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**RECORD PACKET COPY Th 12c****STAFF RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-065-05
Staff:	LJS-SF
File Date:	5/9/2005
60 th Day:	7/8/2005
75 th Day:	7/23/2005
Commission Meeting:	6/9/2005

FEDERAL AGENCY: **U.S. Environmental Protection Agency (EPA)**

**DEVELOPMENT
LOCATION:**

LA-3 and LA-2 ocean dredged material disposal sites, 5.2 miles offshore of Orange County and 5.9 miles offshore of Los Angeles County, respectively (Exhibits 1-3)

**DEVELOPMENT
DESCRIPTION:**

Final designation of the LA-3 ocean dredged material disposal site and increased maximum annual disposal of dredged material at the LA-2 designated ocean disposal site

**SUBSTANTIVE FILE
DOCUMENTS:**

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EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA) has submitted a consistency determination for designation of the LA-3 ocean dredged material disposal site (ODMDS) as a multi-user site to be managed at a maximum annual dredged material disposal quantity of 2.5 million cubic yards,

and the management of the previously-designated LA-2 ODMDS at an increased maximum annual dredged material disposal quantity of 1.0 million cubic yards. This designation and management change does **not** authorize any specific disposal activities at LA-3 or LA-2. All future disposal activities at LA-3 and LA-2 are subject to the federal consistency requirements of the Coastal Zone Management Act. The LA-3 and LA-2 disposal sites support the dredging needs of the Ports of Los Angeles and Long Beach, port tenants (which include businesses involved in commercial and recreational fishing, ship building and repair, cargo transportation, and recreational boating), the U.S. Army Corps of Engineers, recreational boat harbors in Los Angeles and Orange counties, and restoration activities within Newport Bay.

LA-3 has been an interim disposal site since 1976 for the disposal of material dredged primarily from Newport Harbor and Bay. The designated site is located 5.2 miles offshore in water depths ranging from 1,500 to 1,675 feet. The proposed action would shift the center of the LA-3 site approximately 1.5 miles to the southeast of the interim LA-3 site, within an area that is already disturbed by dredged material disposal and located on a flat depositional plain that will be more amenable to monitoring. LA-2 has been a disposal site for material dredged primarily from the Ports of Los Angeles and Long Beach since 1977. The LA-2 site is located 5.9 miles offshore in water depths ranging from 380 to 1,060 feet.

EPA has developed the *LA-2/LA-3 Ocean Dredged Material Disposal Site Management and Monitoring Plan (SMMP)*, and submitted it as an element of the subject consistency determination. The *SMMP* includes: (a) baseline assessment of site conditions; (b) monitoring program; (c) management conditions to protect the site environment; (d) consideration of the quantity and quality of material to be disposed; (e) consideration of long term use of the site and post-closure management, if applicable; and (f) schedule for review and revision of the *SMMP*.

The Commission has concurred with consistency determinations and certifications for dredged material disposal at LA-3 and LA-2 for approximately 25 years. EPA has determined in the *DEIS* for the proposed site designation for LA-3 that these activities have not significantly affected commercial or recreational fisheries in adjacent ocean waters. The proposed LA-3 site designation and increased use of LA-2 will likewise not create significant adverse effects on these fisheries. EPA's management and monitoring plan, in combination with the Commission's authority to review all future disposal actions at LA-3 and LA-2 for consistency with the CCMP, will serve to ensure continued protection of those fishery resources. The proposed designation by EPA is consistent with the recreational and commercial fishery policies (Sections 30220, 20230, 30233, 30234, 30234.5, and 30705) of the Coastal Act.

EPA's *DEIS* for the proposed designation of LA-3 and increased use of LA-2 established that dredged material disposal at these two sites since the late 1970s has created no significant impacts to the marine environment, including water quality and sand supply. In addition, Commission findings in support of disposal projects at those sites over that same time period reached the same conclusion. The Commission's statutory authority to review future disposal projects at LA-3 and LA-2 ensures that any potential water quality or sand supply impacts associated with future projects will be fully evaluated for their consistency with the water quality and sand supply policies of the California Coastal Management Program. The proposed final

designation of LA-3 as an ocean dredged material disposal site, and the proposed increased use of the previously-designated LA-2 disposal site, are consistent with the water quality and sand supply policies (Sections 30230-30233 and 30412) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION

I. Project Description. The U.S. Environmental Protection Agency Region IX (EPA) is proposing the final designation of the LA-3 ocean dredged material disposal site (ODMDS) as a multi-user site to be managed at a maximum annual dredged material disposal quantity of 2.5 million cubic yards, and the management of the previously-designated LA-2 ODMDS at an increased maximum annual dredged material disposal quantity of 1.0 million cubic yards (**Exhibits 1-3**). Concurrence with this consistency determination does **not** authorize any disposal activities at LA-3 or LA-2. All future disposal activities must receive a permit from the U.S. Army Corps of Engineers pursuant to Section 103 of the Marine Protection, Resource, and Sanctuaries Act (MPRSA), and in addition, all disposal activities at LA-3 and LA-2 are subject to the federal consistency requirements of the Coastal Zone Management Act.

The LA-3 ODMDS has been an interim disposal site since 1976 for the disposal of material dredged primarily from Newport Harbor and Bay. The circular boundary of the permanently designated LA-3 site would be located 5.2 miles offshore and centered at 33°31'00" North and 117°53'30" West and would have a 3,000-foot radius (**Exhibit 4**). Water depths at the site range from 1,500 to 1,675 feet. EPA states that the proposed action would shift the center of the LA-3 site approximately 1.5 miles to the southeast of the interim LA-3 site, which would not only encompass a region that is already disturbed by dredged material, but also would be located on a flat depositional plain that will be more amenable to monitoring via precision bathymetry.

The LA-2 ODMDS has been historically managed at an annual disposal quantity of 200,000 cu.yds. for material dredged primarily from the Ports of Los Angeles and Long Beach since 1977. The LA-2 site is located 5.9 miles offshore, has center coordinates of 33°37'06" North and 118°17'24" West, a radius of 3,000 feet, and is located at water depths ranging from 380 to 1,060 feet (**Exhibit 5**).

EPA evaluated a number of alternatives to the proposed action in its DEIS, including no action, maximized use of LA-2 without permanent designation of LA-3, maximized use of LA-3, upland disposal at a sanitary landfill, ocean disposal at a site at similar depth to LA-3, ocean disposal at a shallow water site, and ocean disposal at a deep water site. EPA concluded that these alternatives were not feasible and/or would be more environmentally damaging than the proposed project (**Exhibit 6**).

