

## CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATIONON CONSISTENCY DETERMINATION

Consistency Determination CD-123-96  
Staff: MPD-SF  
File Date: 9/27/96  
45th Day: 11/11/96  
60th Day: 11/26/96  
Commission Meeting: 11/15/96

FEDERAL AGENCY: U.S. NavyDEVELOPMENTLOCATION:

Offshore of Naval Air Weapons Station (NAWS), Point Mugu,  
Ventura County (Exhibits 1-2)

DEVELOPMENTDESCRIPTION:

Establishment of a danger zone extending offshore from the  
existing small arms range (Exhibit 3)

SUBSTANTIVE FILE DOCUMENTS:

1. Negative Determinations ND-85-93 (Army Corps and Navy, Danger Zone, Point Mugu), and ND-77-94 (Navy, Point Mugu).
2. Consistency Determinations CD-49-95 (Navy, Point Mugu) and CD-29-89 (Navy, San Clemente Island)

EXECUTIVE SUMMARY

The Navy has submitted a consistency determination for the establishment of a danger zone extending offshore from one of the small arms ranges at the Naval Air Weapons Station in Point Mugu. The danger zone is necessary to protect the public from Navy firing activities at the small arms range. The project raises public access and recreation impacts because public recreation is affected by the firing activities; however the proposal before the Commission is the establishment of the danger zone, as opposed to the firing activities themselves. To that degree, the danger zone enhances recreation by providing the public better notice of the public safety hazard. Furthermore, the Navy has committed that the danger zone will be predominantly activated on weekdays, and, further, that if ships, boats, or other public uses occur within the danger zone the test firings will cease until the danger zone is clear. With these commitments, public access and recreation impacts have been minimized, and the project is consistent with the public access and recreation policies (Sections 30210-30224) of the Coastal Act.

**STAFF SUMMARY AND RECOMMENDATION:****I. Staff Summary:**

A. Project Description. The Navy proposes the establishment of a danger zone extending offshore from the existing small arms range located along the central shoreline of the Naval Air Weapons Station at Point Mugu in Ventura County. This consistency determination is only for the designation of the offshore danger zone for the existing range; the firing activities are ongoing activities at this range. The Navy states that the danger zone "... is necessary for the protection of life and property" and to "...provide an appropriate and enforceable zone in which the Navy may conduct test firing to qualify military and civilian security personnel." The Navy further states that "The project is necessary to allow certification of the range in compliance with Navy regulations which require a designated danger zone beyond the firing line."

The existing small arms range includes an eight position pistol range, a twelve position rifle combatant range, and a skeet range. The Navy uses pistols, rifles, sub-machine guns, and machine guns and shotguns at this facility. The targets are backed by a 20 foot high berm and each range has an 18 foot high berm along the edges. The range is used to train law enforcement agencies and military personnel, including the California Highway Patrol, local city police departments, the FBI, Naval Investigative Service, and Naval reserves. The length of the danger zone is determined by the range of the most powerful weapons used at the facility. In this case, the maximum range of the weapons used at the small arms range is approximately 3 miles offshore. The shape of the danger zone would be triangular, commencing at the beach just seaward of the range, and widening to approximately 1/2 mile wide three miles further seaward.

A similar danger zone is already in place offshore of the Construction Battalion (CB) small arms range, which is located along the easternmost shoreline of NAWS, approximately 4000 feet southeast of the subject small arms range.

B. Status of Local Coastal Program. The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the CCMP, it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Ventura County LCP has been certified by the Commission but has not been incorporated into the CCMP.

