

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON REOPENING

PREVIOUSLY-CONCURRED-WITH NEGATIVE DETERMINATION

Negative Determination
 No. ND-115-94
 (U.S. Navy, Port Hueneme)
 Staff: MPD-SF
 Staff Report: 3/20/96
 Previous Concurrence: 1/5/95
 Commission Meeting: 4/9/96

FEDERAL AGENCY: U.S. Navy

DEVELOPMENT
 LOCATION:

Offshore waters off Port Hueneme, between 1/2 mile from the Port Hueneme Harbor mouth and existing Navy offshore Restricted Airspace Areas (R-2519 and W-289), Port Hueneme, Ventura County (Exhibit 1)

DEVELOPMENT
 DESCRIPTION:

Establishment of 19 sq. mi. Special Use Airspace, and associated flight testing with Lear 35 and 36A aircraft (Exhibit 2)

EXECUTIVE SUMMARY

The Executive Director of the Commission previously concurred with a Navy negative determination for the establishment of a 19 sq. mi. Special Use Airspace, and associated flight testing with Navy F-14 and civilian Learjet aircraft, offshore of Port Hueneme. Under the federal consistency regulations, consistency review may be revisited in several circumstances, including where a project is initially determined not to affect the coastal zone, "but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed, and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program."

The Navy had originally represented to the Commission that boats would be allowed to clear the area before planes would fly the proscribed flight path. Under the current proposal, the only binding commitment to boat avoidance is

the provision that planes will approach no closer than 500 ft. from boats. The Commission considers this to be a changed circumstance associated with the Navy's proposal, and one which leads to the conclusion that the activity would directly affect the coastal zone, based on noise and possibly safety impacts on recreational boating within the coastal zone. Feasible alternatives may be available which would avoid or significantly reduce these impacts. Whether the project is consistent to the maximum extent practicable with the California Coastal Management Program (CCMP) will be addressed at a future Commission hearing. To assist the Commission in conducting this review, the Commission requests that the Navy submit an analysis of the activity's consistency to the maximum extent practicable with the CCMP.

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Summary:

A. Project Description. The U.S. Navy proposes to create an offshore restricted area called a Special Use Airspace offshore of Port Hueneme (Exhibit 1). The purpose of the airspace designation is to allow offshore aircraft flight testing, with aircraft carrying equipment designed to electronically simulate battle conditions. Sensors located inside an onshore building (called the SWEF building, or Surface Warfare Engineering Facility) would test and evaluate flights and battle simulations. The SWEF building is an existing 5-story structure located at the western entrance of the Port Hueneme Harbor, within the Naval Construction Battalion Center (NCBC) (Exhibit 1). The Navy already maintains an established airspace offshore; the purpose of the proposed airspace would be to extend the existing airspace closer to shore to allow aircraft to approach the SWEF building. Typical flight profiles would be as shown in Exhibit 2.

As originally described in the Navy's negative determination (ND-115-94), the flights were to consist of 80% civilian Learjet aircraft and 20% military F/A-18 or F-14 aircraft. The closest approach to the shoreline was to be one half mile. The Navy also clarified during review of this negative determination that active closures of offshore waters to boating and surfing activities would not be instituted when the proposed flights are in progress.

The Navy subsequently modified the activity to include: (1) limiting jet types to use of Lear 35 or 36 turboprops or equivalent civilian aircraft (i.e., eliminating the use of the noisier F/A-18 and F-14 jets); (2) reducing maximum jet speeds to 325 knots (previously 500 knot maximum speed); (3) assuring that the jets will approach no nearer than 1 nautical mile from shore (previously 1/2 mile); and (4) relocating the airspace to avoid being within the Channel Islands National Marine Sanctuary (CINMS).

The Navy recently published a Supplemental Environmental Assessment (SEA) for the modified proposal, dated February 1996. This SEA describes the currently proposed flight testing schedule as follows:

Utilization:

Average: 9 flight hours per month
Maximum: 22.5 flight hours per month
Maximum: 108 flight hours per year

Flight Periods:

Average: 6 per month (72 per year)
Maximum: 15 per month (72 per year)

Duration of Period:

1.5 hours flight time
2.0 hours schedule range period

Approaches to SWEF:

6 runs per hour
6-10 runs per range period

Times of Use: Primarily weekdays

Daytime:	90%	10:00 a.m. - 5:00 p.m.
Evening:	10%	5:00 p.m. - 10:00 p.m.
Night:	None	10:00 p.m. - 10:00 a.m.

Each use announced at least 24 hours in advance by Notice to Airman (NOTAM) and to Mariners

An average month would include:

6 Flight periods per month
6-10 Approaches to the SWEF per flight period
36-60 Approaches to the SWEF in an average month
22 seconds of noticeable sound (less than 55dB) per approach
13-22 minutes of noticeable sound (less than 55dB) per month

The SEA states:

All flight profiles would commence in W-289 and fly a path toward the SWEF, under NAWCWPNS Range Control.... Profiles would end at one and one-half NM from the SWEF. A power-reduced climbing turn would be commenced so as not to fly within one nautical mile of the shoreline. The turn radius would be 2,800 feet. The closest point of approach to residential property would be about 1.2 nm (1.4 statute miles). The outbound legs will be flown at 3,000 feet MSL and 250 knots. Plan views of the flight profiles showing the closest points of approach are in [Exhibit 2]... On some occasions, aircraft may carry equipment that would simulate electronic warfare countermeasures for the sensors being tested at the SWEF. These electronic emissions would be coordinated through normal range frequency management guidelines controlled by the Western Area Frequency Coordinator.

A residential area and County beach are located immediately upcoast (west) of the SNEF building. In addition, fishing and surfing activities occur immediately seaward of the SNEF building, at the Harbor entrance's West Jetty and La Janelle Park. A substantial amount of recreational and other boating activities occur in ocean waters offshore of Port Hueneme in the Special Use Airspace area.

B. Project History.

1. Airspace. On December 20, 1994, the U.S. Navy submitted a negative determination (ND-115-94) to the Commission staff for the proposed Special Use Airspace offshore of Port Hueneme. Accompanying the Navy's negative determination was an Environmental Assessment (EA). On the basis of the analysis in the EA, the Navy concluded the activity would not affect the coastal zone. On January 5, 1995, the Executive Director concurred with the Navy's negative determination.

Concerns expressed over the initial proposal subsequent to that concurrence have included a statement by the California Department of Fish and Game that the project might adversely affect environmentally sensitive habitat. The primary issue raised was bird strike potential (i.e., collisions between aircraft and brown pelicans). In response to this concern, the Commission staff informed the Navy that it was considering re-opening the federal consistency review process, based on the procedures discussed on page 5 and Appendix A.

Upon receipt of further information, the Department of Fish and Game ultimately concluded that "The revisions to the project should reduce the likelihood of BASH [Bird Strike] hazard to a less than significant level." Consequently, the Commission staff informed the Navy it was withdrawing its consideration of a re-opening of the case.

At a workshop at its February 1996 meeting on the status of the negative determination, the Commission: (1) expressed concerns over radiation effects from radar facilities associated with the Special Use Airspace and the SNEF facility; (2) directed its staff to again request that the Navy submit an after-the-fact consistency determination for the SNEF facility (see following section of this report); and (3) directed its staff to re-schedule this matter for further Commission consideration, after the Navy publishes its SEA for the Airspace. Since the Federal Aviation Administration (FAA) must authorize this airspace before it can be implemented by the Navy, at its March 1996 meeting the Commission further directed its staff to request that the FAA:

not at this point assume that the previous negative determination is applicable to the currently proposed project [pending further] Commission [deliberations to] ... determine whether the Special Use Airspace, as currently proposed, has different effects on resources of the coastal zone than the originally-reviewed activity. [Exhibit 3]

The Navy has now published its Supplemental Environmental Assessment (SEA), dated February 1996, for the project. The public comment period extends through the end of March 1996. The Commission staff's comments on the SEA are attached as Appendix B.

2. SWEF Building History. In September 1995 the Commission staff expressed concerns over the Navy's 1985 construction of the original SWEF facility. That facility was built after implementation of the federal consistency requirements, and documentation available indicates that the Navy was aware that the SWEF facility would affect the coastal zone and would conflict with several policies of the Coastal Act. Because the Commission staff believes the SWEF facility should have undergone federal consistency review at the time of its original proposal, the Commission staff has on several occasions requested that the Navy submit an after-the-fact consistency determination for the facility. The Navy has not formally responded to this request, although the Commission staff expects a response shortly (which will be mailed to the Commissioners and interested parties if it is available prior to the April Commission meeting).

