

CALIFORNIA COASTAL COMMISSION

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Commission Action:



STAFF REPORT AND RECOMMENDATION ON COMBINED COASTAL DEVELOPMENT PERMIT APPLICATION AND CONSISTENCY CERTIFICATION

APPLICATION NO.: 5-06-458

**FEDERAL
CONSISTENCY NO.:** CC-071-07

APPLICANT: County of Orange; Attn: Vincent Gin

PROJECT LOCATION: Dredging and Beach Placement: Dana Point Harbor and Capistrano Beach, City of Dana Point (County of Orange)

Offshore Disposal: EPA approved disposal site known as LA-3 located approximately 14-miles from the entrance of Dana Point Harbor.

PROJECT DESCRIPTION: Coastal Development Permit No. 5-06-458: Dredging of 113,900 cubic yards of material in Dana Point Harbor. 9,500 cubic yards of the dredged material will be placed on Baby Beach located in Dana Point Harbor. 48,400 cubic yards of dredged material will be placed on Capistrano Beach. In addition, the project may consist of the temporary placement of a dredge disposal pipeline from Dana Point Harbor to Capistrano Beach.

Consistency Certification No. CC-071-07: Off-shore disposal (LA-3) of up to 56,000 cubic yards of dredge material.

SUMMARY OF STAFF RECOMMENDATION:

Coastal Development Permit Application: Commission staff is recommending **APPROVAL** of the proposed project subject to **NINE (9) SPECIAL CONDITIONS** requiring: **1)** placement of sediment material on Baby Beach and Capistrano Beach shall be done by placing the material directly on the beach; **2)** timing construction to avoid adverse impacts upon California grunion; **3)** staging area; **4)** turbidity control; **5)** construction responsibilities; **6)** pre-construction *Caulerpa Taxifolia* survey; **7)** Regional Water Quality Control Board (RWQCB) 401 Permit approval; **8)** post completion report; and **9)** the applicant to re-open beach areas closed during sand placement as quickly as possible following completion of the work. The primary issues associated with this development are recreation, water quality and protection of sensitive biological resources.

Consistency Certification: The project includes a consistency certification for the disposal of 56,000 cubic yards of dredge material at LA-3, an EPA designated ocean disposal site located approximately 14-miles from the entrance of Dana Point Harbor. This consistency certification is needed to authorize the disposal of the dredged material beyond the three mile limit of state waters.

The Commission has previously authorized other dredge disposal projects at this location. The proposed project is the least environmentally damaging alternative and will not have significant impacts to marine resources. The dredge materials proposed for off-shore disposal are not suitable for beach replenishment because they consist of fine sediment. The proposed project will result in temporary impacts to sensitive habitat and species. The dredge material is considered suitable for ocean disposal and will not impact water quality or marine resources in or around LA-3 or in the coastal zone. The USACE, EPA and RWQCB have confirmed the materials are suitable for disposal at LA-3. Therefore, the project is consistent with the dredging, water quality, marine resources and sand supply policies of the Coastal Act (Sections 30230, 30231 and 30233). The project will have no negative effects on commercial or recreational boating or fishing in the area. The dredging and placement of material at LA-3 will aid in helping to continue to protect and provide commercial fishing and recreational boating industries in Dana Point Harbor by improving navigation within the bay. Therefore, the project is consistent with the recreational and boating policies of the Coastal Act (Sections 30234, 30234.5, 30220 and 30224).

The proposed development is taking place in the City of Dana Point, which has a certified Local Coastal Program (LCP). However, the dredging, which is located in the water of the harbor, and placement of dredged material is taking place on the beach at Baby Beach and Capistrano Beach, all of which is occurring partially or wholly within the Commission's area of original jurisdiction. Section 30601.5 of the Coastal Act allows the Commission to take action on development proposals where there is both local and Commission jurisdiction. Pursuant to Section 30601.5, The Commission and City have agreed that the Commission can take action on the entire Coastal Development Permit, including those areas within the City's jurisdiction. Therefore, the Commission's action will authorize the entire project, which must be evaluated for consistency with the Chapter 3 policies of the Coastal Act.

STAFF NOTE:

A coastal development permit is required for the project pursuant to Section 13252(a) (2) because it involves more than one hundred thousand (100,000) cubic yards of dredging within a twelve month period, as well as other development that is not exempt. A consistency certification is required for disposal of dredge materials at the LA-3 site because it is a federally permitted activity located outside the coastal zone that has effects on the coastal zone.

To facilitate Commission review of these items, both the coastal development permit application and the consistency certification will be heard at the same time. Commission staff recommends approval of the coastal development permit application and concurrence with the consistency certification.

LOCAL & OTHER AGENCY APPROVALS RECEIVED: California Environmental Quality Act (CEQA) Categorical Exemption (IPO6-346) prepared by the County of Orange dated November 27, 2006; State Lands Commission Dredging Lease dated February 27, 2007 between the State lands Commission and the County of Orange; Regional Water Quality Control Board (RWQCB) Section 401 Water Quality Certification (pending); U.S. Army Corps of Engineers File No. 200601052-DPS

(pending CCC permit); an e-mail from Daniel Swenson of the United States Army Corps of Engineers (USACE) to Allan Ota of the United States Environmental Protection Agency (EPA) dated May 8, 2007 giving preliminary concurrence with disposal of dredged material from Dana Point Harbor; an e-mail from Allan Ota of the EPA (EPA) to Daniel Swenson of the USACE dated May 8, 2007 giving preliminary concurrence with disposal of dredged material from Dana Point Harbor; and an e-mail from Mariah Mills of the RWQCB to Moffatt and Nichol dated June 1, 2007 giving preliminary concurrence with disposal of dredged material from Dana Point Harbor.

SUBSTANTIVE FILE DOCUMENTS: City of Dana Point Certified Local Coastal Program (LCP); Coastal Development Permit No. 5-97-232/Consistency Certification No. CC-138-97; *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated March 2006; *Sampling and Analysis Plan, Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. dated July 2006; Letter to Commission staff from the County of Orange dated November 20, 2006; Letter to Moffatt & Nichol from Commission staff dated December 29, 2006; *Biological Impacts of Temporary Placement of Dredge Disposal Pipeline from Dana Point Harbor to Capistrano Beach* prepared by the Chambers Group dated January 18, 2007; Letter to Commission staff from the City of Dana Point dated February 5, 2007; Letter from Commission staff to Moffatt and Nichol dated December 29, 2006; ; *Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. dated March 2007; Letter from Moffatt and Nichol to Commission staff dated March 15, 2007; Letter from Commission staff to Moffatt and Nichol dated April 13, 2007; Letter from Moffatt and Nichol to Commission staff dated June 4, 2007; Letter to the County of Orange from the United States Army Corps of Engineers (USACE) dated April 5, 2007; and Letter from Moffatt and Nichol to Commission staff dated October 18, 2007.