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

II. Staff Recommendation:

The staff recommends that the Commission adopt the following resolution:

Concurrence

The Commission hereby concurs with the consistency determination made by the Navy for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Public Access and Recreation. Sections 30210-30214 of the Coastal Act provide for the maximization of public access and recreational opportunities, with certain exceptions for, among other things, military security needs and public safety. The applicable public access policies provide:

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 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

Section 30213

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

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

The applicable public recreation policies provide:

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, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The project raises public access and recreation impacts because public recreation is affected by the firing activities. Recreational boating is inconsistent with the firing activities, and therefore the presence and use of the small arms range inhibits recreational boating immediately offshore, and out to 3 miles, of the small arms range. In part for these reasons, as discussed in the following section (Related Commission Action) the Executive Director previously objected to a negative determination for a danger zone in this location (ND-85-93). Since that time, the Commission staff has worked with the Navy to reduce public recreation impacts from the firing activities, including clarifying that boats and ships will not be actively cleared from the danger zone. The Navy states in the current consistency determination:

The [danger zone] regulations would state that the range firing will normally take place between 7:00 a.m. and 5:00 p.m. Monday through Friday. The Command's operating policy for the range is more flexible to boat operators, however, the regulation will read that the danger zone may be used at all times for navigation and fishing, except when advance notice of intention to use this area has been given by the enforcing agency by one or more of the following means: 1) Notice to mariners by radio broadcasts and electronic bulletin boards, 2) display of red flag from the watch tower, 3) notice published in the Ventura County daily newspapers, 4) notice to individual craft by a visit of a United States vessel, 5) telephone advice to fisherman organizations.

Safety observers will be on duty at all times and a flag or beacon will be displayed from the tower when the range is in use. Upon completion of firing, or if the scheduled firing is canceled for any reason, fishermen and boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

Although the regulation will read that vessels or other craft shall not enter or remain in the danger zone when the warning flag or beacon is being displayed unless authorized to do so by the range officer in the control tower, the Command's policy is more flexible. Currently when a ship, craft, surfer or observable marine mammal approaches or enters the danger zone, a cease-fire is called until the ship, craft, surfer or marine mammal is clear of the danger zone. This is the same policy under which the range will continue to operate. The establishment of this danger zone can be attained without significantly affecting the coastal management zone.

The Commission staff also requested that the Navy analyze alternatives to use of the small arms range. The Navy responded:

#### Alternatives

The alternative to relocate these facilities is undesirable because of the substantial cost associated with moving. Constructing a new range at another location is cost prohibitive.

Socially and environmentally, relocating the range is impossible. A new location on Base is nonexistent given the requirements to avoid housing areas, radar and flight danger zone, and environmental constraints (wetlands). The current range building would not be relocated should a site be found.

Another alternative considered is use of the CB Range. Scheduling for this range is difficult because of a full schedule by the CBs and competition for time with other agencies. This alternative would likely increase the actual operation hours of the CB Range by extending operation to odd hours (weekends and evenings) as provided in the current navigation rules. Training times beyond 7:00 a.m. to 4:00 p.m. are disruptive to participants and may be more costly to the government

for overtime pay and may have a greater effect on sport fishing due to longer hours of operation. Additionally this does not meet the requirements of other agencies that require range usage.

With the alternatives consideration and commitments described above, the Navy believes it has taken all efforts possible to minimize recreation impacts. The Navy concludes:

### Conclusion

The proposed action will not change current operating procedures of this existing range, but will be a designation only. Therefore, impact to the coastal management zone is limited to the increased awareness of boat operators to avoid the danger zone. The Command's policy is to operate this facility on a not-to-interfere basis, which calls for a cease-fire to allow the passage of craft entering the danger zone.

The onshore portion of the proposed danger area is located within the secured military zone of the Naval Air Weapons station. The coastal act specifically provides exception to access for military security needs. ... Access to offshore waters is open to the public, except when the existing or proposed firing range is in operation. ... [Public] recreational access is already limited on the land area of the range because of the live-fire and the high security portion of the Base. The proposed designation therefore, poses no impact to this type of recreation.

Recreational boating would be impacted by closure of the danger zone at specific times. The range will normally be in operation Monday through Friday during work hours for most people and will seldom operate on weekends when most recreational boating occurs. In addition, NAWS policy on the operation of the range reduces the impact to boat operators by calling a cease-fire to allowing passage of craft. Therefore, because a range already exists in the area, closure of area is limited to operating hours, and Base policy is flexible to boat operators, the impact to recreational boating is reduced to a level of insignificance.