A potential ongoing concern raised by the absence of consistency review of the original SWEF building is the procedural question of what degree of modification to the existing facility would trigger additional federal consistency review, given that a complete project description and accompanying environmental analysis was never provided to the Commission for that activity.

The reason for this discussion of the SWEF facility is because its placement at this site is the primary determinant for the Navy's proposed airspace in this area. In response to concerns expressed by area residents about considering other alternative locations or methods of flights testing, the Navy maintains it would be infeasible to relocate the SWEF facility.

C. Procedures. Section 930.44 of the federal consistency regulations provides for the continued monitoring of federal activities to assure they continue to be undertaken in a manner consistent to the maximum extent practicable with the State's coastal management program. Under this regulation consistency review may be revisited in several circumstances, including where a project is initially determined not to affect the coastal zone, "but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed, and, as a result, the activity directly¹ affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program." (See Appendix A for full text of Section 930.44)

The question before the Commission is whether changed circumstances and/or modifications to the Navy's proposed activity alter the previous conclusion that the activity would not affect coastal zone resources. If they do alter this conclusion, the Commission must then determine whether the activity remains consistent to the maximum extent practicable with the California Coastal Management Program (CCMP). The staff is recommending that the Commission take action with respect to the first of these questions at its April meeting.

¹ In 1990 amendments to the Coastal Zone Management Act Congress deleted the term "directly" from the text of CZMA Section 307(c)(1). Consequently, Section 930.44 should be deemed to have been similarly amended.

The staff believes that changed circumstances and/or modifications have been made to lead to the conclusion that the activity would directly affect coastal zone resources. However the staff believes it would be more appropriate for the Commission to take action on the activity's consistency with the CCMP at a later date, either after the comment period on the SEA has closed and the Navy has prepared responses to the comments made, or after the Navy is afforded the opportunity to submit an analysis of the activity's consistency to the maximum extent practicable with the CCMP.

D. Federal Agency's Negative Determination. On December 20, 1994, the Navy determined the original project did not affect the coastal zone. On January 5, 1995, the Commission's Executive Director concurred with this negative determination.

II. Staff Recommendation:

The staff recommends that the Commission adopt the following resolution:

The Commission finds that the original negative determination made by the Navy for the proposed project is no longer applicable to the project as currently described. The Commission further finds the project is being conducted and is affecting the coastal zone in a manner substantially different than previously described and that, accordingly, the Commission will proceed to determine whether the project, as modified, is consistent to the maximum extent practicable with the CCMP.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Recreation. The Coastal Act provides:

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

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses. [Section 30220]

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land. [Section 30224]

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.[Section 30234]

The ocean area under the proposed Special Use Airspace is a heavily used recreational and other boating area. Based in part on noise, safety, and habitat concerns raised by the originally described proposal, the Navy made several modifications to the originally reviewed project, including:

(1) limiting jet types to use of Lear 35 or 36 turboprops or equivalent civilian aircraft (i.e., eliminating the use of the noisier F/A-18 and F-14 jets); (2) reducing maximum jet speeds to 325 knots (previously 500 knot maximum speed); (3) assuring that the jets will approach no nearer than 1 nautical mile from shore (previously 1/2 mile); and (4) relocating the airspace to avoid being within the Channel Islands National Marine Sanctuary (CINMS).

For the most part, these modifications lessen impacts to coastal zone resources, because they would reduce noise, reduce safety risks, and reduce impacts to the CINMS. It should be pointed out that the CINMS stated in a letter dated February 27, 1996, that the CINMS remains concerned over "...inconsistencies [in previous project descriptions, which]... if allowed to remain part of the SUA proposal, would constitute a threat to CINMS resources ...". Despite this concern, the Commission believes these four modifications would be beneficial to coastal zone resources.

However these improvements are more than offset by adverse effects on recreational boating that would result by the Navy's current explanation that it will only commit to keeping a distance from vessels of 500 ft. In its original negative determination, the Navy had represented to the Commission that boats would be allowed to clear the area before planes would fly the proscribed flight path. Under the current proposal, the only binding commitment to boat avoidance is the provision that planes will approach no closer than 500 ft. from boats. This commitment is based on existing FAA regulations (Section 91.121), which require that aircraft "may not be operated closer than 500 feet to any person, vessel, vehicle, or structure."

The Commission considers this to be a changed circumstance associated with the Navy's proposal, and one which leads to the conclusion that the activity would directly affect the coastal zone, based on noise and possibly safety impacts on recreational boating within the coastal zone.

The Navy estimates noise levels in close proximity to the Learjets to be up to 95 dBA (see Exhibit 5). The SEA analyzed noise impacts on area communities, but not boats in the water in the close proximity to the flight path.

Based on the SEA chart of "Typical Range of Common Sounds," a noise level of 95 dBA would place the noise as comparable to a "Diesel Locomotive at 50 ft." (87-103 dBA) and a "Motorcycle" (80-110 dBA), and louder than a "Food Disposal" (67-93 dBA) and a "Heavy Truck at 50 ft." (77-90 dBA). While the Navy has not analyzed the impact to recreational boating, with up to 720 flights per year, and the fact that several boating harbors are located in the immediate shoreline vicinity of the Special Use Airspace, with several thousand boats using the area, such a noise level would clearly represent an adverse impact to the quality of the recreational experience, and may deter boaters from using this area at all, at least during the flight test periods. While it may be consistent with FAA regulations, aircraft approaching to within 500 ft. of vessels at sea will unquestionably affect recreational boating. The Port Hueneme Harbor Safety Committee has written a letter (Exhibit 4) expressing concerns over boating impacts from this proposal.

As the Commission staff noted in its SEA comments (Appendix B), the Navy has not adequately analyzed the activity's effect on recreation. These Commission staff comments stated:

The noise discussion is deficient in that it does not analyze effects on boating and recreation of Learjets flying at 100 ft. altitudes, generating an approximate noise level of 95 dBA, and passing by or over a vessel at sea to within 500 ft. The noise analysis needs to be expanded to include a baseline indication of the extent of various types of recreational boating (as well as other boating) activities within the Special Use Airspace, and an analysis of impact of Learjet noise on the quality of the recreation. Effects of potential collisions of Learjets and boats, as well as the effect of fear of such collisions on recreation, should also be addressed.

Moreover, feasible alternatives may be available which would avoid or significantly reduce these impacts. Thus, these same comments also requested information about alternatives such as those that would lessen or eliminate adverse effects on recreation.

Whether the project is consistent to the maximum extent practicable with the California Coastal Management Program (CCMP) will be addressed at a future Commission hearing. Prior to making this determination, the Commission wishes to afford the Navy the opportunity to respond to its SEA comments and to submit an analysis of the activity's consistency to the maximum extent practicable with the CCMP.

In conclusion, based on the changed circumstances and modifications that have been made to the activity, the Commission finds that the establishment of the Special Use Airspace and associated flight testing program would affect the recreational resources of the coastal zone.

APPENDIX A

Section 930.44, federal consistency regulations:

Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program; or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action. [Emphasis added]

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may seek the Secretarial mediation services provided for in Subpart G.

APPENDIX A

CALIFORNIA COASTAL COMMISSION APPENDIX B

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March 20, 1996

Pete Becker
Department of the Navy
Naval Surface Warfare Center
4363 Missile Way
Port Hueneme, CA 93043-4307

Re: Supplemental Environmental Assessment (SEA), Navy Special Use Airspace,
Port Hueneme, Ventura Co., February 1996
Coastal Commission File No. ND-115-94
Federal Aviation Administration (FAA) File No. AWP-530, Docket
#95-AWP-7NR

Dear Mr. Becker:

Please accept the following comments and information/clarification requests on the above-referenced document (SEA page numbers are cited at the beginning of each comment):

1. Page 2 (and elsewhere in the SEA). Please clarify the meaning of the term "non-hazardous" as used in the SEA. Does the term mean an aircraft will not carry any live ammunition, or does it mean that the flights will not generate a safety hazard?

