

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION
ON CONSISTENCY CERTIFICATION

W/36

Consistency Certification

No. CC-39-96	Army Corps
Staff:	MPD-SF
3 Mo. Period Ends:	6/26/96
6 Mo. Period Ends:	9/26/96
Filed:	3/26/96
Commission Meeting:	7/10/96

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

DEVELOPMENT
LOCATION:

"Waters of the U.S." in Coastal Counties within the jurisdiction of the Los Angeles District of the Corps of Engineers (for the coastal zone, between 8 mi. north of the Monterey/San Luis Obispo County line and the San Diego/Mexico International Borders) (Exhibit 1)

DEVELOPMENT
DESCRIPTION:

Regional General Permit (RGP) to authorize the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S., including wetlands, for the purpose of habitat recovery

SUBSTANTIVE
FILE DOCUMENTS:

Special Public Notice, Regional General Permit #41, Army Corps of Engineers Notice No. 96-00094-ES

EXECUTIVE SUMMARY

The U.S. Army Corps of Engineers (Corps) has submitted a consistency certification for the issuance of a Regional General Permit (RGP) to authorize the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S., including wetlands, for the purpose of habitat recovery. The RGP would authorize mechanical clearing and the use of EPA-approved herbicides to remove exotics located in areas under the jurisdiction of the Los Angeles District of the Corps of Engineers.

The Corps' original proposal included a number of measures within the permit to assure that the effects of removal would not adversely affect wetlands, threatened and endangered species, and other environmentally sensitive

habitat. These measures include: (1) seasonal limitations to minimize impacts during migratory seasons and flood seasons; (2) limitations on herbicides allowed; (3) minimization of access road impacts; (4) use of all appropriate Best Management Practices to minimize turbidity and access road effects; (5) flagging of (and avoidance of effects on) native riparian vegetation prior to commencement of any mechanized activities.

In addition, in responding to public comments on the original RGP, the Corps has strengthened the conditions in the RGP. Most importantly, the Corps has agreed to reduce the duration of the RGP to a two year trial period, with monitoring and development of success criteria definitions. Additional measures incorporated into the permit include: (1) further restrictions on aerial spraying from aircraft between March 15 and Sept. 15; (2) limiting stockpiling of debris to disturbed areas and prohibiting burning during wildlife breeding seasons; (3) where appropriate, restoration of access roads; (4) additional coordination with concerned agencies; (5) prior public notice in areas affected by aerial spraying; (6) eliminating the phrase "to the maximum extent practicable" from Condition 6 (see page 8); and (7) prohibiting fueling of vehicles within watercourses.

The Coastal Act allows wetland restoration as one of the eight allowable uses within wetlands, as long as a project is the least damaging feasible alternative, and where adverse effects are mitigated. The habitat protection measures the Corps has agreed to include within the RGP improve the likelihood that the activities covered under the RGP will be limited to those that will aid in the restoration of wetlands and riparian habitat, and will not be detrimental to sensitive wildlife resources. Furthermore, the Commission's existing regulatory processes (including coastal development permit, appeals, and federal consistency authority) provide the Commission with independent review over most activities covered under the RGP. Given these considerations, the proposed RGP is consistent with the wetland and other sensitive habitat policies (Sections 30233 and 30240) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Summary:

A. Project Description/Background. The U.S. Army Corps of Engineers (Corps) has submitted a consistency certification for the issuance of a Regional General Permit (RGP) to authorize the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S., including wetlands, for the purpose of habitat recovery. The permit would apply to such activities subject to the jurisdiction (i.e., activities within "waters of the U.S") of the Los Angeles District of the Corps of Engineers. Exhibit 1 shows the jurisdiction of the three Corps Districts in California; for the coastal zone, the Los Angeles District covers the area between Gorda, Monterey County (located 8 mi. north of the Monterey/San Luis Obispo County line) and the San Diego/Mexico International Border.

The RGP would authorize the following species to be removed:

giant reed - *Arundo donax*
salt cedar - *Tamarix* spp.
common reed - *Phragmites australis*
tree tobacco - *Nicotiana glauca*
castor bean - *Ricinus communis*
star thistle - *Centaurea solstitialis*
artichoke thistle - *Cynara cardunculus*
thistle - *Cirsium* spp.
pampas grass - *Cortaderia selloana*
fountain grass - *Pennisetum setaceum*
cocklebur - *Xanthium strumarium*

The RGP sub-classifies areas in terms of the degree of cover by exotics. "Fully infested stands" contain 80% or greater relative or canopy cover of exotics; areas with between 50% and 80% relative or canopy cover of exotics are classified as "partially infested stands." Removal within fully infested stands would be authorized year-round (except for certain practices, as described below); activities within partially infested stands would be limited to the August 16-February 28, "non-migratory" season. The RGP would not be applicable in areas containing less than 50% relative or canopy cover of exotics. For a parcel to be considered a "stand" it must be at least 0.5 acre in size or completely isolated from contiguous native riparian habitat. Following flood, fire, disease, or other natural event which scours or destroys an area, the Corps will classify the stand based on the areal coverage of exotics that existed immediately prior to the natural disturbance.

The Corps's "Special Public Notice" for the RGP states the following activities would be authorized in "fully infested stands":

1. Broadcast foliar application of herbicides which are currently approved by the U.S. Environmental Protection Agency (USEPA) for use in wetlands. To reduce potential impacts to migratory birds using parcels adjacent to "fully infested stands", no aircraft (e.g. helicopter) based application may occur between March 1 and August 15.
2. Mechanized landclearing, mechanical mulching (i.e. Hydro-Ax), mechanized removal, chipping, and excavation of living or dead invasive plants and any associated debris.
3. Stockpiling of invasive plants and associated debris which have been excavated, except during the flood season (November 15 - April 15), when stockpiling is prohibited. Stockpiles cannot be placed within 50 feet of flowing water and must be disposed of within 30 days by either removal to an appropriate upland disposal area or by burning. Prior to burning of any stockpiles or debris, all appropriate state and local permits must be obtained.

