

CALIFORNIA COASTAL COMMISSION

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**F 13a****PROPOSED FINDINGS****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-035-10
Staff:	LJS-SF
File Date:	6/30/2010
60 th Day:	8/29/2010
75 th Day:	9/13/2010
Commission Vote:	8/12/2010
Commission Action:	Conditional Concurrence
Hearing on Findings:	12/17/2010

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

PROJECT LOCATION: Marina del Rey Harbor, Los Angeles Co. (**Exhibit 1**).

PROJECT DESCRIPTION: Maintenance dredging of up to 894,000 cubic yards of sediment from harbor entrance channels, with disposal of up to ~~327311,000~~ 567583,000 cu.yds. of clean sands at Dockweiler and Redondo Beaches and adjacent nearshore waters, and disposal of approximately 567583,000 cu.yds. of unsuitable sediments within a previously-approved and permitted confined aquatic disposal facility at Slip 1 in the Port of Long Beach.

COMMISSION ACTION: Conditionally concur in the Corps of Engineers' Consistency Determination for the above-referenced federal project

PREVAILING COMMISSIONERS: Commissioners Achadjian, Blank, Bloom, Burke, Liberman, Mirkarimi, Sanchez, Secord, Stone, Wan, and Vice Chair Shallenberger

MOTION: See Page 5

**SUBSTANTIVE
FILE DOCUMENTS:** See Page 19

**STAFF
RECOMMENDATION:** Adopt Proposed Findings in support of the Commission's August 12, 2010, action. Motion is on page 5.

[Staff Note – These proposed findings are presented in “tracked changes” mode.]

EXECUTIVE SUMMARY

The U.S. Army Corps of Engineers (Corps) submitted a consistency determination for maintenance dredging up to 894,000 cubic yards (cu.yds.) of sediment from the entrance channels to Marina del Rey Harbor. Approximately 263,000 cu.yds. of clean sand will be removed from Dredge Area 6 and placed on the beach and/or in the nearshore zone at Dockweiler State Beach and Redondo Beach. Approximately 6448,000 cu.yds. of clean sand will be removed from Dredge Areas 4 and 5 and placed in the nearshore zone off these two beaches. The remaining 567583,000 cu.yds. of dredged material are unsuitable for beach or nearshore placement or for disposal at an EPA-designated ocean disposal site due to the physical and chemical properties of these finer-grained sediments. These materials will be dredged and transported via barge to Slip 1 in the Port of Long Beach, the site of a previously-approved and permitted confined aquatic disposal (CAD) facility. These unsuitable sediments will be deposited within Slip 1 and eventually capped and contained by the Port of Long Beach within a landfill constructed at this site.

The proposed project is necessary in order to: (1) maintain the authorized project channel depth in the Marina del Rey entrance channels, which are subject to continuous filling by sand accretion; (2) assure continued safe navigation for maritime traffic within the harbor; (3) minimize the risk of hazardous shoaling conditions within the entrance channels; (4) avoid intrusion of dredging activities into the critical seasons of vulnerable species; (5) provide beach nourishment materials for downcoast beaches; and (6) take advantage of the timely opportunity to dispose contaminated sediments from Marina del Rey Harbor within the previously-permitted confined aquatic disposal facility at the Port of Long Beach. Navigation safety is currently impaired in the Marina del Rey entrance channel due to the accumulation of sediments in the area behind the detached breakwater since completion of the last maintenance dredging project in early 2007. The proposed maintenance dredging will return the federal entrance channels to their authorized design depth of -20 feet mean lower low water. Dredging and disposal are scheduled to start in November 2010 and extend through April 15, 2011; work is scheduled to occur 24 hours per day seven days per week.

The maintenance dredging project is consistent with the allowable use, alternatives, and mitigation tests contained in the dredge and fill policy of the California Coastal Management Program (CCMP)(Coastal Act Section 30233). The project will remove shoaling in the Marina del Rey Harbor entrance channels and increase boating safety at the harbor. While the proposed dredging could interfere with recreational boating in the entrance channels during dredge operations, any impacts will be temporary and are insignificant when compared to the benefit from removing existing shoaling hazards. The project will generate minor adverse effects on public access and recreation, primarily resulting from temporary beach closures during disposal and sand moving operations on the beach. However, the project will improve public access and recreational opportunities due to the placement of clean and grain-size compatible sand along Dockweiler State Beach and Redondo Beach and in adjacent nearshore waters. The project is consistent with the public access and recreational boating policies of the CCMP (Coastal Act Sections 30210, 30211, 30213, 30220, and 30224).

Project sediments were tested for suitability as beach nourishment materials at Dockweiler State Beach and Redondo Beach and as nearshore disposal materials off these beaches. The Corps determined that sediments from Dredge Areas 1, 2, 3, 7, 8, and 9 were unsuitable for beach or nearshore placement and would instead be transported to the previously approved and permitted confined aquatic disposal facility at Slip 1 in the Port of Long Beach. Sediments from Dredge Area 6 were determined suitable for beach replenishment, and sediments from Dredge Areas 4 and 5 (with two exceptions) were determined suitable for nearshore disposal. The Advisory Committee of the Los Angeles Region Contaminated Sediment Task Force (with one Committee member dissenting) reviewed and concurred with the Corps sediment management and disposal plan for the materials dredged from the Marina del Rey Harbor entrance channels. However, the Commission determined that sediments from Dredge Areas 4, 5, and 6 must undergo toxicity testing to ensure that they are safe for placement on the beach and in the nearshore, and will not adversely affect water quality and public recreation. The Commission determined that if the Corps modifies the project to undertake toxicity testing prior to designating potential beach and/or nearshore disposal locations for sediments from Dredge Areas 4, 5, and 6, the project would be consistent with the water quality policies of the CCMP. Removal of contaminated sediments from the marine environment will improve water quality and marine habitat across the project area, notwithstanding any temporary adverse effects due to the resuspension of sediments during dredging operations. The project is consistent with the marine resource and water quality policies of the CCMP (Coastal Act Sections 30230 and 30231).

Beach disposal of dredged sediments will not occur during the California least tern nesting season, and beach and nearshore disposal will not occur on that section of Dockweiler State Beach that supports wintering Western snowy plovers. Should nearshore disposal occur between March 15 and April 15, restrictions on disposal activity will be implemented to protect California grunion spawning at Dockweiler and Redondo Beaches. Should the Corps determine that beach disposal must be extended beyond March 15, 2011, it will submit a consistency or negative determination to the Commission for a project time extension into the California least tern nesting season. Proposed maintenance dredging of Marina del Rey harbor and disposal of clean

sands on Dockweiler State Beach and Redondo Beach, and in adjacent nearshore waters off both beaches, will not adversely affect environmentally sensitive habitat or endangered and sensitive species present at these locations. The project is consistent with the environmentally sensitive habitat policy of the CCMP (Coastal Act Section 30240).

By using those dredged materials determined to be suitable for beach replenishment at Dockweiler State Beach and Redondo Beach, these sediments will remain in the Santa Monica Bay long shore littoral system, and the project is consistent with the sand supply policy of the CCMP (Coastal Act Section 30233(b)).

STAFF SUMMARY AND RECOMMENDATION

I. PROJECT DESCRIPTION. The U.S. Army Corps of Engineers (Corps) submitted a consistency determination for maintenance dredging up to 894,000 cubic yards (cu.yds.) of sediment from the entrance channels to Marina del Rey Harbor (**Exhibits 1 and 2**).

