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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-50-00
Staff:	LJS-SF
File Date:	5/5/2000
45th Day:	6/19/2000
60th Day:	7/4/2000
Commission Meeting:	6/14/2000

FEDERAL AGENCY: **CORPS OF ENGINEERS**

DEVELOPMENT LOCATION: Port of Los Angeles and LA-2 and/or LA-3 offshore dredge material disposal site, Los Angeles County **(Exhibits 1-4)**.

DEVELOPMENT DESCRIPTION: Deepen the inner harbor channels at the Port of Los Angeles from –50 feet mean lower low water (MLLW) to –53 feet MLLW; dispose approximately 4.2 million cubic yards of dredged material to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Site, a 35-acre landfill in the Southwest Slip, a 40-acre landfill at Pier 300, and placement of contaminated sediments at the Southwest Slip and/or Pier 300 landfills; dispose an additional 2.4 million cubic yards of dredged material at the LA-2 and/or LA-3 ocean disposal sites; and mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account.

SUBSTANTIVE FILE DOCUMENTS:

1. Port of Los Angeles Port Master Plan (as amended).

2. Port of Los Angeles Port Master Plan Amendment No. 15 (Port Landfill Mitigation Credit Account/Bolsa Chica Wetlands Restoration, November 1995).

3. Consistency Determinations CD-57-92 and CD-2-97 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Project, Stages 1 and 2, respectively).

4. Negative Determinations ND- 103-97 and ND-25-99 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Stage 2 Project Modifications).

5. Consistency Determination CD-90-95 (U.S. Fish and Wildlife Service: Bolsa Chica Lowland Acquisition and Conceptual Wetland Restoration Plan).

EXECUTIVE SUMMARY

The Corps of Engineers submitted a consistency determination for its proposed harbor deepening project in the Port of Los Angeles. The Corps proposes to: (1) deepen the inner harbor channels from –50 feet mean lower low water (MLLW) to –53 feet MLLW; (2) dispose approximately 4.2 million cubic yards of dredged material to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Site, a 35-acre landfill in the Southwest Slip, a 40-acre landfill at Pier 300, and placement of contaminated sediments at the Southwest Slip and/or Pier 300 landfills; (3) dispose an additional 2.4 million cubic yards of dredged material at the LA-2 and/or LA-3 ocean disposal sites; and (4) mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account. The Corps has agreed to a phased review of the proposed project pursuant to 15 C.F.R. Section 930.37(c), and will submit to the Commission later this calendar year (well in advance of the start of project construction in the spring of 2002) a consistency determination (or negative determination, if appropriate) that will address the final design decisions on issues (1) and (2), above, and incorporate final EPA review of sediment test results and the recommendations of the Contaminated Sediments Task Force on placement of contaminated sediments. The Corps seeks this initial Commission concurrence in order to secure funding for the project. The Commission's determination (as outlined, below) that the proposed project is consistent with the California Coastal Management Program (CCMP) is predicated on the Corps' agreement to submit a subsequent consistency determination for final project design, and on the Commission's ability to determine at that time whether the project remains consistent with the resource protection policies of the CCMP.

The project is designed to improve cargo handling efficiency at the Port of Los Angeles by deepening channels to provide safe access to inner harbor berths for the largest vessels in the international container ship fleet. Dredging and disposal to create new landfills and mitigation

areas within the Port of Los Angeles, and disposal at the LA-2 and/or LA-3 ocean disposal sites, are consistent with the dredge and fill policies of the CCMP (Sections 30705 and 30233 of the Coastal Act). Sediments were tested and, except for approximately 600,000 cubic yards of contaminated sediments to be placed in confined aquatic disposal sites, were found physically and chemically suitable for unconfined aquatic disposal. The project will generate minor, short-term effects on water quality and marine resources in the Port. However, environmental commitments and mitigation measures incorporated into the project make it consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act).

The project includes restrictions on dredging and fill operations designed to protect the endangered California least tern and California brown pelican from significant, adverse project impacts in shallow water foraging areas used by both species. Additional foraging areas will be created using dredge spoils, and contaminated harbor bottom sediments will be capped to protect existing and new foraging areas. The project is therefore consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act). Disposal of 4.2 million cubic yards of dredged materials to create new landfills at Pier 300 and the Southwest Slip and expand the Cabrillo Shallow Water Habitat area, and disposal of 2.4 million c.y of material at the LA-2 and/or LA-3 ocean disposal sites are consistent with the sand supply policies of the CCMP (Sections 30706, 30708, and 30233 of the Coastal Act). Dredging and filling activities will generate only minor and short-term impacts on commercial and recreational fishing and boating within the Port and at the ocean disposal sites, and are consistent with the public recreation policies of the CCMP (Sections 30706, 30708, 30213, 30220, 30224, and 30234 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Note.

A. Background. Since 1993 the Commission has concurred with numerous consistency determinations (CD-57-92 and CD-2-97), negative determinations (ND-103-97 and ND-25-99), and Port Master Plan Amendments (POLA PMPA Nos. 12, 13, 15, 17, and 19) for construction of the Port of Los Angeles Deep Draft Navigation Improvement Project (DDNI), which includes channel deepening, landfill and terminal construction, and mitigation measures for impacts to marine habitat. The subject consistency determination is a further refinement of the original DDNI project; a port master plan amendment for the subject development is expected from the Port of Los Angeles in the fall of 2000, well before construction is scheduled to commence in April 2002.

B. Phased Review. As of May 25, 2000, the Corps of Engineers has yet to make final design decisions on two project elements: (1) the location for disposal of approximately 600,000 c.y. of contaminated project sediments (to be placed at proposed landfills at Pier 300 and/or the Southwest Slip); and (2) the location for disposal of clean (but structurally unsuitable for landfills) dredged sediments (LA-2 and/or LA-3 ocean disposal sites). In addition, final U.S.

EPA review of sediment testing results is not completed for an area of contaminated sediments, and the Contaminated Sediments Task Force (CSTF) is still reviewing proposed plans for disposal of all project contaminated sediments at the Pier 300 and/or Southwest Slip landfill sites. As a result, the Corps of Engineers has agreed to a phased review of the proposed project pursuant to 15 C.F.R. Section 930.37(c), and will submit to the Commission later this calendar year (well in advance of the start of project construction in the spring of 2002) a consistency determination (or negative determination, if appropriate) that will address the final design decisions on issues (1) and (2), above, and incorporate final EPA review of sediment test results and the recommendations of the CSTF on placement of contaminated sediments. The Corps seeks this initial Commission concurrence in order to secure funding for the project. The Commission's determination (as outlined, below) that the proposed project is consistent with the California Coastal Management Program (CCMP) is predicated on the Corps' agreement to submit a subsequent consistency determination for final project design, and on the Commission's ability to determine at that time whether the project remains consistent with the resource protection policies of the CCMP.

C. Standard of Review. The proposed harbor deepening project is examined for consistency with the policies of Chapter 8 of the Coastal Act because most of the development would occur within the jurisdictional boundary of the Port of Los Angeles; in addition, because the in-port developments are non-appealable there is no trigger for Chapter 3 policy review. However, the proposed disposal of dredged material at the LA-2 and/or LA-3 ocean disposal sites is examined for consistency with the Chapter 3 policies of the Coastal Act because the disposal sites are outside the Port boundary.

II. Project Description.

The proposed project is the first of two consistency determinations to be submitted by the Corps of Engineers for a phased Commission review of the proposed Port of Los Angeles harbor deepening project, a further refinement of the previously-concurred with Deep Draft Navigation Improvement Project(CD-57-92 and CD-2-97). The Corps, in cooperation with the Port of Los Angeles, proposes to deepen the inner harbor channels within the Port from the existing –50 feet mean lower low water (MLLW) to –53 feet MLLW in order to accommodate the largest vessels in the international container ship fleet. The project would consist of dredging approximately 6.6 million cubic yards (c.y.) of sediment over 670 acres of harbor bottom from the Los Angeles Main Channel, West Basin, East Channel, East Basin, and Cerritos Channel. While most of the sediment is clean and suitable for unconfined aquatic disposal, approximately 600,000 c.y. of contaminated sediment will be dredged from the West Basin and Reservation Point areas and placed in a confined aquatic disposal site at the proposed Southwest Slip and/or Pier 300 landfills **(Exhibits 1-4)**.

Disposal of dredged material would occur at several locations. One million c.y would be used to expand the existing Cabrillo Shallow Water Habitat (CSWH) site by approximately 54 acres. The dredged material would be supported by a new submerged dike on the north side, by the existing CSWH dike on the east side, and would slope down from its submerged elevation of –15 feet MLLW to the -20 foot MLLW contour on the west and south sides. The clean dredged

material placed here would cap existing contaminated sediments present on the harbor bottom at this location, and the habitat value generated by this project element would add credits to the Port's existing Outer Harbor Mitigation Bank.

One and one-half million c.y. would be used to create a 40-acre landfill expansion at Pier 300. Dredged material would be placed behind a rock dike to a finished elevation of +15 feet MLLW, and the landfill would be used to construct an additional container terminal and berth. Approximately 1.7 million c.y. would be used to create a 35-acre landfill in the Southwest Slip. Dredged material would be placed behind a rock dike to a finished elevation of +15 feet MLLW. The finished landfill would cap contaminated sediments currently on the harbor bottom at this location and would be used as backland for container terminal storage (two bridges would be constructed across the remnant Southwest Slip channel to connect the new landfill with an existing container terminal). Both locations could be used as a confined aquatic disposal facility for approximately 600,000 c.y. of contaminated dredge material to be removed from the West Basin and Reservation Point.

Lastly, approximately 2.4 million c.y. of clean, fine-grained dredged material unsuitable for structural fill or beach replenishment would be disposed at LA-3 and/or LA-2 ocean disposal sites.

III. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 and Chapter 8 of the Coastal Act, and not the Local Coastal Program (LCP) of 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 and Chapter 8 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 Port of Los Angeles PMP 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. The staff recommends that the Commission adopt the following motion:

MOTION: **I move that the Commission agree with consistency determination CD-50-00 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).**

STAFF RECOMMENDATION:

*Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.*

RESOLUTION TO AGREE WITH CONSISTENCY DETERMINATION:

*The Commission hereby **agrees** with consistency determination CD-50-00 by the U.S. Army Corps of Engineers, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.*

VI. Findings and Declarations.

The Commission finds and declares as follows:

A. Dredging and Filling. Section 30705 of the Coastal Act provides the following in relevant part:

(a) Water areas may be diked, filled, or dredged when consistent with a certified port master plan only for the following:

(1) Such construction, deepening, widening, lengthening, or maintenance of ship channel approaches, ship channels, turning basins, berthing areas, and facilities as are required for the safety and the accommodation of commerce and vessels to be served by port facilities.

(2) New or expanded facilities or waterfront land for port-related facilities.

(3) New or expanded commercial fishing facilities or recreational boating facilities.

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

(5) Mineral extraction, including sand for restoring beaches, except in biologically sensitive areas.

(6) Restoration purposes or creation of new habitat areas.

(7) Nature study, mariculture, or similar resource-dependent activities.

(8) Minor fill for improving shoreline appearance or public access to the water.

(b) The design and location of new or expanded facilities shall, to the extent practicable, take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging.

. . .

(d) For water areas to be diked, filled, or dredged, the commission shall balance and consider socioeconomic and environmental factors.

Section 30233 of the Coastal Act provides the following in relevant part:

(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:

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

. . .

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

The proposed dredging and disposal activity within the Port of Los Angeles needs to be examined for consistency with Section 30705 of the Coastal Act, and the proposed disposal at LA-2 and/or LA-3 needs to be examined for consistency with Section 30233 of the Coastal Act. Under Section 30705, water areas may be dredged and filled when consistent with a port master plan and when the proposed project is an allowable use. Under Section 30233(a), dredging and filling of open waters is limited to those cases where the proposed project is an allowable use, where there is no feasible less environmentally damaging alternative, and where mitigation measures have been provided to minimize environmental impacts.

The dredging to deepen inner harbor channels, create new landfills at Pier 300 and the Southwest Slip, place contaminated sediments at one or both of the two proposed landfills, and expand the Cabrillo Shallow Water Habitat area in the Port of Los Angeles (POLA) are allowable uses under Section 30705(a)(1, 2, and 6). POLA port master plan amendments have been certified by the Commission over the past seven years in order to provide for the ongoing expansion of the port. A port master plan amendment for the proposed channel deepening, landfills, and terminal development is scheduled to be submitted by POLA to the Commission in the fall of 2000. The Commission typically reviews a Corps consistency determination for POLA navigation improvements concurrently with a port master plan amendment to incorporate into the master

plan the new upland areas created, new channel depths, and new land and water uses. In this instance, however, the consistency determination precedes the plan amendment by several months due to the Corps' need to incorporate the project this summer into the 2000 Water Resources Development Act. The fact that project construction will not commence until April 2002 means that the Corps project would in theory be consistent by then with the port master plan. However, should the Commission **not** certify the upcoming plan amendment, then the Corps project could not go forward as the POLA would be unable to issue coastal development permits for any of the project elements due to inconsistency with the port master plan. In addition, the Commission will also be reviewing later this year a second consistency determination from the Corps for the final sediment disposal elements for the project. Commission concurrence with those elements will be required before any project construction could commence.

The disposal of dredged materials from the expansion of port facilities at the LA-2 and/or LA-3 ocean disposal sites is an allowable use under Section 30233(a)(1). Both proposed disposal locations are EPA-approved disposal sites, and disposal here is the least damaging alternative for disposal of the project's clean dredged materials, which are not suitable for beach replenishment due to grain size incompatibility. The project DEIS examined numerous disposal alternatives, but given the structural unsuitability of the subject 2.4 million c.y., ocean disposal was determined to be the least environmentally damaging alternative. However, these sediments may possibly be used to cap contaminated sediments at the Palos Verdes shelf site if it becomes feasible to use fine-grained materials at that site. The final decision on the volume of clean dredged materials going to LA-2 and/or LA-3 will be incorporated into the second consistency determination for this project. At this time, however, the Commission finds that the material is clean and suitable for ocean disposal.

As discussed below, the project will have no significant impacts on coastal resources and no additional mitigation measures (beyond the measures already incorporated into the project by the Corps of Engineers) are necessary. Therefore, the Commission finds that the proposed project is consistent with the dredge and fill policies of the California Coastal Management Program (Sections 30705 and 30233 of the Coastal Act). This finding is based on the information submitted to date, which does not contain final project details regarding the volumes of contaminated sediments placed at the proposed landfills at Pier 300 and/or the Southwest Slip, and the volumes of clean dredged materials to be placed at the LA-2 and/or LA-3 ocean disposal sites. These details will follow and be the subject of subsequent federal consistency review by the Commission.

B. Water Quality and Marine Resources. Section 30705 of the Coastal Act provides in relevant part that:

. . .

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment elutriate shall be analyzed for toxicants prior to dredging or

mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

(d) For water areas to be diked, filled, or dredged, the commission shall balance and consider socioeconomic and environmental factors.

Section 30706 of the Coastal Act provides that:

In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water.

(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.

(d) The fill is consistent with navigational safety.

Section 30708 of the Coastal Act provides that:

All port-related developments shall be located, designed, and constructed so as to:

(a) Minimize substantial adverse environmental impacts.

(b) Minimize potential traffic conflicts between vessels.

(c) Give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities.

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible.

(e) Encourage rail service to port areas and multicompany use of facilities.

The project DEIS documents in great detail the existing water quality conditions and marine resources in the Port of Los Angeles and examines potential project impacts and associated mitigation measures. The DEIS states that the proposed project will include the following water quality protection measures:

A Section 401 (of the Clean Water Act) Certification from the RWQCB for dredging and filling activities that contains conditions including standard Waste Discharge Requirements (WDR).

Monitoring to ensure that return water flow from disposal of dredge material behind Pier 300 dikes meets the RWQCB requirements for settleable solids and toxic pollutants.

Contaminated sediments will be placed and confined in the in-harbor disposal sites in such a manner that the contaminants cannot enter harbor waters after the fill is complete.

Monitoring to ensure that runoff from upland disposal sites meets RWQCB requirements for toxic contaminants and suspended sediments.

Water quality monitoring will be used, to the extent feasible, to design the Pier 300 fill so that water quality is minimally affected in the remaining shallow water habitat and the Seaplane Anchorage. Any reduction in water quality would require mitigation as described in section 3.4, Biota and Habitats.

Oil and sewer pipelines to be removed will be thoroughly cleaned prior to removal.

Water quality in the project area would be affected during dredge and fill operations, primarily increases in turbidity, decreases in dissolved oxygen, increases in nutrients, and increases in contaminants in the immediate vicinity of operations. These localized water column impacts will in turn affect fish and marine birds in the project area. However, any adverse effects will be limited due to the nature of the dredged materials, the short-term nature of the water column changes, and the ability of fish and birds to avoid the turbidity plumes generated by project operations. Extensive water quality monitoring during Stage 1 and 2 of the Pier 400 Deep Draft Navigation Improvement Project failed to detect any significant, adverse, long-term impacts to water quality in the outer harbor as a result of dredging or disposal activities, and none are anticipated for the similar inner and outer harbor operations included in the proposed project. While contaminants could be released into the water column during the proposed dredge and disposal activities that involve contaminated sediments in the West Basin and near Reservation Point, previous water quality monitoring efforts associated with both project and maintenance dredging in the Port of Los Angeles documented that substantial resuspension of contaminated sediments does not occur. The Corps reports in the DEIS that:

Because little contamination is present in the sediments to be dredged and because resuspension of sediments is expected to be low and in a small area, dredging in the inner harbor would not adversely affect water quality in terms of contaminants.

Removal of the contaminated sediments through dredging would improve the sediment quality in the harbor, a beneficial impact.

. . .

Removal of the top layer of sediment which, in some areas, contains accumulated contaminants and sediments deposited over time from numerous sources, including terrestrial inputs such as stormwater runoff and aerial deposition, would decrease the potential for bioaccumulation of contaminants in aquatic organisms. Placing the contaminated sediments in a landfill would, thus, provide an overall benefit to organisms in the harbor by removing a source of pollutants.

Capping a portion of the toxic hot spot adjacent to the Cabrillo Shallow Water Habitat area with clean sand and capping contaminated sediments in the Southwest Slip with a new landfill will prevent resuspension of the contaminated sediments and release of contaminants into the water column at both locations. These project elements are considered long-term benefits and will improve water quality in the Port of Los Angeles.

Marine biological resources in the project area have been documented in a number of environmental documents prepared for the Deep Draft Navigation Improvement Project and subsequent modifications in the Port of Los Angeles, and are incorporated by reference in the subject project's DEIS. Habitats to be dredged are mainly deep, soft bottom areas and fill sites are deep and shallow soft bottom areas. Eelgrass has become established in shallow waters off Cabrillo Beach (54 acres), the Pier 300 shallow water area (18 acres), and the Seaplane Lagoon (9 acres)**(Exhibit 5)**. Sparse and low-quality pickleweed is found at isolated patches within the rip rap uplands of the Southwest Slip. Port waters serve as transient or permanent habitat for over 130 species of juvenile or adult fish. Species richness and diversity increase along a gradient from the Inner to the Outer Harbor.

Dredging would eliminate benthic organisms in and on the 670 acres of soft bottom habitat to be deepened. Newly exposed sediments would recolonize within five years based on past dredging operations in the Port, and therefore this adverse impact is not considered significant. Fish in the water column would be temporarily disturbed by project activities as a result of turbidity, noise, and vibration, and most would leave the immediate area of operations. Effects on fish populations are expected to be similar to those of previous harbor deepening and landfill projects and generate no significant, adverse impacts.