2. Page 7 states the Coastal Commission "supported" the proposal on January 5, 1995. Use of the term "supported" implies a positive reaction to the proposal. To be accurate this language should be modified to state that on January 5, 1995, the Commission's Executive Director agreed with the Navy's determination that the previous version of the project, as described in the original (March 1994) EA, would not affect the coastal zone. This discussion should further note that the Commission will be reconsidering the applicability of this "negative determination" at its April 9-12, 1996, meeting. [Note: March 14, 1996, letter to the FAA (Attachment 1)].

3. Page 8 (and elsewhere in the SEA). The Navy proposes to use Learjet 35 or 36/A aircraft "or equivalent aircraft." Please define the term "equivalent" so we can understand the range of aircraft types, and/or the criteria that will be applied, which would result in alternative aircraft qualifying as "equivalent." Alternatively, the Navy should commit to decisionmakers (such as the FAA and the Coastal Commission) that it will seek further authorization from those decisionmakers prior to using any aircraft uses other than Learjets. Also, please explain why page 93 states the Learjet is the "only" aircraft to execute the flight profiles (and page 12 states: "Lear 35 and 36A (100% of flights))."

APPENDIX B

4. Page 11 (and reiterated on Appendix A, p. 3) states that the Navy saves \$13 million annually through using the SWEF (Surface Warfare Engineering Facility) rather than fleet facilities for various testing and other activities. Please explain how this figure was arrived at, including explaining whether it covers only the proposed Special Use Airspace proposal at SWEF (compared to using fleet facilities), or whether it involves other ongoing existing SWEF operations. If the latter, what is the cost differential if only the proposed Special Use Airspace/Learjet testing activities are considered. In other words, what is the cost differential when existing SWEF-related activities are excluded from the calculation.

5. Page 12 (and elsewhere in the SEA). The Navy commits to limiting flights "primarily" to weekdays. Please clarify the meaning of the term "primarily," including defining an upper limit to the percentage of flights that could occur on weekends. Please also specify whether weekdays that are part of traditional 3 day "weekend/holiday" periods would also be "primarily" avoided (e.g., if July 4 falls on a Monday, indicate whether that day would be considered a weekday or weekend day for flight scheduling purposes).

6. Page 16. Four programs are listed on this page as "being considered" for SWEF installation. These are: Rapid Area Integrating Defense System, Quick Reaction Combat Capability System, Cooperative Engagement Capability, and NATO Self Defense Test Program. We have the following questions about these programs:

- a. What are they and what are their anticipated environmental effects?
- b. Why are they not analyzed in the cumulative impacts analysis which occurs later in the SEA?
- c. Are they needed to implement the proposed Learjets/Special Use Airspace, or are they separate and independent programs?
- d. Do they involve modifications to existing radar facilities at the SWEF facility?
- e. Why is this list different than the one on page 3 of Appendix A, which lists new Navy programs being considered for SWEF installation to consist of: Quick Reaction Combat Capability System, Cooperative Engagement Capability, Evolved Seasparrow Missile Test Program, Thermal Imaging Sensor System, and Infrared Search and Track?
- f. For any of the programs listed in (e) but not found on page 16, please answer questions (a)-(d).

7. There are a number of inconsistencies that need clarification regarding the numbers of flights proposed, as follows:

- a. Page 12 indicates there would be 72 flight periods per year, with 6-10 flights per flight period, whereas page 17 states "The self-imposed maximum number of flights would be 72 per year."

App B (cont.)

b. If page 12 is accurate, then page 74, which indicates "... 144 range hours (72 flights) per year" should be corrected to state 72 flight periods per year, or 720 flights, per year.

c. Page 85, which states there would be an average of 6 flights per month, is inconsistent with the reference on page 12 to 6 flight periods (or up to 60 flights per month).

d. Page 90 contains a reference to 72 flights per year, which should be revised to 720 flights per year (see Comment #7(b)). Also, if necessary for this last reference the percentage of takeoffs and landing on this page may need to be adjusted accordingly.

8. Page 17 states "There is no other intended or anticipated use of the MOA [i.e., Special Use Airspace]." This statement raises several questions, as follows:

a. Does this mean the "programs being considered" (see Question 6 above) do not involve any flight testing within the Special Use Airspace?

b. Also, what has changed since the publication of the original (March 1994) EA for the Special Use Airspace? That document stated:

New programs would be considered for the SWEF laboratory in the future as new threats are detected and new systems are designed, developed, produced, and deployed into the Navy's fleet. If the SUA proposal is approved, these new programs may seek to use the airspace, causing potential indirect and cumulative impacts. However, these new programs are not anticipated to cause the cumulative level of activity to exceed what is stipulated in the proposal as averaging twelve hours per month. As new systems are acquired, old systems become obsolete and are removed.

In addition, several statements in the SEA indicate that the SWEF facility is "unique in the world," which may increase its attractiveness for other military testing applications. We request that the SEA clarify the apparent discrepancy between the SEA and original EA statements, and provide a clearer understanding of the likelihood of future use of the Special Use Airspace and testing that would interact with the SWEF building, so that reviewers can realistically assess the consequences of implementation of this proposal, both individually and cumulatively.

9. Page 17 states "In addition, the FAA monitors MOA usage carefully, receives periodic reports on usage, and reviews them on an annual basis to ensure that actual airspace usage is consistent with intended and approved usage procedures." We request that the Navy agree to submit any written FAA monitoring reports to the Coastal Commission staff on an annual basis. Also, if written reports are not generated, we request that the Navy specify the FAA contact person(s) who would "monitor MOA usage," so that we might independently contact them to determine the results of their monitoring efforts.

App B (cont)

10. Page 19 states the Special Use Airspace would save the U.S. Government "millions of dollars." In order to allow reviewers to evaluate this contention, the SEA needs to document how the savings estimate was calculated. The statement is too general to enable a reviewer to determine whether there are less environmentally damaging feasible alternatives. Decisionmakers need an objective set of criteria and dollar estimates so they can fairly and objectively assess the feasibility of the proposed action and any reasonable alternatives, both in terms of economics as well as technical factors. The SEA lacks the details necessary to enable an evaluation of either the economic or technical feasibility of project alternatives. (See also Comment #13)

11. Page 21 cites "Section 305" of the Coastal Zone Management Act. The correct citation is Section 307, not 305. Also, the word "directly" should be deleted from the same paragraph, as the 1991 amendments to the Coastal Zone Management Act replaced the "directly affecting" test with "affecting." The statute now reads:

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.

12. Page 26. See Comment #10: The SEA should explain how it arrived at the conclusion that it would cost \$48 million to relocate the activities currently housed within the SWEF building.

13. Page 26. The SEA presents a conclusion that it would be technically infeasible to relocate the antennas and sensors associated with the Special Use Airspace to another location. The SEA does not explain how it arrived at this conclusion. The analytical basis that led to this conclusion needs to be spelled out. A detailed explanation is needed that would be comprehensible, if not to the layperson, at least to a person versed in electronic or computer systems, so the conclusion can be objectively evaluated. We would particularly like to see the SEA assess the economic and technical feasibility of siting the antennas and sensors at the Point Mugu Naval Air Weapons Station, where Navy airspace already extends to the shoreline (and therefore would not require expansion of existing airspace), and where flights would present fewer conflicts with public recreation. Other alternatives also warrant discussion, such as use of San Nicolas Island (a Navy island connected to Port Hueneme by subsea cable), and possibly other Navy installations in the country. We urge the SEA preparers to provide an in depth assessment of alternatives that would avoid or reduce project impacts, and explain the analytical basis for any conclusion that any such alternative is infeasible.

14. Page 26 states "There is no other single asset in the world which has the equipment and capacity to provide engineering and technical support for such a large number of fleet surface weapon systems in one location." This statement leads to concerns that future expansion of testing at this site will be proposed (see also Comment #8). We have two information requests concerning this statement:

(a) What is the capacity of the SWEF facility to sustain or provide support for additional weapons system testing?

(b) While we do not request fanciful speculation about hypothetical future uses, the SEA is under an obligation to disclose anticipated or likely future uses. What future uses are reasonably foreseeable?