4. Construction of access roads provided that the width and length of the road are the minimum necessary for access to the exotics removal site. Native woody riparian vegetation must be flagged and avoided. Placement of fill, such as decomposed granite, gravel, or concrete, on newly constructed or existing access roads within waters of the U.S. is not authorized under this RGP. All appropriate Best Management Practices must be used to preclude increased turbidity and to ensure that road construction does not restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

The "Special Public Notice" states the following activities would be authorized on a seasonal basis, between August 16 and February 28, in "partially infested stands":

1. Plant specific application of herbicides which are currently approved by the USEPA for use in wetlands. Plant specific techniques may consist of application via a backpack sprayer and/or the cut/paint technique (cutting of the plant, followed by immediate direct application of herbicide to the freshly cut stump). No herbicide may be applied to native riparian vegetation.
2. Mechanized landclearing, mechanical mulching (i.e. Hydro-Ax), mechanized removal, chipping, and excavation of living or dead invasive plants and any associated debris. Native riparian vegetation must be flagged prior to commencement of any mechanized activities and must be avoided.
3. Construction of access roads provided that the width and length of the road are the minimum necessary for access to the exotics removal site. Native woody riparian vegetation must be flagged and avoided. Placement of fill, such as decomposed granite, gravel, or concrete, on newly constructed or existing access roads within waters of the U.S. is not authorized under this RGP. All appropriate Best Management Practices must be used to preclude increased turbidity and to ensure that road construction does not restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

The 10 Corps-proposed conditions in the originally proposed RGP are described on pages 8-9; additional conditions that will be added to these original conditions are described on pages 10-11. The Corps also notes that:

While hand clearing (including use of chain saws) is generally not subject to Corps jurisdiction under Section 404 of the Clean Water Act, if hand clearing occurs in mixed stands, native riparian vegetation would need to be flagged and avoided.

Procedurally, the way the RGP would be administered, and the discretion the Corps would retain on a project-by-project bases is as follows:

Notification requirement - Prior to use of this RGP, prospective permittees must notify the Corps in accordance with the modified notification procedures under General Condition 10 of this RGP.

Work may not commence until verification of compliance with this RGP is received from the Corps or thirty days have passed since the Corps receives a complete notification package. The Corps would maintain discretion to add Special Conditions to RGP verifications to clarify compliance with the terms and conditions of this RGP or to ensure that the proposed project would have only minimal individual and cumulative adverse impacts to the environment. In cases where the proposed project does not comply with the terms and conditions of this RGP or the Corps determines that the proposed project would be contrary to the public interest or would result in greater than minimal individual or cumulative adverse impacts to the environment, the applicant would be notified by the Corps of Engineers within thirty days of receipt of a complete notification.

B. Status of Local Coastal Program. The standard of review for federal consistency certifications 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 status of the various City and County LCPs from southern Monterey County south through San Diego County are shown on Exhibit 3.

C. Federal Agency's Consistency Certification. The Corps has certified that the proposed Regional General Permit complies with and will be conducted in a manner consistent 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 certification made by the Corps for the proposed general permit, finding that the permit is consistent with the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Wetlands/Environmentally Sensitive Habitat. The Coastal Act provides:

Section 30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ...

(7) Restoration purposes.

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Coastal wetlands provide spawning, nursery, and foraging areas for many species of marine fish. Historically, coastal estuaries and wetlands have been destroyed or disturbed by many human activities, including: dredging for ports and marinas; diking to remove from tidal influence; filling for the creation of new land for development; disposing of domestic sewage and industrial waste, and removing freshwater inflows. The wetland acreage in California's coastal zone has been reduced by approximately 90 percent from its historic amount. Of the original 197,000 acres of marshes, mudflat, bays, lagoons, sloughs, and estuaries in California (excluding San Francisco Bay), the natural productivity and open space values of 52 percent have been totally destroyed by dredging and filling. Of California's remaining estuaries and coastal wetlands, 62 percent have been subjected to severe damage and 19 percent have received moderate damage. Less than 10 percent of California's original coastal estuaries and wetlands remain relatively undisturbed, and the Coastal Act has affords a high degree protection for wetland resources.

Riparian habitat is also critically important, highly threatened, and protected under the Coastal Act. Not all riparian habitat qualifies as wetland habitat under the Coastal Act. Neither the Coastal Act nor the California Code of Regulations implementing the Coastal Act exclude riparian habitat from their definitions of wetlands. These definitions describe wetlands as areas that have the appropriate hydrology and either hydric soils or hydrophytes (wetland vegetation). Under these definitions, some riparian habitats can be classified as wetlands if they are covered with water long enough to promote the formation of hydric soils or to support the growth of hydrophytes.

Like most wetlands, riparian habitat provides a transition between the aquatic environment and upland habitat. The plant communities that make up this transitional area range from predominately obligate wetland species to predominately upland species depending on hydrologic nature of the habitat. Thus, some riparian areas may be classified as wetlands, whereas others may be defined as upland.

Nevertheless, regardless of their classification the riparian ecosystems of California are far more productive than any other of the State's plant communities. Their maximum productivity approaches that of eastern deciduous forests during the summer season and tropical rain forests all year long. Though riparian corridors constitute approximately two per cent of the State's total vegetative cover, they provide habitat for more than fifty per cent of its indigenous species. For example, of the 502 native species and subspecies of land mammals in California, approximately twenty-five percent (133 taxa) are limited to or largely dependent upon riparian and other wetland communities (Williams, et al, 1984). Additionally, half of California's reptile and three-quarters of its amphibian species are associated with riparian systems. These riparian forests are also noted for their abundance and diversity of bird fauna.