The Pier 300 landfill expansion would cause a loss of 40 acres of shallow water, soft bottom habitat that serves as a nursery for a number of fish species, contains eelgrass, and is a foraging area for the California least tern (see below). Mitigation will occur through the use of existing port mitigation credits as approved by the U.S. Fish and Wildlife Service, National Marine

Fisheries Service, and California Department of Fish and Game. Loss of 0.4 acres of dense and 7.7 acres of sparse eelgrass will be replaced at a 1.2:1 ratio in the Pier 300 shallow water habitat area, Seaplane Lagoon, or Cabrillo Beach. The Southwest Slip landfill would cause a loss of 35 acres of soft bottom habitat and mitigation will occur similar to that for the Pier 300 landfill. The Port will salvage and transplant the sparse and low-quality 4,500 square feet of pickleweed here to either the Cabrillo Salt Marsh in the harbor or to an offsite location, as agreed to by the USFWS, NMFS, and CDFG. Expanding the Cabrillo Shallow Water Habitat area would convert 54 acres of deep soft bottom habitat to shallow soft bottom habitat. Colonization of the shallow fill is expected to result in a higher density of organisms as reflected in the recent surveys of the existing Cabrillo Shallow Water Habitat and nearby deep water habitat. Capping a part of the state-listed toxic hot spot near the Cabrillo Pier is a beneficial effect from the fill operation here. **Exhibit 9** provides a list of the mitigation measures to be used to limit adverse project impacts on marine resources.

In conclusion, the proposed harbor deepening project will generate minor, short-term effects on water quality and marine resources in the Port of Los Angeles. However, the dredging and disposal activities will not result in any significant, adverse effects on the coastal zone due to the nature of the dredged materials, the location of the disposal sites, and the environmental commitments incorporated into the project. Therefore, the Commission finds that the proposed project is consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act). However, because of the phased review process for this project agreed to by the Corps of Engineers, the Commission will review the final project design for disposal of contaminated sediments at in-harbor sites later this calendar year in order to ensure that those project elements will not adversely affect water quality and marine resources in the harbor, and to ensure that the project remains consistent with the water quality and marine habitat protection policies of the CCMP.

C. **Environmentally Sensitive Habitat.** Sections 30706 and 30708 of the Coastal Act provide in relevant part that:

> 30706. *In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:*
>
> . . .
>
> *(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water. . . .*
>
> 30708. *All port-related developments shall be located, designed, and constructed so as to:*

(a) Minimize substantial adverse environmental impacts.

. . .

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. . . .

The proposed project could potentially affect marine habitat used by two federally endangered species, the California least tern and the California brown pelican. The Draft EIS for the project describes the habitat needs of, potential project impacts on, and associated mitigation measures for these species. While the least tern has nested on Pier 300 since the mid-1970s, since 1997 the only successful nesting has taken place on the newly-constructed Pier 400; in 1998 the Pier 300 site was decommissioned. Least tern nesting in the Port has been monitored since 1974 and the data indicate that harbor dredging projects that include measures to protect terns have not adversely affected tern nesting **(Exhibit 6)**. For the 1999 nesting season, one 15-acre site in the southeast corner of Pier 400 was designated as the tern nesting site and the entire southern portion of Pier 400 was identified as a tern management area where no construction would occur. Monitoring in 1999 showed that a majority of the terns nested in the management area (280 nests), at one location in the pier surcharge area (4 nests), and at two locations on the transportation corridor (83 nests). Least terns forage over shallow water (less than 20 feet deep) in the Outer Harbor, especially near nesting sites. The terns forage primarily near Pier 300, Cabrillo Beach and salt marsh, the West Basin in the Port of Long Beach, and the Cabrillo Shallow Water Habitat Area.

The California brown pelican resides in the harbor year round but its abundance is greatest during the period between July and November. The pelican prefers to roost on the harbor breakwater dikes and forages over open harbor waters for several species of fish.

The Corps states that the proposed dredging would have no significant adverse effects on endangered species. The inner harbor channels to be dredged are not considered significant foraging areas for least terns or brown pelicans, and, therefore, dredging and related turbidity in these areas are not expected to affect these species.

The proposed Pier 300 landfill would result in a permanent loss of shallow water habitat that is used by least terns as foraging habitat. The fill would also alter circulation in the remaining shallow water habitat in this area which could then cause a degradation of the habitat value that remains. Loss and degradation of shallow water habitat would be mitigated through use of existing port mitigation credits and the creation of additional shallow water habitat in the Outer Harbor. No turbidity will be allowed in the Pier 300 shallow water areas during the tern nesting season between April and September. With these mitigation measures, the USFWS determined that the proposed landfill would not adversely affect either the California least tern or California brown pelican.

The 35-acre Southwest Slip landfill would cause a permanent loss of soft bottom fish and bird habitat (some of currently contaminated) and would be mitigated through use of existing

mitigation credits and/or the creation of additional credits in the Outer Harbor. However, this area is not used by least terns or brown pelicans and the landfill would not adversely affect either of these species.

Proposed expansion of the Cabrillo Shallow Water Habitat Area by 54 acres would convert deep water habitat to shallow water habitat at an elevation of approximately -15 feet MLLW. The expansion would also cap part of the State of California-listed toxic hot spot located near the Cabrillo Pier; this is considered a beneficial impact for protecting this foraging area used by terns and pelicans. Placement of fill material at this location will be timed to avoid the least tern nesting season and/or will be designed to assure that turbidity does not enter the existing shallow water area in order to avoid impacts to least tern foraging activity. Formation of additional shallow water habitat will benefit the least tern once its prey species become established in the new area. The Corps reports that based on surveys in August 1999, fish abundance and species composition were similar during the daytime at the Pier 300 and Cabrillo Shallow Water Habitat areas, five years after the Cabrillo habitat was created. Least tern foraging surveys in 1996, however, showed less use of the Cabrillo area relative to the Pier 300 area, which could be related to tern behavior rather than abundance of fish at the Cabrillo Habitat area.

The Port of Los Angeles develops mitigation plans for impacts to fish and wildlife species in coordination with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game through agreed-upon mitigation policies. **Exhibit 7** shows the estimated number of current mitigation credits available for use in the proposed project. **Exhibit 8** illustrates how those credits would be used in the proposed project. **Exhibit 9** illustrates the marine resources and endangered species mitigation measures to be used in the proposed project. **Exhibit 10** provides information on the mitigation monitoring program for the project. In addition, in its May 15, 2000, letter to the Corps of Engineers **(Exhibit 11)**, the U.S. Fish and Wildlife Service commented on the proposed project as follows:

> *We had produced a Biological Opinion (BO), for the Deep Draft Navigation Improvements Project in 1992 (1-6-92-F-25, September 24, 1992), addressing potential impacts to the California least tern (Sterna antillarum browni) and the California brown pelican (Pelecanus occidentalis californicus). Phases 1 and 2 of that project are nearly completed. The least tern, in particular, has been very well served by the actions of the local sponsor, Port of Los Angeles, who has acted in compliance with the nest management agreement, nest site monitoring, essential foraging area mitigation and protection, all requirements of the 1992 EIS and BO.*
>
> *We completed a Planning Aid Report in August of 1999, and a draft Fish and Wildlife Coordination Act Report (FWCAR) in January 2000, for the subject supplemental project and expect to complete a final FWCAR very soon. As your letter confirms, we have been in discussions, that is, informal consultation, with the Corps of Engineers and the local sponsor, the Port of Los Angeles since last year. By mutual design, the dSEIS includes agreed upon protection measures for the California least tern and acts as a Biological Assessment, as well.*

The project description components that would assure that the listed species, particularly the least tern, would not be adversely affected are listed on pages 3.4-20 through 23 of the dSEIS. In general, those elements include: protection and management of a designated nesting area pursuant to written agreement, through construction timing and monitoring protection of specifically designated essential shallow water foraging areas from degradation during construction, and offsetting, acre-for-acre and near the nesting site, of any loss of shallow water foraging area in advance of loss.

No other listed species may be affected by the proposed channel deepening and landfill construction project. Therefore, provided the project is implemented as described in the dSEIS, we concur that no listed species would be adversely affected by the project and Formal Consultation, pursuant to section 7 of the Endangered Species Act is not warrented. . . .

In conclusion, the proposed dredging and filling of coastal waters in the Port of Los Angeles, and with the mitigation measures incorporated into the project to protect endangered species, will not significantly affect the endangered California least tern or California brown pelican. Therefore, the Commission finds that with the same considerations discussed in previous sections (i.e., subsequent review of final project design, in particular, dredge material disposal locations and design), the proposed project is consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act).

D. Sand Supply. Sections 30706 and 30708 of the Coastal Act provide in relevant part that:

30706. *In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:*

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water.

30708. *All port-related developments shall be located, designed, and constructed so as to:*

(a) Minimize substantial adverse environmental impacts.

. . .

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. . . .

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.

The Port of Los Angeles proposes to dispose up to 2.4 million cubic yards of dredged material at LA-2 and/or LA-3, EPA-approved ocean dredge material disposal sites, the former located seven miles offshore from the Port of Los Angeles and the latter five miles offshore from Newport Beach. Dredged material placed at these sites would not be available for beach replenishment after disposal. Analysis indicates that the dredged material is not suitable for beach placement due to the predominately small grain size of the material. Since the material is predominately silt and clay, wave energy would move this relatively fine material off the beaches and out of the littoral system if the material were placed on the beach or in the nearshore zone. Therefore, the Commission finds that the 2.4 million c.y. of clean but structurally unsuitable dredged materials are also not suitable for beach replenishment, and that the proposed disposal of the 2.4 million c.y. of material at LA-2 and/or LA-3 is consistent with the sand supply policies of the California Coastal Management Program (Sections 30706, 30708, and 30233 of the Coastal Act). The volumes of clean dredged material to be placed at one or both of the ocean disposal sites will be finalized by the Corps of Engineers at a later date and will be a component of the previously-mentioned second consistency submittal for this project under the phased review process agreed to by the Corps of Engineers.

E. Recreation. The Coastal Act provides in the following sections that:

30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. . . .*

30220. *Coastal areas suited for water-oriented recreational activities that cannot be readily provided at inland water areas shall be protected for such uses.*

30224. *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.*

30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational*

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

30234.5. *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

30706. *In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:*

. . .