Approximately 263,000 cu.yds. of clean sand will be removed from Dredge Area 6 and placed on the beach and/or in the nearshore zone at Dockweiler State Beach and Redondo Beach (**Exhibits 3 and 4**). Approximately 6448,000 cu.yds. of clean sand will be removed from Dredge Areas 4 and 5 and placed in the nearshore zone off these two beaches. The remaining 567583,000 cu.yds. of dredged material are unsuitable for beach or nearshore placement or for disposal at an EPA-designated ocean disposal site due to the physical and chemical properties of these finer-grained sediments. These materials will be dredged and transported via barge to Slip 1 in the Port of Long Beach, the site of a previously-approved and permitted confined aquatic disposal (CAD) facility (**Exhibit 5**). These unsuitable (for aquatic disposal) sediments will be deposited within Slip 1 and eventually capped and contained by the Port of Long Beach within a landfill constructed at this site.

The Corps states that the proposed project is necessary in order to: (1) maintain the authorized project channel depth in the Marina del Rey entrance channels, which are subject to continuous filling by sand accretion; (2) assure continued safe navigation for maritime traffic within the harbor; (3) minimize the risk of hazardous shoaling conditions within the entrance channels; (4) avoid intrusion of dredging activities into the critical seasons of vulnerable species; (5) provide beach nourishment materials for downcoast beaches; and (6) take advantage of the timely opportunity to dispose contaminated sediments from Marina del Rey Harbor within the previously-permitted CAD facility at the Port of Long Beach. Navigation safety is currently impaired in the Marina del Rey entrance channel due to the accumulation of sediments in the area behind the detached breakwater since completion of the last maintenance dredging project in early 2007. The Corps states that the shoaling effect occurs because the harbor and local shoreline are situated such that waves originating from the west cause sediment to move predominately in the downcoast (southerly) direction. This littoral drift phenomenon causes shoaling in the sand trap, around the north jetty, and the entrance channels that were designed to allow boats to navigate safely in and out of Marina del Rey Harbor. Sediment accumulation results in shallow channel depths and breaking waves in the channel and adjacent Marina del Rey harbor areas. Sediment is also transported down the Ballona Creek Flood Control Channel

and is deposited behind the detached breakwater, contributing to the shoaling problem in the entrance channel (**Exhibit 2**). These sediments are typically more fine-grained and include elevated levels of contaminants that preclude their placement in the nearshore zone or on the beach.

The proposed maintenance dredging will return the federal entrance channels to their authorized design depth of -20 feet mean lower low water. Dredging and disposal are scheduled to start in November 2010 and extend through April 15, 2011; work is scheduled to occur 24 hours per day seven days per week. Dredging for beach and nearshore disposal most likely will be done by a cutterhead suction dredge with disposal via hydraulic pipeline. Nearshore disposal and dredging for disposal at Slip 1 will most likely be done by a clamshell dredge with disposal using dump scows. The Corps states in the consistency determination that the duration of dredging and the volume dredged will depend on available funding, and that the priority for dredging will be the removal of contaminated sediments due to the one-time opportunity to place these materials in the Slip 1 CAD in the Port of Long Beach. The previous unavailability of a disposal site for contaminated Marina del Rey sediments has required that recent maintenance dredging projects here avoid removing those sediments and, as a result, hazardous shoals have developed at several locations in the entrance channels. The availability of the Slip 1 CAD site now provides a means by which the Corps can comprehensively eliminate the navigation hazards at Marina del Rey caused by the presence of these contaminated sediments. The Commission has previously concurred with Corps maintenance dredging and disposal projects at Marina del Rey, Dockweiler State Beach, and Redondo Beach under consistency determinations CD-041-08, CD-040-06, CD-022-99, CD-012-98, CD-002-98, CD-088-94, CD-068-94, CD-053-92, CD-031-91, CD-023-88, and CD-057-86.

II. FEDERAL AGENCY'S CONSISTENCY DETERMINATION. The Corps of Engineers has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

III. STAFF RECOMMENDATION.

The staff recommends that the Commission adopt the following motion:

Motion: I move that the Commission adopt the revised findings in support of the Commission's action on August 12, 2010, concerning the Corps of Engineers' consistency determination CD-035-10 for maintenance dredging of Marina del Rey Harbor entrance channels, and disposal of dredged materials at Dockweiler and Redondo Beaches, adjacent nearshore waters, and Slip 1 in the Port of Long Beach.

The staff recommends a YES vote on this motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the August 12, 2010, hearing who are also present at the December 17, 2010, hearing, with at least three of the prevailing members voting.

Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

The Commissioners voting on the prevailing side of the August 12, 2010, vote were: Commissioners Achadjian, Blank, Bloom, Burke, Liberman, Mirkarimi, Sanchez, Secord, Stone, Wan, and Vice Chair Shallenberger.

Resolution to Adopt Revised Findings: The Commission hereby adopts the findings set forth below for its conditional concurrence with the above-referenced consistency determination, on the grounds that the findings support the Commission's decision made on August 12, 2010, and accurately reflect the reasons for it.

IV. Commission Action.

On August 12, 2010, the Commission found that if modified in accordance with the following condition, the project would be consistent, and therefore consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program.

Condition:

Sediment Testing. Prior to designating potential beach and/or nearshore disposal locations at Dockweiler and Redondo Beaches for sediments to be dredged from Dredge Areas 4, 5, and 6 at Marina del Rey Harbor, the Corps of Engineers shall undertake toxicity testing of sediment core samples from Dredge Areas 4, 5, and 6.

Motion: I move that the Commission ~~concur~~ with consistency determination CD-035-10 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

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

Resolution to Concur with Consistency Determination:

The Commission hereby **concur**s with the consistency determination by the Corps of Engineers, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

V. APPLICABLE LEGAL AUTHORITIES. Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

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

A. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP.

Section 930.43(a) of the federal consistency regulations (15 CFR § 930.43(a)) requires that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states that:

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe: (1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and (2) The specific enforceable policies (including citations). (3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

As described below in the Water Quality and Marine Resources section of this report, the proposed project is not consistent to the maximum extent practicable with the CCMP. Pursuant to the requirements of Section 930.43 of the federal regulations implementing the CZMA, the Commission is responsible for identifying measures, if they exist, that would bring the project into compliance with the CCMP. The Commission believes that it would be possible to bring this project into compliance with the CCMP if the Corps of Engineers implements the following measure:

Sediment Testing. Prior to designating potential beach and/or nearshore disposal locations at Dockweiler and Redondo Beaches for sediments to be dredged from Dredge Areas 4, 5, and 6 at Marina del Rey Harbor, the Corps of Engineers shall undertake toxicity testing of sediment core samples from Dredge Areas 4, 5, and 6.

B. Consistent to the Maximum Extent Practicable.

Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term “consistent to the maximum extent practicable” means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of federal projects is that the activity must be “consistent to the maximum extent practicable” (CZMA Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is “prohibited [by] existing Federal law applicable to the Federal agency's operations.”¹ The Corps of Engineers did not provide any documentation to support a maximum extent practicable argument in its consistency determination or in any subsequent documents. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

C. Conditional Concurrences. Section 930.4 of the federal consistency regulations provides that:

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

¹ 15 CFR Section 930.32.

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

D. Federal Agency Response to Commission Objection. Section C(a)(i) of Chapter 11 of the CCMP requires federal agencies to inform the Commission of their response to a Commission objection. This section provides:

If the Coastal Commission finds that the Federal activity or development project ... is not consistent with the management program, and the federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

The federal consistency regulations reflect a similar obligation; 15 CFR §930.43 provides:

State agency objection. ...