LIST OF EXHIBITS

1. Vicinity Map
2. Dana Point Harbor Map/Dredge Plan
3. LA-3 Ocean Disposal Site Location
4. Capistrano Beach Fill Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF COASTAL DEVELOPMENT PERMIT

MOTION *I move that the Commission approve Coastal Development Permit No. 5-06-458 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF CONCURRENCE WITH CONSISTENCY CERTIFICATION

MOTION *I move that the Commission concur with consistency certification CC-071-07 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in the certification 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 IN CONSISTENCY CERTIFICATION:

The Commission hereby concurs in the consistency certification by the County of Orange in CC-071-07, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

III. STANDARD CONDITIONS (COASTAL DEVELOPMENT PERMIT)

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

IV. SPECIAL CONDITIONS (Coastal Development Permit)

1. PLACEMENT OF SEDIMENT ON BABY BEACH AND CAPISTRANO BEACH

Placement of dredged sand on Baby Beach and Capistrano Beach shall be done by placing the material directly on the beach, along with proposed biological monitoring and impact avoidance measures described to address California grunion and western snowy plover, as described in the following documents: *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated March 2006; and *Biological Impacts of Temporary Placement of Dredge Disposal Pipeline from Dana Point Harbor to Capistrano Beach* prepared by the chambers Group dated January 18, 2007. Nearshore placement of sand shall not occur unless approved by the Commission through an amendment to this coastal development permit.

2. CONSTRUCTION TIMING (BIOLOGICAL RESOURCES)

To avoid adverse impacts on California grunion, neither pipe placement or nourishment at Capistrano Beach shall occur within suitable grunion habitat between February 15th to September 15th without a written statement from the Executive Director authorizing said development on specified dates. To obtain such a written statement, the permittee must submit a declaration from the California Department of Fish and Game stating that implementing the development described in this condition on the specific dates proposed will not cause adverse impacts to any California grunion or their eggs. The declaration must contain an assessment of the spawning of the California grunion found in the area and a statement that the development activity on the specific dates proposed and in the specified locations will not interfere with the spawning of the California grunion.

3. CONSTRUCTION STAGING AREA PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit two (2) copies of a construction staging area plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to beach areas or to sensitive habitat areas.

- (1) The plan shall demonstrate that:
 - (a) Construction equipment or activity shall not occur outside the staging area;
 - (b) Public parking areas shall not be used for staging or storage of equipment;
 - (c) Sandy beach or habitat (vegetated) areas shall not be used as staging areas; and

- (d) The staging area for construction of the project shall not obstruct vertical or lateral access to the beach, marina or other recreational facilities
- (2) The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - 1. limits of the staging area(s);
 - 2. construction corridor(s);
 - 3. construction site;
 - 4. location of construction fencing.
 - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. TURBIDITY CONTROL

As required by the Regional Water Quality Control Board (RWQCB), the applicant shall ensure that the project does not result in:

- A. Increases of water turbidity by more than twenty percent (20%) of the natural turbidity during non-storm conditions, nor
- B. Dissolved oxygen in the receiving waters being depressed below 5.0 mg/l.

5. CONSTRUCTION RESPONSIBILITIES

Dredging activities authorized under this CDP shall comply with the following construction-related requirements:

- A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow;
- B. If turbid conditions are generated during the dredging or beach nourishment, a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable;
- C. The discharge of any hazardous materials into the harbor or any receiving waters shall be prohibited;
- D. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;

- E. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

6. **REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) 401 PERMIT**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of the 401 permit issued by the Regional Water Quality Control Board (RWQCB) regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

7. **PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY**

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project area and all *C. taxifolia* discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **POST COMPLETION REPORT**

The Permittee shall submit a post-dredging completion report to the Executive Director of the Commission within 30 calendar days after completion of the dredging project to document compliance with all general and special conditions imposed by this permit. The report shall include all information collected by the Permittee, the biological monitor, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:

- A. Permit and project number.
- B. Start date and completion date of dredging and disposal operations.
- C. Total cubic yards disposed at the authorized disposal site(s).
- D. Mode of dredging.
- E. Mode of transportation.
- F. Form of dredged material.
- G. Frequency of disposal and plots of all trips to the authorized disposal site(s).
- H. Tug boat or other disposal vessel logs documenting contact with the USCG before each trip to the authorized ocean disposal site.
- I. A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
- J. Pre-dredging hydrographic survey.
- K. A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredged depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the predredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the predredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate.

9. BEACH CLOSURES

Beach area closures shall be minimized and limited to areas immediately adjacent to the project area (within 200-feet of the pipeline and deposition area). Beach areas closed for sand placement shall be re-opened for public use as soon as feasible upon completion of sand placement. All

beach areas and recreation facilities outside of the 200-foot radius shall remain open and available for public use during the normal operating hours.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. BACKGROUND, PROJECT LOCATION AND DESCRIPTION

1. Background and Project Location

Historically, the County of Orange has carried out maintenance dredging in navigational channels and areas under docks within Dana Point Harbor that have become shoaled due to sediment build up. The previous dredging cycle occurred in 1999/2000 (Coastal Development Permit No. 5-97-232/Consistency Certification No. CC-138-97), and approximately 50,500 cubic yards of sandy sediment were dredged. Of this volume, it is estimated that 32,500 cubic yards of clean sand were placed on or nearshore to Capistrano Beach adjacent to the harbor, 3,000 cubic yards of clean sand were placed on the interior swim beach (Baby Beach), and the remaining 15,000 cubic yards of fine silty and clayey material were deposited at LA-3, the EPA approved offshore disposal site.

The construction of Dana Point Harbor began in the late 1960's and the harbor was officially dedicated on July 31, 1971. The harbor is located in Capistrano Bay on the southern Orange County coastline, which is approximately half way between Los Angeles and San Diego (Exhibits #1-2). Dana Point Harbor is a County Park located within the City of Dana Point, and serves recreational boaters and County residents alike with numerous recreational and leisure activities, and is a vital commercial and community center.

Facilities within the harbor immediately adjacent to the water include the East and West marinas containing approximately 2,500 slips, a fuel dock, bait barge, boat launch ramps, commercial fishing docks, a boatyard, guest docks, boat rental docks, yacht clubs, the youth and group facility, an interior swim beach known as "Baby Beach," a fishing pier, and the Ocean Institute docks for tall ships and research vessels.

The proposed project includes areas of the harbor that are tidelands that were granted to the County of Orange by the California State Lands Commission. The County of Orange is the applicant. The proposal does not include submerged lands that are privately owned. The project area is located within State tidelands which were granted to the County of Orange (Statutes of 1919, chapter 526, page 1138). The tidelands grant to the County does not authorize the County to dredge within the grant area without prior approval from the California State Lands Commission (CSLC). Approval may be granted through a tidelands lease from CSLC. The applicant has applied and obtained such a lease.

