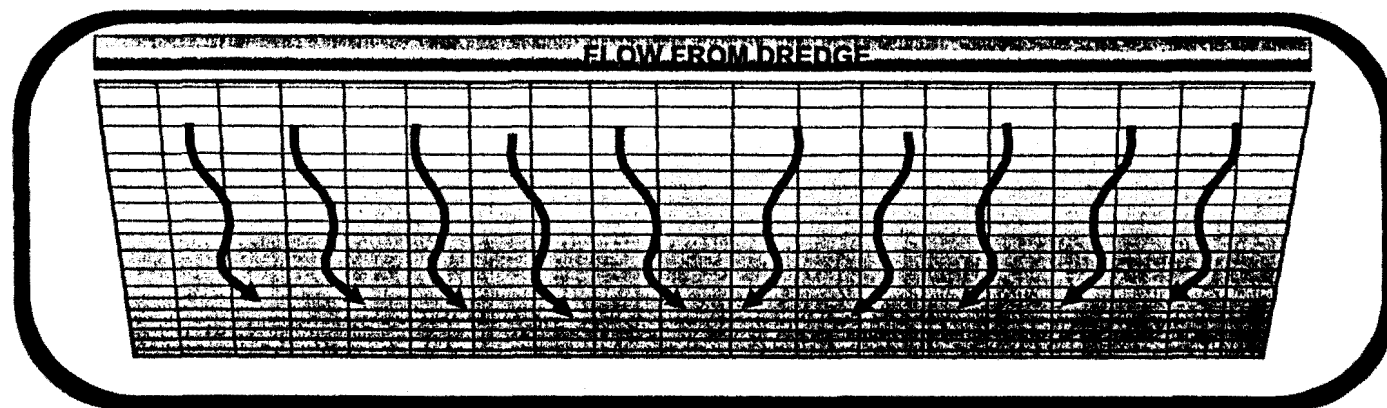
EXHIBIT NO. 7

APPLICATION NO.

