

**CALIFORNIA COASTAL COMMISSION**

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**STAFF RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No. **CD-80-98**  
Staff: MPD-SF  
File Date: 7/3/1998  
45th Day: 8/17/1998  
60th Day: 9/1/1998  
Commission Meeting: 8/11-14/1998

**FEDERAL AGENCY:** U.S. Army Corps of Engineers

**DEVELOPMENT**

**LOCATION:** Crescent City Harbor, Del Norte County (Exhibits 1-2)

**DEVELOPMENT**

**DESCRIPTION:** 70,000 cu. yds. of maintenance dredging of Inner Harbor Basin and Entrance Channels, with beach/nearshore disposal adjacent to the harbor next to Whaler Island (Exhibits 1-2)

**SUBSTANTIVE FILE**

**DOCUMENTS:** See Page 9

**STAFF NOTE:** As of the time of the mailing of staff reports for the August Commission meeting, the Corps had not completed its sediment grain size and sediment chemistry analysis. The Corps states this analysis is not likely to be available until approximately August 5. Consistent with past practice, the staff is recommending that the Commission object to this consistency determination, based on lack of information. If the test results are made available prior to the Commission meeting, and the results establish that the material is clean sandy material, the staff will modify its recommendation and publish an addendum to this report.

## **EXECUTIVE SUMMARY**

The U.S. Army Corps of Engineers (Corps) has submitted a consistency determination for the maintenance dredging of 70,000 cu. yds. of material at the Inner Harbor Basin and Entrance channels in Crescent City Harbor. The material would be used for beach replenishment and disposed of adjacent to the harbor at Whaler Island. Issues raised by the proposed Corps project are (1) the need to assure the materials are uncontaminated and predominantly sandy, and therefore suitable for beach replenishment; and (2) the need to assure the disposal will not occur in an area where environmentally sensitive habitat would be adversely affected.

For most past Corps Crescent City dredging operations, the Corps has used SF-1 as a disposal site. Since that offshore site is outside the littoral cell the Commission has urged the Corps to consider beach replenishment, assuming a site can be found where disposal would not adversely affect sensitive wildlife resources. One site previously considered has been South Beach (south of the harbor), which is inappropriate from both habitat and recreation perspective due to potential adverse effects on razorback clams. Another site used a number of years ago, a pocket beach to the north of the harbor, is inappropriate because disposal would smother sensitive intertidal habitat. The proposed Whaler Island disposal site has not been previously used by the Corps, although it has been permitted by the Commission and used at least once by the Crescent City Harbor District. Assuming the material is clean and predominantly sand, disposal at this site would avoid adverse impacts to sensitive wildlife resources, and this site is within the littoral cell. The only remaining issue, then, is the suitability of the material for beach replenishment. The Corps has not completed its sediment grain size and sediment chemistry analyses. The Commission therefore lacks sufficient information to enable it to find the project consistent with the dredging, marine resources, and public access and recreation policies of the Coastal Act.

## **STAFF SUMMARY AND RECOMMENDATION**

**I. Project Description.** The Corps proposes to dredge 70,000 cu. yds. of material at the Inner Harbor Basin and Entrance channels in Crescent City Harbor. The Inner Harbor Basin would be dredged to -15 ft. mean lower low water (MLLW), involving 18,000 cu. yds. of sandy/silty material. The Entrance Channel would be dredged to -20 ft. MLLW, involving 52,000 cu. yds. of sandy material. Dredging would be by hopper dredge, hydraulic-pipeline dredge, or clamshell/barge. The disposal site would be adjacent to the harbor at Whaler Island, which can be considered a form of beach replenishment as the material would remain within the littoral cell.

**II. Disposal History/Related Commission Action.** The Corps has historically dredged the federal channels at Crescent City approximately every five years. For most past Corps Crescent City dredging operations, the Corps has used SF-1, which is an offshore site outside the littoral cell (Exhibit 1). Previous Commission actions on Corps Consistency and Negative Determinations for Maintenance Dredging in Crescent City include the following:

(1) Commission concurrence with CD-19-81, a consistency determination for 138,000 cu. yds. of dredging, with disposal at SF-1.

(2) Commission staff objection to CD 28-88, a negative determination for 70,000 cu. yds. of dredging, with disposal at SF-1. The basis for the objection was because the sediment test results were not available. (This project was resubmitted as CD-43-88.)