2. Project Description

The operators of the Dana Point Harbor and the Dana Point Harbor Patrol Office have reported navigational hazard conditions due to shoaling that has occurred in the vicinity of storm drain outfalls and along the West and East Breakwaters. Thus, the County of Orange proposes to carry out maintenance dredging to remove these shoaled areas and other areas that have silted in. In addition, the County wants to remove fine-grained

material contaminated with coliform bacteria from the inter-tidal shore face at Baby Beach located within the harbor. The County also wants to reuse any suitable clean dredged material for beach nourishment purposes and then dispose of any material not suitable for nourishment purposes at LA-3. Therefore, the scope of the project consists of maintenance dredging of the navigational channels, anchorages, turning basins and areas under docks affected by sediment build up, disposal of dredged material, and reuse of suitable clean material to enhance the sediment quality of the interior harbor beach (Baby Beach) and nourishment of the County park portion of Capistrano Beach.

The specific locations where dredging will take place are: 1) West Anchorage; 2) Main Channel adjacent to the West Breakwater; 3) Interior "Baby Beach"; 4) West Anchorage area between Pier and Youth and Group Docks; 5) Pilgrim Moorage; 6) West Basin Channel; 7) Boat Launch Ramp Basin; and 8) East Basin Channel (Exhibit #2). Originally, dredging was also proposed for the East Basin area adjacent to a 60" Outfall pipe; however, dredging at this location has now been removed from the proposed project.

The design project depths in the dredging areas vary from -8-feet MLLW (Mean Lower Low Water) in the Boat Launch Ramp and Youth and Group Docks to -15-feet MLLW in the Main Channel and removal of one (1)-foot of the top layer of fine sand at "Baby Beach".

The total quantity of dredge material, with an allowance for 2-feet of possible overdredge depth beyond design depth and a 10% contingency to account for incidental sloughing of dredge cut side slopes and sedimentation that may occur subsequent to condition survey, is estimated to be 113,900 cubic yards.

The fine silty, clayey and gravelly material of about 56,000 cubic yards will be disposed of at an EPA approved site (LA-3) which is located approximately 14-miles from the entrance of Dana Point Harbor (Exhibit #3). The clean coarse sand sediment removed from the Main Channel and West Anchorage will be used for beach replenishment. It is proposed that approximately 9,500 cubic yards of clean coarse material will be used to replace the top layer of fine sand material removed from "Baby Beach" during the project. Approximately 48,400 cubic yards of clean coarse sand material is anticipated to be used to nourish Capistrano County Beach. Two alternatives are being considered for nourishment of the County Portion of Capistrano Beach. One option is to place material directly on the beach, and the other would place sand in the nearshore littoral zone (Exhibit #4).

Chemical composition, grain size and bioassay testing as outlined in the documents entitled *Sampling and Analysis Plan, Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. dated July 2006 and *Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. dated March 2007 were conducted and it was determined that the proposed material to be deposited on Baby Beach and Capistrano Beach was allowable and confirmed that the remaining dredged material should be deposited at LA-3.

The material within the harbor channels designated for disposal at LA-3 will be removed using clamshell dredge equipment, loaded onto bottom-dump scows, and transported to the LA-3 ocean disposal site. The material from Baby Beach will be removed during low tide hours using excavation equipment, loaded onto trucks, transported to a location where the material can be loaded into the scows and then transported to the LA-3 disposal site.

The County has indicated that the method to be used for the removal of the sand sediment that will be placed upon Capistrano Beach would be generally dependent on where on Capistrano Beach the material is to be placed. If the material is to be placed on the higher area of the beach (this method is required as conditioned by this permit), the material will most likely be removed using a cutter/suction head dredge and hydraulically pumped via pipeline to Capistrano Beach. The pipe would be submerged, lying on the ocean bottom. It would have a surface hookup within the harbor and would emerge onto Capistrano Beach, above the high tide line, and probably close to the middle of the beach. From this point on Capistrano Beach, the construction crew would hook up 200-300-foot sections of shoreline parallel-pipeline that would go to the specific placement locations along the beach. Final grading would be preformed by using bulldozers. This pipeline would be in place for approximately a maximum of twelve (12) weeks. The placement of this pipeline on the beach would not impede public access as sand would be pushed up and around and over the pipes to create a "walkover" ramp for people to be able to safely go over the pipes.

If the County received approval to place the dredged sand in the nearshore zone, the material will most likely be removed using clamshell dredge equipment, loaded onto scows, and transported to offshore of Capistrano Beach. Tugboats would then position the scow for bottom dumping into the nearshore/surfzone area. As conditioned (see discussion below), this method would require a permit amendment from the Commission since inadequate information was submitted with this application to determine impacts and address mitigation.

The small amount of coarse sand to be placed onto Baby Beach would be placed the same methods approved for use at Capistrano Beach.

The anticipated timeframe for the proposed project is as follows: 1) four (4) weeks for mobilization and construction equipment; 2) four (4) weeks for dredging and disposal assuming that both the fine and coarse sediment dredging operations occur simultaneously; and 3) four (4) weeks for demobilization of construction equipment. A minimum number of boat slips will be closed during dredging and the boats will be moved to temporary slips. The County will only relocate boats and will install any new docks. If the County intends to install new docks, they would need to submit an amendment to this permit to accomplish this.

Although the placement of sand at Capistrano Beach is referred to as beach nourishment in the application package, the applicant states that it actually is an opportunistic benefit for disposal of littoral sediment dredged from Dana Point Harbor. The placement of sand at Capistrano Beach is driven by the need to dispose of the dredge material and not vice-versa. Accordingly, there are no plans to do post-construction monitoring of this specific project as might have been done for an intended nourishment project where placement of sand is needed to maintain a specified beach width.

B. STATUS OF LOCAL COASTAL PROGRAM (LCP)

The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not any Local Coastal Program (LCP) of the affected area. If the Commission has certified an LCP and incorporated it into the California Coastal Management Program (CCMP), the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated an LCP into the CCMP, the LCP cannot guide the Commission's

decision, but it can provide background information. There is presently a certified LCP for the City of Dana Point. Therefore, the Commission has incorporated the LCP for the City of Dana Point into the CCMP.

C. APPLICANT'S CONSISTENCY CERTIFICATION

The County of Orange has certified that the proposed project is consistent with the California Coastal Management Program.

D. CHAPTER 3 POLICY ANALYSIS OF COASTAL DEVELOPMENT PERMIT AND CONSISTENCY CERTIFICATION

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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 30233 of the Coastal Act states:

(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.

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

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

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

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

(6) Restoration purposes.

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

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

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30234 of the Coastal Act states:

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 states:

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

Section 30220 of the Coastal Act states:

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 states:

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.