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water. . . .

30708. *All port-related developments shall be located, designed, and constructed so as to:*

(a) Minimize substantial adverse environmental impacts.

. . .

(c) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. . . .

The Commission must examine project consistency with recreational resources at the LA-2 and LA-3 ocean disposal sites and those located in the Port of Los Angeles. Regarding the former two sites, in the second consistency determination for this phased-review project that will be submitted by the Corps in the fall of 2000, the final volumes of clean dredged material to be placed at the LA-2 and LA-3 sites will be provided to the Commission. In this subject consistency determination, the Commission must determine whether the general use of the ocean disposal sites is consistent with the CCMP. In its 1997 review of the redesignation of the LA-2 ocean disposal site, the Commission examined the previous twenty years of disposal activity at LA-2 and adopted the following findings regarding commercial and recreational fishing at and near LA-2:

The Commission's interest in the effect of the use of the disposal site on benthic resources and on turbidity at and near LA-2 is generated by concern over the effect of the site on economically, recreationally, and biologically important fish species. It appears from the data presented so far that the designation of LA-2 has not affected fishery resources of the area. To provide further evidence of this conclusion, EPA conducted an analysis of

recreational and commercial fish catch to determine if use of LA-2 has caused a noticeable reduction of fish catches as compared to trends of the region. Based on these studies, EPA concludes that dredged material disposal at LA-2 has not caused any significant effect on recreational and commercial fish catches.

With the Commission's 1997 concurrence in the redesignation of the LA-2 ocean disposal site, the proposed disposal of clean dredged material at LA-2 will not generate significant adverse effects on commercial or recreational fishing. The disposal site is located seven miles from shore and disposal activities will not affect public access to or recreational use of the offshore area. Therefore, the Commission finds that proposed disposal at LA-2 is consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30234, 30234.5, 30220, and 30224 of the Coastal Act).

The LA-3 site is located in an area devoid of submerged relief and at a depth beyond most commercial bottom fishing. While a setline dory fishery exists in the general area of LA-3, dredged material disposal has not adversely affected this fishery in the past, and there is no indication that continued disposal at LA-3 will generate adverse effects on this fishery. Likewise, there are no significant recreational fisheries in the area that could be affected by the project. The site is outside the designated vessel traffic approach lanes for the Ports of Los Angeles and Long Beach, and no significant effects on commercial shipping are generated by use of LA-3. In addition, use of LA-3 will not affect recreational boating in the area. Therefore, the Commission finds that proposed disposal at LA-3 is consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30234, 30234.5, 30220, and 30224 of the Coastal Act).

The project activities within the Port of Los Angeles must be consistent with the recreational policies in Sections 30706 and 30708 of the Coastal Act. The proposed dredging and filling that would occur in the inner harbor channels, Pier 300, the Southwest Slip, and adjacent to the Cabrillo Shallow Water Habitat would not generate adverse effects on recreational activity in the Port. No existing public access or recreation areas will be eliminated or created by the proposed project. Dredging will not affect the existing commercial recreational facilities at Ports O' Call Village on the west side of the main channel. On-water recreational boating will be restricted in the immediate areas of active dredging and filling, and some inconvenience to recreational boaters traveling within the harbor may occur due to project activities, but these are not considered significant impacts. The proposed Pier 300 and Southwest Slip landfill sites are not recreation areas due to the existing cargo terminal and industrial activities that occur here; proposed landfills will not affect public access or recreation.

Construction of the expansion of the Cabrillo Shallow Water Habitat site could generate temporary effects on public recreation in adjacent waters. The DEIS states that:

Constructing the submerged dike at this site and disposing of dredged material would cause turbidity for about 1.5 months . . . To avoid conflicts with construction equipment and impacts to their operations from turbidity, and prior to construction of the Shallow Water Habitat, both bait barges would be located temporarily to an appropriate site within

the Outer Los Angeles Harbor. After construction of the Shallow Water Habitat, both barges may need to be relocated to a more permanent and appropriate location in the Outer Los Angeles Harbor. The bait barges would continue to be accessible to fishing boats during and after construction and no significant recreational impacts would result from use of this site.

Turbidity generated by construction also could adversely affect fishing opportunities at the nearby pier since the number of fish may decline. Since the possible impact to fishing would be short term, fishing would not be precluded at the pier, and opportunities to fish from shore are available elsewhere in the project area (e.g., the Port of Long Beach and the outer beach), this impact is not considered significant. Fish would be expected to return soon after construction ceased (i.e., within days or weeks). Long-term fishing opportunities may increase in the Port of Los Angeles due to the provision of more shallow water habitat, which attracts many different fish species . . . .

Construction activities could also temporarily disrupt recreational water sports in the vicinity of the Cabrillo Shallow Water Habitat Expansion Site. Disruption would be short term and insignificant.

The Commission agrees that project dredging and filling will generate only temporary and minor effects on recreational boating and fishing in the vicinity of dredge and fill operations. Therefore, the Commission finds that with the same considerations discussed in previous sections (i.e., subsequent review of final project design, in particular, dredge material disposal locations and design), proposed dredge and fill activities in the Port of Los Angeles are consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30706 and 30708 of the Coastal Act).