In addition to these questions, we wish to make it clear that it is our understanding that any future modification of flights or flight programs using the Navy's Special Use Airspace, any expansion of use at the SWEF facility for weapons testing, and any modification to the SWEF facility itself, whether being conducted by the Navy or any other entity, may trigger the need for federal consistency review if such modification or such activity would affect the land or water uses or natural resources of the coastal zone. This point is independent of the issue of the legality of the existing SWEF facilities, about which we have previously expressed concerns in several letters to the Navy (dated September 8, 1995, September 21, 1995, and February 16, 1996) (Attachments 2 & 4)). These letters raised the procedural concern that the SWEF facility never underwent proper federal consistency review. Although we expect a response in the near future, we have not yet received a response to these letters.

15. Page 27. The SEA asserts that "SDTS" testing (i.e., testing from actual ships) has limitations rendering it infeasible. Similar to our Comment #13, a more detailed technical explanation that would allow reviewers to understand the analytical basis for the conclusion reached is needed.

16. Page 49 differentiates flight takeoffs and landings, which have relatively high incidences of bird strikes, from "low-level flights" which are described as involving 1% of bird strikes. Why is there such a difference? Please explain the meaning of the term "low-level" as used in this context, in term of altitude and geographic location, if at all possible. To the degree possible, please also attempt to explain how analogous this existing data is to a situation where 100 ft. altitude flights over water would occur in areas of high concentrations of large birds (such as pelicans). For example, how many miles of low-level Learjet flights over water have occurred? Is there any information regarding bird concentrations (particularly large birds) where they have occurred? If no valid comparable data exist, we suggest that the Navy consider a pilot study, or a more limited duration proposal, with commitments to further testing withheld pending the outcome of an assessment of bird strike and other safety considerations.

17. Page 53. The text accompanying the map on this page indicates that the map shows zoning designations. The map indicates general types of land uses but is not truly a zoning map. The map is fine for illustrative purposes; the text should be clarified.

18. Page 53 states "...any proposed land-use ... must comply with the appropriate State-approved General Plan." The State does not approve general plans, although it is state general plan law which establishes the requirement that local governments adopt general plans. At the same time, the State (through the Coastal Commission) does certify Local Coastal Programs (LCPs)

App. B (cont.)

which, once certified, function as the local government's general plan for that portion of the jurisdiction located within the coastal zone. The text should be clarified.

19. Page 53 states the Coastal Commission has the authority to review any activity or project which may impact the coastal zone or its resources. This is inaccurate. Once a local government adopts a local coastal program and the Coastal Commission certifies it (see Comment #18), the local government entity retains the authority to approve or deny projects within the coastal zone. The only exceptions to this are: (1) in areas where the Commission retains original jurisdiction (such as offshore waters and submerged tidelands); (2) in areas where appeals may be brought to the Commission of local government decisions (these appeals areas are formally mapped); and (3) federal agency or federally permitted activities. The text should be clarified.

20. Page 53-54 states the Commission reviews projects under the Coastal Act. Once an LCP is certified, the LCP policies become the standard of review, rather than the Coastal Act (except in areas of original jurisdiction and federal agency or federally permitted activities). The text should be clarified.

21. Page 54. Not all the communities noted in paragraph 2 are within cities (e.g., Silver Strand is within unincorporated Ventura County). The words "and/or Ventura County" should be added at the end of the paragraph.

22. Page 54. The inland range of the coastal zone described as 1,000 ft. is inaccurate. In Ventura County, the inland range extends between approximately 1/2 mile to 1.5 miles inland.

23. Page 54, same paragraph. The description of what surrounds the "Navy Base" is not completely accurate. Immediately north of the Naval Construction Battalion Center is the City of Port Hueneme, not Oxnard (although it would be accurate to note that Oxnard is further north).

24. Page 54, same paragraph. The word "directly" should be deleted (see Comment #11).

25. Page 54, same paragraph. The word "feasible" is incorrect. The words "extent feasible" should be replaced with the words "maximum extent practicable" (see Comment #11).

26. Page 54, last paragraph of "Visual Resources" subsection. The meaning of this paragraph is unclear. The paragraph should be rewritten.

27. Page 57-68. The noise discussion is deficient in that it does not analyze effects on boating and recreation of Learjets flying at 100 ft. altitudes, generating an approximate noise level of 95 dBA, and passing by or over a vessel at sea to within 500 ft. The noise analysis needs to be expanded to include a baseline indication of the extent of various types of recreational boating (as well as other boating) activities within the Special Use Airspace, and an analysis of impact of Learjet noise on the quality of the recreation. Effects of potential collisions of Learjets and boats, as well as the effect of fear of such collisions on recreation, should also be addressed.

App. B (cont.)

28. Page 74 states the Navy received "waivers to perform similar tests." Who granted these waivers? Where were the tests conducted? If they did not involve flying within the proposed Special Use Airspace area, why is it now necessary to fly in this area? If they were flown within this area, what documentation exists with respect to the number of flights, the location and altitudes flown, and any safety or bird strike incidents?

29. Page 74 states "No acrobatic maneuvers would be performed" and that "The maneuvers required to fly the profile are straight forward climbs, descents, and turns." Please clarify whether these statements are still accurate, given that the Navy now proposes to maintain a minimum distance of 500 ft. from vessels at sea. Is it reasonable to include in the definition of "straight forward climbs, descents, and turns" a situation where a Learjet flying at 100 ft. in altitude, observing a ship and climbing to 500 ft. from the ship, and then returning to 100 ft. in altitude? If so, why?

30. Page 75 states "No mishaps occurred during any flight profile similar to what would occur in the MOA as described in the proposed action." Do valid comparable data exist to warrant this conclusion? (See Comment #16) Furthermore, do valid comparable data exist to warrant this conclusion for maneuvers such as those discussed in Comment #29 (i.e., planes flying over/near ships). Would consideration of these types of maneuvers (including possible collisions with ships) alter the safety risk calculations? Page 75 also cites Air Force C-21 flights as an indication of general safety (i.e., trained pilots, similar planes). What data exist indicating the extent to which these planes are flown in comparable situations to that proposed by the Navy.

31. Page 76 cites a 0.00016 probability of a bird strike from any single aircraft approach in the Point Mugu area. We have previously requested the raw data that were used to arrive at this probability. The Navy has not responded to our request. We reiterate our request and recommend that this data be provided in an Appendix to the SEA.

32. Page 82 (under "4.5.1 Coastal Resources"). "Acts are" should be changed to "Act is."

33. Page 82, same paragraph. Coastal Commission regulations are procedural, not substantive. It is the Coastal Act "policies" that establish standards for review, at least with respect to federal agency and federally-permitted projects. For others, see Comments #18-20, which explain when LCP (not Coastal Act) policies are relied on.

34. Page 82, Public Access discussion. The phrase "... has been acquired through use and by legislative authorization" is inaccurate and in any event is not needed here. We recommend you paraphrase Section 30210 or Section 30212 of the Coastal Act (rather than Section 30211, which generally relates to prescriptive rights). These other policies provide a broader, and therefore more appropriate, legislative mandate to discuss when describing Coastal Act public access requirements. Nevertheless, we do not disagree with the SEA's conclusion that public access per se would not be prohibited by the Special Use Airspace and associated flight testing. At the same time we do

App.B (cont.)

disagree with the conclusion stated on Page 83 (first paragraph) that public recreation "would not be limited or prohibited." As we state Comment #27, we do not believe that the Navy has provided any evidence that recreational boating would be not be adversely affected by the proposed flight testing. The flight tests would coincide with a heavily used recreational and other boating use area. As we state in that comment, this impact needs to be analyzed in the SEA.

Aside from the concern over flight testing on recreation, we have previously raised concerns regarding the effects of radar from the SWEF building on recreation (see our February 16, 1996 letter to the Navy [Attachment 2]). Some of those concerns may relate directly to the Special Use Airspace and associated flight testing, because it would appear reasonable to assume that the flight testing would intensify radar use. Since we have not yet received any response from the Navy to our concerns, we reiterate our request for a response to that letter, including the following concern:

Explain what radar equipment will be used to interact with the Lear Jets to be used in conjunction with the currently-proposed Special Use Airspace activity, and indicate whether this would be existing or new radar equipment. If new equipment, or if it is equipment not previously monitored, indicate whether and how RF radiation measures will be monitored to protect public safety.