The Corps elaborates in its "Special Notice" for the RGP:

Although their areal extent is proportionately less than in other parts of the country, western riparian systems have a proportionately greater significance for some functions because of the arid climates in which they occur (USDOI, 1994). These critical functions include provision of fish and wildlife habitat, aquifer recharge, flood water attenuation, erosion control, sediment trapping, and improvement of water quality by filtering pollutants from upland sources. In the arid southwestern U.S., riparian areas serve as linear or single-point habitat islands on which a multitude of native wildlife species are totally dependent for survival (Warner and Hendrix, 1985). In addition, riparian areas provide important movement and dispersal corridors for animals and plants (William and Kilburn, 1984). The U.S. Department of the Interior (USDOI, 1994) estimated that although less than 1% of the western portion of the U.S. is covered by riparian vegetation, between 51% and 82% of all species in the southwestern U.S. depend upon riparian areas for survival.

Addressing the need to protect these systems from invasion by exotics, the Corps states:

Exotic species often thrive in mesic environments and readily establish following disruption of riparian systems. Exotic species have few, if any, native pests or diseases and thus grow rapidly. Once established, their proliferation excludes reestablishment of native species following subsequent disturbances, such as floods or fires (Warner and Hendrix, 1985). The replacement of native riparian habitat with giant reed, salt cedar, and other exotics displaces native fauna, reduces flood conveyance, increases evapotranspirative losses, increases water temperature, and

creates fire hazards (Tabatabai, 1994). For example, of the 14,000 acres of riparian habitat along the Santa Ana River drainage basin, approximately 5,000 acres are infested with Arundo. Eradication of Arundo from the Santa Ana River could reduce annual evapotranspirative water losses by an estimated 37,500 acre-feet, resulting in an estimated savings of \$12 million annually (Iverson, 1993).

Clearly the removal of exotics from native wetland systems is a laudable goal, and one supported by the Coastal Act. The key is to accomplish this in a manner which assures the measures used to implement the removal does not in itself adversely affect sensitive habitat. To provide these assurances, the originally proposed RGP contained the following conditions:

Proposed General Conditions

1. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area.
2. The permittee must ensure that nodes, root stalks, or other debris resulting from their activity do not enter any actively flowing watercourse.
3. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
4. No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Federal agencies should follow their own procedures for complying with the Endangered Species Act. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service.
5. No activity is authorized which may adversely affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR 325.
6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

7. To the maximum extent practicable, native riparian vegetation should be avoided.
8. All project sites shall be marked in such a way as to inform the public about the use of herbicides and shall provide safety warnings.
9. No mechanized equipment, rubber-tired, track vehicles, or other materials shall be stored or staged in waters of the U.S., including wetlands.
10. Prospective permittees must submit the following information to the Corps prior to use of this RGP: [including] (a) name ... of ... permittee; (b) location ...; (c) project purpose; (d) brief description ..., including the areal extent of work being proposed; (e) acreage of "fully infested stands" and "partially infested stands" which would be affected ...; [(f) Coordination with] ... the State Historic Preservation Office (SHPO) ...; (g) [Coordination with] ... the U.S. Fish and Wildlife Service (USFWS) ... [regarding] any federally-listed endangered or threatened species or designated critical habitat in the proposed project area that may be affected ...; [and] (h) Results of a migratory bird survey (if work is being proposed in "partially infested stands" between March 1 and August 15).

The RGP also provides that "...work may not commence until verification of compliance with this RGP is received from the Corps or thirty days have passed since the Corps receives a complete notification package."

Since its originally published its notice for the proposed RGP, the Corps has received comments from a number of public agencies and environmental organizations suggesting modifications to the RGP. These comments are summarized in Exhibit 2. The major recommendations made by the commenters consisted of requests for:

- a shortened duration of the RGP;
- monitoring of the success of exotics removal and of habitat impacts by users of the RGP;
- strengthened permit conditions addressing placement of debris within watercourses;
- restoration, including active planting of native vegetation, in areas where exotic vegetation is removed;
- use of a limited pilot area prior to broadscale use of the RGP;
- reduced or prohibited use of aircraft-based herbicide spraying, as well as published notification in the affected area prior to aerial spraying;

additional restrictions on access roads, including restoration of areas disturbed for such roads;

notification/coordination with additional agencies (including the Coastal Commission, the Regional Water Quality Control Boards (RWQCBs), the State Water Resources Control Board, the National Marine Fisheries Service, and, where applicable, local governments/landowners such as Orange County);

requirements to protect State listed species as well as federally listed species;

avoiding herbicides containing glyphosate in waterways supporting or containing salmonids; and

prohibiting fueling vehicles within wetlands.

The Corps has considered these comments and in the process of preparing a written response to the concerns submitted by RGP commenters; however this Corps response is not available as of the date for mailing this staff report. The response is expected shortly (and probably prior to the scheduled July 10, 1996, Commission hearing for this matter). As soon as it is available, the response will be mailed to those who commented on the RGP, as well as any other person or agency requesting it from the Commission staff.

The Corps has made verbal commitments to the Commission staff in response to these comments, indicating its intent to modify the proposed RGP to contain additional habitat protection measures, where the Corps believes it has the authority to do so and where evidence exists to justify the recommendations. Most importantly, the Corps has agreed to reduce the duration of the RGP to a two year trial period (rather than the original 5-year RGP duration), with monitoring and development of success criteria definitions, as well as further public comment period and public agency review of the results of this information, prior to any further extensions of the RGP.

Additional specific measures that the Corps agrees to incorporate into the final RGP include:

(1) additional restrictions in aerial spraying from aircraft between March 15 and Sept. 15;

(2) limiting stockpiling of debris to disturbed areas and prohibiting burning during the breeding season;

(3) where they will no longer be need for continued maintenance or monitoring, restoration (with native vegetation) of access roads;

(4) requiring additional coordination with the agencies that requested notification (including the Coastal Commission), including notice to permittees that all required State and local permits and other authorizations will need to be obtained;

(5) notifying applicants that such coordination may trigger requirements to protect State-listed species (e.g., where Coastal Commission, RWQCB or Department of Fish and Game review is triggered);

(6) requiring public notification in the affected area where aerial spraying is proposed;

(7) eliminating the phrase "to the maximum extent practicable" from Condition 6 [see page 8 for original condition language]; and

(8) prohibiting fueling of vehicles within watercourses.

