

PUBLIC NOTICE

US Army Corps of Engineers®

Public Notice/Application No.: 200601052-DPS

Comment Period: July 16, 2007 through August 16, 2007

Project Manager: Daniel P. Swenson (213) 452-3414 daniel.p.swenson@usace.army.mil

Applicant

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Dana Point Harbor Department
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Contact

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Location

The proposed work would take place within the Dana Point Harbor, in the City of Dana Point, Orange County, California (dredging site: latitude: 33.45926, longitude: 117.69534), as well as a separate beach nourishment site, Capistrano Beach County Park, in the City of Capistrano, Orange County, California (33.45061, 117.67067) and the off-shore disposal site, LA-3 (Figures 1-3).

Activity

To conduct maintenance dredging and to discharge dredged material at nearby beach sites and at LA-3. For more information see page 3 of this notice.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch
ATTN: CESPL-CO-R-200601391-DPS
P.O. Box 532711
Los Angeles, California 90053-2325

Alternatively, comments can be sent electronically to: daniel.p.swenson@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

Coastal Zone Management- For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission that the project is consistent with the State's Coastal Zone Management Plan. The applicant has certified that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. The District Engineer hereby requests the California Coastal Commission's concurrence or nonconcurrence. A final determination of whether this project affects coastal zone resources will be made by the Corps, in consultation with the California Coastal Commission, after review of the comments received on this Public Notice.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. This review constitutes the extent of cultural resources investigations by the District Engineer at this time, and he is otherwise unaware of the presence of such resources.

Endangered Species- The California least tern, *Sterna antillarum browni*, and the California brown pelican, *Pelecanus occidentalis californicus*, may use the overall area for foraging and roosting in some areas. However, as project activities would consist of only localized, minor effects on the aquatic environment (e.g., temporary turbidity, temporary visual and auditory disturbance), project activities would not affect behavioral patterns of these species. Furthermore, as all proposed nearshore sites are docks and channels or beaches with high levels of recreation, it is not predicted that foraging or nesting activity would be disrupted due to project impacts. Water quality impacts would be short-lived and minimal and would not affect foraging opportunities for either species. Although potential project activities could create elevated surface turbidity levels, these levels are predicted to be not significant, as turbidity would be predominantly a short-term event. It is not expected that turbidity would create levels that would affect prey populations supporting the pelican. If turbidity would be slightly higher than ambient, it is likely that fishes would avoid turbid areas and remain available for catch elsewhere in the system.

Furthermore, the tidewater goby, *Eucyclogobius newberryi*, a fish that occurs in tidal streams associated with coastal wetlands in California (nearest federally-designated critical habitat is approx. 6-7 miles away), is not expected to be impacted by any short-term increases in turbidity within Dana Point Harbor which would result from the proposed activities.

The Western snowy plover, *Charadrius alexandrinus nivosus*, a federal listed species, is a resident to southern California and is known to use one of the proposed beach disposal sites, Capistrano Beach, for foraging and resting (but not nesting). The plover typically nests in undisturbed (i.e., relatively low human activity/noise), flat, open areas with sandy or saline substrates. Snowy plovers forage on invertebrates in the wet sand and amongst the surf-cast kelp within the inter-tidal zone; in the dry, sandy areas above the high tide; on saltpans; and along the edges of salt marshes and salt ponds. Snowy plovers typically forage in areas with little or no human activity; plovers generally avoid areas of high activity, especially where human use is relatively high. Based on the above, the proposed beach disposal operations at Capistrano Beach (temporary pipeline and/or scow discharge, as well as spreading of material onto beach) may affect Western snowy plover. Therefore, the Corps has determined the proposed project activities may effect a Federal-listed species (Western snowy plover) protected under the Endangered Species Act (ESA) and will initiate consultation, pursuant to Section 7 of the ESA.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) - Essential Fish Habitat (EFH)- The proposed dredging activities would temporarily impact areas designated as EFH due to maintenance dredging, and related disposal actions on nearby beaches and the offshore site LA-3. Eelgrass is most likely to occur in the Baby Beach portion of Dana Point Harbor; however, it has not been observed to occur there, with one exception. The offshore area of Baby Beach was surveyed in April 2005, and three eelgrass turions were observed within a 1 m² area at approx. -6 ft MLLW (Figure 4). In addition, the boat Dana Point boat launch area (eastern end of harbor) was surveyed in August 2006, and no eelgrass was observed there.

Beach nourishment (discharge) at Baby Beach: fill material would be placed on Baby Beach (within Dana Point Harbor, see Figure 2). The proposed discharge on Baby Beach could result in ecological impacts due to the mechanical disturbance of the sediments, offshore turbidity effects, and burial of subtidal organisms. However, Dana Point Harbor, like other harbors along the southern California coast, provides a calm, sheltered habitat for marine organisms. The bottom topography within Dana Point Harbor is relatively uniform and most of the bottom is soft substrate and supports a biotic assemblage characteristic of marine soft bottom embayments. The Dana Point Harbor shorelines consist primarily of intertidal and shallow subtidal riprap of medium to large boulders and concrete bulkheads (RBF and MBC 2003). This riprap and the pier pilings of the docks provide intertidal and

subtidal habitats for attached and motile invertebrates characteristic of hard bottom communities. The riprap and pilings also attract rocky shore fish species. The soft bottom areas of Dana Point Harbor are largely unvegetated. Dana Point Harbor is not known to support meadows of the marine flowering plant eelgrass, *Zostera marina*. Chambers Group during an April, 2005, underwater survey of Baby Beach observed 3 turions of eelgrass within an area of approximately 1 square meter at a water depth of approximately -6 feet MLLW. Given the lack of high value ecological resources within the Harbor (e.g., eelgrass beds, rocky reef habitat, etc.), and given the temporary nature of the dredging and disposal activities, intertidal and benthic organisms within and offshore of the Baby Beach site are expected to be only minimally effected and would likely recover within a short time period (a few months).