1. Sensitive Habitats and Resources

In this case, the proposed dredging and off-shore disposal would occur in order to restore previously dredged depths in existing navigational channels. Sediment grain size analysis concluded that some of the sediment was suitable for beach replenishment, while the remaining sediment was suitable for disposal at LA-3.

Without dredging, boat slips within the marina would become silted and unusable and use of navigational channels would be impeded, thereby decreasing the usefulness of the site for recreation oriented boating. Accordingly, the no project alternative would have an adverse impact upon boating related uses of coastal waters.

The dredging is only proposed to occur in previously dredged areas to restore previously dredged depths. There are no feasible alternatives to the proposed dredging which would restore the berthing areas at the subject site and be less environmentally damaging. The soft bottom areas of Dana Point Harbor are largely unvegetated and are not known to support meadows of eelgrass. As such, the proposed project will not impact eelgrass.

Section 30230 of the Coastal Act requires that marine resources be protected and that the use of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The proposed dredging may impact sensitive habitats and resources. Therefore, mitigation measures are necessary to protect the biological productivity of coastal waters.

Section 30233 of the Coastal Act allows dredging and filling of coastal waters or wetlands only for the seven uses listed in Section 30233 of the Coastal Act, as stated above, and where such dredging/fill is the least environmentally damaging feasible alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In this case, the proposed dredging would occur in order to maintain existing and/or restore vessel berthing and mooring areas. Fill would result from 1) the placement of dredged sand in the nearshore zone (if such method were to be authorized) which would ultimately be transported to the beach through wave action and littoral drift; and/or 2) the placement of dredged sand within intertidal areas along the sandy beach; and/or 3) from disposal of sediment at the ocean disposal site at LA-3. This proposed dredging and fill is allowable pursuant to Sections 30233(a)(2), 30233(a)(6) and 30233(b) of the Coastal Act. However, in order to verify that the project implements the least environmentally damaging alternative, mitigation measures are necessary.

In order to evaluate the potential biological impacts associated with the proposed project, the applicant submitted the following document: *Biological Assessment of the Dana Point Harbor Maintenance Dredging Project* prepared by the Chamber Group dated March 2006. The report states that all of the benthic invertebrates (opportunistic species) that live in or on the sediments that will be dredged in Dana Point Harbor will be displaced or destroyed. The disturbed areas are expected to be recolonized rapidly by opportunistic organisms similar to those that occur in the harbor prior to dredging. However, the report also states that soft bottom invertebrates that live adjacent to the dredging area may suffer lethal or sublethal effects from burial and turbidity of sediments disturbed by the dredge. Nonetheless, the dredging would not be expected to result in a long-term change in the diversity, density, or species composition of soft bottom benthic communities in Dana Point Harbor due to the anticipated rapid recolonization by opportunistic organisms and, thus, would have an adverse but insignificant impact.

As stated previously, there are two alternatives being considered for nourishment of the County Portion of Capistrano Beach. One option is to place material directly on the beach, and the other would place sand in the nearshore littoral zone. This applicant's report provides a detailed analysis of the beach placement option, but provides limited analysis of the nearshore placement option.

In regards to option number one (beach placement), the report states that discharge of sand directly onto Capistrano Beach would bury intertidal invertebrates living in the sand or mixed sand/cobble areas. However, most studies have found that diversity, biomass, and abundance of sandy intertidal invertebrates declines following beach nourishment but that the community recovers within a few months. Therefore, the effects of beach nourishment on sandy intertidal invertebrates by direct placement of sand on Capistrano Beach would not be expected to be significantly adverse. The report also states that while impacts to sandy intertidal invertebrates may not be significantly adverse, there may be adverse impacts during the *California grunion* spawning season. Thus, the report states that if sediment placement occurs during the *grunion* spawning season, a qualified biologist should monitor all predicted *grunion* runs. Additionally, the report states that *western snowy plovers* use Capistrano Beach for foraging and resting. Through observations on site and other study areas, the report states that disturbance to *western snowy plovers* during beach placement at Capistrano Beach will be limited to avoidance of the immediate area where activities are occurring and possibly occasional brief disturbance by equipment and personnel accessing the discharge site. However, because Capistrano Beach is not near a *western snowy plover* nesting area, these impacts would be adverse but insignificant. Nonetheless, if sand is placed directly on Capistrano Beach it is recommended that a monitor be present to ensure that *western snowy plovers* are not adversely impacted by this placement.

The applicant's biological report also analyzed, in a limited fashion, the second option which consisted of placing sand in the nearshore littoral zone. This alternative would avoid potential impacts to intertidal invertebrates, *grunion* spawning and the *western snowy plover*. However, nearshore turbidity would be considerably greater using this placement method. Nonetheless, since the nearshore zone of Capistrano Beach is typically extremely turbid, a temporary increase in turbidity over a limited portion of the nearshore zone would not be expected to have significant adverse impacts on marine organisms. While marine organisms will not be significantly impacted, there is a potential that subtidal reefs off

Capistrano Beach will get buried with this option. The report also claims that because the biota associated with shallow subtidal reefs off Capistrano Beach is adapted to considerable sand movement, no long term change in the composition of the reef-associated communities would be expected. To make sure though that long-term burial of the habitat does not occur, the report recommends that if this nearshore disposal is selected that the rocky subtidal habitat off Capistrano Beach be monitored.

In order to evaluate the potential biological impacts associated with the proposed temporary pipeline that would be used for the beach placement option (option one above), the applicant submitted the following document: *Biological Impacts of Temporary Placement of Dredge Disposal Pipeline from Dana Point Harbor to Capistrano Beach* prepared by the chambers Group dated January 18, 2007. The proposed temporary pipeline would extend from the dredged areas in the harbor to the beach nourishment sites. The pipe would be submerged, lying on the ocean bottom. It would have a surface hookup within the harbor and would emerge onto Capistrano Beach, above the high tide line, and probably close to the middle of the beach. From this point on Capistrano Beach, the construction crew would hook up 200-300-foot sections of shoreline parallel-pipeline that would go to the specific placement locations along the beach. Final grading would be preformed by using bulldozers. This pipeline would be in place for approximately a maximum of twelve (12) weeks. The placement of this pipeline on the beach would not impede public access as sand would be pushed up and around and over the pipes to create a "walkover" ramp for people to be able to safely go over the pipes.

The report states that the main channel of Dana Point where the pipeline will be placed consists entirely of soft bottom habitat. No eelgrass beds occur in Dana Point Harbor. The bottom along the proposed pipeline route outside Dana Point Harbor consists of a mixture of sand and rock. The seafloor east of Dana Point Harbor at about 20-foot depth, where most of the pipeline would be laid, is primarily cobble and sand with isolated patches of reefs and boulders up to six (6)-feet in height. The diversity of organisms on the subtidal reefs in the vicinity of the pipeline is low. The placement of the pipeline would temporarily disturb the bottom in the immediate area where the pipeline is placed and perhaps a few inches on either side as the pipe settles on the bottom. Based on a total pipeline length of about 10,500-feet and a disturbance width of about three (3)-feet, approximately 0.72 acres of subtidal bottom would be temporarily disturbed by pipeline placement. Of that total, 0.52 acres of soft bottom habitat will be temporarily impacted and 0.2 acres of hard bottom habitat will be temporarily impacted. The report concludes by stating that these temporary impacts would be an insignificant impact.