(3) Commission staff concurrence with CD-43-88, a negative determination for the same 70,000 cu. yds. of dredging, with disposal at SF-1. This submittal now included the test results. In addition, because of a large quantity of organic material in the sediment the Commission staff agreed that beach replenishment was inappropriate.

(4) Commission staff concurrence with ND-71-93, a negative determination for 40,000 cu. yds. of dredging, with disposal at SF-1.

In addition, the Crescent City Harbor District has historically dredged the inner channels, including in at least one instance disposal at the proposed Whaler Island site. In 1988 the Commission approved a permit with conditions to the Harbor District (CDP 1-88-115), which authorized a 10 year dredging and disposal operation for up to 75,000 cu. yds./year. Since that permit recently expired, the Harbor District has applied for an extension to the permit. One of the available disposal options for the Harbor District in that permit was the proposed Whaler Island site, which, according to the Commission's findings in that permit, "received a one-time disposal of dredging spoils a few years ago [i.e., prior to 1988] under separate coastal development permits without any significant adverse environmental impacts on coastal resources."

Finally, the Corps has submitted a consistency determination for Crescent City Harbor Deepening, including dredging of 19,400 cu. yds. of dredging, with upland disposal at the Harbor District's disposal site just north of the small boat basin. That project will be scheduled for the Commission's September 1998 meeting.

**III. Status of Local Coastal Program.** The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the LCP 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 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 Crescent City LCP has been certified by the Commission and incorporated into the CCMP.

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

**V. Staff Recommendation:**

Commission action on this matter should be initiated by the following motion:

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

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

**Objection**

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

**VI. Applicable Legal Authorities:**

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

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

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

*Section 930.39 Content of a consistency determination.*

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

The federal consistency regulations also provide:

*Section 930.42 State Agency disagreement.*

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

**VII. Findings and Declarations:**

The Commission finds and declares as follows:

**A. Need for Dredging/Navigation.** Maintenance dredging of existing navigation channels in Crescent City Harbor supports the dredging needs of the Crescent City Harbor District, the Coast Guard, and commercial fishing and recreational boats using the harbor. The Coastal Act contains strong policy language and legislative direction supporting and encouraging protection of existing shipping and boating uses, including commercial and recreational fishing activities. 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 30224 provides that:

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234 provides, in part:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded ....*

Section 30234.5 provides in part:

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

Maintenao the bay. The Coastal Act supports

the proposed maintenance dredging in Crescent City Harbor, because it is necessary to accommodate high priority uses such as those identified in Sections 30220, 30224, 30234 and 30234.5 of the Coastal Act.

**B. Dredging and Marine Resources.** Section 30233(a) of the Coastal Act states 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 [, including]: ...*

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

Section 30230 of the Coastal Act provides:

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

Section 30231 provides, in part:

*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 ...*

Both of these sections mandate the protection of marine resources. In addition, Sections 30234 and 30234.5 of the Coastal Act, quoted on page 6 above, provide for the protection of commercial and recreational fishery resources.

The proposed maintenance dredging constitutes dredging and filling within coastal waters. Section 30233(a) of the Coastal Act sets up a three part test for such projects: (1) an allowable use test; (2) an alternatives test; and (3) a mitigation test. The first test is met because the project qualifies as an allowable use under Section 30233(a)(2) as "Maintaining existing, ... previously dredged, depths in existing navigational channels ...".

Addressing the second (alternatives) test of Section 30233(a), without the dredging navigation in the harbor would become hazardous and eventually impassable due to sedimentation. No other dredging alternatives are feasible or less damaging. As it has determined previously, the Commission finds that the proposed maintenance dredging of existing navigation channels in Crescent City Harbor to previously dredged depths represents the least damaging feasible dredging alternative.

Turning next to the disposal alternatives, the Corps considered: (1) the proposed Whaler Island site (Exhibits 1-2); (2) the historically used SF-1 site (Exhibit 1); (3) the "HOODS" site offshore of Humboldt Bay, which the Corps uses for Humboldt Bay disposal; (4) South Beach, the relatively wide sandy beach south of the harbor (Exhibit 1); (5) several pocket beaches to the north of the harbor; (6) the upland disposal site used by the Harbor District; (7) offshore berm creation within the littoral system; and (8) the "no-project" alternative.