The Commission agrees that the Navy has reduced recreational impacts to the extent possible. The project would not have any effects on public access on land, as this portion of the Point Mugu Naval complex is off limits to the public due to military security needs. Moreover, while firing activities at the range raise public access and recreation concerns offshore, due to potential conflicts with recreational and other boating activities seaward of the military base, the proposal before the Commission is the establishment of the danger zone, as opposed to the firing activities themselves. To that degree, the danger zone could be considered to enhance recreation by providing improved public notice of the public safety hazard. Furthermore, the Navy states that the danger zone will be predominantly activated on weekdays. The Navy has also committed to avoid prohibiting boating in the danger zone. The Navy states that if ships, boats, or other public uses occur within the danger zone the test firings will cease until the danger zone is clear.

Finally, the Commission notes that Navy regulations require the danger zone offshore of the firing range (Military Handbook 1027/3B, Section 2.2.2: Surface Danger Zones Over Water (Exhibit 5)). Thus, even if the Commission were to find the proposal inconsistent with Coastal Act access and recreation policies, it could still find the proposal consistent "to the maximum extent practicable" with these policies. The federal consistency regulations (Section 930.32) define this term as meaning that a federal activity must be fully consistent the coastal management program "... unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations." In this case the existence of the requirement cited by the Navy could be properly considered the equivalent of a regulation prohibiting full compliance with the Coastal Act, in the event the Commission were to determine the project inconsistent with the applicable access and recreation policies.

In conclusion, with the commitments included by the Navy in the project as described above, the Commission finds that public access and recreation impacts have been minimized and that the project is consistent with the public access and recreation policies (Sections 30210-30224) of the Coastal Act.

B. Related Commission Actions. In ND-85-93, the Executive Director objected to a negative determination from for similar danger zone in the same location as that proposed by the Navy in the subject consistency determination. That negative determination had been submitted by the U.S. Army Corps of Engineers on behalf of the Navy. An objection to a negative determination is not a determination that an activity should not be authorized; rather it is a statement that an activity affects the coastal zone and triggers the need for a consistency determination. A copy of that objection is attached (Exhibit 4).