In regards to the placement of the pipeline on the sandy beach, this would temporarily disturb sandy intertidal organisms. However, this intertidal invertebrate community would be expected to recover from this disturbance within a few months. In addition to the impacts upon sandy intertidal organisms, the pipeline could also disturb shorebirds foraging on the beach. This temporary disturbance would be insignificant for most shorebird species; however, the federally threatened western snowy plover sometimes forages on Capistrano Beach. Similarly, as recommended for placement of any sand on Capistrano Beach, this report also recommends that a monitor be present to insure that pipe laying operations avoid areas where *western snowy plovers* are present until the plovers vacate the area. It is recommended that the monitor be present during all operations on Capistrano Beach to insure that project activities do not disturb the foraging or resting activities of this species.

As previously discussed, there are two alternatives being considered for nourishment of the County Portion of Capistrano Beach. One option is to place material directly on the beach, and the other would place sand in the nearshore littoral zone. The first option specifically identifies impacts associated with this option such as the impacts to *grunion* and the *western snowy plover*. With mitigation measures (e.g. monitoring, avoidance), these impacts will be minimized or avoided and will not be permanent. However, the analysis submitted for the second option was inadequate. More specific information regarding the potential impacts to the subtidal reefs off Capistrano Beach were not available. However, according to the applicant's preliminary analysis, permanent impacts to subtidal reefs are possible with the second option (nearshore placement). Such permanent impacts would need to be offset. Mitigation might include construction of artificial reef to replace the impacted reef. No mitigation site was identified and the feasibility of implementing an artificial reef as mitigation is unknown. No specific mitigation was identified. The Commission cannot authorize a sand placement option that has unknown impacts and unknown mitigation. If the County wishes to pursue the nearshore placement option, they would need to address these issues through an amendment. Meanwhile under this permit, the nearshore sand placement option will not be allowed. Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires that the placement of sediment on Baby Beach and Capistrano Beach must be accomplished through option one, which would place material directly on the beach. **SPECIAL CONDITION NO. 1** also incorporate the applicant's proposals with regard to the protection of the western snowy plover and monitoring for California grunion.

In order to avoid adverse impacts to the *California grunion*, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to avoid work during grunion run season unless the obtain clearance from the California Department of Fish and Game and the Executive Director of the Commission to proceed based upon an assessment of the spawning of the California grunion found in the area and a statement that the development activity on the specific dates proposed and in the specified locations will not interfere with the spawning of the California grunion.

The applicant has not identified a staging area for the proposed project. Thus, in order to ensure that no adverse impacts upon sensitive habitats and species occur due to construction staging, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a construction staging area plan prior to the issuance of the permit.

The increase in suspended sediments caused by dredging could also decrease light penetration, deter small fish from using the protective habitat, and interfere with bird foraging. The increase in turbidity can interfere with this sight-based feeding. However, wildlife foraging for food in the water column would not need to go a significant distance to avoid areas that are affected by turbidity. Furthermore, the Regional Water Quality Control Board (RWQCB), as one state agency that regulates discharges into coastal waters, sets turbidity standards. The RWQCB standards for acceptable levels of turbidity include a maximum increase of 20% of naturally occurring turbidity and dissolved oxygen levels of not less than five milligrams per liter.

The project proposes to incorporate standard Best Management Practices (BMPs) to minimize turbidity. Discharge onto scows will be controlled, utilizing techniques necessary

to ensure that turbidity during dredging does not increase in the immediate area more than 20% above ambient levels. Turbidity will also be monitored so that general construction activities (e.g., operation of dredge) do not increase turbidity in the immediate area more than 20% above ambient levels. The Commission finds that it is necessary to ensure that these turbidity standards are not exceeded. To assure that acceptable levels of turbidity are maintained, the Commission imposes **SPECIAL CONDITION NO. 4**.

As conditioned, the proposed project will not impact sensitive resources; however, in order to verify this, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires the applicant to document compliance with all general and special conditions defined in this permit to ensure protection of sensitive habitat in proximity to the project area. The Commission finds that the proposed dredging is an allowable use and the least environmentally-damaging feasible alternative (with feasible mitigation measures described below).

CONCLUSION

Therefore, as conditioned, the Commission finds the proposed project is consistent with Sections 30230 and 30233 of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

2. Water Quality

One of the potential adverse effects from dredging and ocean disposal activities is the re-suspension and relocation of contaminants. Dredge material can contain elevated levels of heavy metals, pesticides, organics, and other pollutants. These contaminants usually are bound to finer grain material such as clay and silt. Pursuant to the requirements of the Corps and under the direction of the U.S. Environmental Protection Agency (EPA), the applicant conducted physical, chemical, and biological tests on the sediments within the proposed dredging areas of Dana Point Harbor proposed for aquatic disposal at Baby Beach, Capistrano Beach and at the federally-approved ocean disposal LA-3 site.

With respect to the proposed disposal at LA-3, the Commission's main concern is the effects on marine resources and commercial and recreational fishing over the need to assure that the material to be disposed of at LA-3 is uncontaminated and suitable for ocean disposal. The Commission generally uses the federal standards and guidelines for evaluating the suitability of sediment for aquatic disposal. The chemical and biological testing requirements and procedures detailed in the Inland Testing Manual (ITM), (USEPA/USACE 1998) and the Ocean Disposal Testing Manual (Greenbook), (USEPA/USACE 1991) were used to evaluate the suitability of the dredge sediments for ocean disposal. In some cases, the sediment chemistry occurs in a range where it may or may not be suitable for ocean disposal and would require upland or confined aquatic disposal. Contaminants of potential ecological concern (COPECS) included heavy metals, chemical analogues of the pesticide DDT, and polynuclear aromatic hydrocarbons (PAHs) (i.e. chemicals formed during the incomplete burning of coal, oil, gas and other organic substances).

Chemical composition, grain size and bioassay testing, as outlined in the documents entitled *Sampling and Analysis Plan, Dredge Material Evaluation Dana Point Harbor*

Maintenance Dredging prepared by Kinnetic Laboratories, Inc. dated July 2006 and *Dredge Material Evaluation Dana Point Harbor Maintenance Dredging* prepared by Kinnetic Laboratories, Inc. dated March 2007, were conducted, and it was determined that the proposed material to be deposited on Baby Beach and Capistrano Beach was allowable and confirmed that the remaining dredged material should be deposited at LA-3. More specifically, the reports stated that sediments from test composite A are suitable for beach nourishment. The reports also state that the majority of the sediments from test composites B and C are suitable for ocean disposal at LA-3. An exception is noted for test results for individual core C2, which was located near a storm drain within the harbor. Since submittal of the application, the proposed project has been amended to remove dredging from this location as previously discussed earlier in the staff report.