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (see §930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency,

the Federal agency shall notify the State agency of its decision to proceed before the project commences.

IVVI. FINDINGS AND DECLARATIONS:

The Commission finds and declares as follows:

A. Dredging and Filling. Section 30233 of the Coastal Act provides the following in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

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

...

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

The proposed maintenance dredging and disposal project needs to be examined for consistency with Section 30233 of the Coastal Act. Under this section, dredging and filling of open coastal waters, including disposal of dredged materials, is limited to those cases where the proposed project is an allowable use, is the least damaging feasible alternative, and where mitigation measures are provided to minimize environmental impacts. The disposal of dredged materials from the maintenance of navigation channels is an allowable use under Section 30233(a)(2). The proposed nearshore and on-beach disposal locations at Dockweiler State Beach and Redondo Beach, and at the previously-approved and permitted confined aquatic disposal facility at Slip 1 in the Port of Long Beach, are the least damaging feasible alternatives for disposal of clean, sandy dredged materials at the former locations and unsuitable dredged materials at the latter location. As discussed in the following sections of this report, mitigation measures are incorporated into the project where necessary to protect coastal resources. Therefore, the Commission finds that the proposed maintenance dredging project is consistent with the

allowable use, alternatives, and mitigation tests contained in the dredge and fill policy of the California Coastal Management Program (CCMP)(Coastal Act Section 30233).

B. Public Access and Recreation. The Coastal Act provides the following:

Section 30210. 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 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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

Section 30220. 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. Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division

The Corps of Engineers reports that Marina del Rey Harbor is one of the largest recreational boat harbors on the West Coast and accommodates approximately 6,000 slips of private boaters, commercial fishing vessels, U.S. Coast Guard vessels, and Los Angeles County lifeguard boats. The marina is protected at its entrance channel by three jetties and a detached breakwater (**Exhibits 1 and 2**). The consistency determination states that:

Shoaling within the entrance channel has impacted safe navigation in Marina del Rey Harbor. If dredging does not occur, storm events could deposit enough sediment and debris from Ballona Creek and the adjacent beaches to close the Harbor, which will result in thousands of recreational and commercial vessels as well as U.S. Coast Guard (USCG) operations being unable to transit the harbor. Therefore, the Clean Water Act's (CWA's) overall project purpose is to restore the entrance channel to its authorized dimensions with the basic project purpose being marine recreational and commercial navigation, which is a water-dependent activity. The proposed project meets a public need for safe recreational and commercial navigation, and for unobstructed operations of vital USCG operations and County lifeguard rescue, fire suppression, law enforcement, and various emergency response activities.

...

Commercial and recreational activities [at Marina del Rey Harbor] include boat rentals, charter boat fishing, sport fishing, dining cruises, windsurfing, water shuttle service, harbor/ocean kayaking, ocean jet skiing, swimming, sailing, and ferry service to Catalina Island. The Harbor entrance channel jetties are regularly used by pedestrians and anglers for sightseeing, bicycling, skating, fishing, and walking. In addition, Marina del Rey has multiple hotels and restaurants located throughout the Harbor area. The Marina del Rey Harbor entrance channels incur major boat traffic most of the year, with particularly heavy concentrations on weekends and summer months . . . Dockweiler State Beach and Redondo Beach are heavily used (especially during the summer and on weekends) for recreational purposes and attract a substantial number of residents and visitors to the area.

The proposed maintenance dredging project will remove dangerous shoaling in the Marina del Rey entrance channels and, as a result, will significantly increase boating safety at and adjacent to the harbor. While the project could interfere with boating during dredging operations, any impacts will be temporary and are insignificant when compared to the recreational benefits from removing existing shoaling hazards. The presence of dredge and work vessels in the entrance channel will result in temporary and minor constraints to boating. Commercial vessels will be fully informed of the construction activities and should have no difficulties in maneuvering in the entrance channels. *Notice to Mariners* will include notification of the dredging project, constraints to navigation, and advice to recreational boaters. Since the proposed project is scheduled during the nonpeak boating season when recreational use is relatively low, and because project operations will conclude by April 15, temporary but less-than-significant impacts to boating may occur during project dredging.

Disposal of dredged material in nearshore waters and on the beach at Dockweiler State Beach and Redondo Beach will create temporary adverse impacts to public recreation at these locations (**Exhibits 3 and 4**). Disposal pipelines and construction vehicles and equipment used to place dredged sand on the beach and in nearshore waters will detract from recreational activities (e.g., walking, fishing, sunbathing) popular at these locations. However, sand ramps will be placed over disposal pipelines to allow continued public access to all areas of the beach, except at the immediate point of placement of dredged material. Disposal of dredged materials on Dockweiler and Redondo Beaches will conclude by March 15, thereby avoiding the peak recreational use period and minimizing potential adverse effects on public access and recreation. During beach and nearshore disposal of clean dredged materials, beaches may be temporarily affected by changes in color and the presence of odors associated with these materials. The Corps states that dredged material is usually darker in color and its discharge on the beach will cause temporary adverse impacts. Once the sand dries, it will lighten to match existing beach sands and odors will dissipate. Given that disposal of clean dredged sands will not occur during the summer season, potential impacts to access, recreation, and views will be temporary, localized, and not significant.

The proposed maintenance dredging project would generate minor adverse effects on public access and recreation, primarily resulting from temporary beach closures during disposal and

sand moving operations on the beach, from the noise associated with bulldozer operations on the beach, and from temporary odors and sand colors associated with dredged materials. However, the proposed project would significantly improve public access and recreational opportunities due to the placement of clean and grain-size compatible sand along Dockweiler State Beach and Redondo Beach. The project would also improve the safety of recreational boating due to the removal of shoals which currently interfere with navigation in the entrance channels at Marina del Rey Harbor. The dredging and disposal operations are scheduled to avoid peak recreational use periods in Marina del Rey and Dockweiler and Redondo Beaches. Therefore, the Commission finds that the proposed maintenance dredging project is consistent with the public access and recreational boating policies of the CCMP (Coastal Act Sections 30210, 30211, 30213, 30220, and 30224).

C. Water Quality and Marine Resources. The Coastal Act provides the following:

Section 30230. 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. 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 groundwater 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.

The consistency determination first addresses water quality at the project site:

The quality of water at Marina del Rey Harbor is affected by activities both inside and outside the Harbor. Marina del Rey Harbor receives pollutants through sewage overflows, storm drains, accidental spills, and antifouling paint compounds leaching. During the dry season, the primary source of chemicals affecting the Harbor has been attributed to marine activities. Chemicals associated with boating activities include lead, zinc, copper, tributyltin (TBT), polycyclic aromatic hydrocarbons (PAHs), and bacteria.

During the wet season, the primary source of chemicals affecting the Harbor is likely a result of watershed runoff during rain events. Impacts on water quality from the watershed are primarily associated with stormwater runoff and sediments containing elevated concentrations of heavy metals, organic compounds, and bacteria.

Discharge from Ballona Creek influences chemical concentrations in Marina del Rey Harbor and the adjacent marina in two ways. First, sediment accumulation at the mouth of Ballona Creek reduces flushing of the marina during storm flow events, which can lead to an accumulation of chemicals in Harbor and marina waters. Second, because a portion of the Ballona Creek discharge is deflected by the detached breakwall toward the Harbor entrance channels, contaminated sediments and stormwater have the potential to be transported into the Harbor during flood tide events. The source of wet weather discharge can be significant.