Beach nourishment (discharge) at Capistrano Beach (Figure 3): The intertidal at Capistrano Beach is primarily sand or a mixture of cobble and sand. While California grunion (*Leuresthes tenuis*) spawn on southern California sand beaches between March and September, during the highest nighttime tides, Capistrano Beach is not known as a regular grunion spawning area. However, there is potential for grunion to spawn there. Shorebirds that typically use southern California sand beaches and that would be expected at Capistrano Beach include black-bellied plovers (*Pluvialis squatarola*), marbled godwit (*Limosa fedora*), whimbrel (*Numenius phaeopus*), willet (*Catoptrophorus semipalmatus*), and sanderling (*Calidris alpina*).

Based on surveys in March, 2000, by Coastal Resources Management, the shallow subtidal (about -12 feet MLLW) off Capistrano Beach is 60 to 90 percent low relief reef with isolated rocks up to two meters in height. A sand veneer covered the lower relief shale bedrock. Further offshore at a depth of around -20 feet MLLW the habitat consisted of isolated patches of reef and boulders (approximately 10 percent of the habitat) but overall, the seafloor was primarily cobble and sand. Diversity of organisms on the subtidal reefs was low. Growth on the rocks was dominated by sand tolerant species of red algae. Small isolated patches of surfgrass (*Phyllospadix* spp) were found at both the -12 foot and -20 foot depth contours. The surfgrass was better developed at the -20 foot contour. Small patches of giant kelp (*Macrocystis pyrifera*) have historically occurred in the vicinity of Capistrano Beach; however, no kelp was observed immediately offshore Capistrano Beach in the Coastal Resources Management survey. A few kelp plants in poor condition were seen further upcoast near the entrance to Dana Point Harbor.

Information on the soft bottom habitat in the vicinity of Capistrano Beach is available from the biological monitoring program for the SERRA outfall and was summarized in the Coastal Resources Management report. The infaunal community in the general project area was dominated in numbers of species and individuals by polychaete annelid worms, mollusks, crustaceans (including ostracods, cumaceans and amphipods) and echinoderms (brittle stars and sea cucumbers). At depths less than 40 feet, the benthic community was characterized by low diversity and comparatively few species. The most abundant soft bottom epifaunal invertebrates were the tube building polychaete worms (*Diopatra ornata* and *D. splendidissima*) and sea pens (*Stylatula elongata*). Other invertebrates occurring on the soft bottom in the project area included anemones (*Pachycerianthus fimbriatus*), sea pansies (*Renilla kollekeri*), gastropods (*Kelletia kelletii*, *Terebra pedroana*), hermit crabs (*Isocheles pilosus*), sand stars (*Astropecten armatus*) and short-spined sea stars (*Pisaster brevispinus*).

Few fishes were observed in the Coastal Resources Management dive surveys off Capistrano Beach. However, fish species that would be expected in the mixed sand and rock habitat offshore Capistrano each include black surfperch (*Embiotica jacksoni*), kelp bass (*Paralabrax clathratus*), seniorita (*Oxyjulis californica*), halibut (*Paralichthys californicus*), barred sand bass (*Paralabrix nebulifer*), sand dabs (*Citharichthys stigmaeus*), hornyhead turbot (*Pleuronichthys verticalis*), bat ray (*Myliobatis californica*), staghorn sculpin (*Leptocottus armatus*), and lizard fish (*Synodus lucioceps*). Common surf zone fishes in southern California include barred surfperch (*Amphistichus argenteus*), California corbina (*Menticirrhus undulatus*), jacksmelt (*Atheinopsis californiensis*), and California grunion (*Leuresthes tenuis*). Marine

mammals common in nearshore waters off Capistrano Beach include California grey whale, bottlenose dolphin, common dolphin, Pacific white-sided dolphin, California sea lion and harbor seal. Common seabirds in nearshore waters include western gulls (*Larus occidentalis*), cormorants (*Phalacrocorax* spp), surf scoters (*Melanitta perspicillata*), California brown pelicans, and western grebes (*Aechmophorus occidentalis*).

For beach nourishment activities, fill material would be placed either directly onto the beach or along and just offshore of the beach such that the material would naturally migrate off-shore due to fluvial processes. The proposed activity could result in ecological impacts at the disposal site, due to the mechanical disturbance of the sediments. Consequently, the impacts could include water quality degradation, mainly due to turbidity, and habitat and species burial, due to sediment deposition. With respect to turbidity, most aquatic organisms are able to cope with the predicted fluctuations. For example, motile organisms, such as fishes, generally will avoid the turbidity plumes. However, some organisms are not able to easily adapt to increased turbidity, for example, light sensitive organisms. While sessile, light sensitive organisms may be affected by temporary turbidity, the effects would be temporary and only minimal, given the already high turbidity associated with the surf zone along Capistrano Beach.

In addition to inhibiting light, turbidity can result in the physical burial of benthic species and habitat. As sediment deposition could occur over near-shore habitat, burial impacts would be predicted to occur over species located in the predicted deposition area. Based on monitoring data from the Ponto Beach discharge in 1998 ((University of Southern California (USC) & California Department of Boating and Waterways (CDBW), *The Fate of Fine Sediments In A Suspension Plume: Ponto Beach, California: A Report of Findings*, April 1998), 10,000 cy of sediment with 18% fines were discharged directly into the surf-zone and monitored, the findings indicated that only a fine layer of sediment covered the bottom floor. Based on these results, the proposed discharge may result in a small amount of burial, typically less than an inch, over the inter- and sub-tidal floor. Buried habitat would be recolonized rapidly (weeks to a few years depending on habitat type).