The USACE, EPA and RWQCB have affirmatively stated that the disposal of dredged sediments on Baby Beach, Capistrano Beach and LA-3 is acceptable.

In order to further protect water quality, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant comply with other water quality best management practices for the duration of the dredging period.

In addition, while the RWQCB has reviewed the sediment analyses, the 401 permit is still pending. Thus, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires applicant to submit a copy of the 401 permit issued by the RWQCB regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required prior to the issuance of permit

CONCLUSION

Therefore, as conditioned, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act. In addition, the Commission finds that with these measures, the proposed project will not affect water quality resources of the coastal zone, and therefore, the project is consistent with the Water Quality policy of the CCMP.

3. **Caulerpa Taxifolia**

In the late 1990's, a non native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies similar habitat. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had

serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In August 2000, an infestation of *C. taxifolia* was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures as low as 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted. In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several State, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the Bay bottom could cause its spread by dispersing viable tissue fragments. The proposed project would disturb the harbor bottom by dredging and *C. taxifolia* could be distributed to other parts of the bay or to the open ocean through transport of the dredge spoils for ocean disposal. The site has not been surveyed for *C. taxifolia*. Therefore, the Commission imposes **SPECIAL CONDITION NO. 7**, which identifies the *C. taxifolia* survey procedures necessary to be completed prior to beginning any construction.

CONCLUSION

Therefore, as conditioned, the Commission finds the proposed project is consistent with Sections 30230 and 30233(b) of the Coastal Act. In addition, the Commission finds that the

¹ References : Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchioretto, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

4. Recreation and Public Access

The proposed project will allow for continued long-term use of coastal waters for recreational boating. Temporary impacts to the use of the recreational facility and marina during dredging is expected. A minimum number of boat slips will be closed during dredging, but the boats will be moved to temporary slips. The County will only relocate boats and will not install any new docks. If the County intends to install new docks, they would need to submit an amendment to this permit to accomplish this. Thus, access will constantly be maintained on-site.

The proposed project includes the placement of sediment at Baby Beach and Capistrano Beach and public access to these placement areas on the beach would be temporarily prohibited during the active construction period for safety reasons. A condition of the permit (**SPECIAL CONDITION NO. 9**) requires the applicant to minimize beach area closures by limiting closed beach areas to an area not to exceed two hundred feet from the pipeline and deposition area. Furthermore, as discussed previously, during the period when the sediment placement pipes are present on the beach, sand would be pushed up and around and over the pipes to create a "walkover" ramp for people to be able to safely go over the pipes. Therefore, access to and along those portions of the beach which are not temporarily closed will be maintained. The long-term benefits of beach nourishment offset the temporary reduction in beach use by providing a larger, more stable beach for public recreation.

CONCLUSION

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30213 and 30221 of the Coastal Act. In addition, the Commission finds that the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

5. Commercial Boating/Recreational Boating/Fishing

The project will have no negative effects on commercial or recreational boating or fishing in the area. The dredging and placement of material at LA-3 will aid in helping to continue to protect and provide commercial fishing and recreational boating industries in Dana Point Harbor by improving navigation within the bay.

CONCLUSION

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30234, 30234.5, 30220 and 30224 of the Coastal Act. In addition, the Commission finds that the proposed project will not adversely affect resources of the coastal zone, and therefore, the project is consistent with the policies of the CCMP.

E. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

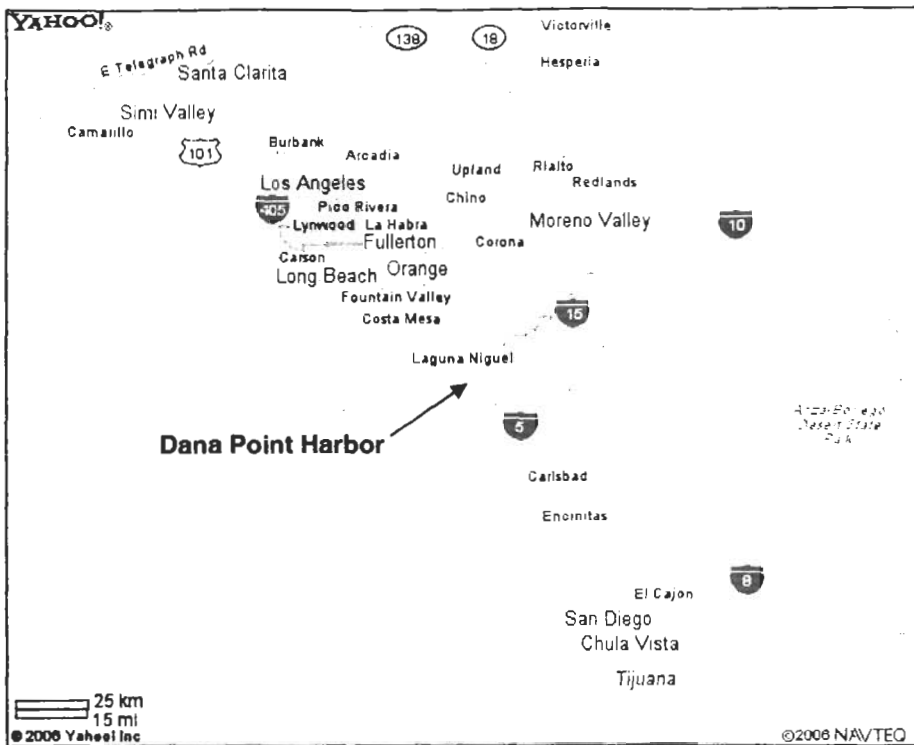
The proposed development is taking place in the City of Dana Point, which has a certified Local Coastal Program (LCP). However, the dredging, which is located in the water of the harbor, and placement of dredged material is taking place on the beach at Baby Beach and Capistrano Beach, all of which is occurring partially or wholly within the Commission's area of original jurisdiction. Section 30601.5 of the Coastal Act allows the Commission to take action on development proposals where there is both local and Commission jurisdiction, and the City of Dana Point has agreed to let the Commission process a CDP for the portions of this project within the City's jurisdiction. Therefore, the development must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act and therefore will not prejudice the ability of the City to continue to administer its LCP.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