35. Page 82 states "There would be no construction" associated with the Special Use Airspace. Does this mean there would be no installation of new facilities at the SWEF building to support the flight testing, or just no new building construction? Please describe whatever facility installation is needed that does not already exist at the SWEF building to support the Special Use Airspace flights, in particular any new radar facilities (see Comment #34). Also, please indicate what, if any, new facility installation, particularly radar, are associated with the "programs being considered for the SWEF building" (see Comment #6).

36. Page 83. Change the several references to "regulations" on this page to "policies" (see Comment #33).

37. Page 83 states that it is the Commission's conclusion that the activity would not affect the coastal zone. Please describe this as a Commission staff or Executive Director action, and also note, as we state in our Comment #2 above that this position is potentially subject to change.

38. Page 83, "Development" paragraph. Section 30250 of the Coastal Act provides several potentially relevant standards worth mentioning in this paragraph, including the need to avoid "significant adverse effects, either individually or cumulatively, on coastal resources." Regarding the third sentence in this paragraph, see Comment #35. Regarding the last sentence in this paragraph, which states that Special Use Airspace establishment would not prohibit use or development of any coastal land, please note that in a recent letter to the Navy regarding disposal of the Naval Civil Engineering Laboratory (NCEL) (see Attachment 3), we requested an analysis of the extent to which existing or increased intensification of radar facilities at the SWEF

App. B (cont.)

building may affect public uses proposed at the soon-to-be disposed NCEL base. We would appreciate a response to the questions raised in that letter, to support this SEA conclusion on Page 83 about effects on other coastal lands and uses.

39. Page 83, Coastal Resources Summary. The language "standards of the Coastal Commission Regulations" should be replaced with "standards of the Coastal Act." (see Comment #33) Regarding the second sentence in this paragraph, see Comment #2.

40. Page 85. Why does the SEA state that the airplanes would not be visible to viewers and property owners across Ocean Drive? Common sense would indicate otherwise. Please explain the rationale for this statement.

41. Page 85. It is inconsistent to state that since 90% of the flights occur on weekdays between 10 a.m. and 5 p.m., that visual impacts would not occur on weekends during peak recreational use (see comment #5). Please clarify.

42. Page 86 indicates the activity will have "no direct economic effects." A response to Comments #6 and #35 may help clarify this point. However, even if there would be no new facility installation at the SWEF, it would appear reasonable to assume that the flights themselves would generate some, albeit a small amount, of employment opportunities, equipment purchases, fuel purchases, and other miscellaneous activities. See also Comments #8, regarding possible future expansion of use of the Special Use Airspace.

43. Page 87, Disclosure Statement in Real Estate Transactions. Regarding the reference to the term "non-hazardous," see Comment #2. Regarding the statement "they are also consistent with other public uses of the coastal zone," see Comments #13 and #34.

44. Page 87. The title of Section 4.7 is "Environmental Consequences of Alternative Actions." The discussion that follows does not address environmental consequences but rather consequences to Navy operations. Perhaps the discussion should be retitled. In addition, the alternatives discussion is limited to the No Action alternative. As we note in Comments #10 and #13, we believe other alternatives should be considered.

45. Page 87, same paragraph. We do not agree that the SEA provides enough information to justify a conclusion that the No Action alternative would "impair the Navy from meeting a critical mission by precluding the generation of threat scenarios for use in the test and evaluation of ship defense systems." It may be that the No Action alternative may be more expensive, although even this assertion needs elaboration (see Comments #4 and #12). We therefore question the appropriateness and validity of the statement that no action alternative would adversely affect safety for deployed sailors. If the Navy wishes to maintain this assertion, additional supporting information needs to be provided to support it.

App. B (cont.)

46. Page 87, same paragraph. We also question the statement "This would prevent the Navy from fully utilizing the SWEF - and the investment made in the facility could not be fully returned." Our concerns and questions about this statement are as follows:

- a. We do not understand why a return on an investment is relevant to a federal government military operation. It would appear more appropriate to discuss costs in the context of feasibility of alternatives (see Comments #10 and #13). Considerations of feasibility do allow economic factors to be weighed.
- b. If the Special Use Airspace is needed to fully utilize the SWEF, then why is there no mention in the 1978 Master Plan for the SWEF which would indicate that proposed flight testing is an anticipated use at the SWEF.
- c. If the Special Use Airspace requires no new construction, facilities, or employment at the SWEF, as stated on pages 82 and elsewhere in the SEA, then why is the SWEF not already "fully utilized"?

47. Pages 87-91, Cumulative Impacts. Cumulative impacts discussions traditionally list and briefly describe the set of projects considered in the analysis, so that reviewers may understand what is included or what may have been omitted from the analysis. We recommend this approach here.

48. Page 89-90 states that a project is in the feasibility stage that would use Pt. Mugu for military/commercial purposes. We request more information on this project, such as indicating whether (and if so, how much) it would: (a) entail facility construction at Point Mugu; (b) increase air traffic at Point Mugu or in the region; and (c) involve flights or flight testing at low altitudes over offshore waters seaward of Point Mugu?

49. Page 93, states the Learjet can withstand a bird strike at 500 knots. How was this determined? Can you provide a copy of any report(s) showing how this conclusion was arrived at?

50. Appendix A, page 2. Please explain the meaning of the statement that "The modified equipment would no longer represent The Fleet Equipment."

51. Appendix A, page 4 states: "Peak periods have not yet been identified, but this will be addressed in ongoing coordination and in the final Letter of Agreement." Please indicate when these determinations will be made, and please agree to inform us when any such decisions are made.

52. Appendix A, page 4 states "The aircraft will remain 500 ft. (horizontally and vertically) from any surface craft." The accompanying maps indicate "Aircraft will remain at least 500 ft. from any surface craft. The two statements are not identical. Furthermore, both of these statements differ from the Appendix M, page 2, which states: "Overflight of any surface craft below 500 feet msl is not permitted." Please clarify the criteria which will be applied to ship overflights.

App. B (cont.)

Thank you for the opportunity to comment on this SEA. If you have any questions about these comments, please feel free to call me at (415) 904-5289.

Sincerely,

Mark Delaplaine

Mark Delaplaine
Federal Consistency Supervisor

[Note: Not included in this Appendix]

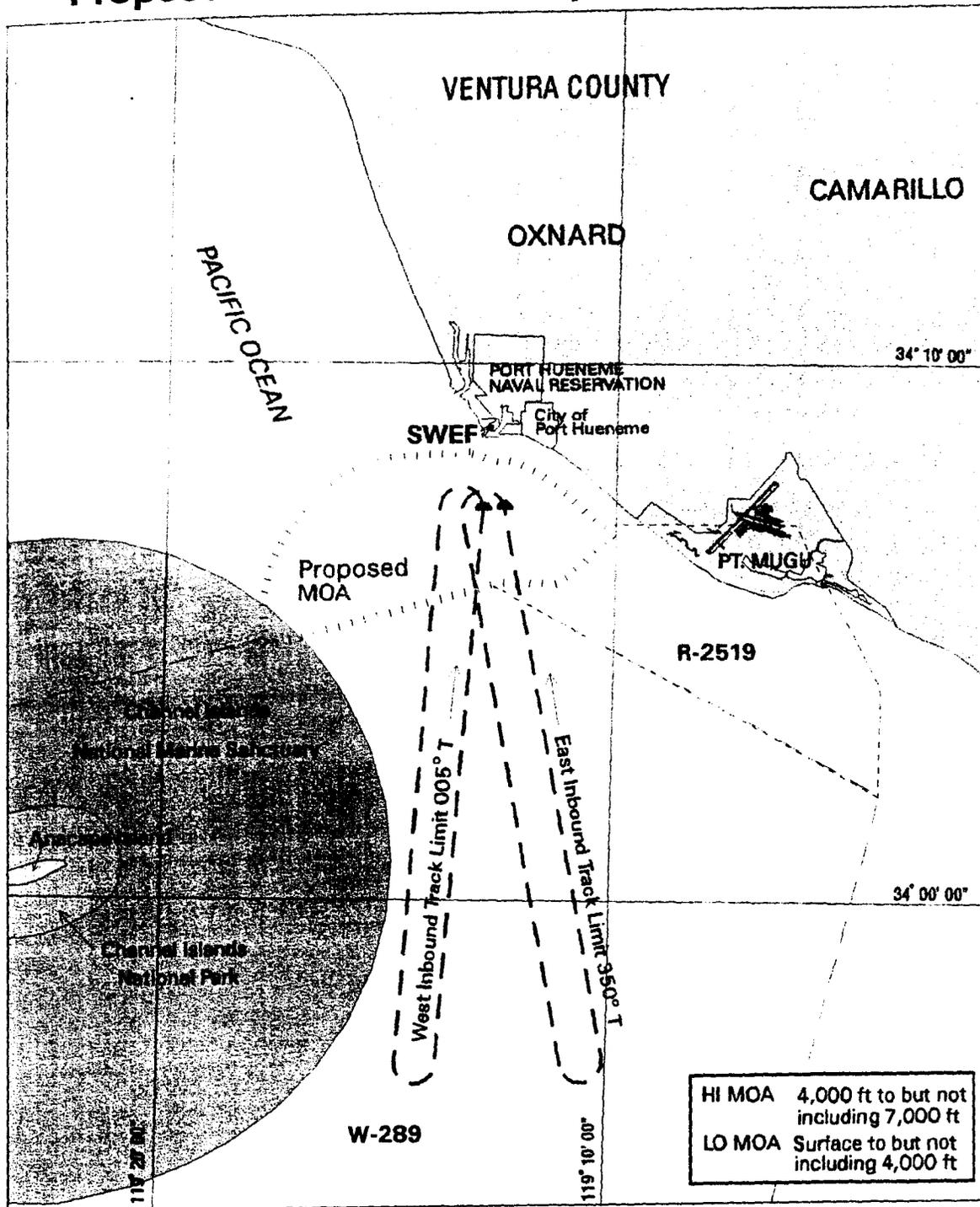
Attachments: (1) March 14, 1996, CCC letter to FAA
^ (2) February 16, 1996, CCC letter to Navy
(3) March 8, 1996, CCC letter to Navy
(4) September 8, 1995, and September 21, 1995, CCC letters to Navy