SF-1 is located approximately 1.25 miles southwest of the harbor, and was a historically available site. However the site's availability as an approved disposal site under the Marine Protection Research and Sanctuaries Act of 1972 (MPRSA) lapsed on January 1, 1997; therefore this site is not usable under Section 102 of the MPRSA. It could be used under Section 103 of the MPRSA; however the Corps has not prepared the necessary analysis that would need to accompany an application for a "103" disposal request. Therefore this site is not a feasible alternative at this time.

The HOODS site is too far away to be economically feasible. Disposal at South Beach and/or the pocket beaches to the north would be more environmentally damaging than the proposed Whaler Island site, due to razorback clam habitat at South Beach and sensitive intertidal habitat at the pocket beaches to the north. Berm creation was rejected because the Corps stated additional studies would be needed to determine habitat and material dispersal impacts. Upland disposal was rejected due to the limited capacity of the Harbor District's available site, including the need to reserve capacity for the upcoming Harbor Deepening Project (CD-81-98). (That project is likely to be scheduled for a public hearing at the Commission's September 1998 meeting.) The no project alternative was rejected because, as stated in the previous section of this report, not dredging the harbor would conflict with Coastal Act goals supporting boating, fishing, and other high priority uses.

To conclude regarding disposal alternatives, assuming the material is suitable for beach replenishment, the proposed Whaler Island disposal site would represent the least environmentally damaging feasible alternative. The Commission would support the use of this site if the Corps' sediment analysis now underway verifies that the material is suitable for beach replenishment. However, given that the sediment test results are unavailable at this time, the Commission does not have sufficient information to determine the project consistent with the alternatives test of Section 30233(a).

For similar reasons (i.e., the lack of test results), the Commission is unable to determine whether any mitigation measures are needed to avoid or minimize environmental effects. As is necessary for all open ocean dredge disposal activities the Commission reviews, the quality of the sediments proposed for open ocean disposal are being evaluated based on the 1991 EPA/Corps testing manual, Evaluation of Dredged Material Proposed for Ocean Disposal -- Testing Manual (i.e., the "Green Book"). Given that the sediment test results are unavailable at this time, the Commission cannot be assured that the proposed disposal would avoid adverse effects on marine resources. Therefore the Commission also does not have sufficient information at this time to determine the project consistent with the mitigation test of Section 30233(a).



The Commission concludes that it lacks sufficient information to determine the project consistent with the alternatives and mitigation tests of Section 30233(a), and, for similar reasons, with the marine resources, water quality, fisheries, and recreation sections (Sections 30230-30234.5) of the Coastal Act.