The consistency determination provides the results from sediment grain size and sediment chemistry testing of the proposed dredged materials. Project sediments were tested (following standard guidance from the Ocean Testing Manual (USEAP/USACE, 1991)) for suitability as beach nourishment materials at Dockweiler and Redondo Beaches and as nearshore disposal materials off of these beaches. In addition, beach transect grain size sampling was also performed at Dockweiler and Redondo Beaches. Regarding the suitability of the proposed dredged materials for beach nourishment, the Corps reports that based only on grain size data, Dredge Areas 2, 4, 5, and portions of Area 3 are suitable for nearshore placement at Dockweiler and/or Redondo Beaches. Dredge Area 6 is suitable for both beach and nearshore disposal at Dockweiler and Redondo Beaches. Dredge Areas 1, 7, 8, 9, and portions of Area 3 are too fine-grained to be used as beach replenishment material.

The Corps summarized the results of sediment chemistry testing of the proposed dredged materials and proposed disposal options:

- Areas 1, 2, and 3 are unsuitable for beach or nearshore disposal.
- Area 4, with the exception of the area surrounding test core 4b, is suitable for nearshore disposal at Dockweiler Beach.
- Area 5, with the exception of the area surrounding test core 5a, is suitable for nearshore disposal at both Dockweiler and Redondo Beaches.
- Area 6 is suitable for beach and nearshore disposal at Dockweiler and Redondo Beaches.
- Areas 7, 8, and 9 are unsuitable for beach or nearshore disposal.

The Corps next presented the sediment test results and the proposed dredged materials disposal plan at an April 2010 joint meeting with the members (including the Commission staff) of the Advisory Committee of the Los Angeles Region Contaminated Sediment Task Force (CSTF) and the Southern California Dredge Material Management Team (SCDMMT). The Corps proposed that sediments unsuitable for beach or nearshore disposal be transported to and placed within the Port of Long Beach's (POLB) previously-approved and permitted Slip 1 CAD facility, and that clean sands be placed on the beach and in the nearshore at Dockweiler and Redondo Beaches as follows:

- Area 1: POLB
- Area 2: POLB
- Area 3: POLB
- Area 4: Dockweiler Beach nearshore, except for core 4b area to POLB
- Area 5: Dockweiler or Redondo Beach nearshore, except for core 5a area to POLB
- Area 6: Dockweiler or Redondo Beach or nearshore areas off both beaches
- Areas 7, 8, and 9: POLB

The CSTF and SC-DMMT, including Coastal Commission staff representatives, concurred with the sediment test results and the proposed sediment disposal plan, finding that the dredged materials from Dredge Area 6 are suitable for beach replenishment and materials from Dredge Areas 4 and 5 (with the exception of the materials in the vicinity of cores 4b and 5a) are suitable for beach replenishment when placed in the nearshore zone. The dredging contract and specifications will be designed to ensure that the sediments surrounding cores 4b and 5a will be excluded from transport to and placement on the beach or nearshore waters, but instead will be transported to the POLB Slip 1 location. However, the CSTF/SC-DMMT representative from Heal the Bay dissented from this finding and argued that all materials proposed for placement on the beach or in the nearshore should undergo additional toxicity and bioassay testing. It was the consensus of all the other agency representatives that such testing was not required given the grain size and sediment chemistry test results of the sediments from Dredge Areas 4, 5, and 6.

On August 3, 2010, staff representatives from the Corps of Engineers, U.S. EPA, Regional Water Quality Control Board, Heal the Bay, and the Coastal Commission conducted a conference call and reexamined the sediment test results from cores 4d and 4e. All the participating agencies agreed that the 16,000 cubic yards of sediment associated with these cores should be disposed at the Port of Long Beach Slip 1 confined aquatic disposal facility rather than in nearshore waters as previously designated by the Corps and the CSTF in April 2010. The Corps modified the proposed maintenance dredging project to incorporate this disposal modification.

The primary concerns regarding nearshore and on-beach disposal of dredged material are the suitability of the materials for beach replenishment and potential temporary impacts to marine organisms from increased levels of turbidity. As noted above, the Corps analyzed the physical and chemical characteristics of the sediments to be dredged. These test confirmed that the sediments from Areas 4, 5, and 6 (with the exceptions noted above) are chemically and physically suitable for beach replenishment at Dockweiler and Redondo Beaches. Commission and USEPA staff reviewed the test results and concurred with the finding that these dredged materials are suitable for beach replenishment. The balance of the dredged materials will be placed in a previously-approved and permitted CAD facility at Slip 1 in the Port of Long Beach, where they will be permanently isolated from the marine environment within a landfill to be constructed at this site by the Port (**Exhibit 5**).

Turbidity effects from project dredging will be localized and temporary due to the high sand content of most of the dredged sediments. The dredging of more fine-grained contaminated

sediments will lead to short-term suspension of materials that could adversely affect water quality in the immediate vicinity of dredging operations. However, these sediments are currently exposed to the water column and contribute to the ongoing degradation of water quality in Marina del Rey Harbor. The removal of these contaminated sediments from the marine environment will improve water quality and marine habitat across the project area, notwithstanding any temporary adverse effects due to resuspension of sediments. While on-beach and nearshore disposal will result in minor, short-term impacts to existing nearshore habitat, fish, plankton, and benthic organisms, the Dockweiler Beach and Redondo Beach disposal areas are regularly subject to wave action and any affected species will recolonize the area soon after completion of the dredging and disposal operations. The Corps will implement a water quality monitoring plan at the dredging sites and at the beach and nearshore disposal sites. Turbidity levels will be monitored through dredging and disposal operations and mitigation measures (e.g., placing silt curtains, slowing dredge cycle times) will be installed should turbidity levels exceed the standards and limits contained within the California Ocean Plan. The Commission has previously found that these types of impacts are not significant and do not require additional mitigation measures when it concurred with other dredge material disposal operations at southern California nearshore disposal sites, including Dockweiler State Beach as an element of previous Marina del Rey maintenance dredging projects.

However, during the August 12, 2010, public hearing the Commission discussed the published sediment chemistry test results from Dredge Areas 4, 5, and 6 cores, the proposed sediment disposal locations on public beaches and in adjacent nearshore waters, and the potential human health problems that could arise from transferring those sediments from the entrance channels to areas where the public will come in contact with those sediments. Heal the Bay expressed concerns over the adequacy of the sediment test results undertaken thus far to provide complete assurance that beach disposal of dredged sediments would not adversely affect human health (Exhibit 6). The Commission found that the project as proposed was not consistent with the water quality protection policies of the California Coastal Management Program (Coastal Act Sections 30230 and 30231). As a result, the Commission determined that the sediments from Dredge Areas 4, 5, and 6 must undergo toxicity testing to ensure that they are safe for placement on the beach and in the nearshore and will not adversely affect public recreation and water quality. The Commission determined that the proposed project would be consistent with the water quality protection policies provided that the Corps modify the project as follows:

Sediment Testing. Prior to designating potential beach and/or nearshore disposal locations at Dockweiler and Redondo Beaches for sediments to be dredged from Dredge Areas 4, 5, and 6 at Marina del Rey Harbor, the Corps of Engineers shall undertake toxicity testing of sediment core samples from Dredge Areas 4, 5, and 6.

To implement this condition the Corps must submit the toxicity test results to the members of the Contaminated Sediment Task Force, including Commission staff, and obtain their concurrence with a sediment disposal plan that reflects the results from the toxicity test results.