Dredge disposal pipeline: If a hydraulic cutter/suction head dredge is used for dredging operations, material would be pumped through a temporary pipeline to Capistrano Beach (as described below, also see Figure 1). The main channel of Dana Point Harbor 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 benthic habitat along the proposed pipeline route is offshore of San Juan Creek and is periodically disturbed by discharges from the creek. Based on March 2000 surveys by Coastal Resources Management, 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 reef and boulders (approximately 10 percent of the habitat). Where the pipeline heads inshore towards the beach, the percentage of hard substrate increases to 60 to 90 percent. Most of this hard substrate is low relief covered with a sand veneer. Isolated rocks up to six feet in height occur. The diversity of organisms on the subtidal reefs in the vicinity of the pipeline is low. Growth on the rocks is dominated by sand-tolerant species of red algae. Small isolated patches of surfgrass (*Phyllospadix* spp.) occur. No kelp beds are currently found along the proposed pipeline route. The nearest kelp beds are west and offshore of the proposed pipeline route and also on the Dana Point Harbor breakwater. Isolated kelp plants might at times attach to some of the rocks along the pipeline route.

Placement of the pipeline would 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. As the pipe hits the bottom it will briefly resuspend sediments in the immediate vicinity. Mobile organisms such as fishes and crabs would be expected to move away from the disturbed area while the pipe is settling on the bottom but would return to the area as soon as resuspended sediments settle (within minutes). Sessile organisms such as tube worms on sand and red algae on rocks that are directly under the pipeline

might be killed or injured by the placement of the pipe. Based on a total pipeline length of about 10,500 feet and a disturbance width of about 3 feet, approximately 0.72 acres of subtidal bottom would be disturbed by pipeline placement. Most of this would be soft bottom habitat. Approximately 2,400 feet of the pipe would be within the harbor where the bottom consists entirely of soft substrate. Approximately 6,000 feet of the pipeline would be at about 20 foot water depth where about 10 percent of the habitat is hard bottom. About 2,100 feet would be in shallow water where the substrate is 60 to 90 percent hard bottom (80 percent assumed for this analysis). Therefore the amount of hard bottom habitat that would be disturbed by pipeline placement would be approximately 0.2 acres. Most of this hard bottom is low relief habitat periodically covered by sand and disturbed by discharges from San Juan Creek. Once the pipeline is removed the rocks would be recolonized by red algae and other organisms characteristic of the habitat before pipeline disturbance. Overall, the proposed pipeline placement would have a temporary, adverse impact on approximately 0.52 acres of soft bottom habitat and 0.2 acres of hard bottom habitat.

Placement of pipeline on the beach and covering a portion of the pipeline with sand would temporarily disturb sandy intertidal organisms. The intertidal invertebrate community would be expected to recover from this disturbance within a few months. Placement of the pipeline and covering of a portion of the pipeline with sand could disturb shorebirds foraging on the beach. This temporary disturbance would be insignificant for most shorebird species. However, the Federal threatened western snowy plover (*Charadrius alexandrinus nivosus*) sometimes forages on Capistrano Beach. Disturbance to snowy plovers during pipe placement at Capistrano Beach likely will be limited to avoidance of the immediate area where activities are occurring. Because Capistrano Beach is not near a snowy plover nesting area, impacts would be adverse but temporary and minimal.

Grunion Fishery: The grunion, *Leuresthes tenuis*, is a local species known to occur predominantly along the southern California coast. Grunion typically spawn on sandy beaches with substantial wave exposure from March through July. Given that inner Dana Point Harbor beaches (specifically Baby Beach) do not experience substantial wave exposure, the proposed project would not be predicted to affect grunion spawning activities at this location. However, grunion may spawn at the other proposed beach nourishment site, Capistrano Beach. At the Capistrano Beach site, dredged material would be discharged either directly onto the beach or along and just offshore of the beach. To avoid adverse effects to grunion, pre-project surveys would be conducted to evaluate beach suitability for grunion activity. In the event that beach nourishment operations would extend beyond March 1 through August (the grunion spawning season), and if surveys indicate that beach conditions are found to be suitable for grunion activity or grunion activity is detected at any time, the permittee shall refrain from work and immediately notify the Corps (within 24 hours). After coordination with NOAA Fisheries, to ensure that impacts to California grunion are minimized to the greatest extent possible, then the Corps may authorize the permittee to proceed.

Lobster Commercial/Recreational Fishery: Regionally, lobster is the most important commercial species in terms of value and one of the top species hunted for by recreational divers. Juvenile lobster use the near-shore environment for one to two years; they are dependent upon the surfgrass and hard-bottom reef habitats as a nursery area and a refuge from predation. The proposed project could have direct impacts to lobster if surfgrass or hard-bottom habitat is temporarily buried by discharged material. Consequently, the effects of the beach nourishment activities could affect the overall success of juvenile lobsters. However, as indicated above, impacts to EFH resources are expected to be minimal due to the temporary nature of the disturbance.

EFH Consultation: This notice initiates the EFH consultation requirements of the MSFCMA. The predicted project impacts would not be expected to have a substantial adverse impact on EFH or Federally managed fisheries in California waters. Although short-term impacts might occur during

pipeline placement and discharge of fill onto beach sites, impacts would be short lived and not significantly impact existing biotic resources. Therefore, it is our initial determination that the proposed activity would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent. The basic project purposes for the proposed project consist of maintenance, navigation, and providing additional sediment for beaches.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to conduct maintenance dredging and beach nourishment in portions of Dana Point Harbor (Figure 2), in the City of Dana Point, Orange County, California and to discharge dredged material (for beach nourishment) at Capistrano Beach County Park (Figures 1 and 3), in the City of Dana Point, Orange County, California and at the LA-3 off-shore disposal site (Figure 5).

Specifically, the applicant proposes to dredge approximately 115,200 cubic yards (CY) of material (including up to 2 feet of overdredging and a 10% contingency for slumping of sideslope material) from portions of Dana Point Harbor. Dredged material would be discharged for the purpose of beach nourishment at Baby Beach (9500 CY, 2.4 acres) within the Harbor and at Capistrano Beach County Park (48,400 CY, 6.0 acres on beach and/or 11.7 acres along beach (nearshore)). Beach nourishment at Capistrano Beach County Park would take place by constructing an on-shore berm along approx. 1000 linear feet of beach and/or by discharging material at a nearshore site (Figure 3). In addition, 57,300 CY of dredged material not suitable for beach nourishment would be discharged at the LA-3 off-shore disposal site (Figure 5). 2600 CY of material from the C2 sample location, not suitable for disposal into waters of the U.S., would be left in place.