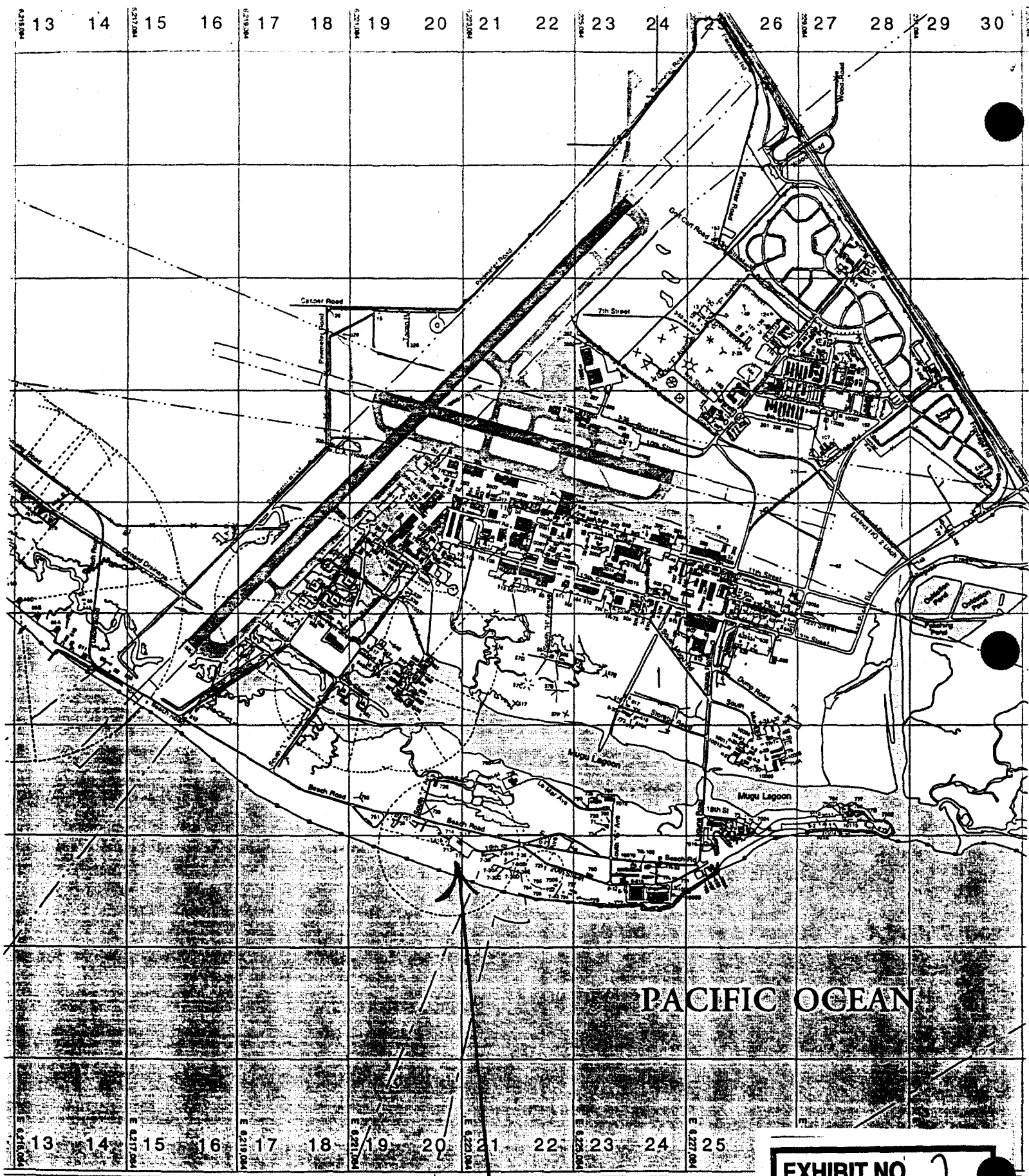
In CD-29-89, the Commission concurred with the Navy's consistency determination for the redevelopment of a naval training center on San Clemente Island. The project included the construction of a small-arms range and the establishment of an offshore danger zone. The establishment of the danger zone would have adversely affected commercial fishing, kelp harvesting, and recreational uses of the marine environment. After submittal of the consistency determination, the Navy agreed to modify the project in order to reduce its coastal zone effects. Those modifications included allowing public use of the danger zone when the small-arms range is not in use, publishing notice of closure of the danger zone, and minimizing closure of the danger zone during the summer months. The project, as modified, restricted the use of the marine environment offshore from the small-arms range for 40 days per year. The Commission found that restriction would not be consistent with the California Coastal Management Program (CCMP). However, the Commission recognized that the Navy's regulations required the establishment of the danger zone, and thus found the project to be consistent to the maximum extent practicable with the CCMP. That project differs from the subject project in that it was for construction of a firing range and designation of a danger zone, whereas the subject project is only for designation of a danger zone.

In addition to the above actions, the Commission and/or its staff have reviewed two proposals relating to the "CB" firing range, which is located approximately 3/4 mile downcoast (southeast) of the subject danger zone and small arms range. In ND-77-94, the Executive Director objected to a negative determination to strengthen shoreline protection devices immediately seaward of that firing range (i.e., replace sheetpile walls with a concrete wall and rock revetment). The Navy proceeded with that project despite the objection.