In conclusion, and as conditioned by the Commission, the proposed dredging of clean and contaminated sediments from the Marina del Rey entrance channels, the disposal of clean sands in the nearshore and on Dockweiler and Redondo Beaches, and the placement of contaminated sediments in the previously-approved POLB Slip 1 CAD facility will not significantly affect coastal water quality but rather will improve water quality and marine habitat at Marina del Rey. Therefore, the Commission finds that if modified as described above, the proposed project is consistent with the marine resource and water quality protection policies of the CCMP (Coastal Act Sections 30230 and 30231).

D. Environmentally Sensitive Habitat/Endangered Species. Section 30240 of the Coastal Act provides that:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and park and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The proposed maintenance dredging project has the potential to affect two federally listed species and the California grunion. The consistency determination and supplemental information provided by the Corps examine potential project impacts and measures incorporated into the project to avoid and minimize those impacts:

- A California least tern fenced nesting area is located approximately just upcoast of the project dredging site. Proposed dredging and disposal will occur outside of the April 15 – September 15 least tern nesting season and, as a result, project-generated turbidity will not affect least tern foraging in the ocean and harbor waters adjacent to the nesting site.
- The Western snowy plover is not known to nest at Dockweiler State Beach, due to intense recreational use and beach maintenance at this location. During the plover's spring and fall migration periods and over winter, individual plovers may occasionally rest on Dockweiler Beach and wintering snowy plovers have been observed on Dockweiler Beach. Plovers do not winter at Redondo Beach due to the narrower beach and adjacent housing. As with past dredged material disposal operations at Dockweiler Beach, all proposed beach nourishment work at Dockweiler Beach will occur south of the identified plover wintering area. Pre-disposal surveys will be conducted at Dockweiler Beach and should plovers be found on or adjacent to the planned disposal site, Corps-hired monitors will direct the contractor to avoid any disposal activity that would affect wintering plovers.
- California grunion are a special interest fish species in the project area and spawn on Dockweiler State Beach and Redondo Beach from mid-March through mid-September,

with peak spawning activity occurring between April and June. Beach disposal will end by March 15, 2011, and will therefore not affect grunion spawning. Nearshore disposal of dredged material could occur until April 15, 2011, but will be halted during predicted grunion runs for the time period extending from two hours before the predicted start of the run until two hours after the predicted end of the run. This measure, developed in consultation by the Corps, National Marine Fisheries Service, and California Department of Fish and Game, will ensure that nearshore turbidity from dredged material disposal does not impede grunion from approaching and spawning on the adjacent beach.

The Corps also states that the placement of dredged material on Dockweiler State Beach and Redondo Beach would have no adverse effects on terrestrial biological resources due to the fact that little or no vegetation is found at either beach site due to wave action, erosion, and previous beach replenishment projects. As currently proposed, the placement of clean dredged sand on the beach and/or in the nearshore will not significantly affect environmentally sensitive habitat or endangered/sensitive species found at these locations. Beach disposal will not occur during the California least tern nesting season, and beach and nearshore disposal will not occur on that section of Dockweiler State Beach that supports wintering Western snowy plovers. Should nearshore disposal occur between March and April 15, restrictions on disposal activity will be implemented to protect California grunion spawning. Should the Corps determine that beach disposal must be extended beyond March 15, 2011, it will submit a consistency or negative determination to the Commission for a project time extension into the California least tern nesting season. In conclusion, the proposed maintenance dredging of Marina del Rey harbor and disposal of clean sands on Dockweiler State Beach and Redondo Beach, and in adjacent nearshore waters off both beaches, will not adversely affect environmentally sensitive habitat or endangered and sensitive species present at these locations. The Commission finds that the proposed project is consistent with the environmentally sensitive habitat policy of the CCMP (Coastal Act Section 30240).

E. Sand Supply. Section 30233(b) of the Coastal Act provides that:

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

The Corps proposes to dredge approximately ~~327~~311,000 cubic yards of clean sandy material from the Marina del Rey Entrance Channel Dredge Areas 4, 5, and 6 and dispose the material on Dockweiler State Beach and Redondo Beach and in nearshore waters adjacent to these beaches. Approximately ~~321~~6,000 cu.yds. from Dredge Area 4 are physically suitable for placement in the nearshore waters off Dockweiler State Beach, and 32,000 cu.yds. from Dredge Area 5 are suitable for nearshore placement off either Dockweiler or Redondo Beaches. The 263,000 cubic yards from Dredge Area 6 (the sand trap located on the upcoast side of the north jetty) are suitable for placement on either Dockweiler or Redondo Beach or in adjacent nearshore waters. These dredged materials are physically compatible for placement at these locations. ~~and aAs~~

discussed previously in this report (Section C: Water Quality and Marine Resources), the Commission has determined that prior to designating potential beach and/or nearshore disposal locations at Dockweiler and Redondo Beaches for sediments to be dredged from Dredge Areas 4, 5, and 6 at Marina del Rey Harbor, the sediments from those areas must undergo toxicity testing to ensure that they are safe for placement on the beach and in the nearshore and will not adversely affect public recreation and water quality. If after toxicity testing all or a portion of these sediments are determined by the members of the Contaminated Sediment Task Force to be suitable for beach and/or nearshore placement, do not contain levels of contaminants that preclude their placement on the beach or in adjacent nearshore waters. By placing these suitable materials at these locations, they will remain in the Santa Monica Bay long shore littoral system. Therefore, the Commission finds that the proposed maintenance dredging project is consistent with the sand supply policy of the CCMP (Coastal Act Section 30233(b)).

SUBSTANTIVE FILE DOCUMENTS.

1. Consistency Determinations for Corps of Engineers maintenance dredging at Marina del Rey: CD-041-08, CD-040-06, CD-022-99, CD-012-98, CD-002-98, CD-088-94, CD-068-94, CD-053-92, CD-031-91, CD-23-88, and CD-057-86.
2. Negative Determinations for Corps of Engineers maintenance dredging at Marina del Rey: ND-022-96 and ND-112-94.