The consistency determination states that:

- A. The LA-3 ocean dredged material disposal site off Los Angeles, California has been selected as the preferred alternative in the Draft Environmental Impact Statement (DEIS) published following EPA policy and the National Environmental Policy Act.*

- B. Designation of LA-3 complies with all of EPA's ocean dumping site selection criteria defined at 40 CFR §228.5 and §228.6(a).*
- C. Dredged material proposed for disposal at LA-3 and LA-2 will be evaluated to determine compliance with: 1) EPA's Ocean Dumping Regulations at 40 CFR Parts 220, 225, 227 and 228; 2) testing procedures defined in the guidance manual titled: "Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters" (U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, 1978), or a revised version as soon as it becomes final; 3) EPA Region IX's dredged material testing guidance (U.S. Environmental Protection Agency, Region IX, 1989) or later revisions; and 4) the Corps' dredged material permitting regulations at 33 CFR Parts 320 to 330 and 335 to 338.*
- D. A management and site monitoring program will be conducted by EPA Region IX, in cooperation with the Corps's Los Angeles District and other Federal and State agencies, to assure that disposal of material at LA-3 and LA-2 does not result in unacceptable environmental impacts.*
- E. Designation of the LA-3 site and management of the LA-2 site at an increased maximum annual dredged material disposal quantity is essential for the continued maintenance and development of navigation channels and harbors in the ports of Los Angeles and Long Beach, Newport Bay, and other such areas in the Los Angeles and Orange County region.*

EPA states that new dredging projects are planned in association with restoration of Newport Bay and for planned developments in the Ports of Los Angeles and Long Beach. Suitable ocean disposal sites are needed to support ongoing maintenance and capital development projects that will generate dredged materials which cannot be beneficially reused (e.g., beach replenishment, landfill construction). As noted previously, the subject consistency determination does **not** propose any specific disposal actions at either LA-3 or LA-2 at this time. These would be the subject of future consistency determinations or certifications. To that end, the consistency determination states that:

Granting of dredged material disposal permits under MPRSA §103 is beyond the scope of the final designation of the LA-3 disposal site. Designation of an ocean dredged material disposal site is a completely separate process from the permit evaluation process. Final designation of the LA-3 site does not mean that all material proposed for disposal at that site will be authorized. EPA Region IX and the Corps, Los Angeles District have selected the LA-3 site as an acceptable site for disposal of proposed dredged materials that comply with EPA's Ocean Dumping Regulations. This is also the case for the LA-2 site, which received its final designation as a permanent disposal site in 1991.

EPA also notes that Section 102(c) of the MPRSA (as amended by Section 506 of the Water Resources Development Act of 1992) provides that, in the case of ocean dredged material disposal sites, no site shall receive a final designation unless a management plan has been developed. EPA has developed the *LA-2/LA-3 Ocean Dredged Material Disposal Site*

Management and Monitoring Plan (SMMP), and submitted it as an element of the subject consistency determination. The *Plan* includes the following:

- (A) *a baseline assessment of conditions at the site;*
- (B) *a program for monitoring the site;*
- (C) *special management conditions or practices to be implemented at each site that are necessary for protection of the environment;*
- (D) *consideration of the quantity of the material to be disposed of at the site, and the presence, nature, and bioavailability of the contaminants in the material;*
- (E) *consideration of the anticipated use of the site over the long term, including the anticipated closure date for the site, if applicable, and any need for management of the site after the closure of the site; and*
- (F) *a schedule for review and revision of the plan (which shall not be reviewed and revised less frequently than 10 years after adoption of the plan, and every 10 years thereafter).*

The *Plan* further states that:

Similar ocean dredged material disposal sites receiving similar material may be combined into a single management plan provided that all MPRSA Section 102 (c)(3) requirements are met for each site (EPA/USACE, 1996). Both the LA-2 and LA-3 sites qualify under this criterion, and disposal at these sites is coordinated jointly by the same EPA and USACE offices; therefore, this management plan will fulfill the requirements for both the LA-2 and LA-3 sites.

The *Plan's* baseline assessment at LA-3 and LA-2 includes information on currents, temperature, salinity, and dissolved oxygen; sediment grain size, total organic carbon, metals, and hydrocarbons; and plankton, benthos, and demersal fish communities. The *Plan* states that:

Management decisions about the suitability of dredged material for ocean disposal are guided by criteria in the MPRSA and EPA's Ocean Dumping Regulations; guidance on specific aspects of these regulations is provided in Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters (the "Green Book"; EPA/USACE 1991). EPA Region IX in coordination with USACE or Angeles District may develop additional regional guidance in the future for sediment testing which should be used in addition to the 1991 Green Book.

The *Plan* provides for future review and revision:

Because this SMMP has been developed after almost 3 decades of dredged material disposal at these two sites with no unreasonable or significant impacts to the marine environment, we feel reasonably confident that the important site management and monitoring requirements are known and covered in this document. However, there is always the possibility for unanticipated problems or events, in which case modifications to the management or monitoring plan will be decided jointly with EPA Region IX and USACE Los Angeles District personnel.

Absent any unforeseen or unanticipated problems with the management or monitoring of dredged material disposal at either LA-2 or LA-3 ODMDS, this plan will be reviewed (and revised if necessary) at 10-year intervals.

The Plan describes the type of monitoring that will occur at LA-3 and LA-2:

Site monitoring is a requirement for use of both the LA-2 and LA-3 disposal sites; disposal operations will be prohibited if resources for implementing the SMMP are not available. Routine monitoring surveys (described below) at either site will occur at least every 5 years or more frequently as determined by EPA. The primary purpose of the environmental monitoring plan is to verify the predictions in the DEIS of site conditions following disposal. Simply stated, these predictions are that: a) only acceptable dredged material is disposed at the site; b) no substantial amounts of dredged material will go outside the site; c) no substantial amount of bioaccumulation is occurring inside the site; and d) no adverse effects are occurring to biological resources outside the site . . . Dredged material that is suitable for ocean disposal under the 1991 Green Book guidelines is expected to cause acceptable impacts within the disposal site. These include burial of any onsite benthic communities and potentially some chronic, sub-lethal biological effects to any onsite fauna from associated chemicals of concern in the disposed sediments. Partial recolonization will occur within the site, but full recovery of the benthic community the designated boundary of LA-2 or LA-3 is not expected during active use of either site, because continued disposal operations will tend to bury any recolonizing fauna. Full recolonization of the site with no long-term associated environmental impact would be expected if either site is ever closed in the future and disposal is discontinued.

The Site Management and Monitoring Plan for LA-3 and LA-2 disposal sites concludes as follows:

If, however, it is determined that the potential for risk to human health or the marine environment exists because of bioavailable contaminants being placed at the site, the potential management actions include any or all of the following actions:

- *Review and revise the sediment characterization process as part of permit activity*
- *Suspend or modify any further use of the site while the cause of the problem is being identified*

- *Cap the affected area with a sufficient volume of clean sediments to insure the bioavailable contaminants are permanently isolated from any biological receptors*
- *Identify additional monitoring tasks that must be performed to better identify or delineate the source of the problem*
- *Permanently terminate use of the site if this is the only means for eliminating the adverse environmental impacts*

II. Federal Agency's Consistency Determination. The U.S. EPA has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

III. Staff Recommendation.

The staff recommends that the Commission adopt the following resolution:

MOTION: I move that the Commission **concur** with consistency determination CD-065-05 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence 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 Concur with Consistency Determination:

The Commission hereby **concurs** with the consistency determination by the U.S. EPA, 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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

A. Background. The Marine Protection, Resource, and Sanctuaries Act (MPRSA) authorizes EPA to designate dredged material disposal sites. (33 U.S.C. Sections 1401 et seq.) The purpose of that Act is to regulate the dumping of waste material into the ocean. Section 101 of the MPRSA prohibits, unless authorized by permit, the transportation of waste materials for the purpose of dumping them into the ocean and dumping of waste materials into the territorial seas of the United States or into contiguous waters. (33 U.S.C. Section 1401.) That Act authorized the Corps of Engineers (Corps) to issue permits for dumping of dredged material and the EPA to issue permits for all other wastes.

Section 102 of the MPRSA authorizes the EPA Administrator to designate sites for the dumping of wastes, including dredge spoils. (33 U.S.C. Section 1412[c].) The MPRSA also directs the EPA to establish environmental criteria for site designation. The EPA has developed five general criteria and 11 specific factors that it must consider in designating an ocean dredged material disposal sites. (40 C.F.R. Section 228.5 and 228.6.) These criteria and factors require EPA to consider the need for dumping, the effect on human health and welfare, fisheries, and marine ecosystem, the appropriate locations and methods for ocean dumping, and the existence of alternative locations and methods for waste disposal. The MPRSA requires that, to the extent feasible, dredged material be disposed of in sites designated by EPA. (33 U.S.C. Section 1413[b].)