cc: Ventura Area Office
U.S. Navy (Captain Beachy)
FAA (Harvey Riebel)

MPD/mra/1967p

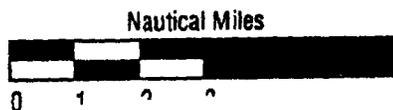
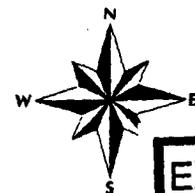
App. B (cont.)

Proposed Port Hueneme Special Use Airspace



All aircraft would maintain a minimum of 2000 ft AGL over the National Marine Sanctuary

- Ventura County
- Surface Water
- National Marine Sanctuary
- National Park Boundary
- Approach Routes
- Restricted Airspace Boundary
- Warning Area Boundary
- Turn Points



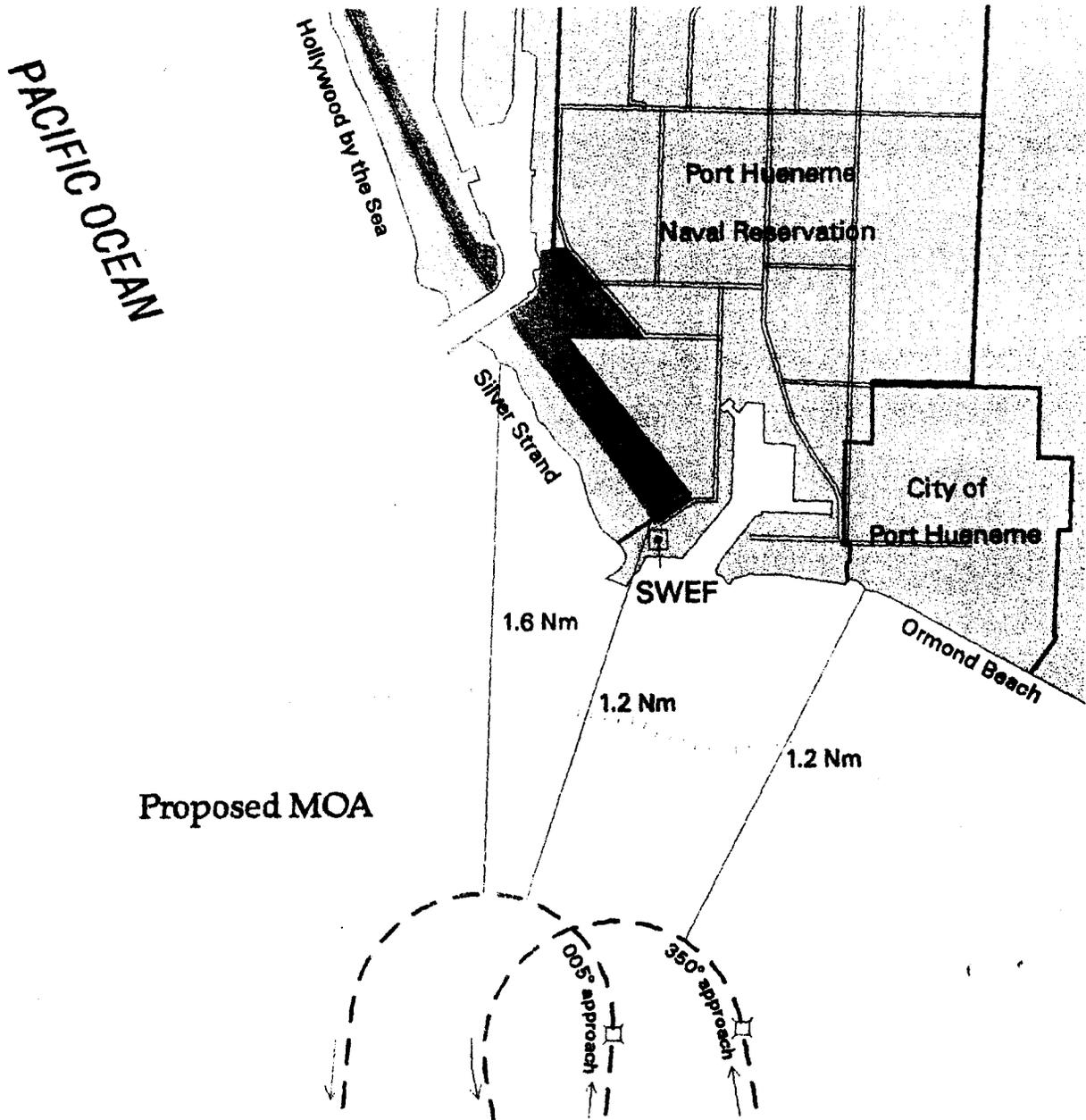
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EXHIBIT NO. 1
APPLICATION NO.
Special Use Area
California Coastal Commission

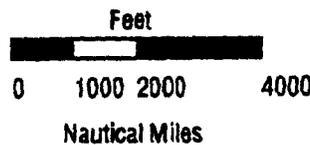
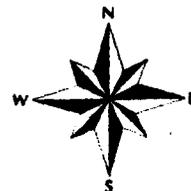
Figure 2

Proposed Action Flight Profiles

With Closest Points of Approach



- Ventura County Mainland
- Residential Areas
- Surface Water
- Flight Paths
- Proposed MOA Boundary
- Roads
- Boundaries
- SWEF
- Turn Point



Exn. 1 (cont'd)

Figure 6

Flight Profile #1

Aircraft will be Lear type 35 or 36A turboprops or equivalent civilian aircraft. One or two aircraft, selected radials inbound; start 21.5 miles from "SWEF;" each inbound run to be at a selected altitude of 100' to 7,000' on a heading that will avoid penetration of the Channel Islands National Marine Sanctuary below 2,000'. Each run to be level flight, approaching 1.5 miles of the "SWEF" prior to turning outbound. Direction of outbound turn to be as specified by range air controller in order to minimize interference with Class D airspace areas and to avoid penetrating the Channel Islands National Marine Sanctuary below 2,000'. Speed will not exceed 325 knots. This profile comprises 80% of projected flights. All flights to remain seaward of the shoreline and within the limits of SUA until completion of mission.