[Staff Note: The final wording of these modifications will be available shortly, will be mailed to anyone requesting it from the Commission staff, and will be distributed at the July 10, 1996 Commission meeting.]

The Commission believes the shortened duration of the RGP, combined with additional minimization, mitigation, and monitoring provisions, greatly lessen any habitat concerns that might be raised over the long term effects of mechanized equipment and use of herbicides in wetlands. Perhaps of greater significance, at least from a procedural perspective, is the fact that the activities covered under the RGP would normally be subject to, or at least potentially subject to, other Commission regulatory authorities. The Commission retains coastal development permit authority for activities within the Commission's "original" jurisdiction, as well as in areas where local government Local Coastal Programs (LCPs) have not been certified. The Commission retains appeal authority for activities within 100 ft. of any wetland, estuary, or stream within the coastal zone (as well as within 300 ft. of the sea or the top of any coastal bluff). These original and appeals jurisdiction areas coincide with or subsume the vast majority of areas that the Corps defines as "waters of the U.S." Finally, the Commission retains direct federal consistency jurisdiction over federal agency activities affecting coastal zone resources, including activities conducted on federal land.

Statutory and regulation language elaborating on these Commission authorities is contained in Exhibit 4, which consists of: (1) the Coastal Act definition of development (including as development the "discharge or disposal of any dredged material or of any gaseous, liquid, [or] solid waste" and "the removal or harvesting of major vegetation other than for agricultural purposes"; (2) the Commission's regulation that clarifies which repair and maintenance activities trigger coastal development permit requirements; and (3) the federal consistency regulation that clarifies that where the Commission has federal consistency authority over a federal agency project that is also a federally-permitted project (e.g., a Corps-permitted project on Navy land) the Commission will review the project as a federal agency project.

Given these regulatory procedures available to the Commission outside the procedural scope of this Corps consistency certification, it would appear the only situation where a project might be authorized by the Corps, but not otherwise potentially subject to independent Commission authority, would be an

activity located outside and landward of the coastal zone. Nevertheless, even for those activities, the Commission staff would still receive notification from the Corps and could seek to influence the Corps' process to assure all terms of its permit would be complied with (e.g., recommend special conditions or other appropriate action by the Corps); again the Corps has committed that it will not authorize individual activities unless it can "ensure that the proposed project would have only minimal individual and cumulative adverse impacts to the environment." If activities located outside the coastal zone comply with this test they would be unlikely to affect the coastal zone; in addition it should be noted that Section 930.66 of the federal consistency regulations provides further remedies available to the Commission in the event a federally permitted activity is having a coastal zone "effect substantially different than originally proposed, and, as a result, is no longer consistent with the State's management program."

The Coastal Act allows wetland restoration as one of the eight allowable uses within wetlands, as long as a project is the least damaging feasible alternative, and adverse effects are mitigated. As described above, the Commission retains the authority in the vast majority of instances to assure these tests are complied with. In conclusion, between the Corps' conditions and the Commission's continuing authority, combined with the fact that the overall intent of the RGP is directed at protecting and restoring wetlands and environmentally sensitive habitat areas, the proposed RGP is consistent with the wetland and other sensitive habitat policies (Sections 30233 and 30240) of the Coastal Act.

FAX TRANSMITTAL		# of pages 6
To <i>Mark Delaplaine</i>	From <i>Eric Stein</i>	
Dept./Agency <i>CCC</i>	Phone # <i>ACOE</i>	
Fax # <i>415-904-5400</i>	Fax #	
<small>FORM 7600-01-317-7308 5000-101</small>		<small>GENERAL SERVICES ADMINISTRATION</small>

1. **Summary of comments re**

a. **Federal agencies:**

- 1) **U.S. Environmental Protection Agency (EPA):** EPA is generally supportive of removal of invasives and believes the use of glyphosate should have minimal impacts on water quality and wildlife. EPA offered the following comments: specific areas or watersheds should be targeted for invasives removal in a given year, also language should be added to suggest that invasives removal efforts begin at the top of a watercourse. Habitat restoration should be included as a requirement of the RGP. Native riparian impacted by a project should be replaced and recolonization should be prevented. EPA also asked if this RGP would apply to projects whose purpose was flood control? EPA suggested that the RGP be issued for a 1-3 year period and that success criteria be developed to gauge the success of the effort; therefore, applicants should be required to monitor sites following use of the RGP.

- 2) **U.S. Fish and Wildlife Service (FWS):** The FWS is generally supportive of the RGP for invasives removal; however, they recommend that the RGP be limited to the Santa Ana River watershed at first, with the possibility of expanding it to other areas later. The FWS also suggested the following changes: application of herbicide from aircraft should not occur between March 15 and September 15; stockpiles should be placed only in disturbed areas and should not be burned during the breeding season; a limit should be set on the length, width, location, and lifespan of access road and these roads should be subject to the approval of the Corps and the FWS; nodes, root stalks and other debris should not enter water, wetlands, or riparian areas. The FWS would like a special condition added that required that a permittee keep the area free of exotic reintroduction for a period of 20 years.

- 3) **National Marine Fisheries Service (NMFS):** NOAA is supportive of invasives removal. They recommend that proposed condition 3 be modified

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to require stockpiles be disposed of within 30 days and prior to water flowing into the stockpile area. Condition 2 should be revised to prohibit roots, nodes, debris etc from entering or remaining in the streambed of any waters of the U.S. Condition 10 should include notification to NOAA. NOAA also suggested that the following conditions be added to the RGP. Access roads should be restored to pre-project conditions and any native vegetation removed should be replaced. As a follow-up to invasives removal, project sites should be revegetated with native riparian vegetation and monitored for three years. NOAA also suggested that some incentives be investigated to promote upstream invasives removal. Finally, NOAA suggested that the RGP initially be limited to the Santa Ana River Watershed and after a trial period, expansion into other areas could be considered.