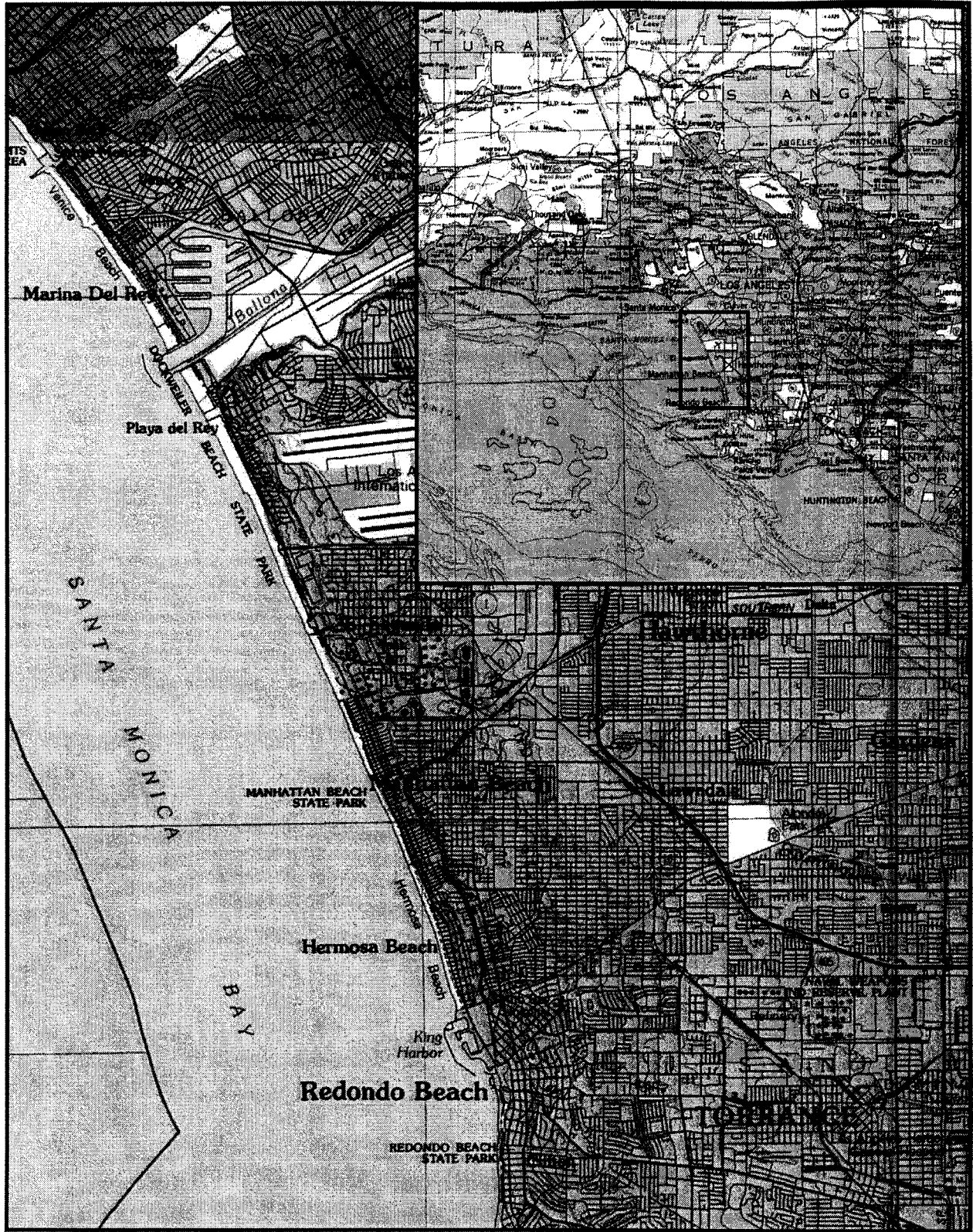
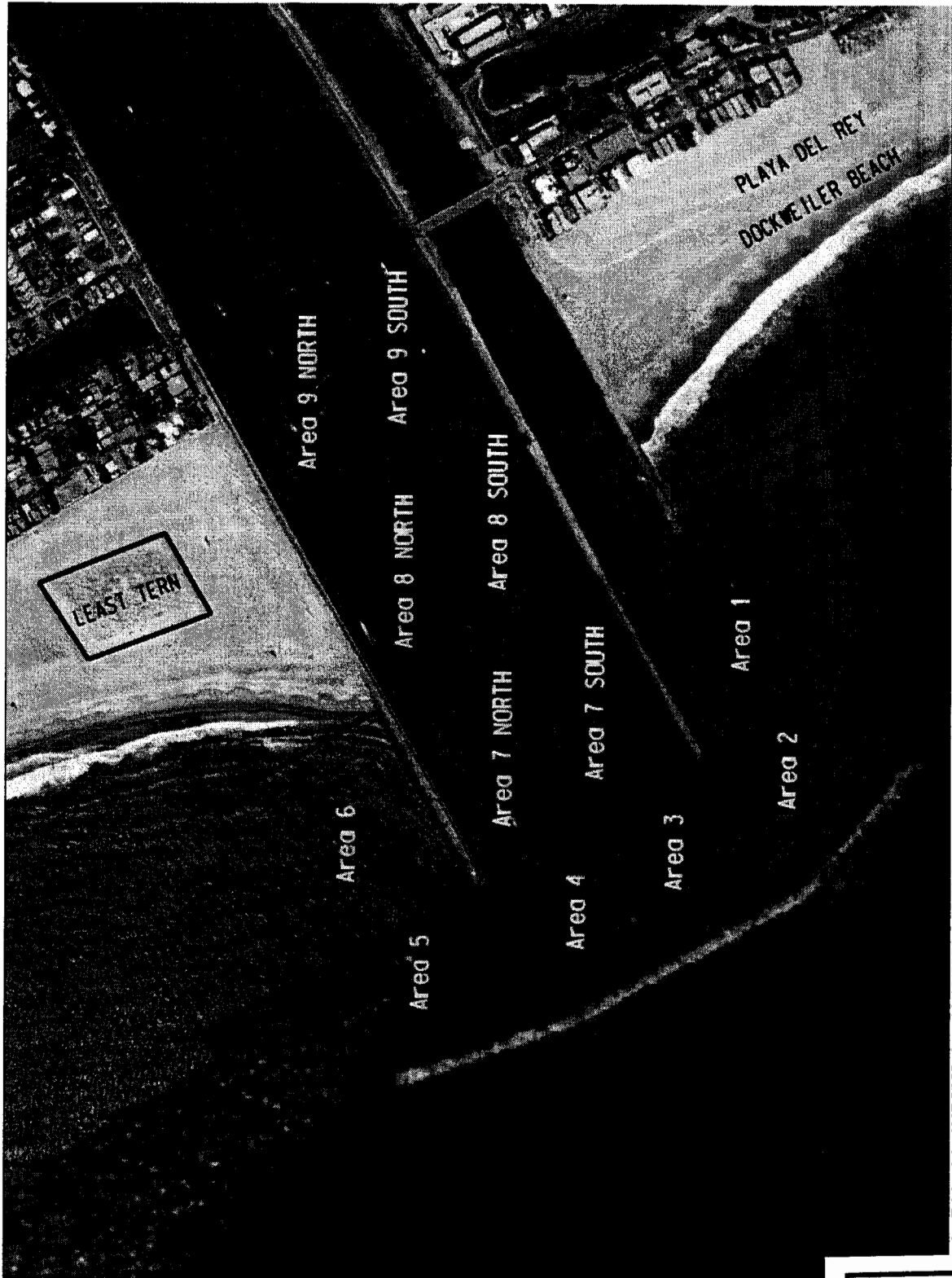


Figure 1 Site Location

EXHIBIT NO. <u>1</u>
APPLICATION NO.
CD-035-10



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Figure 2. Marina del Rey Harbor Composite Areas.