Additional Project Information

Sediment Testing- Based on grain size analysis, as well as physical and chemical sediment testing and bioassays completed for the proposed project (report entitled: "Dredge material evaluation - Dana Point Harbor Maintenance Dredging" prepared by Kinnetic Laboratories, Inc. and Moffatt & Nichol, dated March 2007), the Corps has determined sediments from proposed dredging sites A1-A6 would be suitable for disposal on the two proposed beach sites, Baby Beach and Capistrano Beach County Park. Material from all other dredging sites, B1-B8 and C1, C3-C6, are not suitable for beach nourishment and would be discharged at the LA-3 off-shore disposal site (with the exception of C2).

An exception is noted for test results for individual core C2 (East basin - 60 inch outfall site, see Figure 2), which was located near a storm drain within the harbor. In general, the sediment chemistry showed as much as two orders of magnitude higher contaminant values than the other individual

cores in this test composite. In particular, there were significantly higher concentrations for tributyltin (over 400 ppt) and total PAHs (over 7 ppm, or 7,419 ug/kg). Due to the significantly elevated sediment chemistry in the vicinity of the storm drain, C2 material is not suitable for disposal at LA-3, and the approximately 2600 CY of C2 material would be left in place.

Transport and discharge operations-

1. Dredged material would be removed, transported, and discharged as follows:
 - a. Beach sites method 1: Hydraulic cutter/suction head dredge and pumped through a temporary pipeline to the two beach nourishment sites. The proposed pipeline would extend from Dana Point Harbor to the disposal site on Capistrano Beach (see Figure 1). It most likely would be a 30-inch outer diameter steel-walled (or High Density Poly-Ethylene) pipe. The pipe would be submerged and would lie on the ocean bottom. The pipe would be installed by filing it with compressed air, floating it into place with a barge and tender boats, and then submerging the pipe by removing the compressed air. If high density polyethylene pipe rather than steelwalled pipe is used, it would have to be anchored to the sea floor with collars and weights. The barge and tender boats would not need to anchor during pipeline installation. The pipe 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 the pipeline's emergence on the beach, the construction crew would attach 200 to 300 foot sections of additional pipeline that would extend parallel to shore to specific discharge locations on the beach. Sand would be pushed around and over the pipe on the beach to create ramps for people and equipment to cross over the pipe. The pipe would be in place for a maximum of twelve weeks. To remove the pipe a compressor would be attached at the dredge end of the pipe. The compressor would pump compressed air into the pipe to push water out of the pipe and cause the pipe to float to the surface of the ocean. The pipe would then be picked up by the barge and tender boats.
 - b. Beach sites method 2: Clamshell/excavator dredge with material transported to discharge sites via scow (Figure 6);
 - c. LA-3 method: material would be dredged using a clamshell/excavator dredge with material transported via scow;
2. Scheduling: Overall operations (including mobilization and demobilization) would take place over three months, tentatively scheduled over the period from December 2007 to March 2008. Dredging and discharge operations would occur only on weekdays between 7:00 am and 7:00 pm.
3. Routes: For marine routes of pipeline and/or scows, see Figures 1, 5, 6.
4. Debris management: dredged material is expected to be high in sand content and contain little debris. The hydraulic suction dredge would be screened for any debris larger than 12 inches in diameter. In addition, the Permittee would ensure that a monitor would be in place to observe all on-shore discharges and ensure that all large debris would be manually removed.
5. Beach discharge method: Material disposed of at the Capistrano Beach County Park site (on-shore discharge) would be spread using a loader, then graded with a beach rake to remove trash and debris.

Proposed Special Conditions

Dredging-

1. For this permit, the term dredging operations shall mean: navigation of the dredging vessel at the dredging site, excavation of dredged material within the project boundaries, and placement of dredged material into: i) hopper dredge, disposal barge or scow, or truck; or ii) a temporary pipeline for transport of material to beach disposal sites.
2. Dredging authorized in this permit shall be limited to the areas defined in Figures ____ only. No more than 115,200 cubic yards of dredged material are authorized for dredging from the Dana Point Harbor by the Permittee. No dredging is authorized in any other location under this permit. This permit does not authorize the placement or removal of buoys.
3. For this permit, the maximum dredging design depth (also known as the project depth or grade) shall be as shown on Figures _____, with a maximum allowable overdredge depth of 2 feet below the design depth. No dredging shall occur deeper than the dredging design depth for each particular site within Dana Point Harbor plus the 2 feet of overdredge depth or outside the project boundaries.
4. The Permittee is prohibited from dredging and disposing material in navigable waters of the U.S. that has not been tested and determined by the Corps, in consultation with the Environmental Protection Agency Region IX (EPA), to be both clean and suitable for disposal in ocean waters. Re-testing of previously tested or dredged areas is required after three years from the date of sediment sampling. This time limit is subject to shortening given the occurrence of any event that may cause previously determined clean material to become suspect, at the discretion of the Corps. Prior to each dredging episode, the Permittee must demonstrate that the proposed dredged materials are chemically and physically suitable for disposal in ocean waters according to the provisions of the Inland Testing Manual or Ocean Disposal Manual as appropriate. If the material does not meet the physical and chemical criteria for unconfined disposal in ocean waters, the dredged material shall be disposed in an upland disposal area. The Permittee shall submit to the Corps and EPA a draft sampling and analysis plan (SAP). Sampling may not commence until the SAP is approved, in writing, by the Corps, in consultation with EPA.
5. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the Permittee shall send a dredging and disposal operations plan to the Corps and EPA, with the following information:
 - A) A list of the names, addresses and telephone numbers of the Permittee's project manager, the contractor's project manager, the dredging operations inspector, the disposal operations inspector and the captain of each tug boat, hopper dredge or other form of vehicle used to transport dredged material to the designated disposal site.
 - B) A list of all vessels, major dredging equipment and electronic positioning systems or navigation equipment that will be used for dredging and disposal operations, including the capacity, load level and acceptable operating sea conditions for each hopper dredge or disposal barge or scow to assure compliance with special conditions on dredging and disposal operations.
 - C) A detailed description of the dredging and disposal operations authorized by this permit. Description of the dredging and disposal operations should include, at a minimum, the following:
 - i. Dredging and disposal procedures for 115,200 cubic yards to be dredged from the Permittee's proposed sites within Dana Point Harbor. Areas shallower than

the dredging design depth shall be shaded green, areas between the dredging design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps may request additional information.

ii. A schedule showing when the dredging project is planned to begin and end.