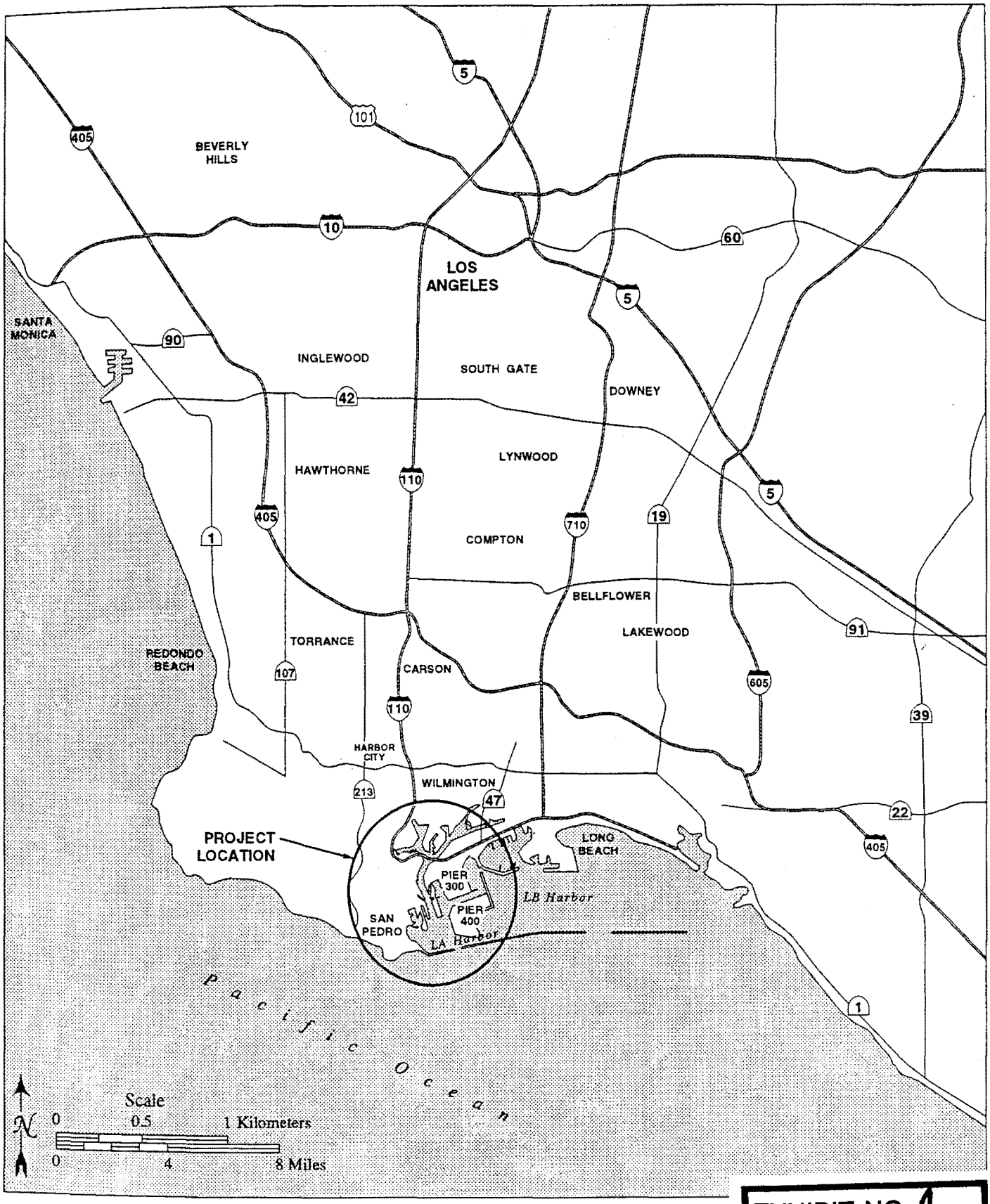


Figure ES-1. Project Location

EXHIBIT NO. 1
APPLICATION NO.
CD-50-00
California Coastal Commission

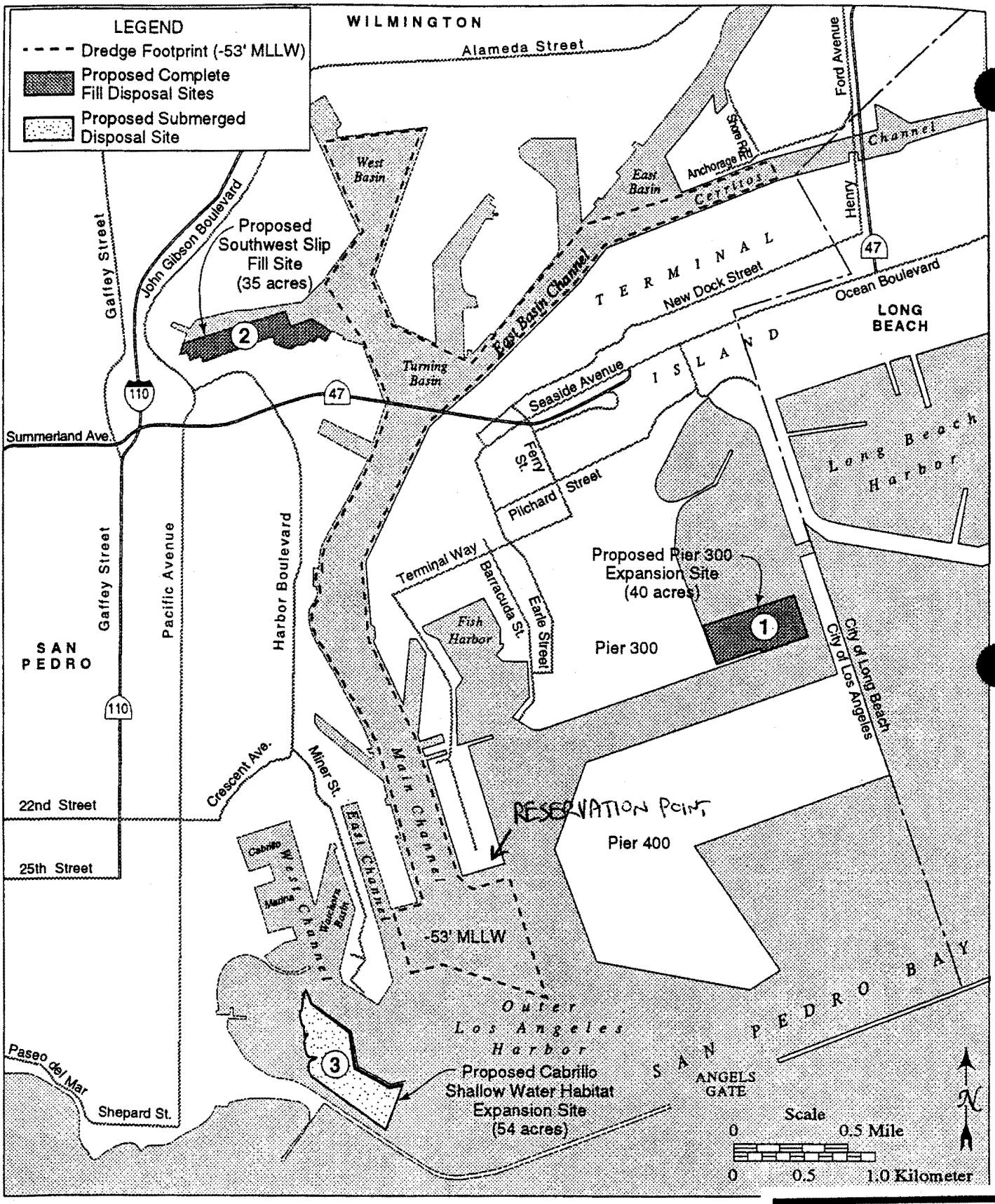


Figure 5-1. Recommended Plan (Modified NED Plan)

EXHIBIT NO. 2
APPLICATION NO.
CD-50-00
California Coastal Commission

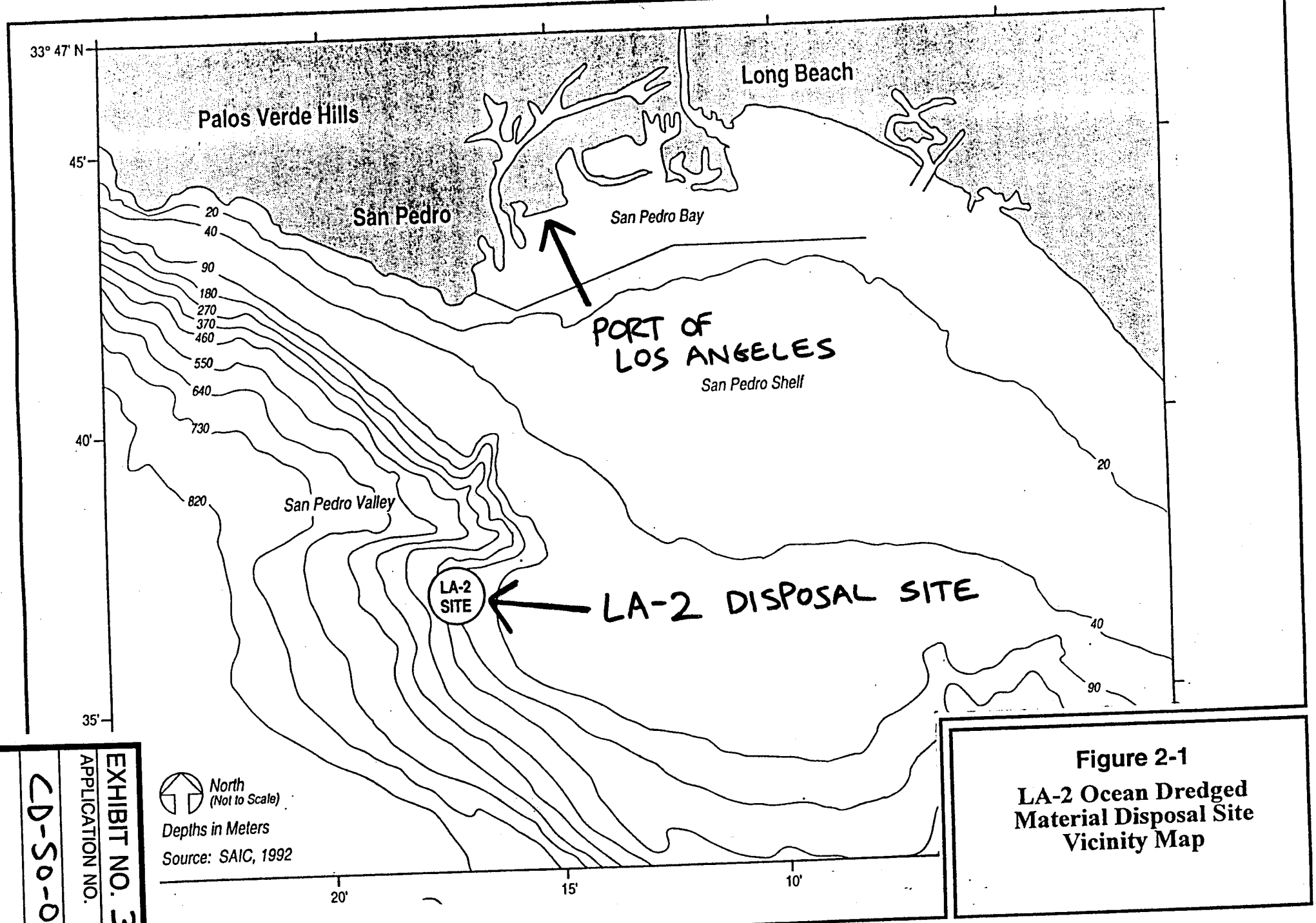
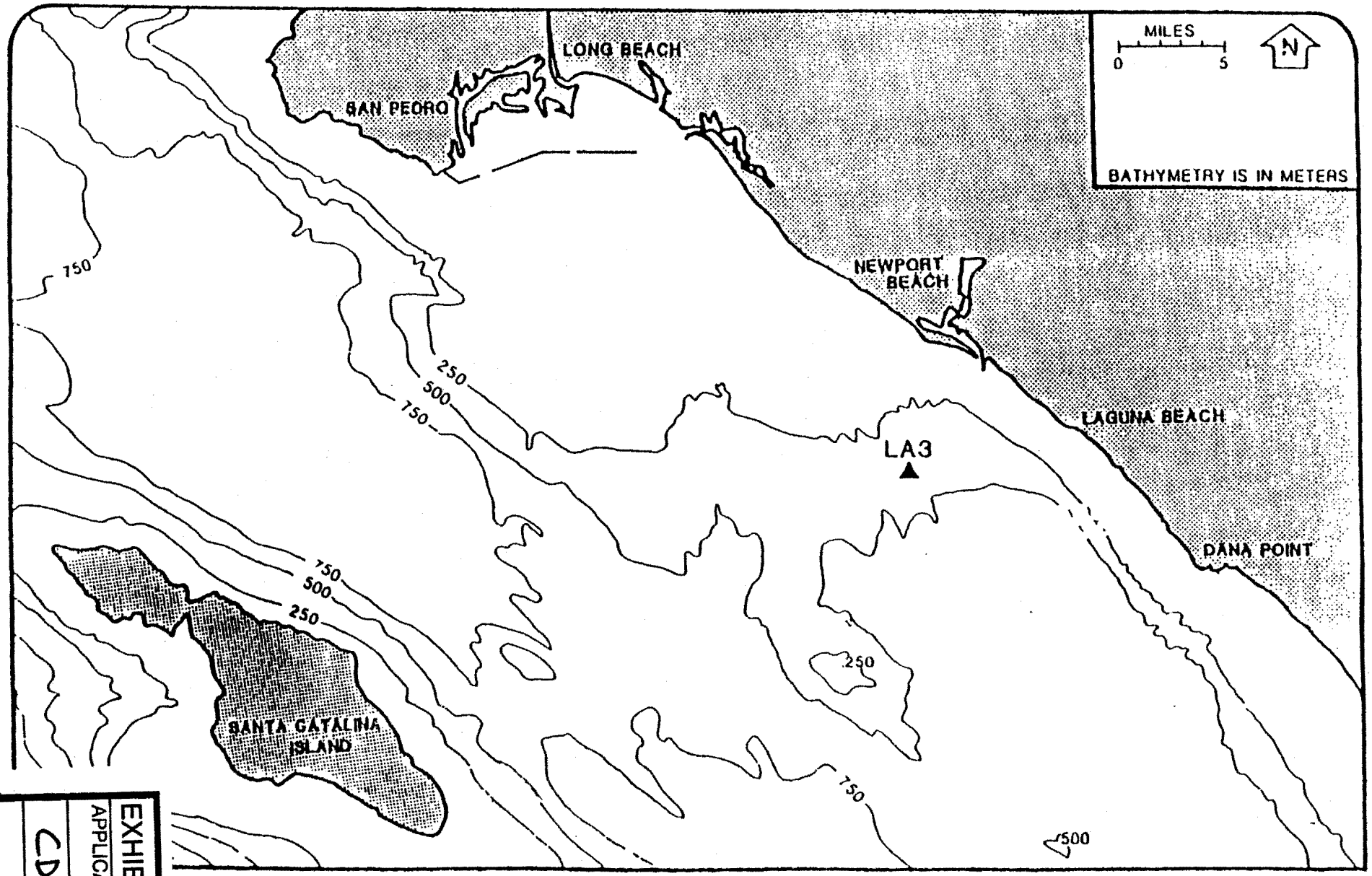