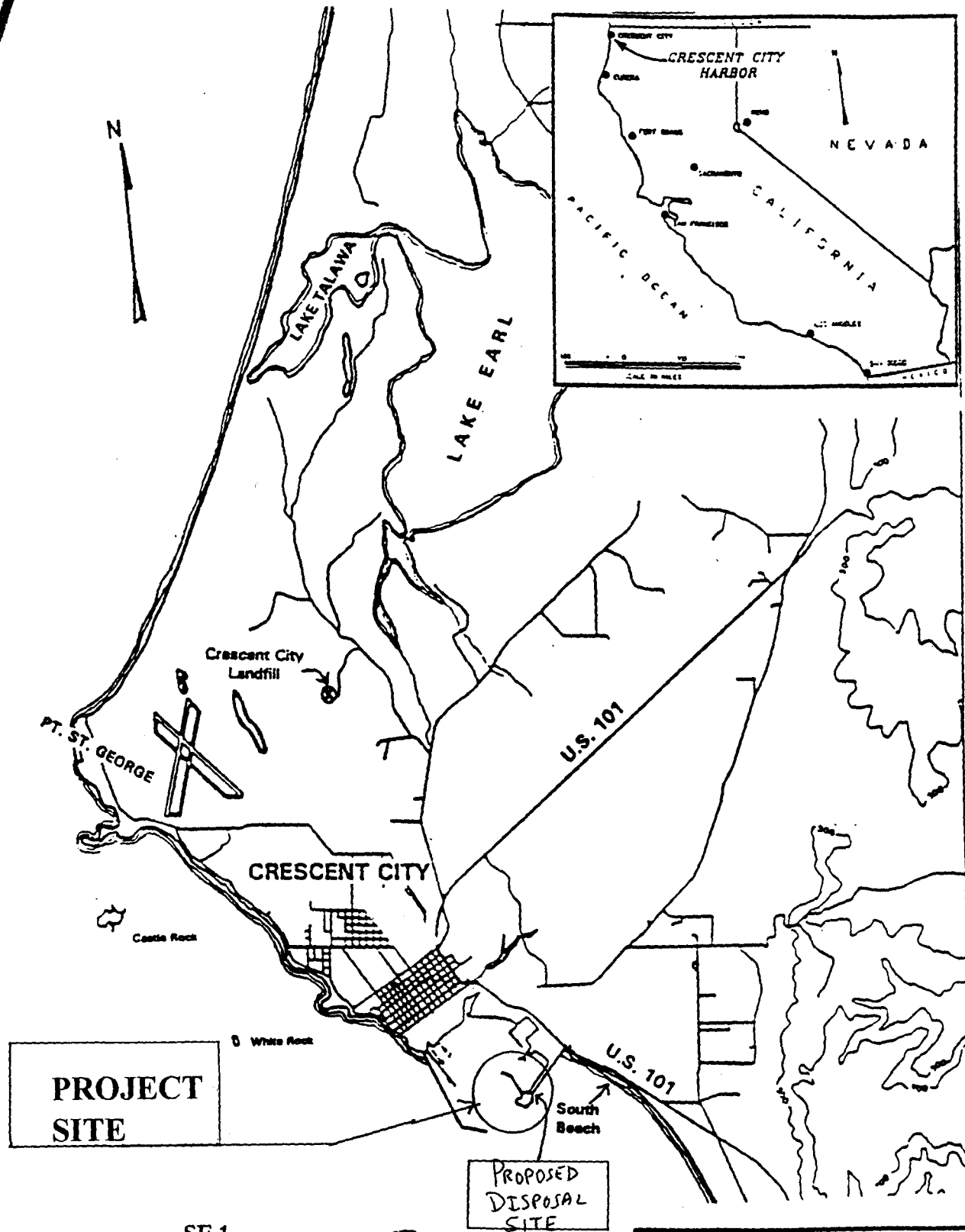
**C. Sand Supply.** Section 30233(b) of the Coastal Act provides:

*(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.*

This section of the Coastal Act encourages placement of sandy dredge spoils in a manner that will ensure their return to the longshore transport system, when possible. One of the concerns of any dredging project and spoils disposal is the loss of sand to the particular littoral cell, and the possible resulting erosion up- or down-coast. The Commission has expressed concerns over past Corps disposal at SF-1 because it removes material from the littoral system, and the Commission has in fact encouraged such solutions as are currently proposed by the Corps in its proposal to dispose of the material at Whaler Island. However, as discussed in the previous section of this report, absent the necessary confirmation that the material is uncontaminated and predominantly sandy material, the Commission lacks sufficient information to determine the material is suitable for beach replenishment. The Commission is therefore unable at this time to find the project consistent with the sand supply policy Section (30233(b)) of the Coastal Act.

## **VIII. SUBSTANTIVE FILE DOCUMENTS**

1. Previous Corps Consistency and Negative Determinations for Maintenance Dredging in Crescent City - ND-71-93, CD-43-88, ND 28-88, CD-19-81.
2. Consistency Determination No. CD-81-98, for Corps Crescent City Harbor Deepening Dredging.
3. Crescent City Harbor District Dredging Permits 1-88-115 and NCR-76-C-282.
4. Evaluation of Dredged Material Proposed for Ocean Disposal, Testing Manual, Environmental Protection Agency and the Corps of Engineers, February, 1991.



**PROJECT  
SITE**

SF-1  
DREDGED MATERIAL  
DISPOSAL SITE

**PROPOSED  
DISPOSAL  
SITE**

|   |  |                               |   |
|---|--|-------------------------------|---|
| DEL NORTE CO  |  | CALIFORNIA                    |   |
| <b>LOCA<br/>VICINI</b>  |  | EXHIBIT NO.                   | 1 |
|   |  | APPLICATION NO.               |   |
| IN SHEET<br>U.S. ARMY ENGINEER DIST.<br>DRAWN:<br>TRACED:<br>CHECKED: |  | CD-80-98                      |   |
| TO AC<br>DATES  |  | California Coastal Commission |   |

FIGURE 1.