D) A predredging bathymetric condition survey (presented as a large format plan view drawing), taken within thirty (30) days before the dredging begins, accurate to 0.5-foot with the exact location of all soundings clearly defined on the survey chart. The predredge survey chart shall be prepared showing the following information:

- i. The entire dredging area, the toe and top of all side-slopes and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the predredge condition survey should cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered.
- ii. The dredging design depth, overdredge depth and the side-slope ratio.
- iii. The total quantity of dredged material to be removed from the dredging areas and the side-slope areas.
- iv. Areas shallower than the dredging design depth shall be shaded green, areas between the dredging design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps may request additional information.
- v. The predredging survey chart shall be signed by the Permittee to certify that the data are accurate and that the survey was completed within thirty (30) days before the proposed dredging start date.

E) A debris management plan to prevent disposal of large debris at all disposal locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.

6. The Permittee shall not commence dredging operations unless and until the Permittee receives a Notice to Proceed, in writing (via letter or e-mail), from the Corps.

7. The Permittee shall maintain a copy of this permit on all vessels used to dredge, transport and dispose of dredged material authorized under this permit.

8. The Permittee shall notify the Commander Eleventh Coast Guard District (USCG), and the Coast Guard Marine Safety Office / Group LA-LB not less than 14 calendar days prior to commencing work and as project information changes. A copy of each notification to the USCG shall be sent to the Corps for our file. The notification, either by letter, fax, or e-mail, shall include as a minimum the following information:

- A) Project description including the type of operation (i.e. dredging, diving, construction, etc).
- B) Location of operation, including Latitude / Longitude (NAD 83).
- C) Work start and completion dates and the expected duration of operations.
- D) Vessels involved in the operation (name, size and type).
- E) VHF-FM radio frequencies monitored by vessels on scene.
- F) Point of contact and 24 hour phone number.
- G) Potential hazards to navigation.
- H) Chart number for the area of operation.

Addresses:

Commander, 11th Coast Guard District (dpw)
Coast Guard Island, Building 50-2
Alameda, CA 94501-5100
ATTN: Local Notice to Mariners,
BM1 Ron Hellberg
TEL: (510) 437-2986
FAX: (510) 437-3423
E-mail: d11lnm2uscg.mil

U.S. Coast Guard
Marine Safety Office / Group LA-LB
1001 South Seaside Ave., Bldg 20
San Pedro, CA 90731
Attn: Waterways Management
TEL: (310) 732-2020

9. The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the USCG in writing, with a copy to the Corps, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation which requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps as well as the USCG, Aids to Navigation office. The Permittee and its contractor(s) are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps and the U.S. Coast Guard

10. Should the Permittee determine the work requires the placement and use of private aids to navigation in navigable waters of the U.S., the Permittee shall submit a request in writing to the Corps as well as the U.S. Coast Guard, Aids to Navigation office. The Permittee is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps and the USCG.

11. The Permittee shall ensure that the captain of any hopper dredge, tug or other vessel used in the dredging and disposal operations, is a licensed operator under USCG regulations and follows the Inland and Ocean Rules of Navigation or the USCG Vessel Traffic Control Service. All such vessels, hopper dredges or disposal barges or scows, shall have the proper day shapes, operating marine band radio, and other appropriate navigational aids.

12. The Permittee's contractor(s) and the captain of any dredge covered by this permit shall monitor VHF-FM channels 13 and 16 while conducting dredging operations.

13. Upon request, the Permittee and its contractor(s) shall allow inspectors from the Corps, EPA, and(or) the USCG to inspect all phases of the dredging and disposal operations.

14. Upon request, the Permittee and its contractor(s) retained to perform work authorized by the permit or to monitor compliance with this permit shall make available to inspectors from the Corps, EPA, and(or) the USCG the following: dredging and disposal operations inspectors' logs, the vessel track plots and all disposal vessel logs or records, any analyses of the characteristics of dredged material, or any other documents related to dredging and disposal operations.

15. The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States.

16. If a violation of any permit condition occurs, the violation shall be reported by the Permittee to the Corps within twenty-four (24) hours. If the Permittee retains any contractors to perform any activity authorized by this permit, the Permittee shall instruct all such contractors that notice of any

violations must be reported to the Permittee immediately.

17. When using a hopper dredge, water flowing through the weirs shall not exceed 10 minutes during dredging operations. The level that a hopper dredge can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site or during transit from the dredging site to the disposal site. No hopper dredge shall be filled above this predetermined level. Before each hopper dredge is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.

18. When using a disposal barge or scow, no water shall be allowed to flow over the sides. The level that a disposal barge or scow can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site. No disposal barge or scow shall be filled above this predetermined level. Before each disposal barge or scow is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.

19. The Permittee shall use an electronic positioning system to navigate at the dredging site. The electronic positioning system shall have a minimum accuracy and precision of +/- 10 feet (3 meters). If the electronic positioning system fails or navigation problems are detected, all dredging operations shall cease until the failure or navigation problems are corrected. Any navigation problems and corrective measures shall be described in the post-dredging completion report per Special Condition 20.

