

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT AND RECOMMENDATION**  
**ON CONSISTENCY CERTIFICATION**

Consistency Certification No.	<b>CC-119-98</b>
Staff:	MPD-SF
File Date:	9/29/97
3 Months:	12/4/1998
6 Months:	3/14/1998
Commission Meeting:	10/15/1998

**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:**

1. Consistency Certification No. CC-39-96, Army Corps of Engineers, Regional General Permit #41.
2. Army Corps of Engineers Notice No. 96-00094-ES, RGP #41.

## **EXECUTIVE SUMMARY**

The U.S. Army Corps of Engineers (Corps) has submitted a consistency certification for the re-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 to assure that the effects of removal would not adversely affect wetlands, threatened and endangered species, and other environmentally sensitive habitat. Initially limited to a two year trial period, the Corps now proposes a five-year permit. The Corps indicates that use during the trial period was limited and non-controversial. Based on further public comments, the Corps has added measures into the new permit, including: the addition of new species authorized for removal; prohibiting pesticide mixing within waters of the U.S. or within vegetated areas; prohibiting burning within 1000 ft. of native riparian or wetland habitat areas; and placing further limits on stockpiling.

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 included 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, as noted previously, 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 re-issuance 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 re-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. On July 10, 1996, the Commission concurred with the Corps' consistency certification for issuance of this same permit for a trial 2-year period (CC-39-96). The Corps

agreed to re-submit the matter to the Commission for any extensions to the permit. The Corps is in the process of reissuing the permit for a 5-year period, to run through August 2003.

The RGP initially authorized 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*

Under the new permit, the following species have been added:

- Cape ivy - *delaireia odorata*
- Alligator weed - *Alternanthera philoxeroides*
- Perennial pepperweed - *Lepidium latifolium*
- White top, hoary cress - *Cardaria draba*
- Russian olive - *Elaeagnus angustifolia*
- Myoporum - *Myoporum laetum*

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 RGP would authorize the following activities 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.*

In addition, 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.*

Based on public comments after the 2-year trial period, the Corps added six species removable under the permit, as listed on page 3. In addition, the new permit prohibits pesticide mixing within waters of the U.S. or within vegetated areas; prohibits burning within 1000 ft. of native

riparian or wetland habitat areas, places further limits on stockpiling (including prohibiting stockpiling during the rainy season), and requires notification to the State Water Resources Control Board. A complete text of the Corps' permit conditions is attached as Exhibit 2.

**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 motion:

**MOTION.** I move that the Commission **concur** with the Corps of Engineers' consistency certification.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of 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 predominantly obligate wetland species to predominantly upland species depending on the hydrologic nature of the habitat. Thus, some riparian areas may be classified as wetlands, whereas others may 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 2% of the State's total vegetative cover, they provide habitat for more than 50% 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. Further elaboration and documentation of riparian habitat values can be found in the Commission's findings of concurrence with the previous RGP #41 (CC-39-96). In that decision, the Commission found:

*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 a number of conditions to protect environmentally sensitive habitat. Based on comments on the new permit, the Corps has added conditions that: prohibit pesticide mixing within waters of the U.S. or within vegetated areas; prohibit burning within 1000 ft. of native riparian or wetland habitat areas; place further limits on stockpiling (including prohibiting stockpiling during the rainy season); and require notification to the State Water Resources Control Board. A full list of the Corps' permit conditions is attached as Exhibit 2.

The Corps initially limited the duration of the RGP to a two year trial period and committed to conducting a public comment period and public agency review prior to any further extensions of the RGP. Public comments received on the new permit are attached as Exhibit 5, and the Corps has revised the permit conditions based in part on these comments. The Corps states that the trial period has demonstrated successful use of the permit in implementing invasives removal while avoiding adverse effects on environmentally sensitive habitat. The Corps also notes that use of the permit has not occurred in areas within or affecting the coastal zone. The Corps notes:

*Since its issuance, 8 actions have been authorized under RGP 41, accounting for 386.5 acres of invasive weed removal. Of these actions, 5 were in San Diego County and 3 were in Riverside County. The Corps has not experienced any compliance problems on these 8 authorizations.*

Based on this information about lack of adverse impacts, the Commission reiterates its earlier findings from its review of the previous 2-year RGP, as follows:

*The Commission believes the 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.*