The MPRSA also establishes a permit system for the disposal of dredge spoils into the ocean. Section 103 of the MPRSA authorizes the Corps to issue permits for the disposal of dredged material into the ocean, if the Corps determines that "the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." (33 U.S.C. Section 1413[a].) Before the Corps can issue a permit, it must notify EPA of its intent. EPA can disagree with the Corps decision to issue a permit if it finds that the project does not meet the criteria established in its regulations. (40 C.F.R. Part 227.) If EPA determines that the material is not suitable for ocean disposal, the Corps cannot issue the permit. (33 U.S.C. Section 1413[c].)

LA-3 has been used as an interim dredged material disposal site since 1976; this interim designation expired on December 31, 2002. During that time period, approximately 3.0 million cu.yds. of dredged material was disposed at LA-3 (DEIS, Table 1.1-2). EPA designated LA-2 as an interim dredged material disposal site in 1977 and gave the site permanent designation in 1991; this latter action was the subject of consistency determination CD-063-90 (for the first five years of the permanent designation) and CD-114-96 (for the continued designation of LA-2). Since 1977, approximately 8.0 million cu.yds. of dredged material has been disposed at LA-2 (DEIS, Table 1.1-3).

B. Need for Dredging. Section 30220 of the Coastal Act provides that:

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

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

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

Section 30255 of the Coastal Act provides that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Section 30260 of the Coastal Act provides, in part, that:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Section 30701 of the Coastal Act provides, in part, that:

The Legislature finds and declares that:

(a) The ports of the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry.

The LA-3 and LA-2 disposal sites support the dredging needs of the Ports of Los Angeles and Long Beach, port tenants (which include businesses involved in commercial and recreational fishing, ship building and repair, cargo transportation, and recreational boating), the U.S. Army Corps of Engineers, recreational boat harbors in Los Angeles and Orange counties, and restoration activities within Newport Bay. The Coastal Act supports and encourages protection of these land and water uses. The Coastal Act includes policies protecting, in a manner consistent with other policies of the Coastal Act, recreational boating, sports fishing, commercial fishing, and port-related activities. In previously concurring with consistency determinations for the designation of LA-2 as a dredged material ocean disposal site, the Commission found that the site supports the port and commercial and recreational boating resources of the region and that

the designation was consistent with above-cited Coastal Act policies. In reviewing the current consistency determination for designation of LA-3 and the increased use of LA-2, the Commission reiterates its previous conclusions regarding the need for managed ocean disposal sites off Los Angeles and Orange counties and incorporates the findings from its previous concurrence with CD-114-96 for the designation of LA-2.

C. Recreational and Commercial Fisheries. Section 30220 of the Coastal Act provides that:

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

Section 30230 of the Coastal Act provides that:

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

Section 30233(b) of the Coastal Act provides, in part, that:

Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation

Section 30234 of the Coastal Act provides that:

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

Section 30234.5 of the Coastal Act provides that:

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

Section 30705(c) of the Coastal Act provides, in part, that:

... dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms

In its February 1997 concurrence with the final designation of the LA-2 ocean disposal site (CD-114-96), the Commission referenced findings reported by EPA regarding physical oceanography, benthic resources, and fish catches at and adjacent to the LA-2 site:

- Disposal at LA-2 caused only minor disturbances to benthic resources at the site.
- Turbidity clouds would not migrate to nearby fishing grounds and would not affect fishing areas.
- Fisheries monitoring data supported EPA's conclusions that the designation of LA-2 did not significantly affect fisheries resources.
- Disposal at LA-2 did not cause any significant effect on recreational and commercial fish catches in the region.

The subject consistency determination provides an updated analysis (based on information within the Draft EIS for the LA-3 Site Designation and increased use of LA-2) of the marine resources within and adjacent to the LA-3 and LA-2 disposal sites and the potential effects on those resources from proposed designation and use of LA-3 and the increased use of LA-2:

Both the LA-2 and LA-3 sites are located on the continental slope. Water depths at the LA-2 ODMDS range from 360 to 1,115 feet (110 to 340 meters) and depths at the LA-3 ODMDS range from 1,500 to 1,675 feet (460 to 510 meters). The main biological communities affected by dredged material disposal within the site boundaries are benthic infauna, benthic epifauna, and demersal fish.

Infauna communities are highly influenced by the sediments in which they live and depth gradients. The infauna species assemblages within the site boundaries of both the LA-2 and LA-3 sites are dissimilar to reference areas, which is not surprising given that dredged material disposal has occurred at these sites since the late 1970s. A Sediment Profile Image (SPI) survey done by SAIC in 1999 showed the presence of pioneering and higher order successional stage infaunal communities near the interim LA-3 disposal site (indicative of typical ambient conditions), while communities at the center of the interim disposal site (affected by dredged material disposal) appeared to be at early successional stages (SAIC, MEC, and CRG 2001 in Chambers 2001). The infauna community at the LA-3 site in 2000 exhibited increased species richness, density, and diversity with an increased percentage of mollusks, echinoderms, and lesser taxa (e.g., phoronids) and a decreased percentage of polychaete worms compared to surrounding areas (Chambers 2001). At the LA-2 site in 2000, infauna exhibited decreased species richness and density with a decreased percentage of polychaetes and crustaceans and an increased percentage of mollusks and lesser taxa compared to surrounding areas. Site monitoring results have shown elevated abundances of stress-tolerant species at the LA-2 site compared to surrounding areas (USEPA 1997). Continued disposal at the LA-3 site and an increased annual disposal volume at the LA-2 site are expected to result in temporary, localized impacts to benthic organisms without

significant impact to the benthic infauna community in adjacent areas outside of LA-3 and LA-2 due to the localized nature of the impact and rapid recolonization of dredged materials (see DEIS pages 4-26 through 4-28).

*Surveys in 2000 and 2001 showed that epifauna in the vicinity of the LA-3 site were similar to those at reference areas. The epifauna at the interim LA-3 and surrounding disposal areas was dominated by relatively slow-moving species including the urchins *Brissopsis pacifica*, *Spatangus californicus*, *Allocentrotus fragilis*, and *Brissaster latifrons*, and the sea star *Zoraster evermanni*. Similarly, the epifauna at LA-2 and surrounding areas was dominated by *Allocentrotus fragilis*, *Brissopsis pacifica*, *Spatangus californicus*, and *Brissaster latifrons*. Abundances of epifauna within the disposal sites were variable, sometimes lower or higher compared with reference sites depending on survey (see DEIS pages 3-59 to 3-61). Continued disposal at the LA-3 site and an increased annual disposal volume at the LA-2 site may result in reductions in the number of species and abundance of epifauna within disposal site boundaries. These effects are considered insignificant because they are localized to the area affected by disposal operations and not expected to be seen in adjacent areas outside of LA-3 and LA-2. In addition, contaminant concentrations in sea cucumbers collected from both sites were below levels likely to pose human health hazards (see DEIS pages 4-28 to 4-29).*

Previous monitoring has indicated a similar demersal fish community at and in the vicinity of the LA-2 and LA-3 disposal sites as at reference sites, although the number of species and abundances may be depressed within the disposal sites. Slightly fewer species and individuals were collected within the LA-3 site than at surrounding areas in 2000-2001. Lower species richness and abundance within LA-3 also was recorded during surveys in 1988-1989 (MITECH 1990). At the LA-2 site, species richness in 2000-2001 was similar to that of a reference area, although fewer individuals were collected within the site than at surrounding areas. Previous surveys in 1983-1984 recorded lower species richness and abundance within the LA-2 site boundaries compared with reference areas. Some of the differences in demersal fish assemblages may be related to availability of prey items or differences in seafloor habitat associated with dredged material disposal (see DEIS pages 3-69 to 3-71). Similar to epifauna, continued disposal at the LA-3 site and an increased annual disposal volume at the LA-2 site may result in localized reductions in the number of demersal fish species and abundance within site boundaries. These effects are considered insignificant because they are localized to the area affected by disposal operations and not expected to be seen outside of LA-3 and LA-2. In addition, there is no evidence of contaminant bioaccumulation in fishes in the vicinity of either site (see DEIS pages 4-29 and 4-30).