20. The Permittee shall submit a post-dredging completion report to the Corps within 30 calendar days after completion of each dredging project to document compliance with all general and special conditions defined in this permit. The report shall include all information collected by the Permittee, 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 Baby Beach and Capistrano beach sites.
- D) Mode of dredging.
- E) Mode of transportation.
- F) Form of dredged material.
- G) Frequency of disposal to the Baby Beach and Capistrano beach sites.
- H) Tug boat or other disposal vessel logs documenting contact with the USCG before each trip to the ocean disposal site.
- I) Percent sand, silt and clay in dredged material.
- J) 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.
- 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.
- L) The post-dredging report shall be signed by a duly authorized representative of the

Permittee. The Permittee's representative shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

21. A pre-construction survey of the project area for *Caulerpa taxifolia* (*Caulerpa*) shall be conducted in accordance with the *Caulerpa* Control Protocol (see <http://swr.ucsd.edu/hcd/ccpvl.htm>) not earlier than 90 calendar days prior to planned construction/dredging and not later than 30 calendar days prior to construction/dredging. The results of that survey shall be furnished to the Corps, NOAA Fisheries, and the California Department of Fish and Game (CDFG) at least 15 calendar days prior to initiation of work in navigable waters. In the event that *Caulerpa* is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps, in consultation with NOAA Fisheries and CDFG. In addition, and simultaneously, a pre-construction survey of the project area for eelgrass shall be conducted.

22. The Permittee shall discharge only clean construction materials suitable for use in the oceanic environment. The Permittee shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

Beach Disposal (beach nourishment)-

1. The Permittee shall not commence beach disposal operations unless and until the Permittee receives a Notice to Proceed, in writing (via letter or e-mail), from the Corps.

2. The Permittee shall ensure that a monitor will be in place to observe all on-shore discharges and ensure that all large debris will be manually removed.

3. Pre-project surveys shall be conducted to evaluate beach suitability for grunion activity. In the event that beach nourishment operations would extend beyond March 1 through August (the grunion spawning season), and if surveys indicate that beach conditions are found to be suitable for grunion activity or grunion activity is detected at any time, the permittee shall refrain from work and immediately notify the Corps (within 24 hours). After coordination with NOAA Fisheries, to ensure that impacts to California grunion are minimized to the greatest extent possible, then the Corps may authorize the permittee to proceed.

4. If a violation of any permit condition occurs during discharge operations, the Permittee shall report such violations to the Corps within twenty-four (24) hours after the violation occurs. If the permittee retains any contractors to perform any activity authorized by this permit or to monitor compliance with this permit, the Permittee shall instruct all such contractors that notice of any permit violations must be provided to the Permittee immediately so the Permittee can report the violation as required.

5. The permittee shall maintain a copy of this permit on all vehicles used to transport and discharge of fill material authorized under this permit.

6. The permittee shall send one (1) copy of a beach disposal post-discharge report to the Los Angeles District's Regulatory Branch documenting compliance with all general and special conditions defined in this permit. The post-discharge report shall be sent within 30 calendar days after completion of the discharge operations authorized in 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 include:

- i. Corps permit number.
- ii. Identify source of material.
- iii. Total cubic yards disposed at each beach disposal site.
- iv. Modes of transportation and discharge.
- v. Actual start date and completion date of transport and discharge operations.
- vi. Verification of debris removal requirements (see Beach Disposal special condition #2 above).

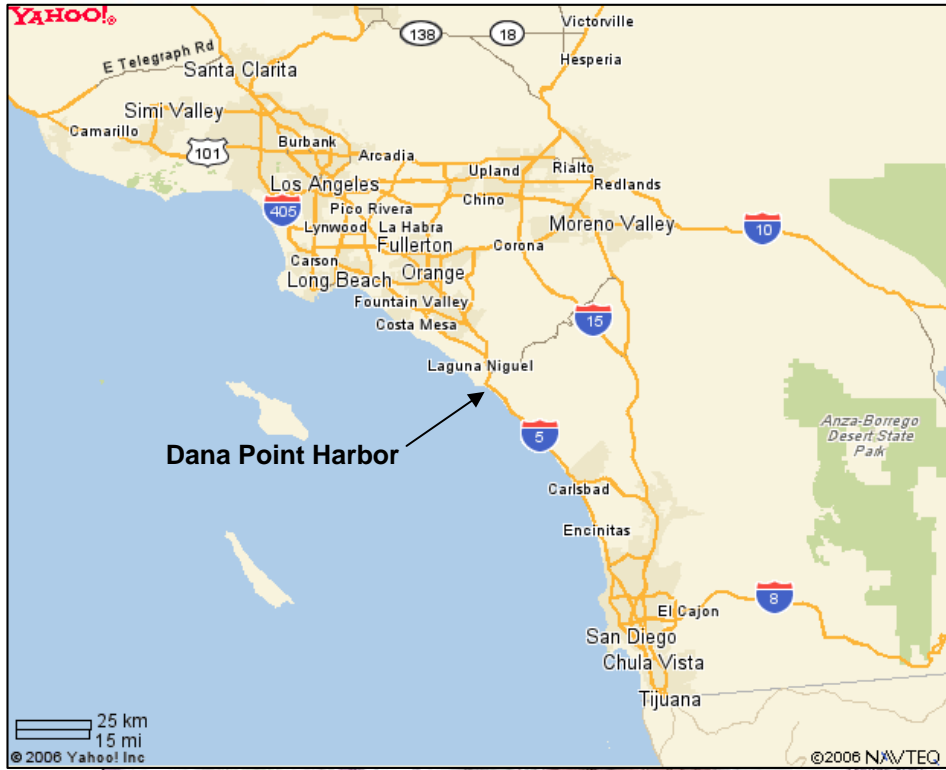
7. The Permittee shall implement all appropriate, standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive eroded materials do not enter waters of the U.S. due to beach nourishment operations.

8. The applicant will establish a safety flag perimeter of the beach nourishment area during disposal activities, and monitor the premises to protect the general public from construction hazards and equipment.

9. No maintenance, storage, or fueling of heavy tracked equipment or vehicles will occur within 500 feet of the high tide line of waters of the U.S.

10. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

For additional information please call Daniel P. Swenson at (213) 452-3414. This public notice is issued by the Chief, Regulatory Division.