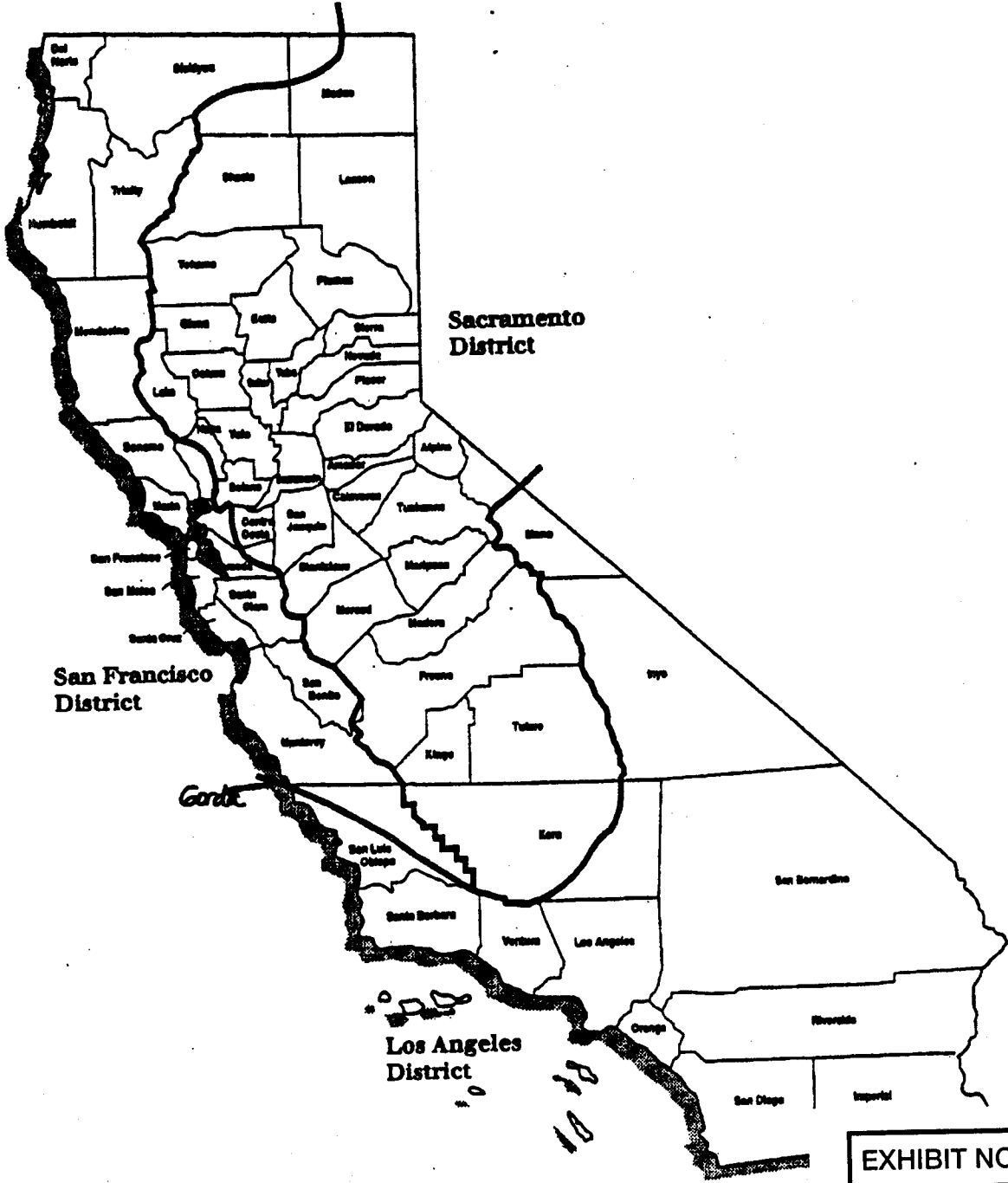
*Statutory and regulation language elaborating on these Commission authorities is contained in Exhibit 4, which consists of: (1) the Coastal Act definition of development (including as development the "discharge or disposal of any dredged material or of any gaseous, liquid, [or] solid waste" and "the 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 Commission concludes, as it did for the earlier consistency certification (CC-39-96), by finding that the activities covered under the RGP are among the allowable uses within wetlands under the provisions of Section 30233, and that, as described above, the Commission retains the authority in the vast majority of instances to assure that all the tests of Sections 30233 and 30240 of the Coastal Act are complied with. Thus, 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 Commission reiterates that the proposed RGP is consistent with the wetland and other sensitive habitat policies (Sections 30233 and 30240) of the Coastal Act.