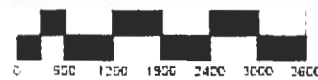
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County of Orange is the lead agency for purposes of CEQA compliance. A Categorical Exemption (IPO6-346) dated November 27, 2006 was prepared for this project pursuant to the provisions of CEQA.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area (i.e., docks, parking). The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the public access, water quality, and habitat protection policies of the Coastal Act. Mitigation measures to minimize adverse effects include: special conditions related: **1)** placement of sediment material on Baby Beach and Capistrano Beach shall be done by placing the material directly on the beach; **2)** construction timing to avoid adverse impacts upon California grunion; **3)** staging area; **4)** turbidity control; **5)** construction responsibilities; **6)** pre-construction *Caulerpa Taxifolia* survey; **7)** Regional Water Quality Control Board (RWQCB) 401 Permit approval; **8)** post completion report; and **9)** requirements related to temporary beach closure. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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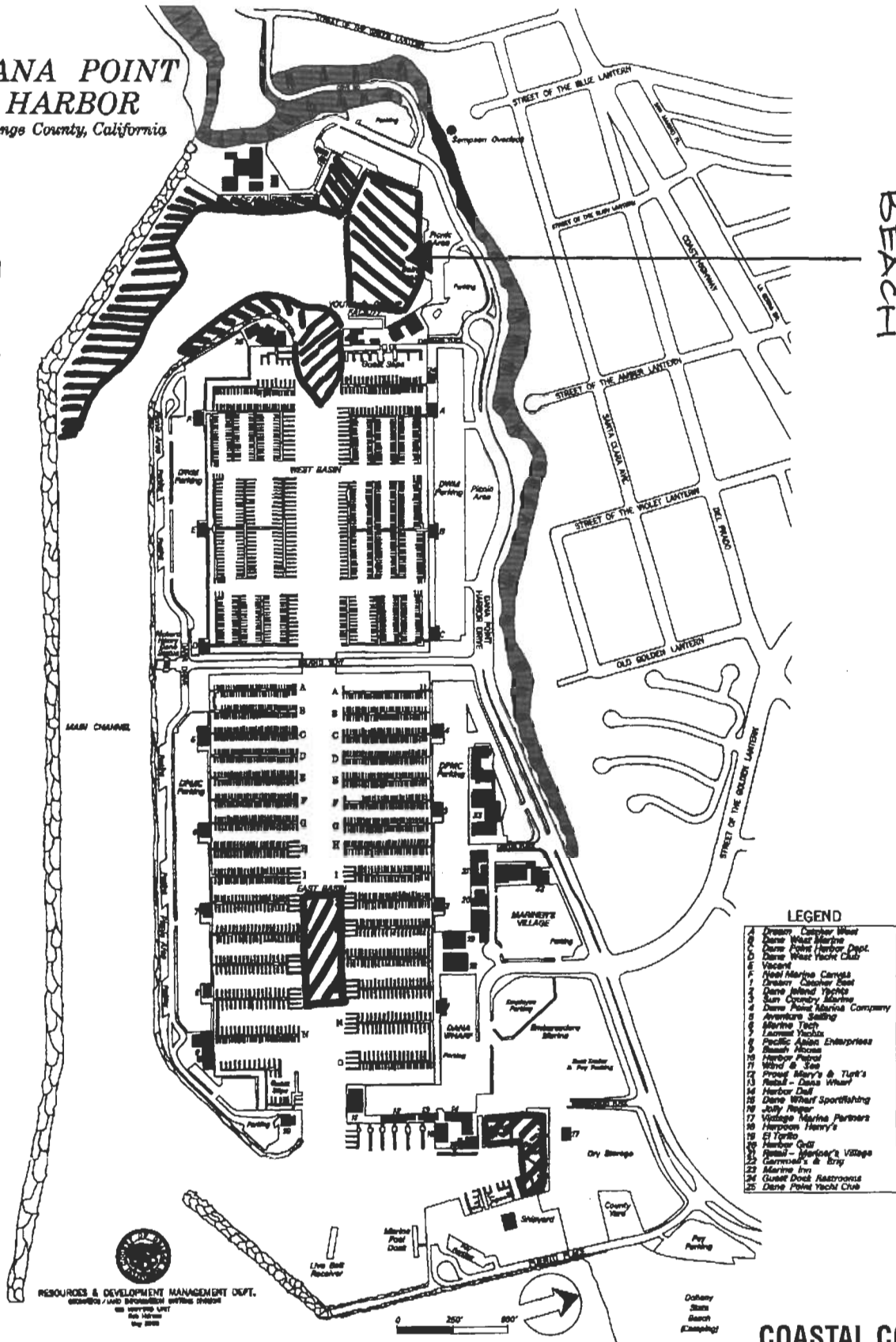
VICINITY MAP

EXHIBIT # 1
 PAGE 1 OF 1

DANA POINT HARBOR
Orange County, California

BABY
BEACH

 = DREDGING LOCATIONS



LEGEND

1	Dresser Caspian West
2	Dane West Marine
3	Dana Point Harbor Dept.
4	Dane West Yacht Club
5	Vacant
6	Hotel Marine Carriage
7	Dresser Caspian East
8	Dane Island Yachts
9	Sun Country Marine
10	Dana Point Marina Company
11	American Sailing
12	Marine Tech
13	Luxoriel Yachts
14	Pacific Aloha Enterprises
15	Shanty House
16	Harbor Repair
17	Wind & Sea
18	Proud Mary's & Turk's
19	Reel - Cassa Wharf
20	Harbor Dail
21	Dane Wharf Sportfishing
22	Jolly Reper
23	Village Marina Partners
24	Harpoon Henry's
25	El Torito
26	Harbor Grill
27	Palms - Marlowe's Village
28	Garrison's & Bray
29	Marine Inn
30	Guest Dock Restaurants
31	Dane Point Yacht Club