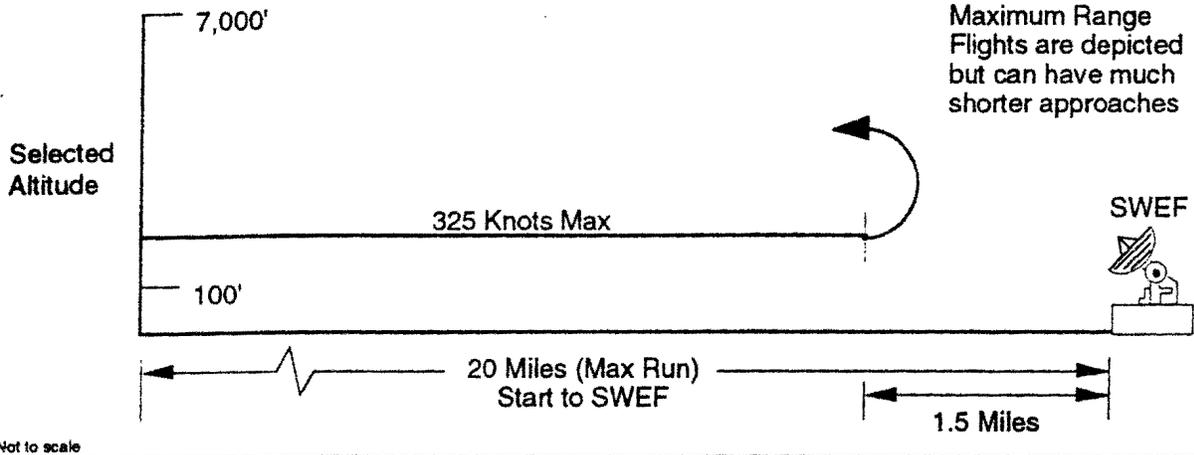


Figure 7. SWEF Flight Profile #1.

Flight Profile #2

Aircraft will be Lear type 35 or 36A turboprops or equivalent civilian aircraft. Selected radial inbound, start 25.5 miles from the "SWEF;" each inbound run to be at a selected initial altitude of 100' to 3,000'. Speed will not exceed 325 knots. Approach to within 15.5 miles of the "SWEF," climb to 3,000' and maintain altitude until "command descent," then descend to original inbound altitude and approach to 1.5 miles of the "SWEF" prior to turning outbound. Inbound run will not penetrate the boundary of the Channel Islands National Marine Sanctuary below 2,000'. Direction of outbound turn to be as specified by range air controller in order to minimize interference with Class D airspace areas and to avoid penetrating the Channel Islands National Marine Sanctuary below 2,000'. All flights to remain seaward of the shoreline and within the limits of SUA until completion of mission.

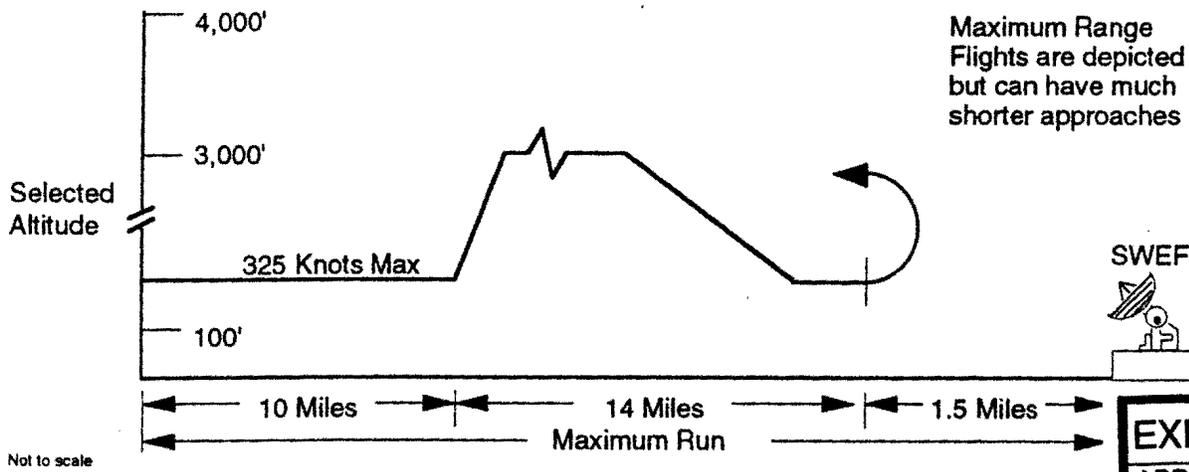


Figure 8. SWEF Flight Profile #2.

EXHIBIT NO. 2
APPLICATION NO.

Special Use Area

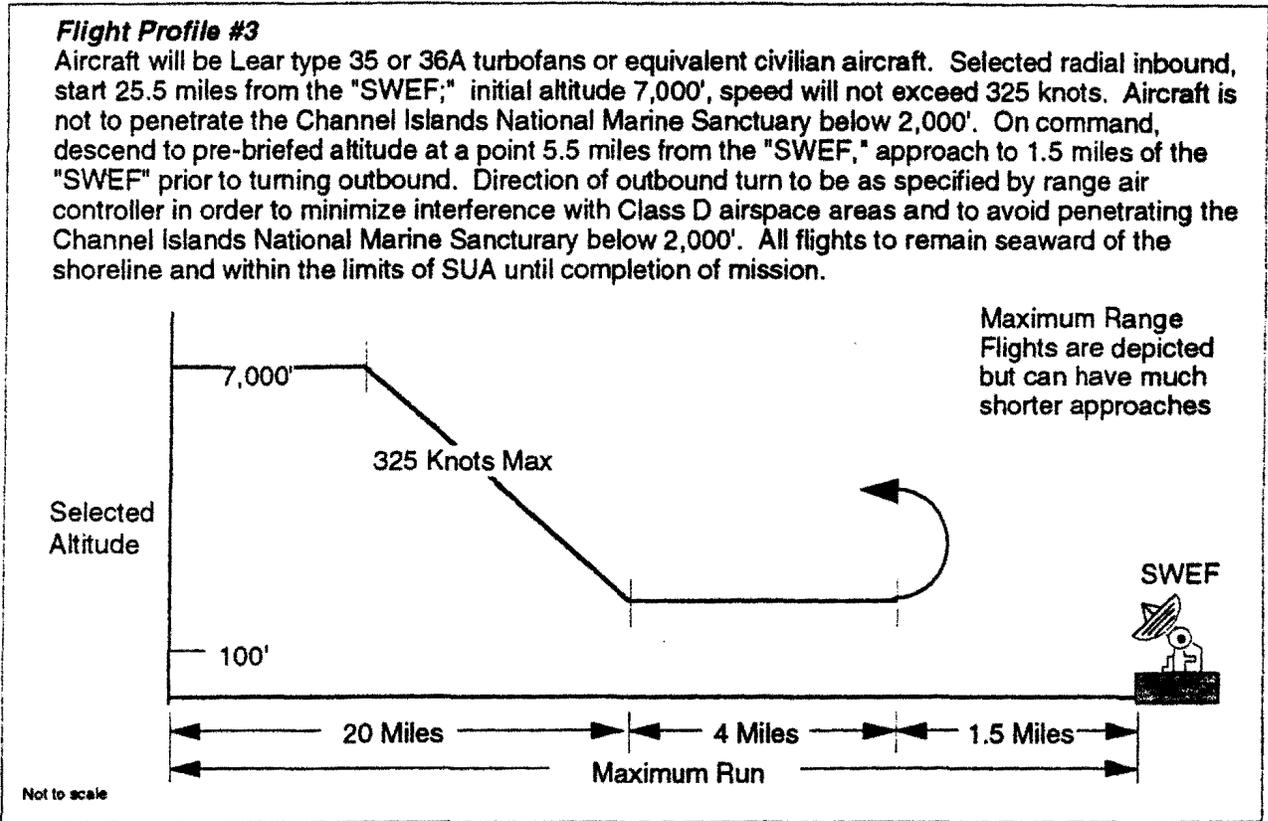


Figure 9. SWEF Flight Profile #3.

Exh. 2 (cont'd)

CALIFORNIA COASTAL COMMISSION

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



March 14, 1996

Federal Aviation Administration
 Attn: Harvey Riebel
 Manager, System Mgmt. Branch
 Air Traffic Division
 P.O. Box 92007
 Worldway Postal Center
 Los Angeles, CA 90009

RE: Navy Special Use Airspace, Port Hueneme, Ventura Co.
 FAA File No. AWP-530, Docket #95-AWP-7NR

Dear Mr. Riebel:

The purpose of this letter is to inform the FAA that the activity covered under the previous negative determination for the Navy's Special Use Airspace in Port Hueneme (ND-115-94) has been modified. Consequently we request that the FAA not at this point assume that the previous negative determination is applicable to the currently proposed project. At our next Commission meeting, which is scheduled for April 9-12, 1996, the Commission will conduct a public hearing and determine whether the Special Use Airspace, as currently proposed, has different effects on resources of the coastal zone than the originally-reviewed activity. If the Commission makes this finding, it will re-open federal consistency review.