In reviewing CD-49-95, the Commission concurred with the Navy's consistency determination for construction of a 1000-inch rifle range within the "CB" firing range complex. While that project included elimination of approximately 0.06 acres of wetland habitat, the Commission determined that the cumulative effect of berm removal at the northern and central sections of the firing range, the reintroduction of tidal waters to the northern end of the firing range (due to berm removal), and the fact that the proposed berm would prevent lead bullets from entering the wetlands at the southern end of the firing range led to the conclusion that the project would generate a net improvement to wetland habitat and resources.







FIRING RANGE

IF SHEET IS LESS THAN 11" X 17" IT IS A REDUCED PRINT-SCALE REDUCED ACCORD

EXHIBIT NO. 2  
APPLICATION NO.

CD-123-96

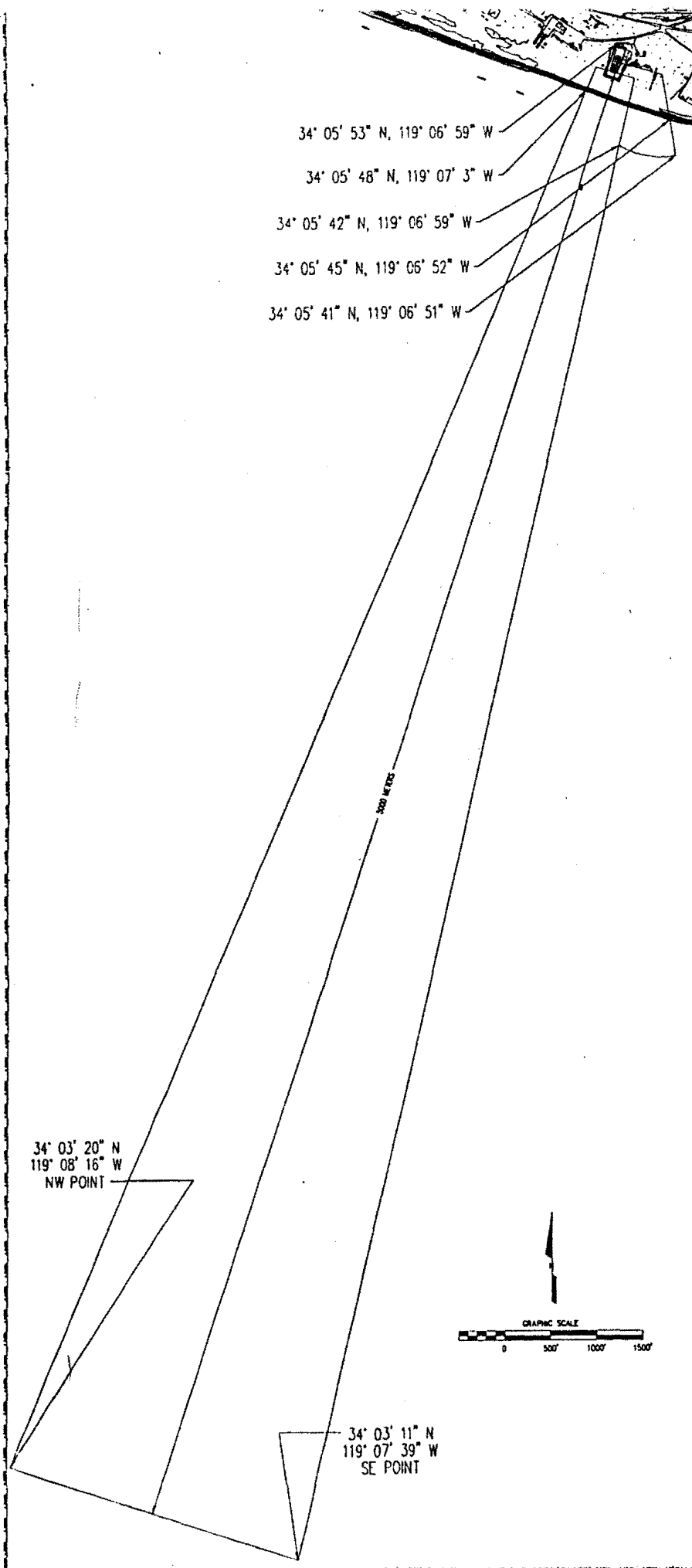


EXHIBIT NO. 3

APPLICATION NO.