- 4) Bureau of Land Management: no comment
- 5) Federal Emergency Management Agency: no comment
- 6) Federal Highway Administration: no comment
- 7) National Park Service: no comment
- 8) Soil Conservation Service: no comment
- 9) Department of the Navy - Southwest Division:
Based on the Navy's experience with Arundo removal in the Santa Margarita River, in areas with less than 80% coverage of Arundo, they sprayed the plants and allowed them to dry without removing the biomass. Over a 25 acre area, they only had two resprouts with this method, even when the sprayed Arundo was left on damp soil. Therefore, the Navy recommends that this method also be authorized by the proposed RGP.

b. **State and local agencies:**

- 1) California Coastal Commission: The Coastal Commission will consider our request for a general consistency determination at their July meeting. The

CCC requested that the notification requirement include notification to them and receipt of any applicable coastal development permits. The CCC would also like a revegetation requirement added to the RGP and a provision to protect State-listed endangered species. Also the CCC suggested that following construction of access roads, applicants be required to restore the area to prevent habitat loss and erosion.

2) California Department of Fish and Game: no comment

3) Advisory Council - Historic Preservation: no comment

4) State Water Resources Control Board (SWRCB):
The State Water Board is working with the Corps regarding our request for blanket water quality certification for the RGP. They state board requested an extension on their 60 day processing time given the scope of this request. The state also stated that issuance of a 401 certification or waiver would require compliance with CEQA and requested the Corps take the lead in preparation of technical documents. The state also asserted that the Corp is de-facto the applicant for the certification; therefore, they requested the Corps pay a \$10,000 certification handling fee.

5) Regional Water Quality Control Board:
Los Angeles Region

The water board stated that the State Water Board would address 401 certification and CEQA requirements. The regional board recommended that the RGP address State-listed endangered species. The regional board suggested the Corps justify how the percent coverages which define partially and fully infested stands were determined. The board also requested the Corps provide a list of EPA-approved herbicides with their MSDS sheets and require extensive public notification prior to application via aircraft. The board pointed out that upland disposal would be subject to state and local requirements. The board would also like a distinction made between temporary and permanent

access roads. The board suggested that proposed condition 6 be strengthened to prohibit activities which restrict or impede flow of water. Finally the regional board recommended that revegetation be required under the RGP.

Santa Ana Region

The Regional Board is generally supportive of issuance of the general permit given the adverse effect of exotics on water quality standards. They note that the requested blanket 401 certification would need to be issued by the State Water Board and that it would require compliance with CEQA. Therefore the Corps decision document should address both NEPA and CEQA. The Regional Board would recommend that the State Board issue blanket certification with the following additions: 1. prospective permittees evaluate potential impacts to both state and federally listed endangered species. 2. General Condition 6 be revised to say the if a project would impede the passage of high flows or cause the relocation of the water, an individual permit be required so that water quality impacts can be more fully addressed. 3. The following General Conditions should be added: a. implementation of a project shall not create a nuisance or pollution as defined in the California Water Code. b. projects shall not cause a violation of any applicable water quality standards for receiving waters c. discharge of any substances in concentrations toxic to human, animal, plant or aquatic life is prohibited d. Best Management Practices shall be implemented during the course of the project e. no waste material shall be discharged to any drainage area, channel or streams. Spoil sites shall not be located within any streams or areas where spoils could be washed into any surface waterbody.

6) County of Orange - Environmental Planning Division:

The County generally supports the Corps efforts to issue this general permit and encourages the Corps to participate in regional invasive species control efforts and provide mitigation opportunities for local participation in these efforts. The County commented that any activity, removal, and

especially road construction in County owned or easement areas would also require review and authorization from the County. Lastly, the County recommended that General Condition 6 be clarified to include flow restrictions resulting from debris removal operation and that the phrase "to the maximum extent practicable" be stricken from condition 6.

- 7) Los Angeles County Department of Public Works:
The County suggests that vegetation removal for any purpose be covered under the general permit, not just for the purposed of habitat recovery.
- 8) Southern California Association of Governments:
no comments

c. **Other organizations and individuals:**

- 1) Metropolitan Water District:
MWD is supportive the RGP but questions the text. They believe that certain components of the RGP, such as herbicide application, hand clearing of vegetation, and stockpiling are activities not regulated by the Corps. MWD requested clarification that these activities will not be regulated in conjunction with the RGP
- 2) San Diego Audobon Society:
The San Diego Audobon Society generally supports the concept of the proposed general permit. They suggest that water hyacinth be added to the list of invasives covered under the general permit. However, they are opposed to aerial application of herbicide and recommend that the permit exclude application of herbicides from aircraft. They also recommend that the general permit require access roads which are newly constructed for the purposed of this activity be restored and revegetated upon completion of the work. This would reduce fringe effects, habitat fragmentation, erosion, soil compaction, and alteration of flow. They also recommended that the general permit exclude mechanized work in any season that a particular wetland has essential wildlife support value. Some wetlands are important for winter migrants, so this

should be addressed on a case-by-case basis.

3) Santa Barbara Urban Creeks Council:

The Santa Barbara Urban Creeks Council supports the RGP with the following conditions: Herbicides containing glyphosate should not be used in waterways known to support salmonids during spawning or rearing seasons or when salmonids are within one-mile downstream of the project site; applicants be required to develop a plan to prevent recolonization with invasives (e.g. hydroseeding, follow-up eradication, replanting). The Urban Creeks Council also recommended that the RGP also require protection of State-listed endangered species; proposed condition 9 should be modified to include a prohibition on fueling vehicles in waters of the U.S.; proposed condition 10 should require a response letter from the FWS and should include pre-project salmonid surveys within one mile of the proposed project.