EXHIBIT NO. 2
APPLICATION NO.
CD-035-10

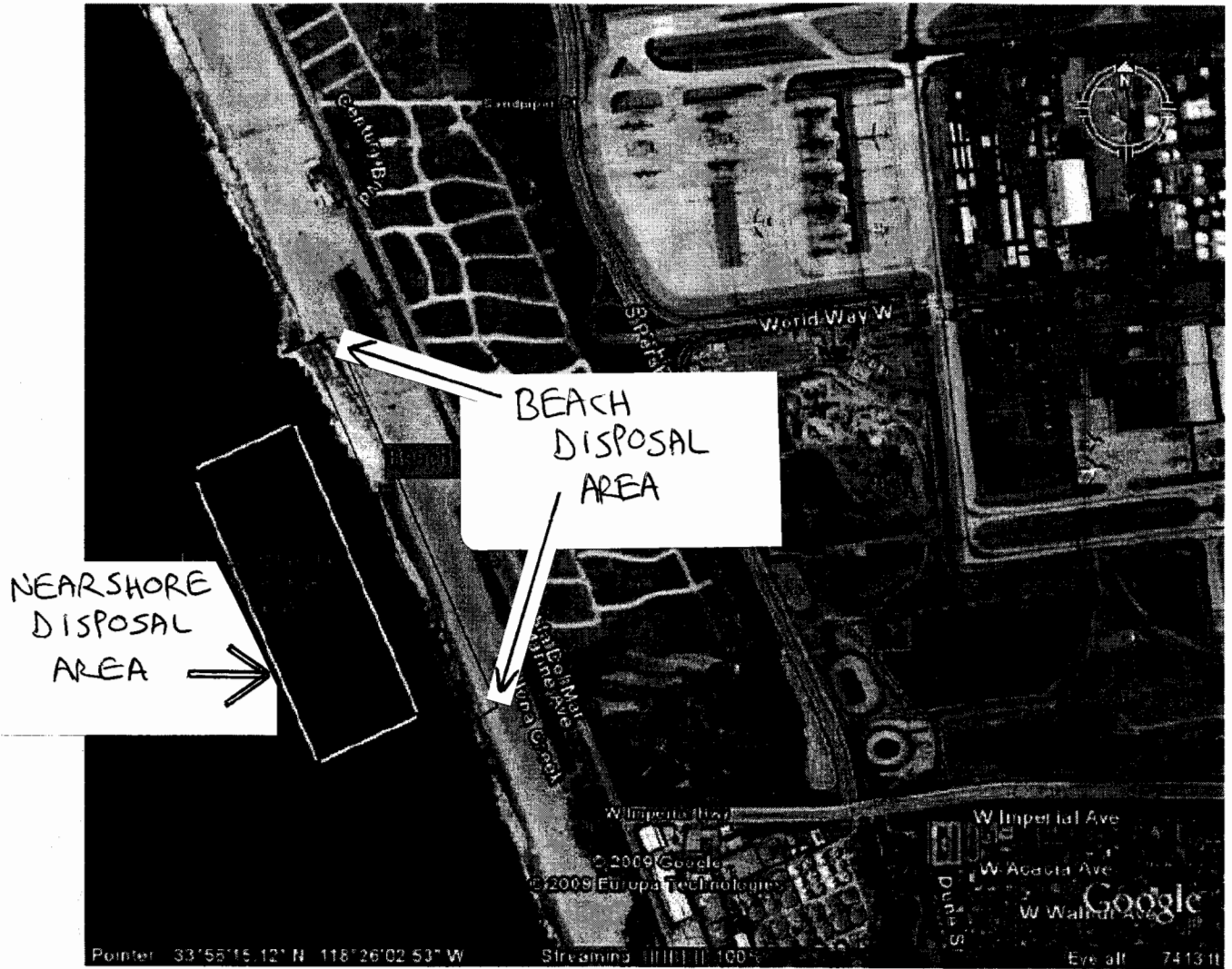


Figure 3. Dockweiler State Beach Disposal Areas

EXHIBIT NO. 3
APPLICATION NO.
CD-035-10

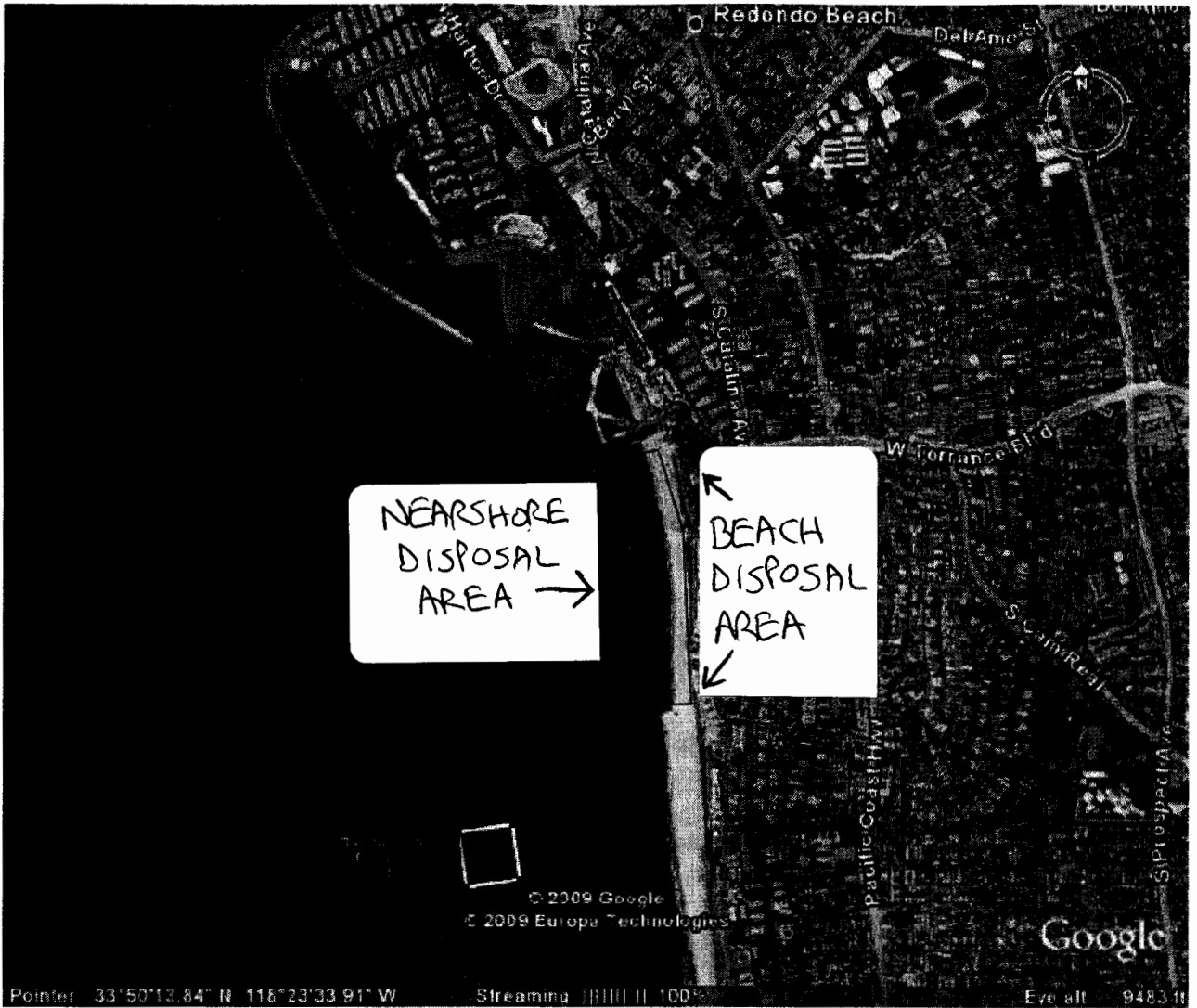


Figure 4. Redondo Beach Disposal Areas

EXHIBIT NO. 4
APPLICATION NO.
CD-035-10

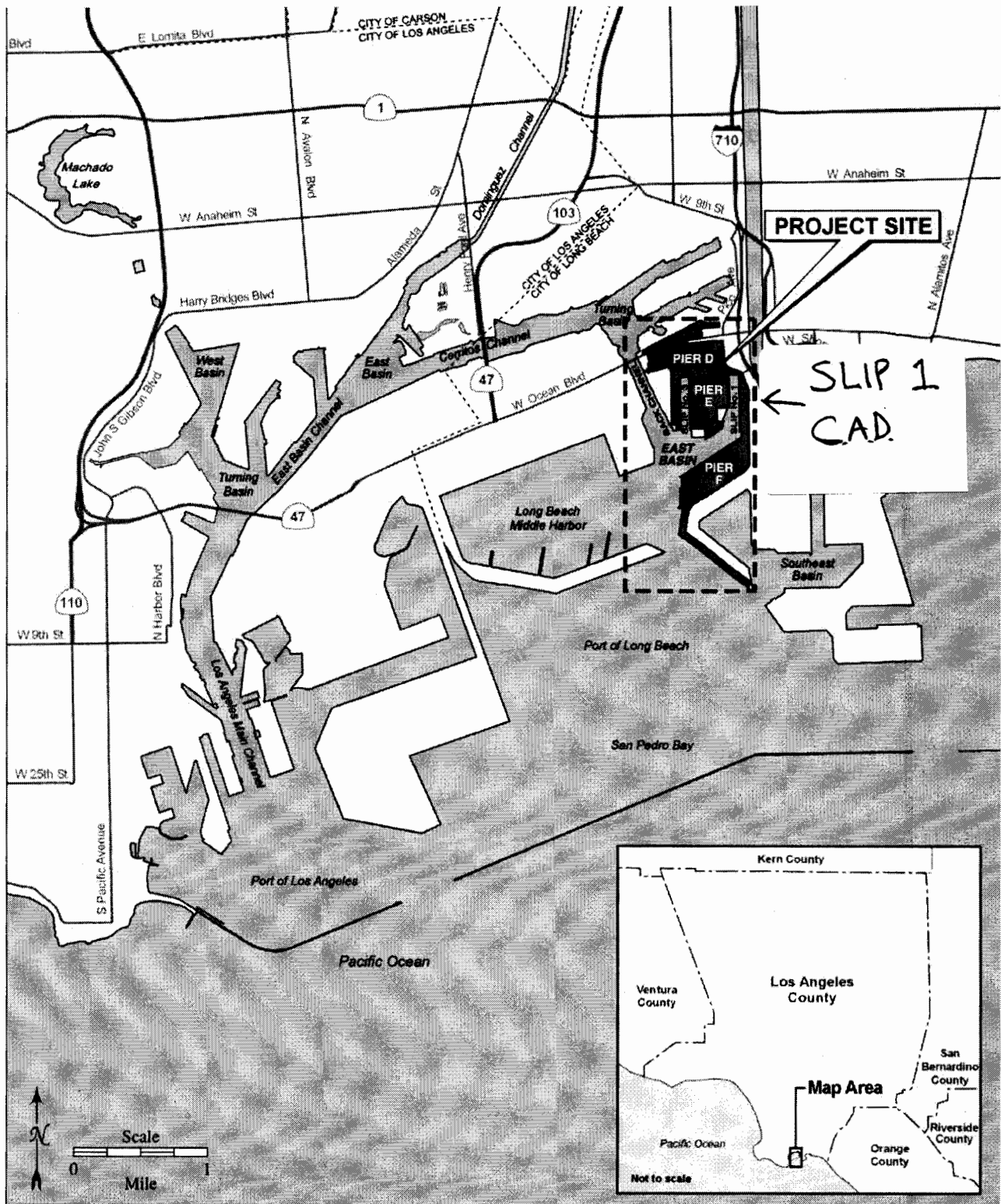
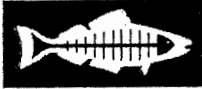


Figure 5. Slip 1, Port of Long Beach

EXHIBIT NO. 5
APPLICATION NO.
CD-035-10

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August 5, 2010

Chairperson Neeley and Commissioners

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219
Sent via Email [lsimon@coastal.ca.gov]

Re: CD-035-10 U.S. Army Corps of Engineers Draft Environmental Assessment for the Entrance Channel Maintenance Dredging at Marina del Rey Harbor.

Dear Chairperson Neeley and Commissioners,

On behalf of Heal the Bay, we appreciate this opportunity to provide comments on the Staff Recommendation on Consistency Determination for the *Draft Environmental Assessment* for the *Entrance Channel Maintenance Dredging at Marina del Rey Harbor* ("Draft EA"). We support aspects of the project, including the beneficial reuse of contaminated material to be dredged from the entrance channel as slip fill in the Port of Long Beach Middle Harbor Project and that the project aims to reduce shoaling conditions around the entrance channel that are hazardous to navigation. However, after reviewing the Draft EA, we would like to convey a few concerns. Mainly, we believe material should undergo toxicity testing prior to being determined to be suitable for beach and nearshore placement.

The Coastal Commission should require material to undergo toxicity testing prior to being designated to be placed on the beach or nearshore zone.

The Staff Report states, "Approximately 263,000 cu.yds. of clean sand will be removed from Dredge Area 6 and placed on the beach and/or in the nearshore zone at Dockweiler State Beach and Redondo Beach. Approximately 64,000 cu.yds. of clean sand will be removed from Dredge Areas 4 and 5 and placed in the nearshore zone off these two beaches" (Page 2). We are concerned that this material was determined to be "clean" based on results of chemistry and physical compatibility testing, not on toxicity testing.

Section 30233(b) of the California Coastal Act states "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." While beach nourishment is appropriate for completely "clean" material, we do not agree that material should be deemed "clean" and suitable for beach and nearshore placement based on chemistry alone. This approach is not consistent with the CSTF Long Term Management Strategy which states that multiple lines of evidence should be used to make decisions regarding sediment quality, including toxicity and bioaccumulation results, *particularly when low-to-moderate levels of*

EXHIBIT NO. 6

APPLICATION NO.
CD-035-10