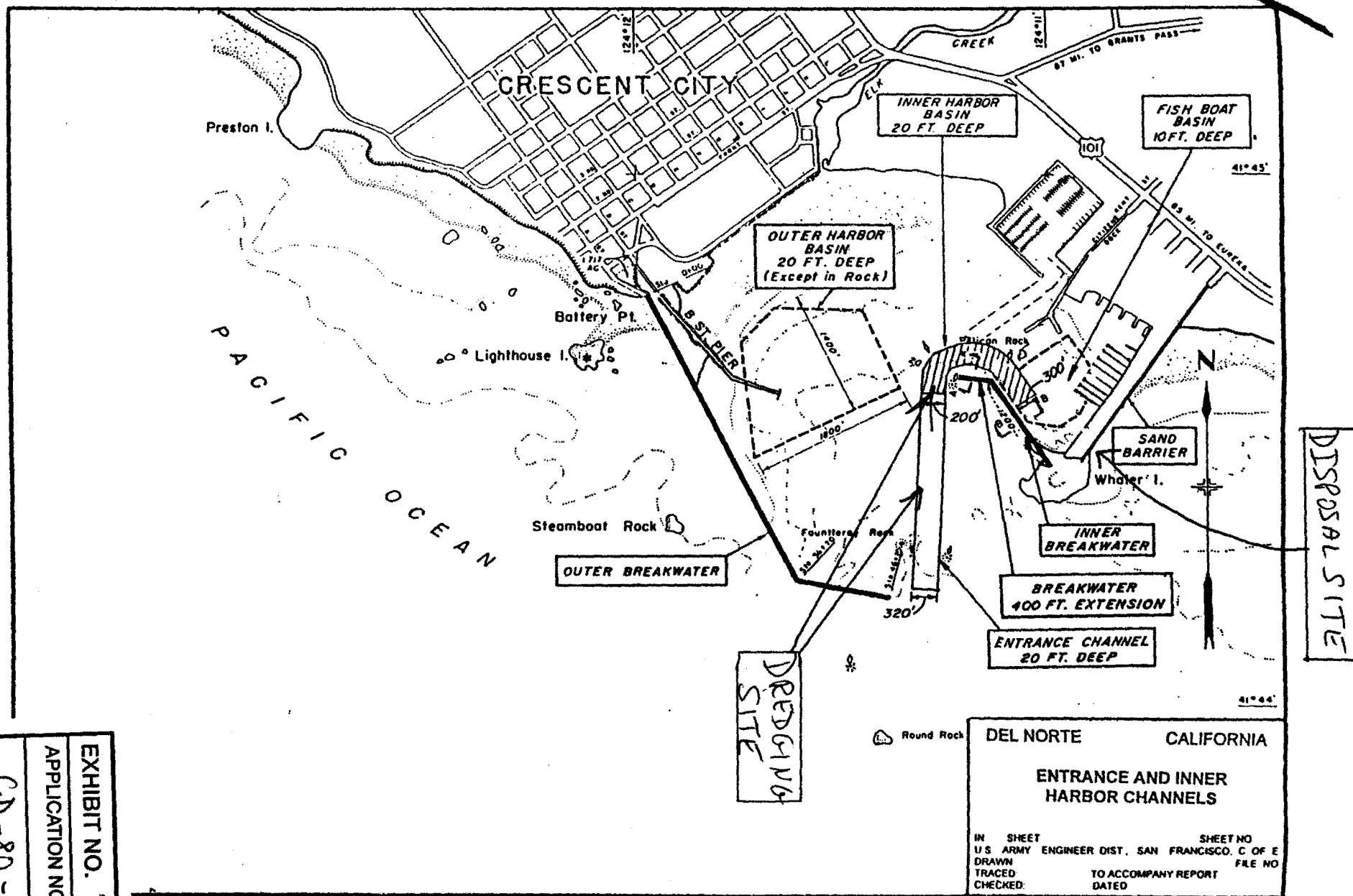


FIGURE 2..

|                                      |                 |
|--------------------------------------|-----------------|
| <p>California Coastal Commission</p> | EXHIBIT NO. 2   |
|                                      | APPLICATION NO. |
|                                      | CD-80-89        |