Central Coast District/Central Coast Area

Local Coastal Program LCP Certification Status

As of July 1, 1995

Santa Cruz County

- Santa Cruz
- Westside Ag. Lands
- Capitola
- Capitola Parcels
- Watsonville

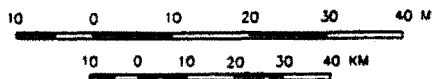
Monterey County

- Malpaso Beach
- Yankee Beach
- Marina
- Sand City
- South of Bay Ave.
- Seaside
- Monterey (2 of 5 segments)
- Pacific Grove
- Hayward Lumber
- Carmel

San Luis Obispo County

- Sweet Springs Marsh
- Otto/South Bay
- Morro Bay
- Pismo Beach
- Grover Beach

- County LCP Effectively Certified
- City LCP Effectively Certified
- City LUP Effectively Certified
- No LCP/LUP Effectively Certified
- Area of Deferred Certification



NOTE: Coastal Zone Boundary for illustrative purposes only.



California Coastal Commission
Technical Services Division

The Commission was active in LCP implementation programs in the Central

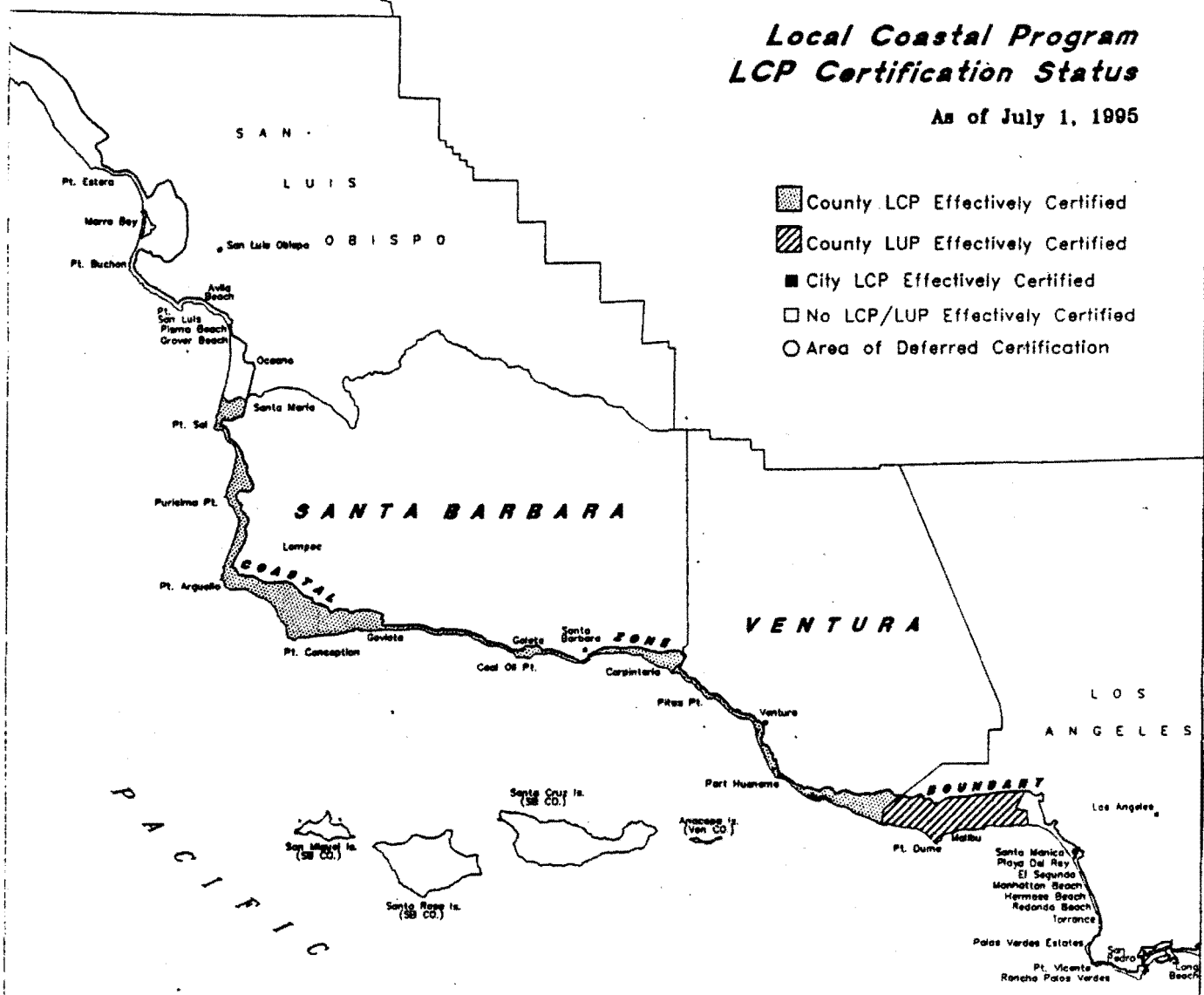
The Commission reviewed updates for the Monterey County LCP zoning, the
and Santa Cruz County LCP through major LCP Amendments.