EPA concludes in its consistency determination that:

Designation of the LA-3 site and increased annual usage of the LA-2 site may result in localized, short-term adverse, but not significant impacts on other segments of the biological community, such as plankton, marine birds, marine mammals, and essential fish habitat (see DEIS pages 4-25, 4-30 to 4-31). No significant impacts to recreational or commercial

fisheries are expected from continued use of these sites. The majority of the landings (both by weight and dollar value) in the vicinity of the LA-2 and LA-3 sites are coastal pelagic species including Pacific sardine, northern anchovy, Pacific mackerel, and jack mackerel, which because of their mobility can likely avoid disposal plumes. California spiny lobster are usually fished in waters shallower than about 300 feet (91 meters) and are, therefore, not likely to be affected by ocean disposal at either site. Analysis of commercial catch data from 1970 through 1995 determined there were no detectable effects from dredged material disposal at LA-2 or LA-3 on commercial catch statistics (see DEIS pages 4-31 and 4-32).

The Commission has concurred with consistency determinations and certifications for dredged material disposal at LA-3 and LA-2 for approximately 25 years. EPA has determined in the DEIS for the proposed site designation for LA-3 that these activities have not significantly affected marine resources and commercial or recreational fisheries in adjacent ocean waters. The Commission notes that the *LA-2/LA-3 Ocean Dredged Material Disposal Site Management and Monitoring Plan* is a required element of the proposed site designation of LA-3 and the increased use of LA-2. As described earlier in this report, the *Site Management and Monitoring Plan* includes provisions for site monitoring and management actions to protect marine and fishery resources, including revisions to the *Plan* if necessary:

Because this SMMP has been developed after almost 3 decades of dredged material disposal at these two sites with no unreasonable or significant impacts to the marine environment, we feel reasonably confident that the important site management and monitoring requirements are known and covered in this document. However, there is always the possibility for unanticipated problems or events, in which case modifications to the management or monitoring plan will be decided jointly with EPA Region IX and USACE Los Angeles District personnel . . . Absent any unforeseen or unanticipated problems with the management or monitoring of dredged material disposal at either LA-2 or LA-3 ODMDS, this plan will be reviewed (and revised if necessary) at 10-year intervals.

In conclusion, the Commission finds that the proposed LA-3 site designation and increased use of LA-2 will not create significant adverse effects on recreational and commercial fisheries in the waters off Los Angeles and Orange counties. The Commission also finds that EPA's management and monitoring plan, in combination with the Commission's authority to review all future disposal actions at LA-3 and LA-2 for consistency with the CCMP, will serve to ensure continued protection of those fishery resources. Therefore, the Commission finds that the proposed designation by EPA is consistent with the recreational and commercial fishery policies (Sections 30220, 20230, 30233, 30234, 30234.5, and 30705) of the Coastal Act.

D. Water Quality and Sand Supply. Section 30230 provides that:

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

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

Section 30231 provides, in part, that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 provides that:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233(b) of the Coastal Act provides, in part, that:

Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

Section 30412 provides, in part, that:

The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate the provisions of this section. Neither the commission nor any regional commission shall, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, regional commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out the provisions of this division.

Section 307(f) of the Coastal Zone Management Act incorporates into the CCMP the requirements of the Federal Water Pollution Control Act and requirements of federal and state agencies developed pursuant to that Act. Section 307(f) of the Coastal Zone Management Act provides that:

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended [33 U.S.C.A. Section 1251 et seq.] ... or (2) established by the Federal Government or by any state or local government pursuant to [the Act] Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control ... requirement applicable to such program.

Significant impacts to marine organisms can occur from the disposal of contaminated dredged material. Sediments proposed for future disposal at LA-3 and LA-2 could be contaminated with heavy metals, pesticides, PCBs, and petroleum based products. Organisms in the water column and on the ocean floor may absorb some of these contaminants, which can then accumulate in the tissues of these organisms and in other higher level predators. Another potential impact from disposal of dredge material at LA-3 and LA-2 is the loss of sand resources which nourish area beaches. Disposal of sand at these two sites would remove that material from the littoral system and could adversely affect coastal resources by increasing erosion and reducing the size of public beaches.

The Commission previously evaluated water quality and sand supply issues in its review of EPA's consistency determinations for the final designation of LA-2 (CD-63-90 and CD-114-96). In those reviews, the Commission found that although potential water quality and sand supply impacts could be significant, they were issues that EPA, the Corps, and the Commission would evaluate on a case-by-case basis, since all of these agencies have regulatory review over disposal activity at LA-2. The Commission found in both consistency determinations that it would resolve any sand supply or water quality conflicts through individual review of dredged material disposal activities, and it has done so in subsequent years. The conclusions that the Commission reached in CD-63-90 and CD-114-96 are still valid and the Commission incorporates those findings by reference into this report.

The subject consistency determination addresses the potential effects on water quality and regional sand supply from the proposed final designation of LA-3 and the increased use of LA-2:

Dredged material proposed for disposal at any EPA-designated disposal site will be evaluated to determine compliance with EPA's Ocean Dumping Regulations at 40 CFR Parts 220, 225, 227 and 228. The composition and characteristics of the proposed dredged material must be completely documented or the sediment is prohibited from ocean disposal (40 CFR §227.5). The sediment proposed for disposal must be adequately sampled and evaluated in comparison to a reference site that has characteristics similar to the LA-2 and LA-3 sites, as appropriate, to evaluate for suitability for ocean disposal. Specifically, EPA

Region IX and the Corps, Los Angeles District will evaluate sediment physical and chemical tests, bioassay tests, and bioaccumulation tests to determine whether the proposed dredged material complies with EPA's permit criteria at 40 CFR Part 227 and is suitable for ocean disposal at LA-2 and LA-3 sites.

Regulation of actual dredging and disposal activities, including spillage, is part of the Corps MPRSA §103 permit process. When MPRSA §103 permits are prepared by the Corps, Los Angeles District, agencies such as the California Coastal Commission and the California Regional Water Quality Control Board will have the opportunity to review and comment on them.

...

Granting of dredged material disposal permits under MPRSA §103 is beyond the scope of the final designation of the LA-3 disposal site. Designation of an ocean dredged material disposal site is a completely separate process from the permit evaluation process. Final designation of the LA-3 site does not mean that all material proposed for disposal at that site will be authorized. EPA Region IX and the Corps, Los Angeles District have selected the LA-3 site as an acceptable site for disposal of proposed dredged materials that comply with EPA's Ocean Dumping Regulations. This is also the case for the LA-2 site, which received its final designation as a permanent disposal site in 1991.