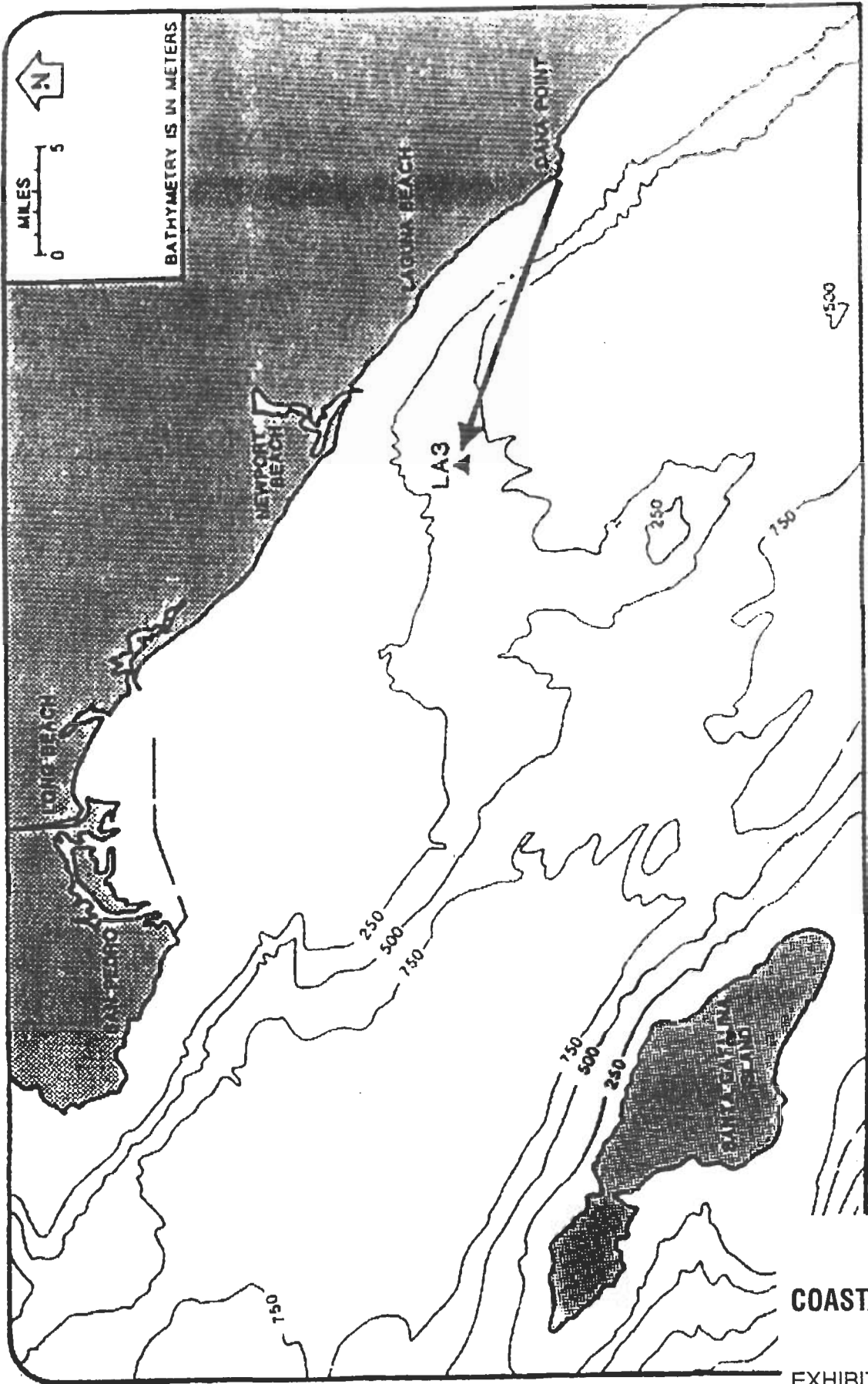
RESOURCES & DEVELOPMENT MANAGEMENT DEPT.
SCHEMATIC / LAND INFORMATION UNIT
NOV 2006

DANA POINT HARBOR MAP

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

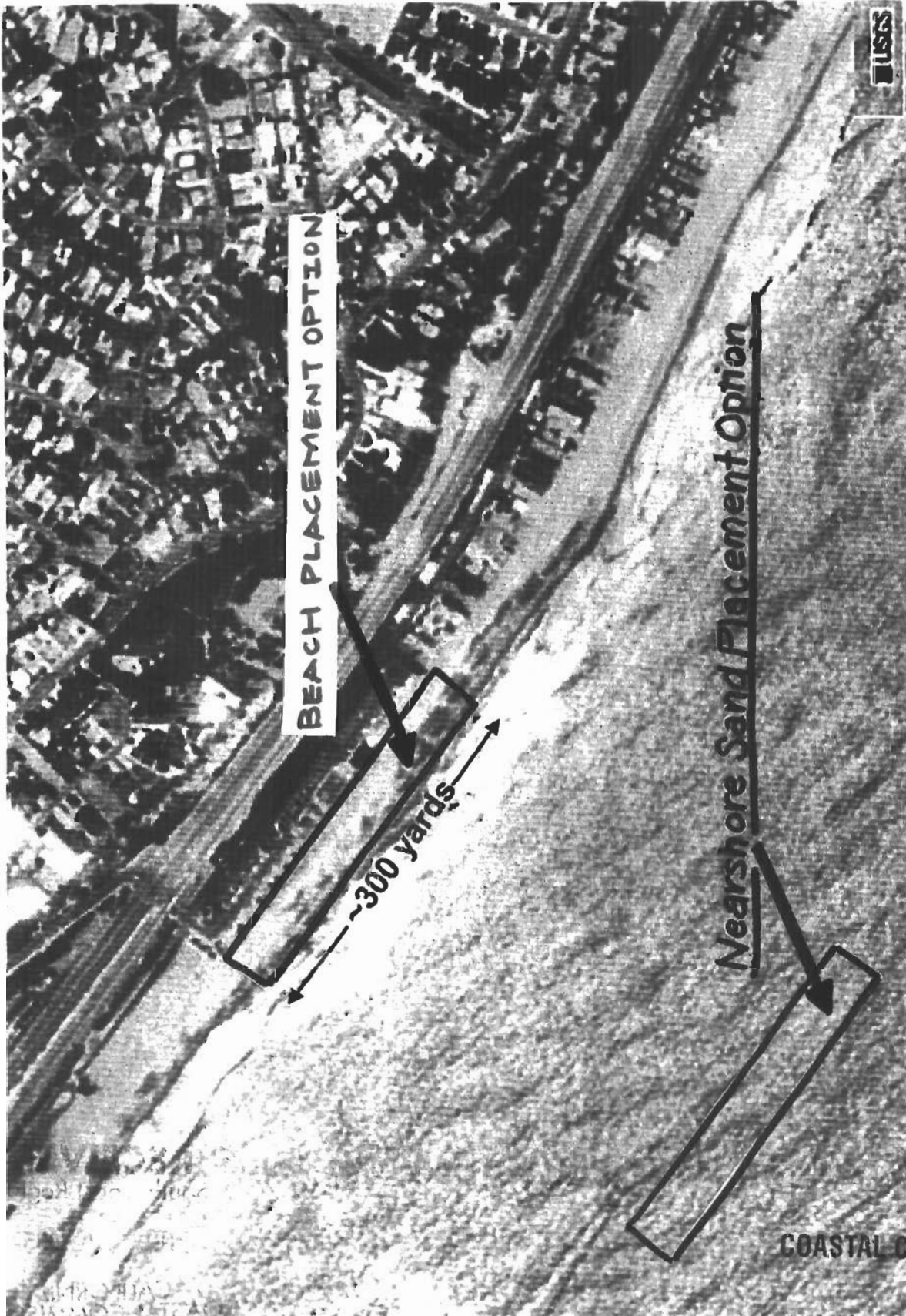
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LA-3 OCEAN DISPOSAL SITE LOCATION

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 1 OF 1



Capistrano Beach Fill Plan

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1