Figure 2-1

LA-2 Ocean Dredged Material Disposal Site Vicinity Map

EXHIBIT NO. 3
APPLICATION NO.
CD-50-00
California Coastal Commission



LA-3 DISPOSAL SITE LOCATION MAP

3/5

EXHIBIT NO. 4
APPLICATION NO.
CD-50-00
California Coastal Commission

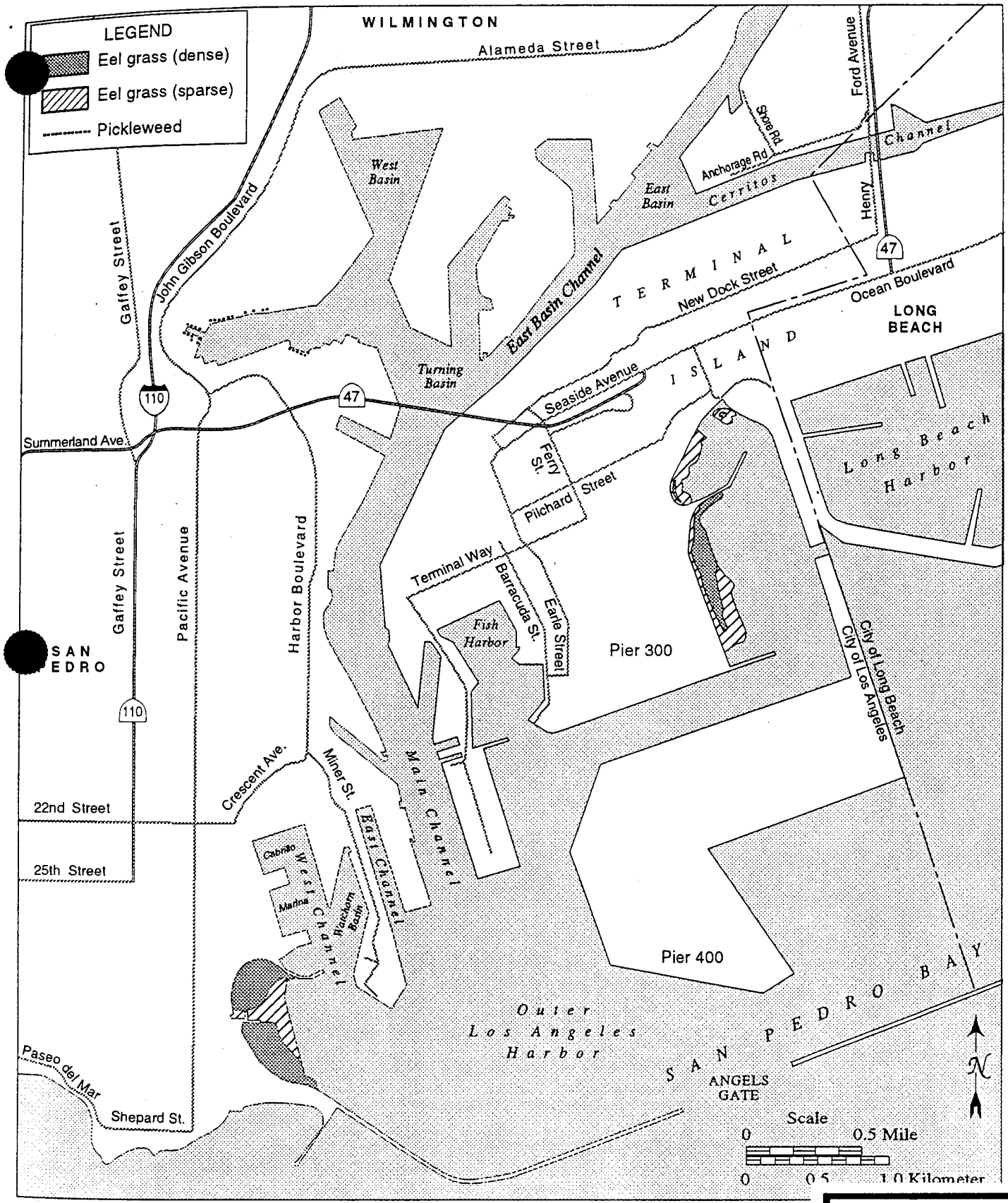
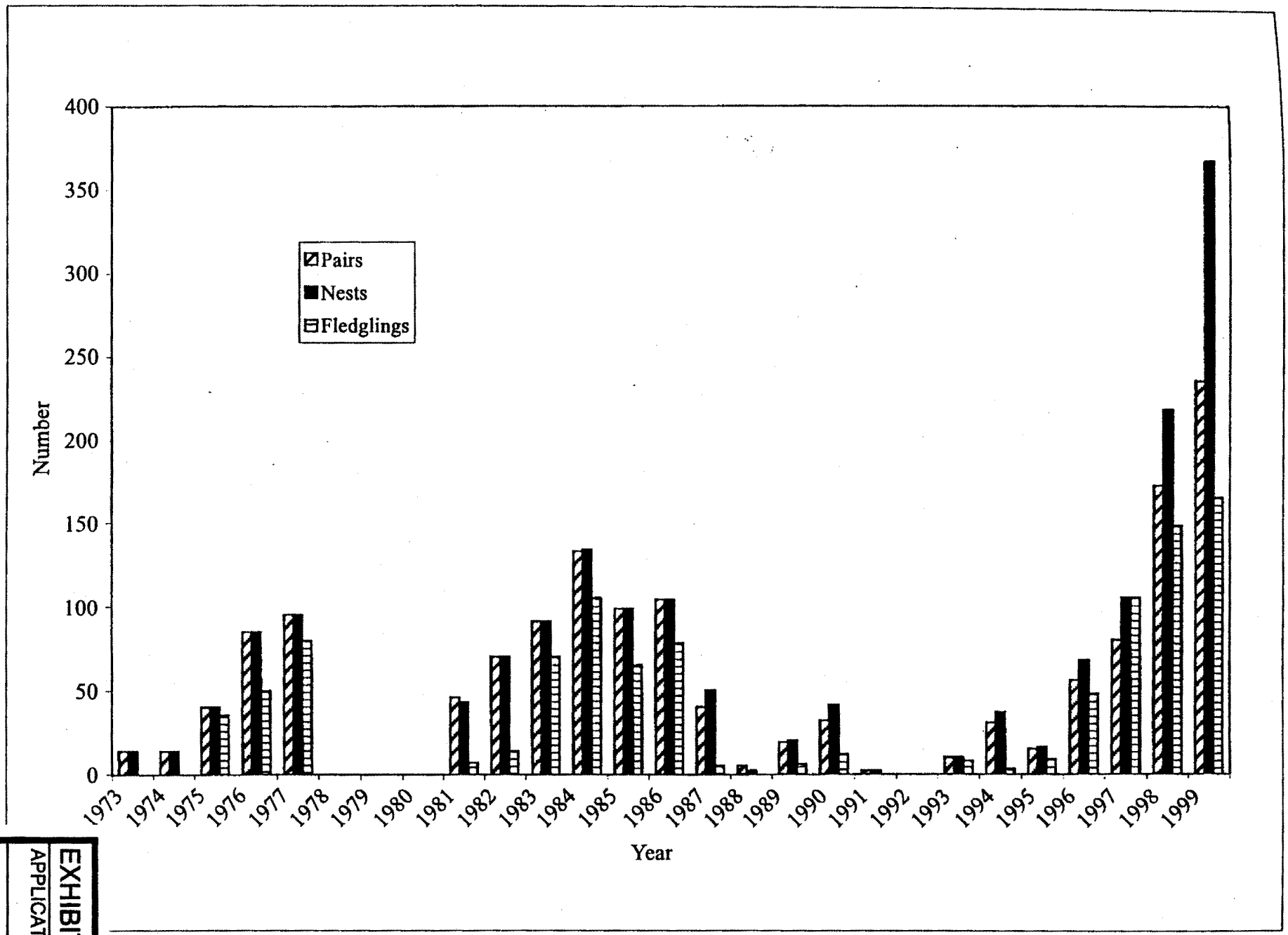


Figure 3.4-1. Locations of Eelgrass and Pickleweed

EXHIBIT NO. 5
APPLICATION NO.
CD-50-00
California Coastal Commission



2. California Least Tern Breeding at Los Angeles Harbor

Table 3.4-3. Mitigation Available for Channel Deepening Project

Mitigation Bank	*Approximate Credits Available*[1]	*Value in Deep Outer Harbor*[2]	*Value in Shallow Outer Harbor*[2,3]	*Value in Inner Harbor Slips*[2]
Bolsa Chica Bank	70	70	~47	140
Outer Harbor Bank	46	46	~31	92
Inner Harbor Bank	6	n.a.	n.a.	6
Total		116	78	238

Notes:
1. Final values to be confirmed from as-built drawings for Pier 400 and the Cabrillo Shallow Water Habitat.
2. Value of credits is 1/1 for Outer Harbor deep habitat, 1/1.5 for Outer Harbor shallow habitat, and 1/0.5 for inner harbor; n.a. = not applicable.
3. The Pier 300 fill may require expenditure of credits for degradation of the remaining water area.