Before sediments from any dredging site can be disposed at the LA-2 and/or LA-3 sites, the project applicant must obtain a permit from the Corps under MPRSA §103. Corps Public Works projects are also subject to MPRSA §103, but a permit is not issued for Corps activities. The permit applicant should consult with EPA Region IX and the Corps, Los Angeles District on a sampling plan for the proposed dredging site. EPA Region IX and other concerned regulatory and resource agencies, including the California Coastal Commission, will review the final test report when it is submitted with the Corps' Public Notice.

When the Public Notice is published for review, the applicant must show that ocean disposal is the preferred alternative for disposal of sediments proposed for dredging. As required in 40 CFR. §225.2(c) of the EPA Ocean Dumping Regulations, EPA Region IX will make an independent evaluation to determine whether the proposed dredged material is suitable for ocean disposal. EPA Region IX will also review the draft Corps MPRSA §103 permit to determine whether any special conditions should be proposed for the permit.

...

Final designation of the LA-3 site is planned to avoid significant disruption to marine and wildlife habitats. Comments on Section 30230 discuss anticipated effects on biological communities at the disposal site. Disposal of dredged material in water depths of 460 to 510 meters (1,500 to 1,675 feet) will not have a significant effect on water circulation at a distance of 6.5 kilometers (3.5 nautical miles) from the nearest point of land. Computer

modeling has shown that the majority of the dredged material is expected to settle within the site boundaries, including thicknesses that may be associated with potential adverse physical impacts on benthic organisms. Similarly, an increased annual disposal volume at the LA-2 site with disposal of dredged material in water depths of 360 to 1,115 feet (110 to 340 meters) will not have a significant effect on water circulation at a distance of more than 4.6 nautical miles (8.5 kilometers) from the nearest point of land.

EPA Region IX and the Corps, Los Angeles District will encourage the beneficial use of dredged material, whenever possible, as an alternative to ocean disposal. EPA Region IX and the Corps, Los Angeles District consider clean sand as a natural resource that should be used to replenish beaches or other acceptable beneficial uses where possible. As previously noted, designation of the LA-3 site and an increased annual disposal volume at the LA-2 site does not mean that all proposed dredged material will be disposed at these sites. Applicants for each proposed dredging and disposal project must evaluate possible alternatives, including beach nourishment.

Dredged material that is discharged in the territorial sea for beach nourishment is permitted under § 404 of the CWA [40 C.F.R. 230.2(b)]. In this case, the District Engineer would determine that the discharge of dredged material into the territorial seas would be for the primary purpose of fill, such as beach nourishment. Under these circumstances, the discharge will be evaluated under §404 of the CWA [33 CFR. §336.0(b)]; otherwise, dredged material disposal in the territorial seas is regulated by MPRSA §103.

The DEIS for the LA-3 designation compares the interim and permanent LA-3 disposal sites and explains why the proposed permanent site is preferable due to oceanographic conditions and marine resources monitoring feasibility:

LA-3 is positioned on the continental slope within Newport Canyon. At the site, the seafloor slopes from the northwest to the southeast from water depths of 410 to 480 m (1,345 to 1,575 ft). During the 1998 U.S. Geological Survey review, a substantial amount of dredged material outside the interim site boundaries was noted, both to the north and to the northeast and southeast of the site. This may be attributed to disposal short of the targeted disposal site, errors in disposal generally resulting from inaccurate navigation, and/or dispersion of disposed material. Approximately 786,000 yd³ (601,000 m³) of sediment dredged from the Upper Newport Bay was recently disposed in the southeast quadrant of the interim site boundary. In addition, the interim location may preclude the effective use of bathymetry or other acoustic techniques during site monitoring due to the presence of complex submarine canyon features located within the site boundary.

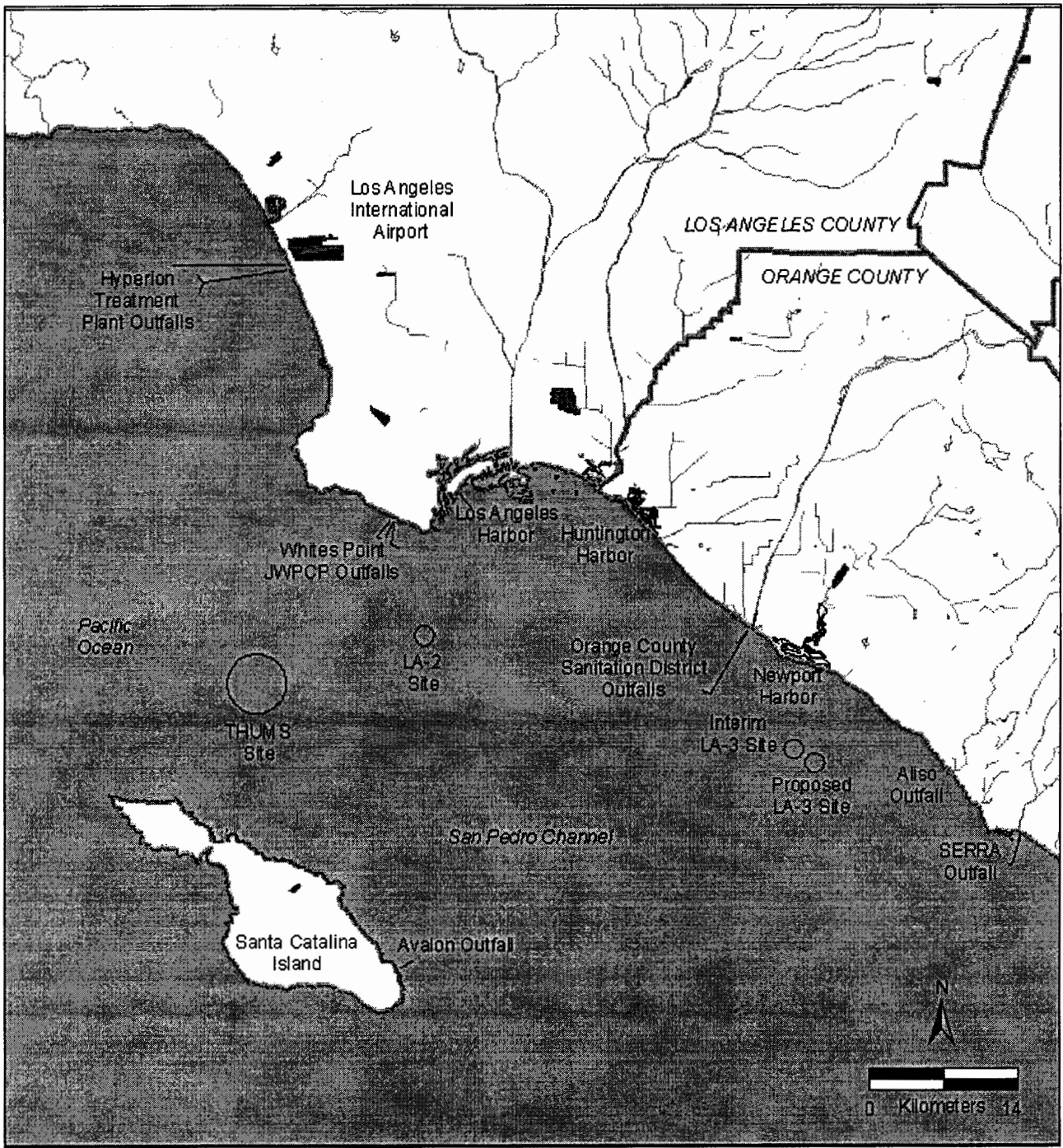
Consequently, the proposed permanent site boundary would be centered at about 2.4 km (1.3 nmi) [1.5 miles] southeast of the interim site center with a boundary radius of 915 m (3,000 ft) that reflects the results of the modeling runs that predicted the size of the anticipated dredged material footprint (Figure 2.1-2). The center of the proposed LA-3 site is at 33°31'00" N and 117°53'30" W, approximately 8.5 km (4.5 nmi) [5.2 miles] southwest of the entrance channel to Newport Harbor (Figure 2.1-1). As discussed in Chapter 3 of this

EIS, based on the results of the modeling runs, the boundary of the proposed site would remain at a radius of 915 m (3,000 ft). By doing so, the permanent site would not only encompass the region that is already disturbed by dredged material, but also would be located on a flat, depositional plain that will be more amenable to monitoring via precision bathymetry. Designating the center of the permanent LA-3 site to the southeast of the interim site within the LA-3 study area as indicated would not significantly change the transportation distance from the Newport area. Locating the permanent site boundaries at this location would not be anticipated to change the environmental impacts associated with the interim LA-3 site and would redirect the disposal of material to an area historically used for disposal. Focusing the permanent disposal area away from the submarine canyon that exists at the interim site would simplify monitoring of the disposal activities.