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MN (12.8° E)

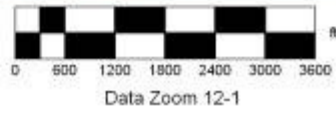


EXHIBIT A1 – SITE MAP – DANA POINT HARBOR AND CAPISTRANO BEACH



Figure 2. Dana Point Harbor Limits of Dredging and Final Sampling Locations

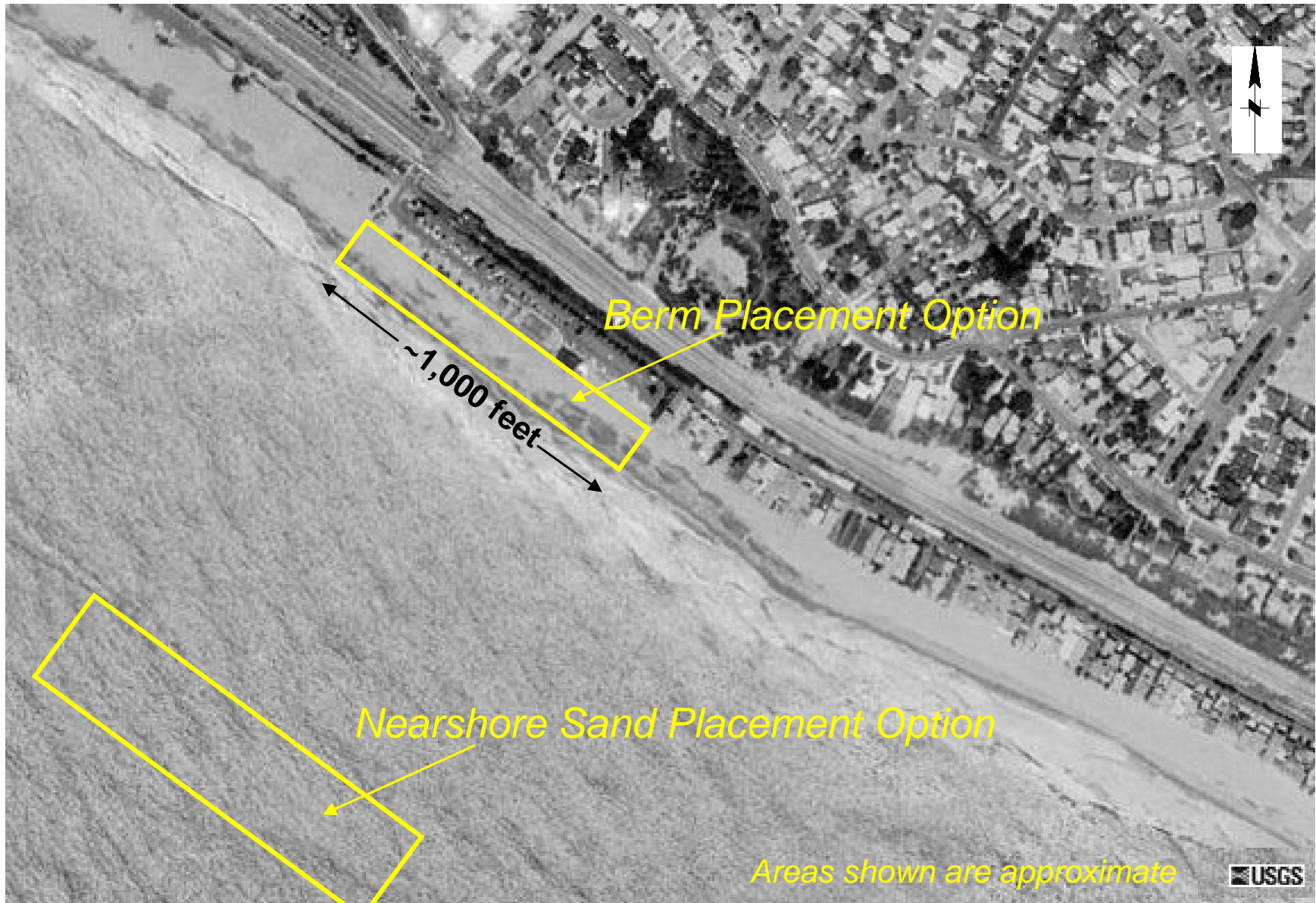