CD-9-98

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MATERIAL BARGE

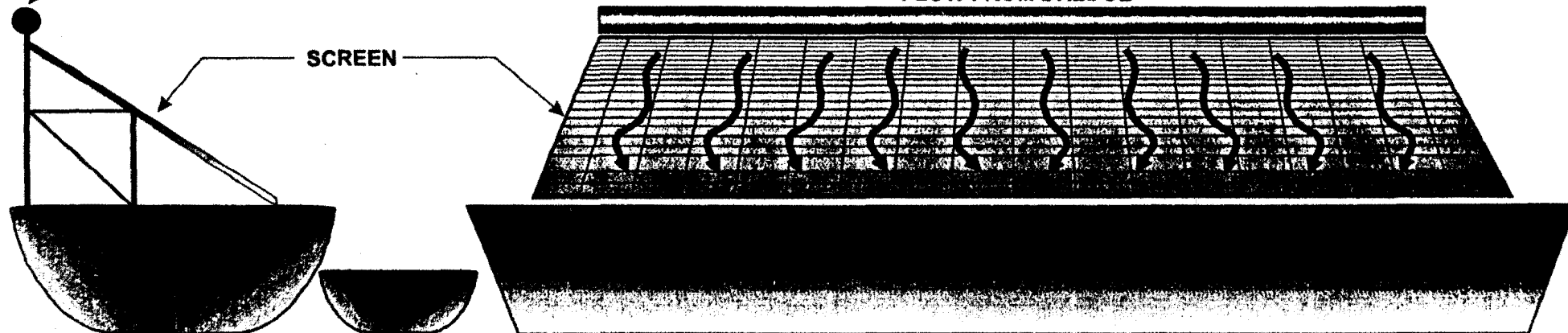


Top View

PIPE FROM DREDGE

SCREEN

FLOW FROM DREDGE



End View

OVERSIZED MATERIAL BARGE

Side View

EXHIBIT NO. 8
APPLICATION NO. CD-9-48

Alternative 2.1:
Screen Over Barge



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CHANNEL DREDGING AT N.A.S.N.I.
CORONADO, CALIFORNIA

SAND SCREENING

FIGURE 5.3

Pumped
Clean
Sand
Flow

Debris
Stock pile

Debris
Conveyor

Angled Screen

Dispersed
Flow

Spreader
Box

Berm

Pacific
Ocean

EXHIBIT NO. 9
APPLICATION NO. CD-9-98
California Coastal Commission

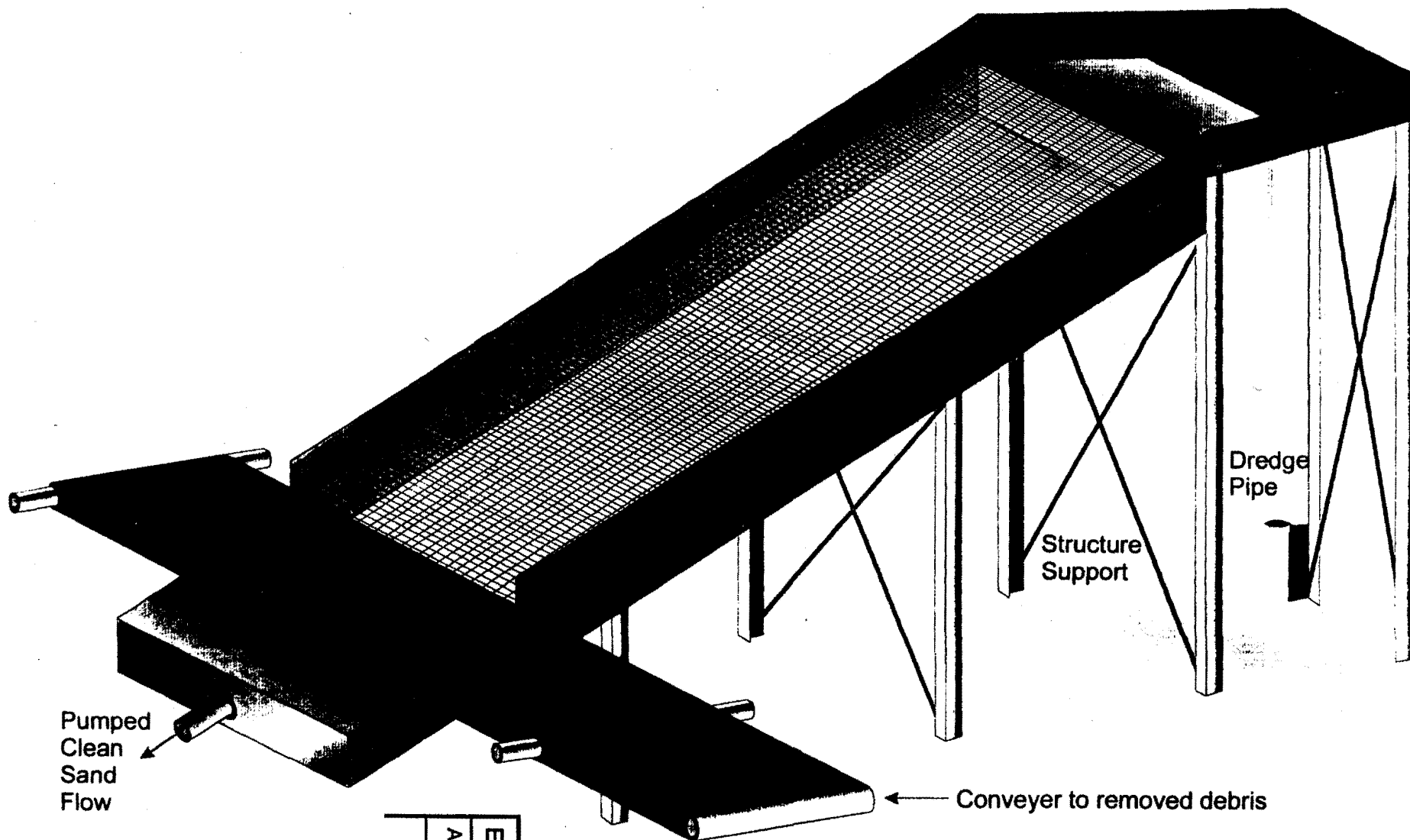
Alternative 3.1:
Angled Screen Concept



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SAND SCREENING

FIGURE 6.3



Alternative 3.1:
Angled Screen Concept

EXHIBIT NO. 10
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CHANNEL DREDGING AT N.A.S.N.I.
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SAND SCREENING

FIGURE 6.4

TEMP BERM
WIER

Beach fill contained behind tubes requires UXO sweep

Sand
Flow

Pipeline
Extensions

Continuous Geotextile
Tube Berm

Sinker
Pipeline

Pacific
Ocean

EXHIBIT NO. 11
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Alternative 3.6:
Beach UXO Sweep and Removal



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SAND SCREENING

FIGURE 6.9