As you are aware, a Supplemental Environmental Assessment (SEA) for the modified activity is now being circulated for public review. Among the issues the Commission may consider in April is whether Navy Lear jets, flying at 100 ft. altitudes approaching ships at sea (but keeping a minimum distance of 500 ft. from the ships), would affect recreational boating, recreational or commercial fishing, or other boating activities. The Commission may also look at the question of whether intensification of radar use associated with the Special Use Airspace would affect recreation.

When they become available, we will send you a copy of our comments on the SEA, and we will notify you of any further action on this matter taken by the Commission. If you have any questions about this letter, please contact me at (415) 904-5289.

Sincerely,

MARK DELAPLAINE
 Federal Consistency Supervisor

cc: Ventura Area Office
 U.S. Navy (Pete Becker and Captain Beachy)
 NOAA Assistant Administrator
 Assistant Counsel for Ocean Services
 OCRM
 Governor's Washington D.C. Office

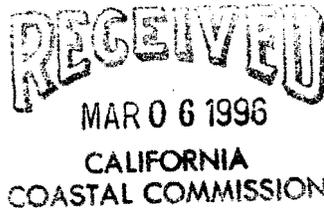
EXHIBIT NO. 3
APPLICATION NO.
Special Use Area
California Coastal Commission

PORT HUENEME HARBOR SAFETY COMMITTEE

Mandated by
California Oil Spill Prevention and
Response Act of 1990

March 5, 1996

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219



Re: ND-115-94, Special Use
Airspace, Port Hueneme

Dear Mr. Douglas:

At our regular meetings of December 13, 1995, and February 29, 1996, the Port Hueneme Harbor Safety Committee considered the proposed Special Use Airspace offshore of Port Hueneme and how it may affect the safety of shipping operations at the Port of Hueneme. At the February 29th meeting, we received public comment on the proposal and reviewed the Coastal Commission letter to the Navy of February 16, 1996.

While it is the official position of the U.S. Navy that the proposed flights toward the Harbor, as low as 100 feet above the water, will not delay, alter, or endanger harbor operations, our concern is that the broad scope of the proposal will almost certainly have impacts and that this should receive a full and thorough review.

The Navy has very recently introduced a new concept of activating the Special Use Airspace even in the presence of vessels. Assurance is given that a "safety bubble" of 500 feet will be observed around each vessel. This concept is in place of prior assurances that test flights would be aborted if a ship were in transit. Analysis is needed of the safety of this concept. Many vessels calling at the Port of Hueneme have an air draft that exceeds 100 feet, posing major accident risk if a ship is operating within the Special Use Airspace while flight tests are in progress. Both the charted fairway leading into Port Hueneme and a portion of the major shipping lanes leading along our coast are included in portions of the Special Use area that is being requested by the Navy on a permanent basis.

Oil Platform Gina, having an air draft exceeding 100 feet, is within the proposed Airspace. The safety implications of its presence needs analysis that should include consideration of the oil spill hazard and remediation resources available in the event of an aircraft accident.

To facilitate a full and thorough review of those safety implication of the proposal within our areas of concern, we support your February 16, 1996, request for submittal of a consistency determination for the SWEF facility. We also believe there is a need for a consistency determination for the Airspace proposal and suggest that you request that one be submitted by the Navy.

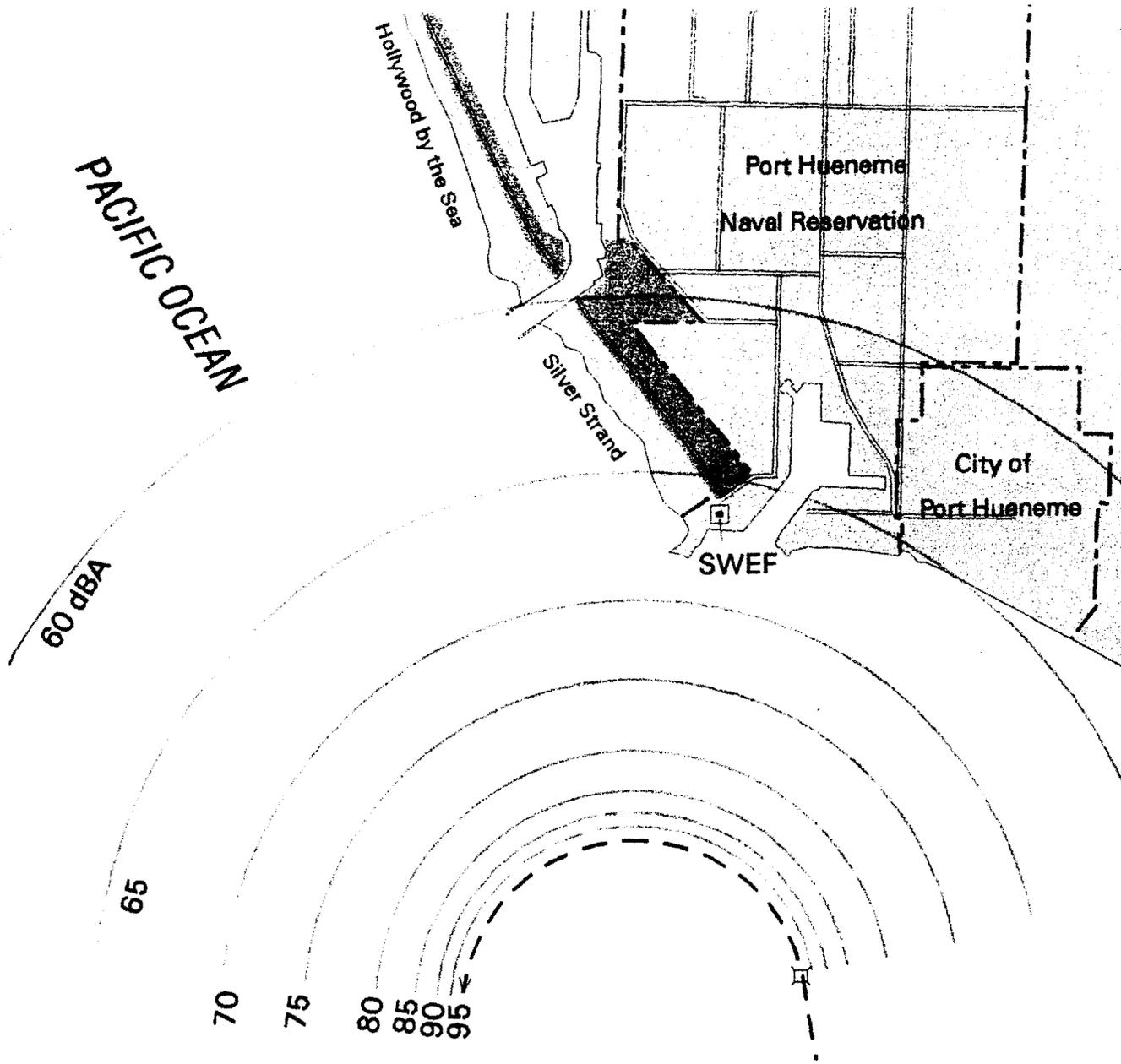
Sincerely,


Captain Carl Dingler
Harbor Safety Committee Member

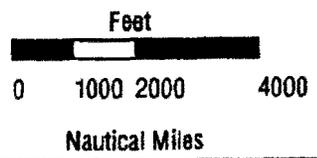
EXHIBIT NO. 4
APPLICATION NO.
Special Use Area
 California Coastal Commission

Sound Exposure Levels

Single Aircraft Pass
Learjet 350° approach



- Ventura County Mainland
- Residential Areas
- Surface Water
- Flight Path
- Sound Exposure Levels
- Roads
- Boundaries
- SWEF
- Turn Point



Scale shown is 1:
Projection: Universal Transverse
North American Datum

EXHIBIT NO. 5
APPLICATION NO.
<i>Special Use Area</i>
California Coastal Commission

Figure 42