CD-123-96

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200



December 9, 1993

David J. Castanon  
Chief, North Coast Section  
U.S. Army Corps of Engineers  
Ventura Regulatory Field Office  
2151 Alessandro Drive, Suite 100  
Ventura, CA 93001

Subject: Negative Determination ND-85-93 (Danger Zone at NAWS, Point Mugu)

Dear Mr. Castanon:

The Coastal Commission staff has reviewed the materials submitted by the Corps of Engineers on behalf of the U.S. Navy for the establishment of a surface danger zone in waters extending three miles offshore from the small arms range at the Naval Air Weapons Station, Point Mugu (Ventura County). In addition, Commission staff discussed the proposed designation with Ms. Tiffany Welch of your staff on December 6, 1993.

The purpose in designating this surface danger zone at Point Mugu is to bring the small arms ammunition range (which has operated at this site for approximately twenty years) into conformance with Navy regulations requiring a designated surface danger zone beyond range firing lines. The length of the danger zone was determined by the range of the most powerful weapon (machine gun) used at the range; at Point Mugu, the danger zone will extend approximately three miles offshore with a maximum width of one-half mile. The small arms range is used on a near-daily basis and no use of the offshore danger zone is allowed when the range is operating.

We are concerned over impacts on public access and recreation, and possibly commercial and/or recreational fishing, of the near-permanent exclusion of the public within this area. The negative determination submitted has not adequately described the existing and potential public access, recreation and fishing opportunities occurring in this area. Nor has it demonstrated that less damaging alternatives are infeasible or unavailable.

In conclusion, the Commission staff disagrees with your determination that the proposed designation will not affect the coastal zone. While the firing range and closure of the offshore area encompassed by the proposed danger zone are

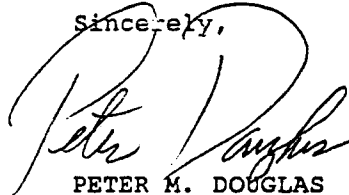
EXHIBIT NO. 4
APPLICATION NO.
CD-123-96

longstanding activities at Point Mugu, they nevertheless involve long term affects on public access and recreation, and possibly commercial and recreation fishing, in the waters offshore of Point Mugu. We therefore object to your negative determination made pursuant to 15 CFR Section 930.35(d). Consequently, a consistency determination will need to be submitted for this project.

The consistency determination should analyze impacts on existing and potential future public access and recreation, including surfing opportunities, as well as impacts on existing and potential future commercial and recreational fishing, were this area to be available for public use. It should also analyze alternatives to the use of firing ranges that necessitate offshore access exclusions.

Please contact Larry Simon at (415) 904-5280 if you have any questions.

Sincerely,



PETER M. DOUGLAS  
Executive Director

cc: South Central Coast Area Office  
NOAA  
OCRM  
DWR  
Governor's Washington, D.C. Office

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EXHIBIT 4, p.2

## MILITARY HANDBOOK 1027/3B

RANGE FACILITIES AND MISCELLANEOUS TRAINING FACILITIES  
OTHER THAN BUILDINGS

2.2.2 Surface Danger Zones Over Water. The limits of the water impact area must be shown on local navigation charts as a surface danger zone. A notice to mariners must be published routinely to warn all marine interests to stand clear when the range is in operation. At each end of the target line, a pole shall be erected to display the largest red range flag practicable (Visible from all points within the Surface Danger Zone) and with either a flashing red beacon or white strobe light. Buoys marking the outer limits of the danger zone may be required. An observation tower may be erected just behind the most distant firing line. Height should be sufficient to allow full view of the danger zone. A lookout having direct communication with the firing line is posted to assure that all firing is stopped until the surface danger zone has been cleared.

EXHIBIT NO. 5

APPLICATION NO.

CD-123-96