The Commission notes that EPA's *DEIS* for the proposed designation of LA-3 and increased use of LA-2 established that dredged material disposal at these two sites since the late 1970s has created no significant impacts to the marine environment, including water quality and sand supply. In addition, Commission findings in support of disposal projects at those sites over that same time period reached the same conclusion. The Commission's statutory authority to review future disposal projects at LA-3 and LA-2 ensures that any potential water quality or sand supply impacts associated with future projects will be fully evaluated for their consistency with the water quality and sand supply policies of the California Coastal Management Program. Therefore, the Commission finds that the proposed final designation of LA-3 as an ocean dredged material disposal site, and the proposed increased use of the previously-designated LA-2 disposal site, are consistent with the water quality and sand supply policies (Sections 30230-30233 and 30412) of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS:

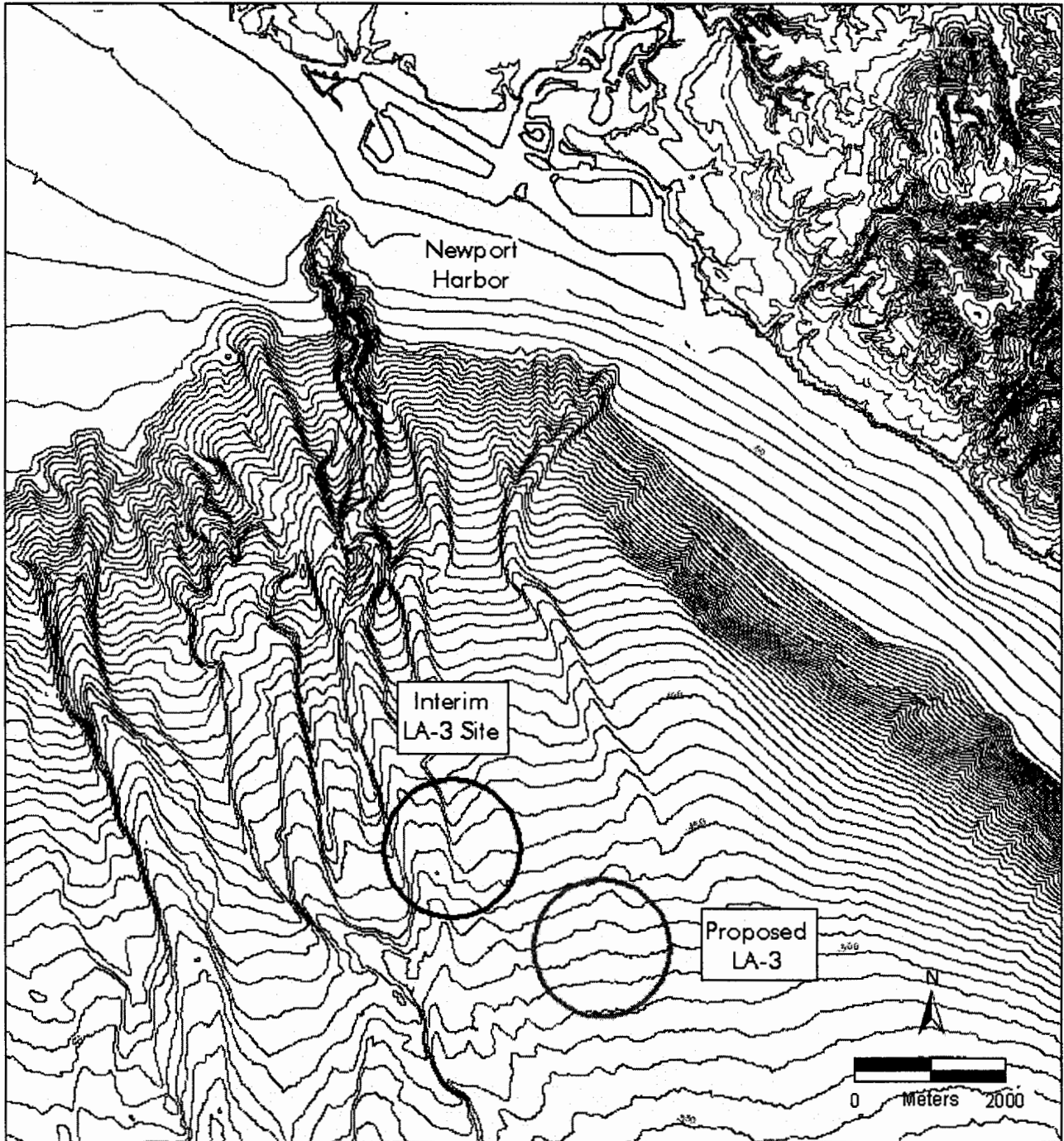
1. Draft Environmental Impact Statement for LA-3 Ocean Dredged Material Disposal Site Designation, U.S. EPA and U.S. Army Corps of Engineers, December 2004.
2. Consistency Determination CD-114-96, EPA redesignation of LA-2 ocean disposal site.
3. Consistency Determination CD-063-90, EPA designation of LA-2 ocean disposal site.