EXHIBIT NO. 3
APPLICATION NO.
CC-39-96

Central Coast District/South Central Coast Area

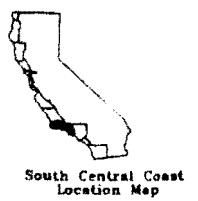
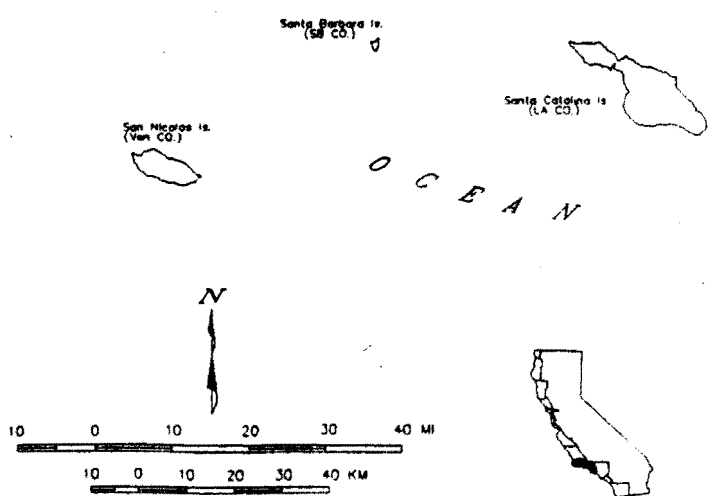
Local Coastal Program
LCP Certification Status

As of July 1, 1995

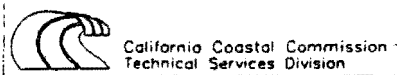


- ▨ County LCP Effectively Certified
- ▧ County LUP Effectively Certified
- City LCP Effectively Certified
- No LCP/LUP Effectively Certified
- Area of Deferred Certification

- ▨ Santa Barbara County
 - Haskell's Beach
 - Channel Islands
- Guadalupe
- Santa Barbara
- Carpinteria
- ▨ Ventura County
 - San Buenaventura
 - Oxnard
 - Port Hueneme
- ▧ Los Angeles County (Malibu/Santa Monica Mts. segment)
 - Malibu



NOTE: Coastal Zone Boundary for illustrative purposes only



South Coast District/South Coast Area

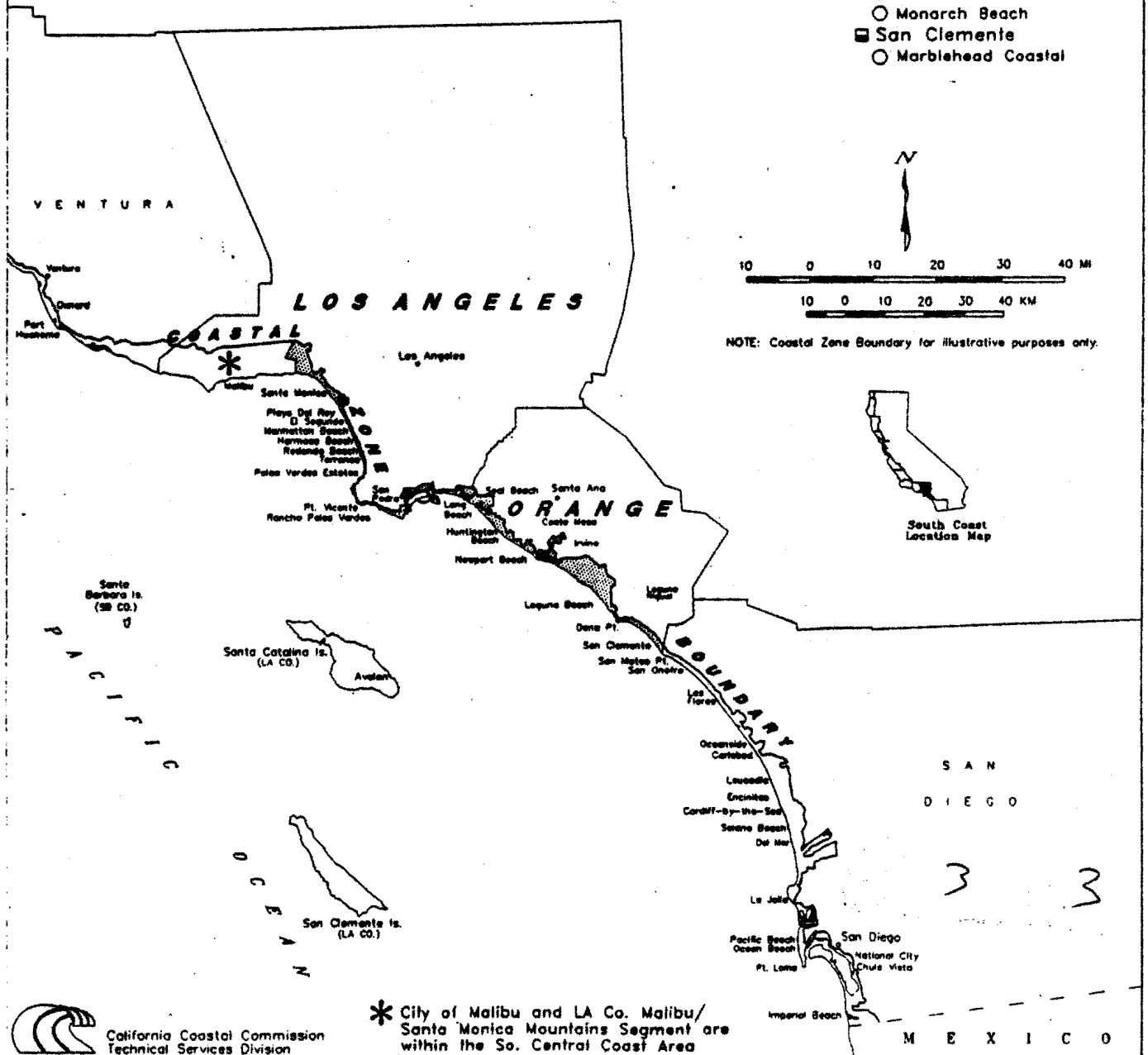
**Local Coastal Program
LCP Certification Status**

As of July 1, 1995

- County LCP Effectively Certified
- City LCP Effectively Certified
- City LUP Effectively Certified
- No LCP/LUP Effectively Certified
- Area of Deferred Certification