Table 3.4-4. Biological Mitigation Requirements for Channel Deepening

Disposal Alternative	Depth (feet)	Disposal Sites: Pier 300 Acres	Pier 300 Value*	Pier 300 Credits	Southwest Slip Acres	Southwest Slip Value	Southwest Slip Credits	Cabrillo SWH Acres	Cabrillo SWH Value	Cabrillo SWH Credits	Total Credits	Credit Deficit**
-50'-1	50	-40	1.5	-77.5	-35	0.5	-17.5	54	0.5	27.0	-68.0	49.0
-50'-2	50	0	1.5	0.0	-35	0.5	-17.5	54	0.5	27.0	9.5	126.5
-50'-3	50	0	1.5	0.0	-35	0.5	-17.5	54	0.5	27.0	9.5	126.5
-50'-4	50	0	1.5	0.0	-35	0.5	-17.5	0	0.5	0.0	-17.5	99.5
-50'-5	50	-40	1.5	-77.5	0	0.5	0.0	54	0.5	27.0	-50.5	66.5
-50'-6	50	-80	1.5	-134.5	0	0.5	0.0	54	0.5	27.0	-107.5	9.5
-50'-7	50	na	1.5	na	na	0.5	na	na	0.5	na	na	na
-53'-1	53	-80	1.5	-134.5	-35	0.5	-17.5	54	0.5	27.0	-125.0	-8.0
-53'-2[a]	55	-40	1.5	-77.5	-35	0.5	-17.5	54	0.5	27.0	-68.0	49.0
-53'-3	53	0	1.5	0.0	-35	0.5	-17.5	54	0.5	27.0	9.5	126.5
-53'-4	53	0	1.5	0.0	-35	0.5	-17.5	0	0.5	0.0	-17.5	99.5
-53'-5	53	-80	1.5	-134.5	0	0.5	0.0	54	0.5	27.0	-107.5	9.5
-53'-6	53	-40	1.5	-77.5	0	0.5	0.0	0	0.5	0.0	-77.5	39.5
-53'-7[a]	53	0	1.5	0.0	-35	0.5	-17.5	0	0.5	0.0	-17.5	99.5
-53'-8	53	0	1.5	0.0	-75	0.5	-37.5	0	0.5	0.0	-37.5	79.5
-55'-1	55	-80	1.5	-134.5	-35	0.5	-17.5	54	0.5	27.0	-125.0	-8.0
-55'-2	55	-40	1.5	-77.5	-35	0.5	-17.5	54	0.5	27.0	-68.0	49.0
-55'-3	55	0	1.5	0.0	-35	0.5	-17.5	54	0.5	27.0	9.5	126.5
-55'-4	55	0	1.5	0.0	-35	0.5	-17.5	0	0.5	0.0	-17.5	99.5
-55'-5	55	-80	1.5	-134.5	0	0.5	0.0	54	0.5	27.0	-107.5	9.5
-55'-6	55	-40	1.5	-77.5	0	0.5	0.0	0	0.5	0.0	-77.5	39.5
-55'-7	55	0	1.5	0.0	-75	0.5	-37.5	54	0.5	27.0	-10.5	106.5

Notes: * For a 40-acre fill, the value is 1.5 of water area lost plus a up to a 5% degradation of the remaining shallow water (~233 acres). For an 80-acre fill, the value of 1.5 and 5% degradation of remaining shallow water area (~193 acres) would need to be reviewed by resource agencies prior to permit issuance or construction. Value of 1.5 assumes the Pier 400 access corridor is open. The value would be 1.125 with it closed (LAHD 1999).

** Based on a projected balance of 116 credits in the Port's mitigation banks (Bolsa = 70; Outer Harbor = 46).

a. Alternative -53'-2 is the Modified NED Plan and the Preferred Alternative. Alternative -53'-7 is the NED Plan.

PROPOSED PROJECT

Mitigation Measures

The following measures are adapted from and supplement measures approved for the Deep Draft Navigation Improvement Project. New measures are added as appropriate.

General Marine Resources

BIO-1 The LAHD shall provide off-site or on-site compensation for loss of general marine resources including approximately 40 or 80 acres of shallow water Outer Harbor habitat and/or 35 or 75 acres of inner harbor habitat in excess of the mitigation credits available in existing mitigation banks. Neither the LAHD nor the USACE shall begin construction of any fill prior to providing mitigation acceptable to the resource agencies (USFWS, NMFS, CDFG), as described herein, adequate to compensate for marine resource impacts associated with fill construction. Implementation of mitigation measures shall occur prior to or concurrent with any construction of the proposed project in Los Angeles Harbor.

a. The LAHD shall apply credits available in existing mitigation banks to compensate for loss of fish and wildlife habitat due to construction of fill at the Southwest Slip Site and Pier 300 Expansion Site.

b. The LAHD shall continue to pursue implementation of wetlands restoration projects at: (i) Bolsa Chica Future Full Tidal, (ii) Ballona Wetlands Parcel A/C, (iii) Santa Ana River Mouth, or (iv) Ormond Beach to make up any mitigation shortfall after exhausting existing mitigation banks.

c. If these wetlands are determined to be infeasible or in aggregate do not provide adequate mitigation above that required for the approved project, then other coastal wetlands shall be considered/ substituted in the Southern California Bight, including but not limited to Huntington Beach Wetlands, Tijuana River, San Elijo Lagoon, Mugu Lagoon, Buena Vista Lagoon or others. Such mitigation, including acquisition of lands and interests, shall be undertaken before or concurrent with any construction of any portion of the project not otherwise adequately mitigated. These opportunities identified above will be established through Memoranda of Agreements (MOAs) with the concerned resource agencies taking into account provisions identified in "d" below.

d. Should no feasible coastal wetlands restoration projects identified above be available at the time of Port Master Plan Amendment certification or Department of Army Permit (if applicable) to the Port, then the USFWS, NMFS, CDFG may allow the Port to implement an alternative mitigation measure, such as an Artificial Reef Project(s) in the Los Angeles coastal area under the provisions specified below:

- *Artificial Reefs Research.* Upon signature by the appropriate parties to an MOA, the LAHD shall participate in developing an artificial reef program to continue the work previously compiled in conjunction with the Port of Long Beach and NMFS. The purpose of this research is to help confirm the habitat value/ productivity of artificial reefs and their value as mitigation for Port fills. The design (including size) and monitoring program shall be in conformance with agency requirements. The LAHD will receive credit for construction of the reef at a mutually agreeable ratio. Following completion of the project the value of the reef would be recalculated in accordance with the established MOA.

- *Future Artificial Reef Implementation Program.* If, based on the studies identified above or other information that may come available in the future, the USFWS, NMFS and CDFG determine reefs are suitable mitigation, and if wetlands are not available or it is determined that reef construction in conjunction with a coastal wetlands restoration program is appropriate, then the LAHD shall implement an artificial reef program. This

program will be established through MOAs with the resource agencies taking into account provisions identified below.

This program shall include construction of one or more quarry rock reefs or other suitable materials at an initial tradeoff ratio to be determined by the signatories to a prerequisite reef MOA based on data available at the time. Location of reef placement would be limited in the north at Pt. Dume and in the south at Dana Point. Priority areas for siting of artificial reefs shall be in Santa Monica Bay, off the Palos Verdes Peninsula, and south of the Los Angeles Harbors in the "Huntington Flats" area.

e. The LAHD shall establish new or modify existing MOAs to be submitted for approval by the California Coastal Commission and Board of Harbor Commissioners prior to or concurrent with the issuance of an Department of Army Permit by the USACE, Port Master Plan Amendment certification, Coastal Development Permit, or publication of bids for construction of any fill by the USACE or LAHD beyond the amount present in existing mitigation banks or created through project implementation. Such MOAs, together with other mitigation measures shall result in implementation of mitigation projects to compensate for all marine resource impacts of the proposed project. The MOAs shall include, at a minimum, the following:

- Signatures by representatives of the LAHD, USFWS, NMFS and CDFG and other parties as appropriate.
- A completed evaluation of the habitat values of the project impact site before and after the project and a completed evaluation of probable habitat values before and after implementation of the mitigation project(s). These values will be used to determine the appropriate relationship of acres of habitat filled in the Port.
- A plan for the proposed mitigation with sufficient acreage either alone or in concert with other wetlands restoration projects to provide compensation for proposed project impacts.
- Provisions for the monitoring and long-term maintenance of habitat values at the mitigation site(s).
- Provision that any lands upon which mitigation for LAHD/USACE projects is to occur must be dedicated to ensure management of fish and wildlife values in perpetuity by an entity acceptable to USFWS, NMFS, and CDFG, prior to release of any credits to the LAHD/USACE.
- Commitments to initiate the mitigation work prior to or concurrent with initiation of any proposed construction activity resulting in permanent loss of fish and wildlife habitat (i.e. construction of new land).
- Provision that excess credits may be used by the LAHD for future harbor fills or sold to other Port authorities in Southern California or other approved coastal, water-dependent uses, for compensation of impacts to marine resources. These credits may not be used by other parties for any developments occurring in any federal jurisdictional wetlands.
- Provision that the appropriate CEQA and NEPA analyses and documentation be executed for the mitigation project(s).

BIO-2 Eelgrass in the Pier 300 Shallow Water Habitat lost due to construction of the Pier 300 Expansion Site shall be replaced within the harbor in accordance with the NMFS guidance document. Locations identified for relocation include excavation at the Pier 300 Shallow Water Habitat accreted area, or creating appropriate depths through deposit of dredge or other acceptable material along the margins of any new land created through the Pier 300 Expansion, or in the Cabrillo Beach area. Material should be coarse-grained, as available.

EX. 9 CONT.

BIO-3 Pickleweed in areas of the Southwest Slip to be filled shall be salvaged prior to filling and replanted in suitable habitat in the harbor or off site.

Endangered Species Measures

BIO-4 The construction of new fill in the Pier 300 Shallow Water Habitat shall be designed, to the extent possible, taking into account results of modeling to determine water quality in the Seaplane Lagoon and in the remaining Pier 300 Shallow Water Habitat.