Regional Location

EXHIBIT NO. 1
APPLICATION NO.
CD-065-05





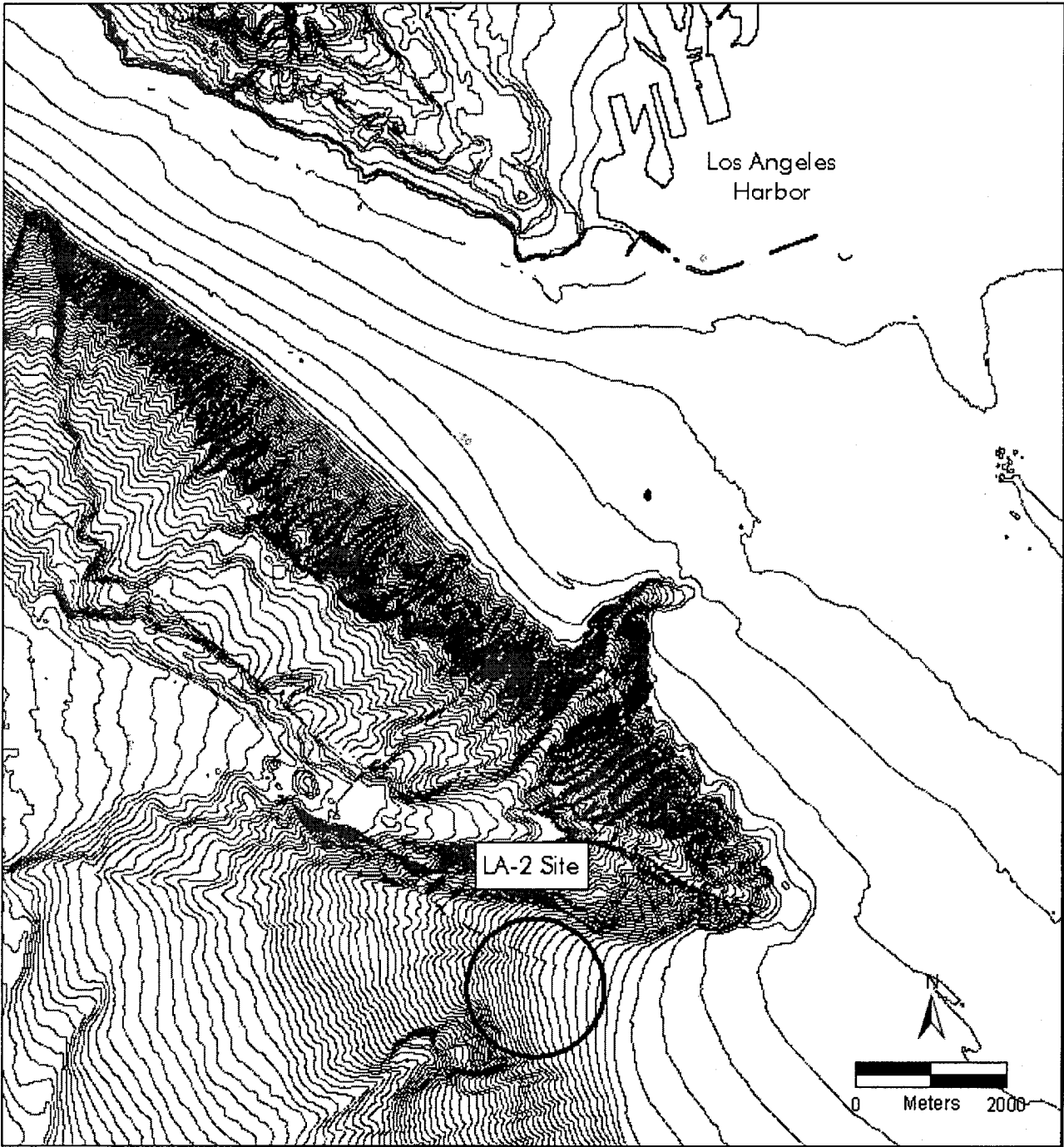
LA-3 Bathymetry



EXHIBIT NO. 2

APPLICATION NO.