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contaminants exist in the sediment. Grain size and physical characteristics are also not sufficient to determine potential impacts of the material. As we have seen from other projects in Marina Del Rey (South Marina Del Rey Entrance Channel Dredge and Sand Separation) even material with high sand content can have high levels of certain constituents. In the case of the proposed project, core chemistry results for areas determined suitable for nearshore and beach disposal show low concentrations of many constituents. Even low levels of multiple chemicals can have synergistic toxic effects through chemical interactions, even if individual chemical concentrations are low. In addition, standard chemical tests do not include all constituents that might contribute to toxicity, such as pyrethroids. Recent work by SCCWRP and the City of Los Angeles on Ballona Creek sediments demonstrated that the sediments were often toxic and the predominant source of the toxicity was pyrethroids. Toxicity testing is the best method catching potential impacts of such constituents. In addition to coming in contact with wildlife, material placed on the beach and nearshore zone has a high chance of coming in contact with the public. Hence, toxicity testing is vital to ensure this material will not pose a risk to human health and marine life.

Also, chemical concentrations for many constituents in the sediments from Areas 4 and 5 exceeded values seen in nearshore composites from Dockweiler and Redondo, demonstrating that the proposed beach nourishment sediments are not as clean as existing nearshore sand. For instance, total DDT and chlordane levels for composite samples in Areas 4 and 5 exceeded ERMs, while beach composites were not detected at the corresponding reporting limit. Certain core samples from Area 4 (specifically 4d and 4e) showed PAHs and total chlordane above ERLs. While the Staff Report reflects that these cores will be placed nearshore, it is now our understanding from a subsequent CSTF determination that this material will now go to POLB Middle Harbor Project. The Commission should ensure that this change has been made, as sediments with chemistry levels above ERMs should not be placed nearshore where they could come into contact with the public when currents bring them to shore. We believe that toxicity test results should be a critical component of such suitability calls and that the remaining material considered for beach and nearshore disposal should undergo toxicity testing.

In sum as a precautionary measure, we urge the Commission to require the ACOE to perform toxicity tests on material from Areas 4, 5, and 6 to ensure it does not exhibit toxic effects prior to designating the material appropriate for beach and/or nearshore disposal. If you have any questions, please contact us at (310) 451-1500.

Sincerely,

W. Susie Santilena, MS, EIT
Water Quality Scientist

Kirsten James, MESM
Water Quality Director

EX. # 6