BIO-5 For the purposes of maintaining shallow water for least tern foraging, the LAHD shall replace up to the 80-acre loss of shallow water at the Pier 300 Expansion Site with 80 acres of shallow water created/available at the Cabrillo Shallow Water Habitat through provisions of the Port of Los Angeles Outer Harbor Mitigation Bank Agreement and/or this project. Construction of shallow water habitat as replacement feeding areas for the least tern shall be concluded prior to the least tern nesting season in which the habitat loss occurs and shall be capped with sand material.

BIO-6 Unless specifically allowed by the CDFG and USFWS, the LAHD/USACE shall not allow turbidity from dredge and fill activities to extend into shallow water during the April-to-September breeding season of the California least tern. This requirement shall be monitored as provided for in Measure BIO-8 below and shall be based on visually observed differences between ambient surface water conditions and any dredging turbidity plume.

BIO-7 Unless approved otherwise by the CDFG and USFWS, the LAHD/USACE shall ensure that no impact pile driving shall be allowed in the Pier 300 Shallow Water Habitat during the April-to-September breeding season of the California least tern.

BIO-8 The LAHD/USACE shall provide a qualified least tern biologist, acceptable to the USFWS and CDFG and approved by USACE, to monitor and manage the least tern colony during the nesting season. This program shall be carried out for up to one year following construction of the last element of the Port of Los Angeles Channel Deepening Project. The biologist shall coordinate with the agencies pursuant to the existing least tern MOA and shall:

a. Monitor nesting and fledgling success of the least tern colony and provide an annual report in the format provided in previous years.

b. Provide an education program for construction crews regarding the identity of the least tern and their nests, restricted areas and activities, actions to be taken if least terns are found outside the designated least tern nesting sites, and any other pertinent requirements.

c. Assist the USFWS and CDFG in predator control, as required, prior to and during the least tern nesting season during the construction period.

d. Visually monitor and report to the dredging contractor or LAHD/USACE contract manager and CDFG/USFWS any turbidity from project dredging which enters the shallow water habitat area to the east of Pier 300.

BIO-9 If California least tern or other protected species nests are found outside the designated nesting sites during construction, then all work in the immediate area shall be halted, and the least tern biologist shall be notified immediately. An appropriate buffer zone around the nest(s) and protection shall be specified by the biologist in coordination with CDFG and USFWS.

BIO-10 The LAHD shall investigate the removal of all or a portion of the existing rocky-dike groin in the Seaplane Lagoon should this removal not occur as a result of a re-

EX. 9 CONT.

lated project, the Pier 400 Container Terminal Project. The value of this removal shall be documented in water quality modeling studies with results to be submitted to the concerned resource agencies.

BIO-11 No construction staging area shall be located within 200 feet of the identified least tern site during the April-to-September least tern nesting season.

3.4.8 Significant Unavoidable Adverse Impacts

No unavoidable significant impacts would occur.

EX. 9 CONT.

3.4.9 Mitigation Monitoring Program

Potentially Significant Adverse Impacts	*Mitigation Measures*	*Significance After Mitigation*	*Mitigation Program Responsibility/ Report Recipient*	*Frequency*
General Marine Resources				
Placement of dredge material would result in a loss of 40 or 80 acres of soft bottom and water-column habitat in the Pier 300 Expansion Site and 35 or 75 acres in the Southwest Slip Fill Site.	BIO-1 Compensate for loss of marine resources at Pier 300 Expansion Site and Southwest Slip through use of existing or new mitigation banks.	Not significant	LAHD/USACE	Prior to or concurrent with project.
Loss of about 24 acres of eelgrass for 80-acre fill or 8 acres of eelgrass for 40-acre fill at Pier 300 Expansion Site.	BIO-2 Replace eelgrass lost at Pier 300 Expansion Site within the harbor in accordance with the NMFS guidance document.	Not significant	LAHD	Prior to or after fill placement.
Loss of 31.5 m^2 of pickleweed for 35-acre fill or 448.4 m^2 of pickleweed for 75-acre fill at Southwest Slip Fill Site.	BIO-3 Pickleweed lost at Southwest Slip shall be salvaged and replanted in the harbor or off site.	Not significant	LAHD	Prior to fill placement.
Endangered Species				
Pier 300 Expansion Site fill could alter water circulation and water quality.	BIO-4 Design Pier 300 Expansion using water quality modeling.	Not significant	LAHD/USACE	Prior to Pier 300 Expansion construction.
Pier 300 Expansion Site fill would remove 40 or 80 acres of shallow water habitat.	BIO-5 Replace shallow water lost at Pier 300 Expansion Site within harbor at 1:1.	Not significant	LAHD	Prior to Pier 300 Expansion construction.
Placement of dredge material in Pier 300 Expansion Site would cause short-term turbidity.	BIO-6 Prohibit turbidity from dredge and fill activities to extend into shallow water during the California least tern breeding season, unless determined otherwise by USFWS and CDFG.	Not significant	Contractor/USACE	During disposal activities at Pier 300 site.
Wharf construction at Pier 300 Expansion Site could affect least tern nesting and foraging.	BIO-7 Prohibit impact pile driving in Shallow Water Habitat during the breeding season of the California least tern unless determined otherwise by USFWS and CDFG.	Not significant	LAHD	During wharf construction.
Disposal of dredge material at sites in harbor could affect least tern foraging.	BIO-8 Provide a qualified least tern biologist to monitor and manage the least tern colony during the nesting season.	Not significant	LAHD	During disposal activities in harbor.

Potentially Significant Adverse Impacts	*Mitigation Measures*	*Significance After Mitigation*	*Mitigation Program Responsibility/ Report Recipient*	*Frequency*
Placement of dredge material on Pier 400 upland disposal site could affect least terns nesting outside the designated sites.	BIO-9 If California least tern or other protected species nests are found outside the designated nesting sites during construction, work in the immediate area of nesting shall be halted, and the least tern biologist shall be notified immediately.	Not significant	Contractor/USACE	During disposal activities at Pier 400 Upland site.
Placement of dredge material at Pier 300 Expansion Site could alter water circulation and water quality.	BIO-10 Model the removal of all or a portion of the existing groin in the Seaplane Lagoon and remove if modeling shows benefit to water quality and if not previously removed.	Not significant	LAHD/USACE	Prior to disposal activities at the site.
Placement of dredge material on Pier 400 Upland disposal site could affect least tern nesting.	BIO-11 No construction staging area shall be located within 200 feet of the designated least tern site during the least tern nesting season.	Not significant	LAHD	During placement of dredge material on Pier 400 Upland site.

EX.10 CONT.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
2730 Loker Avenue West
Carlsbad, California 92008

MAY 15 2000

Mr. Robert Koplin
Chief, Planning Division
Corps of Engineers, Los Angeles Dist.
P.O. Box 532711
Los Angeles, California
90053-2325

Attn: Larry Smith, Environmental Resources Branch

Re: Los Angeles Harbor Channel Deepening Project

Dear Mr. Koplin:

This letter responds to your letter, dated April 17, 2000, on the referenced subject. Your letter indicates that the subject project and its draft supplemental Environmental Impact Statement (dSEIS, April 2000) supplements the Deep Draft Navigation Improvements Project EIS completed in 1992. Your letter seeks our concurrence with your view that the subject supplemental project would not adversely affect listed species and Formal Consultation, pursuant to section 7 of the Endangered Species Act, is not warranted.

The currently proposed supplemental project alternative (53-2) would deepen the Los Angeles Harbor main channel to -53' MLLW, generating about 6.6 million cubic yards (mcy) of dredge spoil. About 1.5 mcy would be used to construct a new 40-acre landfill next to Pier 300, within an existing shallow water area; 1.7 mcy would be used to construct a 35-acre landfill along the Southwest Slip; 1.0 mcy would be used to expand the Cabrillo Shallow Water Habitat by 54 acres; and 2.4 mcy would be disposed of at an approved offshore deepwater disposal site.

We had produced a Biological Opinion (BO), for the Deep Draft Navigation Improvements Project in 1992 (1-6-92-F-25, September 24, 1992), addressing potential impacts to the California least tern (*Sterna antillarum browni*) and the California brown pelican (*Pelecanus occidentalis californicus*). Phases 1 and 2 of that project are nearly completed. The least tern, in particular, has been very well served by the actions of the local sponsor, Port of Los Angeles, who has acted in compliance with the nest site management agreement, nest site monitoring, essential foraging area mitigation and protection, all requirements of the 1992 EIS and BO.

We completed a Planning Aid Report in August of 1999, and a draft Fish and Wildlife Coordination Act Report (FWCAR) in January 2000, for the subject supplemental project and expect to complete a Final FWCAR very soon. As your letter confirms, we have been in discussions, that is, informal consultation, with the Corps of Engineers and the local sponsor, the Port of Los Angeles since last year. By mutual design, the dSEIS includes agreed upon protection measures for the California least tern and acts as a Biological Assessment, as well.

The project description components that would assure that the listed species, particularly the least tern, would not be adversely affected are listed on pages 3.4-20 through 23 of the dSEIS. In general, those elements include: protection and management of a designated nesting area pursuant to a written agreement, through construction timing and monitoring protection of specifically designated essential shallow water foraging areas from degradation during construction, and offsetting, acre-for-acre and near the nesting site, of any loss of shallow water foraging area in advance of loss.

No other listed species may be affected by the proposed channel deepening and landfill construction project. Therefore, provided the project is implemented as described in the dSEIS, we concur that no listed species would be adversely affected by the project and Formal Consultation, pursuant to section 7 of the Endangered Species Act is not warranted. Our representative remains Mr. Jack Fancher who may be reached at (760) 431-9440, email jack_fancher@fws.gov.

Sincerely,

Andrew R. Yuen

Andrew R. Yuen
Deputy Field Supervisor

1-6-00-I-50

cc: NMFS, Long Beach (Bob Hoffman)
CDFG, San Diego (Marilyn Fluharty)
✓CCC, San Francisco (Jim Raives)
Port of LA, San Pedro (Ralph Appy)

EX. 11 CONT.