CD-065-05

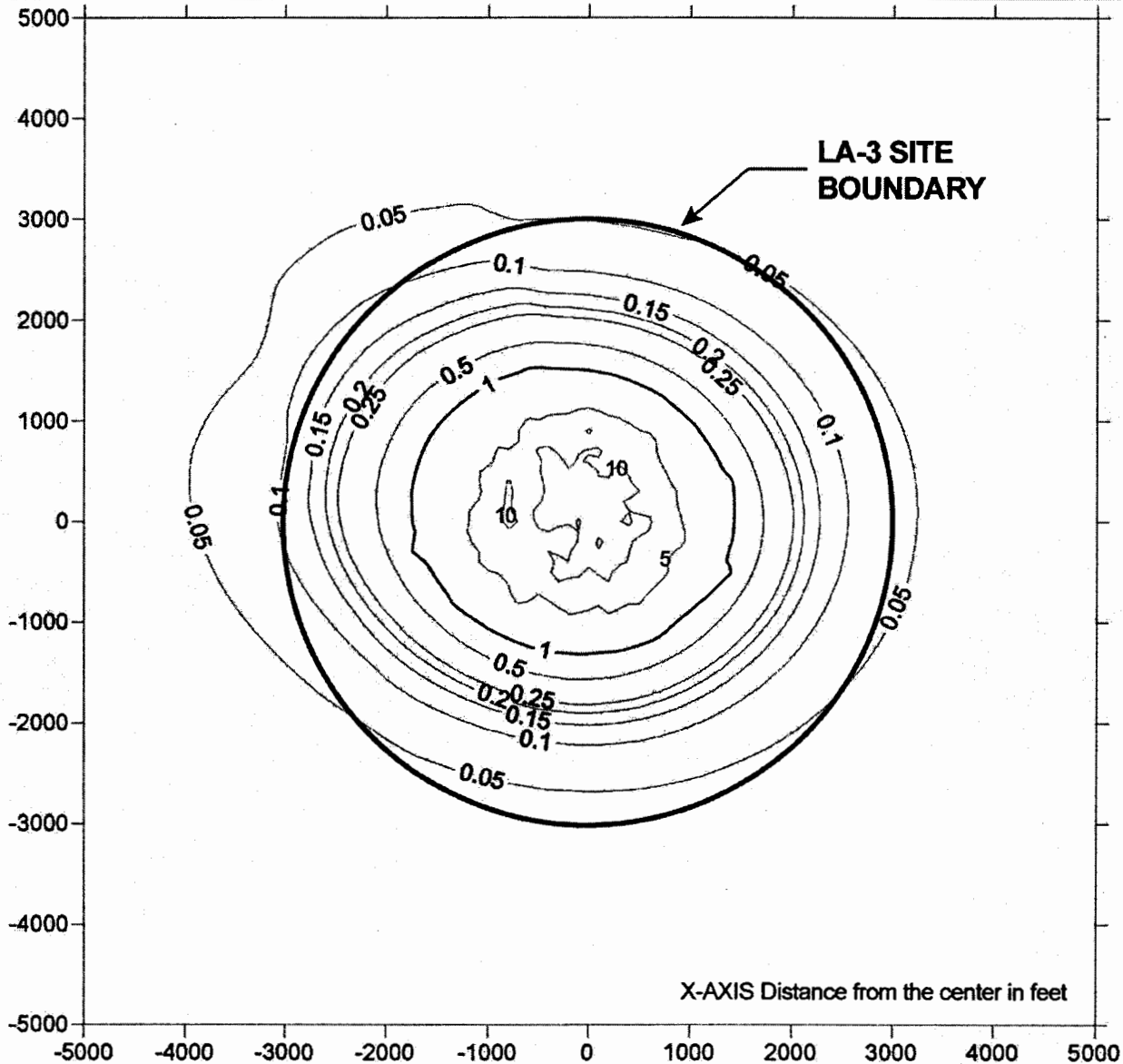


LA-2 Bathymetry



EXHIBIT NO.	3
APPLICATION NO.	
	CD-065-05

Y-AXIS
Distance from
the center in feet



NOTE: Contours in feet

X-AXIS Distance from the center in feet

**Modeled Footprint of Sediment Accumulation at LA-3
for an Annual Disposal Volume of 2,500,000 yd³**

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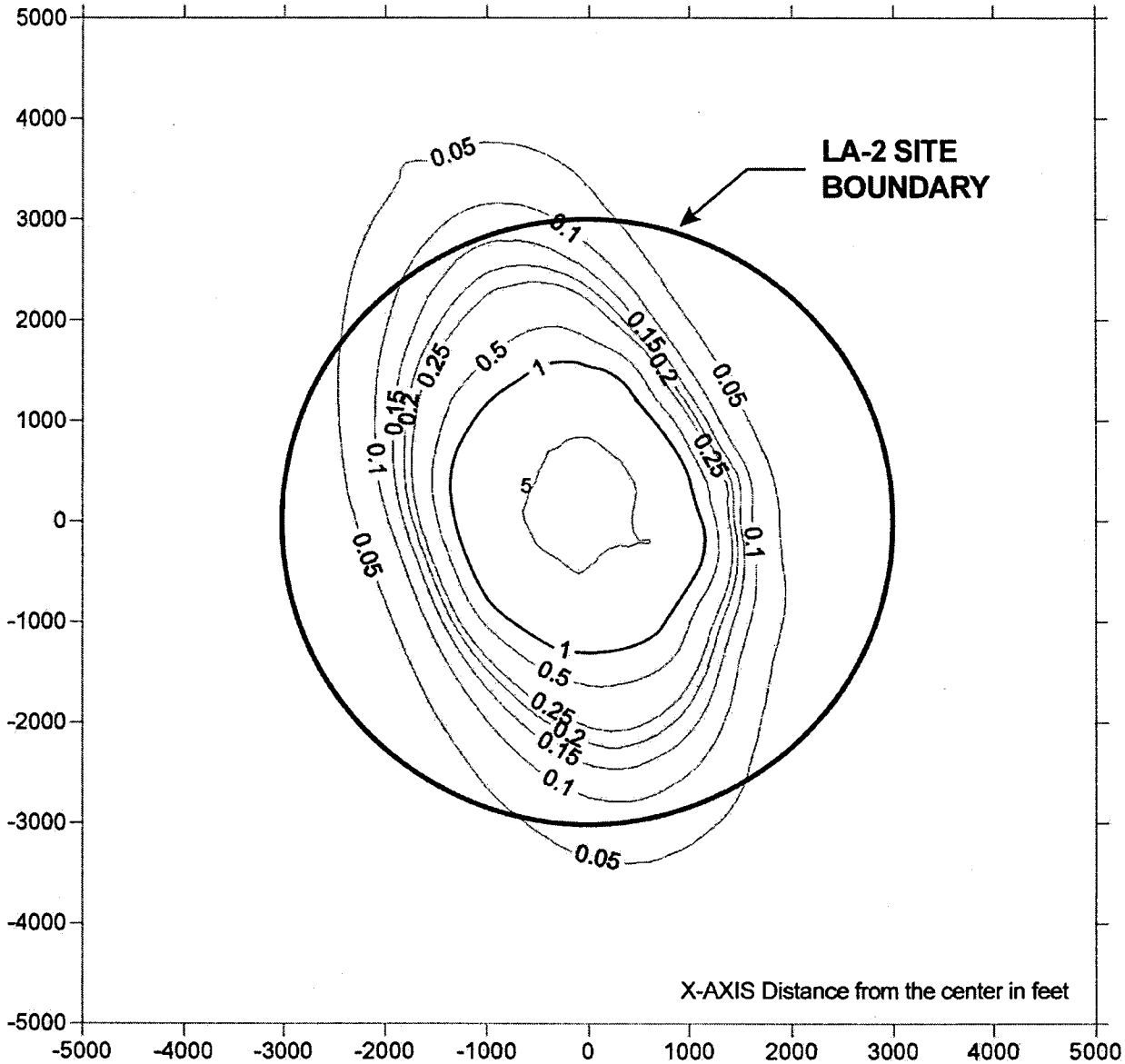
12/16/04



Figure 4.2-1

EXHIBIT NO. 4
APPLICATION NO. CD-065-05

Y-AXIS
Distance from
the center in feet



NOTE: Contours in feet

Modeled Footprint of Sediment Accumulation at LA-2
for an Annual Disposal Volume of 1,000,000 yd³

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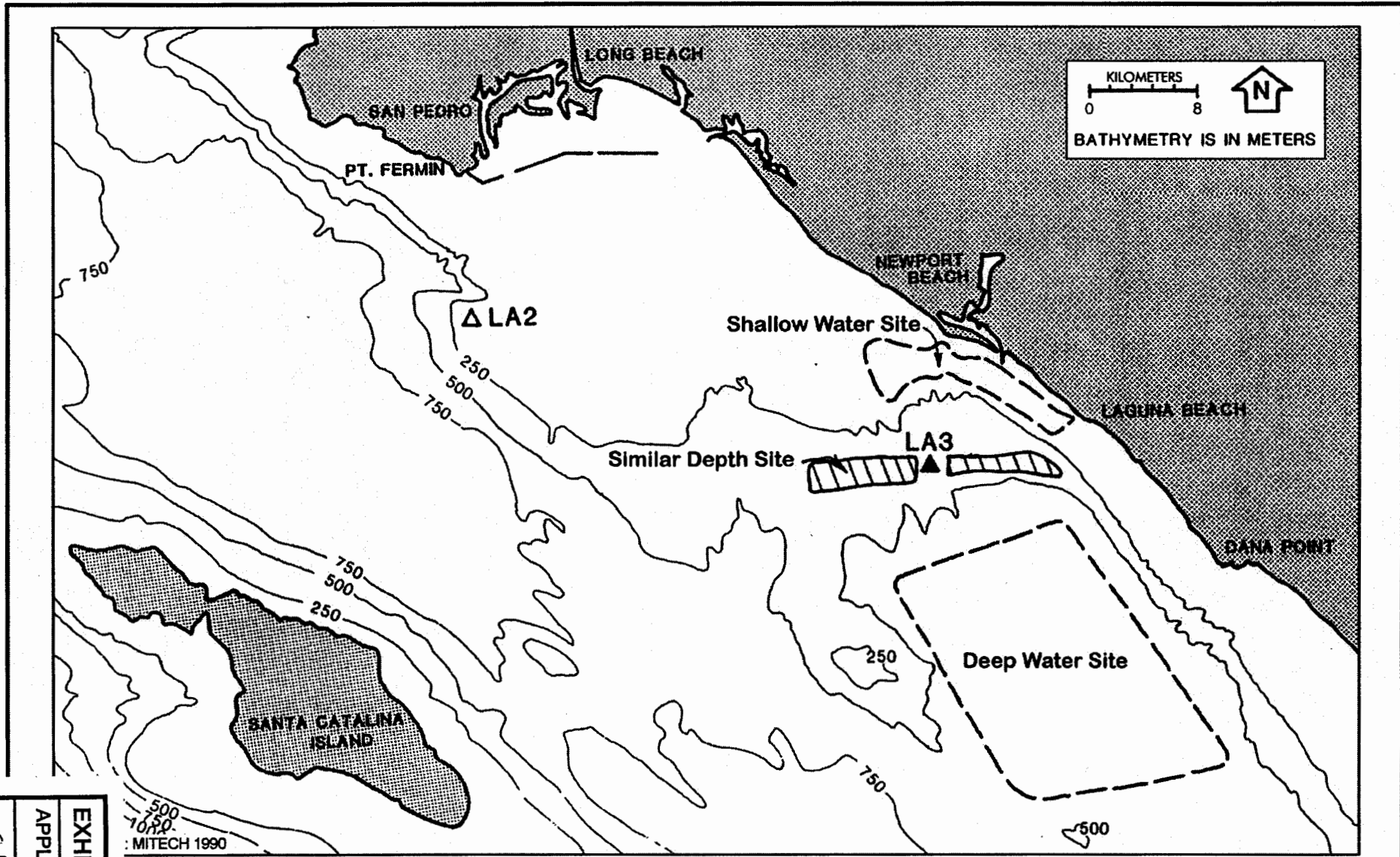


Figure 4.2-2

EXHIBIT NO. S

APPLICATION NO.

CD-065-05



Locations of LA-3 and LA-2 and Other Alternative Sites



EXHIBIT NO.	6
APPLICATION NO.	CD-065-05