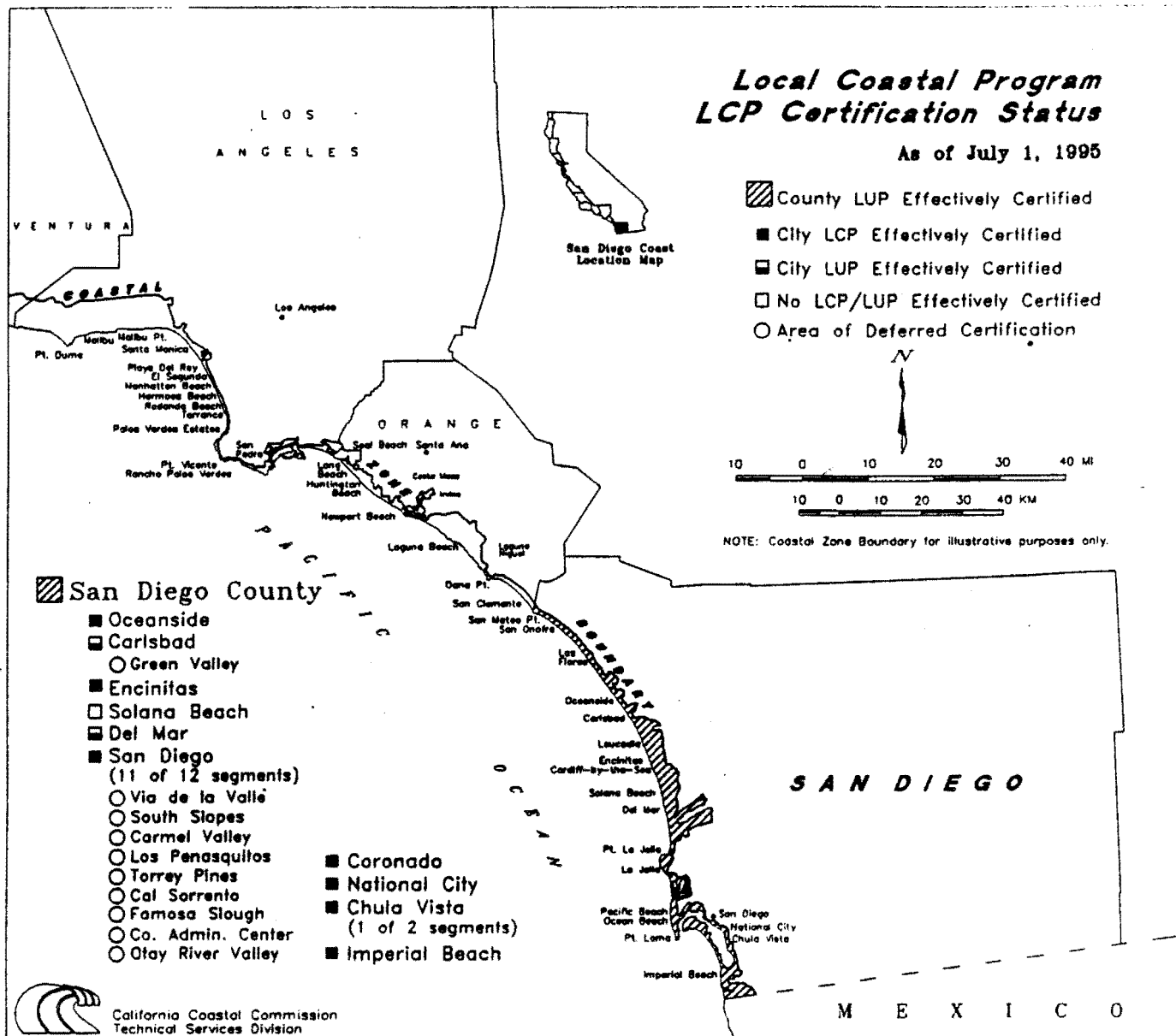
- Los Angeles County (2 of 4 segments)
- Los Angeles
 - Santa Monica
 - Beach/CC
 - El Segundo
 - Manhattan Beach
 - Hermosa Beach
 - Redondo Beach
 - Edison Easement
 - Torrance
 - Palos Verdes Estates
 - Rancho Palos Verdes
 - Long Beach
 - Avalon

- Orange County (4 of 7 segments)
- Seal Beach
 - Huntington Beach
 - MWD Wetland
 - PCH Wetland
 - Costa Mesa
 - Newport Beach
 - Irvine
 - Laguna Beach
 - Irvine Cove
 - Hobo Canyon
 - Blue Lagoon
 - Treasure Island
 - Three Arch Bay
 - Laguna Niguel
 - Dana Point
 - Monarch Beach
 - San Clemente
 - Marblehead Coastal



* City of Malibu and LA Co. Malibu/Santa Monica Mountains Segment are within the So. Central Coast Area

South Coast District/San Diego Coast Area



In the San Diego Coast area this year:

The Commission certified the City of Encinitas LCP which represents a sizable jurisdiction in the San Diego Area. This LCP included resolution of significant regional policy issues related to bluff erosion and beach sand management.

The City of San Diego completed updates of several community plans which came to the Coastal Commission for certification as LCP amendments, including plans for Torrey Pines, La Jolla, Pacific Beach and the Sorrento Hills portion of North City.

The City of San Diego completed the Mission Bay Park Master Plan which comprises the Land Use portion of the Mission Bay segment LCP.

The Commission staff dealt with significant issues in planning and regulatory work, including:

3 4

EXHIBIT 4

- (1) Coastal Act definition of development
- (2) Commission's repair and maintenance regulations
- (3) Federal consistency regulations, definition of applicant

1. Coastal Act Definition

Section 30106 of the Coastal Act defines "development" as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, ... ; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes,

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

2. Commission Regulations

The Commission's administrative regulations provide:

13252. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

...
(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

EXHIBIT NO. 4
APPLICATION NO.
CC-39-96

Federal Consistency Regulations:

930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of Subpart C of this part.

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