EXHIBIT D – CAPISTRANO BEACH FILL



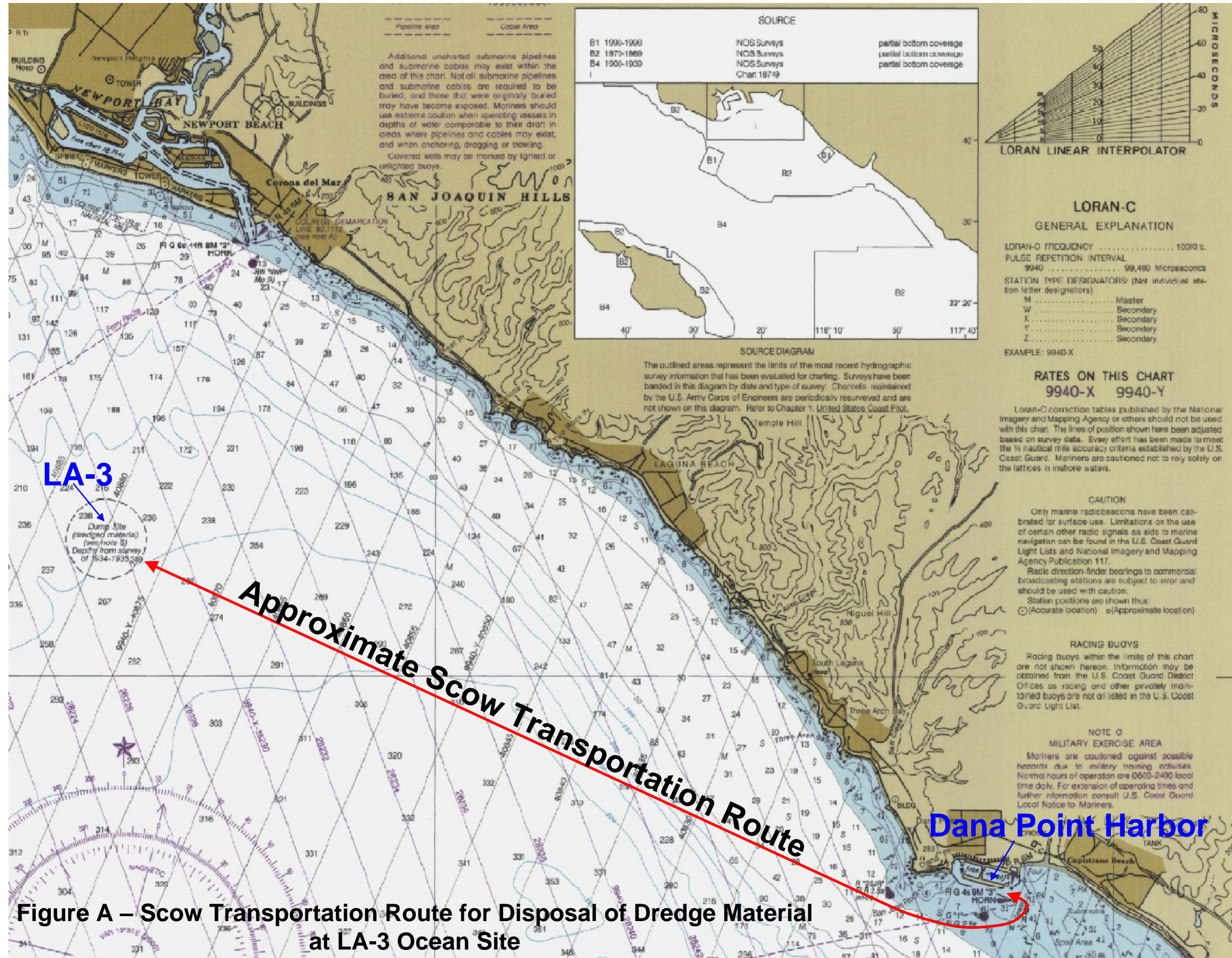


Figure A – Scow Transportation Route for Disposal of Dredge Material at LA-3 Ocean Site

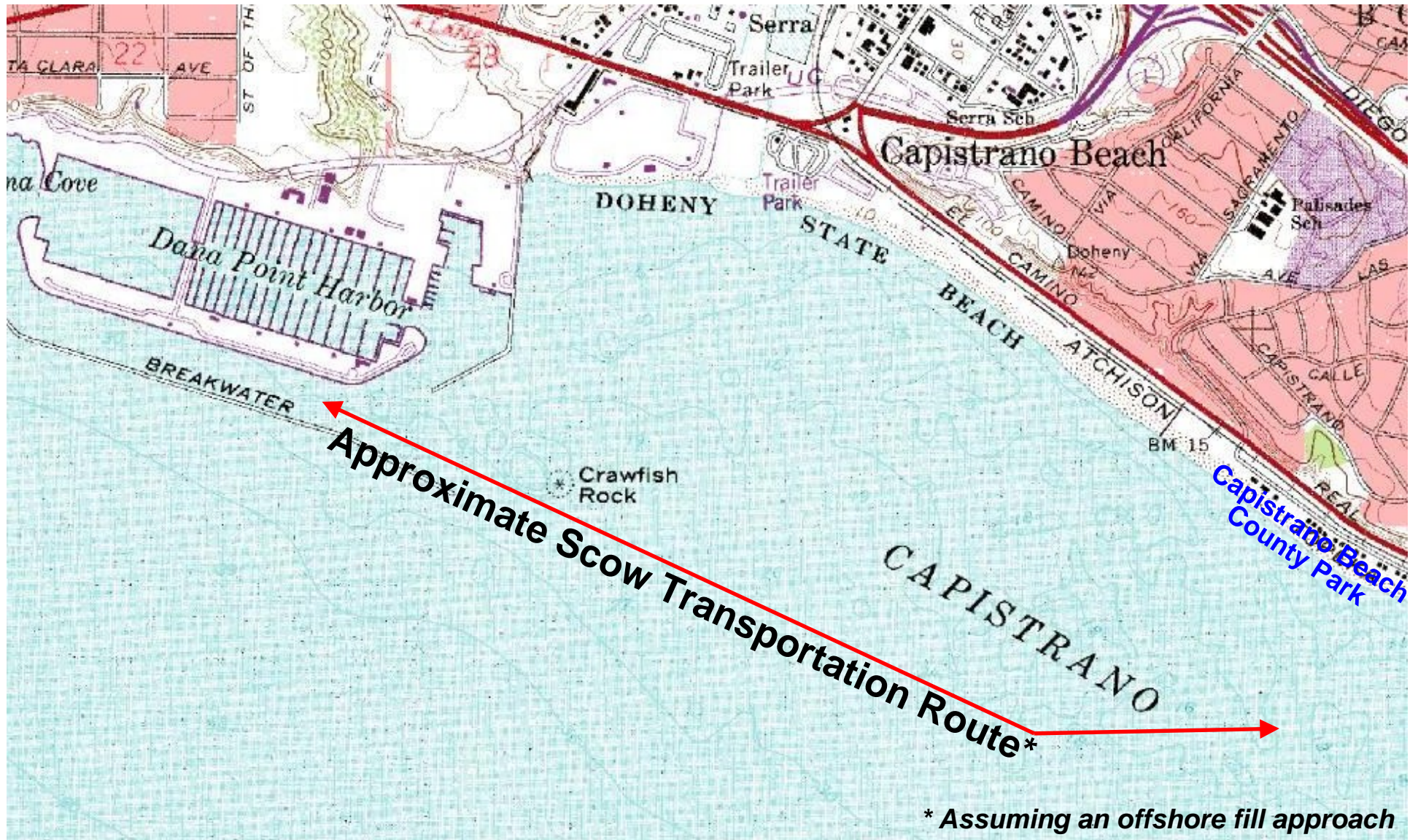


Figure B – Scow Transportation Route for Disposal of Dredge Material at Capistrano Beach (for Offshore Fill Alternative)