## CORPS DISTRICTS IN CALIFORNIA



APPLICATION NO.


 **California Coastal Commission**

## EXHIBIT 2

### **Permit Conditions**

#### **General Conditions:**

1. The time limit for completing the authorized activity ends on **August 17, 2003**. Based on an ongoing evaluation of the general permit, the Corps maintains the discretion to reissue, modify, rescind, or exclude certain activities or areas from the RGP.
2. 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.
3. No activity may cause more than minimal adverse effect on navigation and activities shall not interfere with the public's right to free navigation on all navigable waters of the United States. For projects occurring in navigable waters of the United States, the permittee shall notify the Commander Eleventh Coast Guard District POW, BLDG 50-6 Coast Guard Island, Alameda, California, 94501-5000, (510) 437-2968, at least two weeks prior to start of activity and 30 days if buoys are to be placed. The notification should include the following information:
  - a. the location of the work site;
  - b. the size and type of equipment that will be performing the work;
  - c. name and radio call signs for working vessels, if applicable;
  - d. telephone number for on-site contact with project engineers; and
  - e. the schedule for completing the project.
4. The permittee must ensure that nodes, root stalks, or other debris resulting from their activity do not enter or remain in any actively flowing watercourse.
5. The permittee shall not stockpile invasive plants and associated debris during the flood season (November 15- April 15). Stockpiling is allowed between April 16 and November 14; however, it must occur in previously disturbed or degraded areas. Stockpiles cannot be placed within 50 feet of flowing water, must be placed in such a manner that it is not dispersed by currents or other forces, and must be disposed of within 3 months of initial creation of the stockpile by either removal to an appropriate upland disposal area or by burning. Prior to upland disposal or burning of any stockpiles or debris, all appropriate state and local permits must be obtained.
6. Burning of stockpiles shall not occur within 1,000 feet of native riparian or wetland habitat areas between March 15 and September 15.
7. Access roads which are no longer necessary for site monitoring, restoration, maintenance, or treatment or abandoned access roads must be restored with appropriate native riparian or wetland vegetation.
8. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. For projects proposed

EXHIBIT NO. 2
APPLICATION NO.
CC-119-98
 California Coastal Commission

the permittee shall submit an approval letter from the tribe with their notification package and shall obtain Section 401 water quality certification, or waiver thereof, from the U.S. Environmental Protection Agency.

9. 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. The Corps may require focused endangered species surveys be performed prior to verification of compliance with this RGP.

10. 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, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). Federal permittees should follow their own procedures for compliance with the requirements of the National Historic Preservation Act and other Federal historic preservation laws. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. Discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

12. In partially infested stands, native riparian vegetation must be flagged prior to commencement of any mechanized activities and must be avoided. In fully infested stands, native riparian vegetation should be avoided to the maximum extent practicable. Any native riparian trees 3-inches DBH (diameter at breast height) or larger which are removed from fully infested stands, must be replaced on-site at a 2:1 ratio.

13. All project sites shall be marked in such a way as to inform the public about the use of herbicides and the permittee shall provide public safety warnings.

14. All pesticide mixing shall occur outside waters of the U.S. or at locations devoid of vegetation.

15. Aircraft based application of herbicides in waters of the U.S. shall not occur between March 15 and September 15.

16. No mechanized equipment, rubber-tired vehicles, track vehicles, or other equipment shall be stored, staged, or fueled in waters of the U.S., including wetlands.

17. Following the use of this General Permit, permittees shall ensure that the project site contains less than 5% relative coverage of invasive weeds (the invasive weeds covered by this General Permit) for a period of two years from completion of the initial weed removal. At the end of the two year follow-up period, the permittee shall submit to the Corps a brief description of the status of the site including photo documentation and an estimate of the degree of infestation and amount of native flora before and after the project.

18. Prospective permittees must submit the following information to the Corps prior to use of this RGP:

- a. Name, address and telephone number of the prospective permittee;
- b. Location of the proposed project, including a vicinity map;
- c. Project purpose
- d. Brief description of the proposed project, including the areal extent of work being proposed and the method of biomass removal/disposal;
- e. Acreage of "fully infested stands" and "partially infested stands" which would be affected by the proposed project;
- f. Citation of this RGP;
- g. Copy of a letter to the State Historic Preservation Office (SHPO) inquiring about the presence or absence of listed and/or eligible sites for listing in the National Historic Register in the proposed project area that may be affected by the proposed activity;
- h. Copy of a letter to the U.S. Fish and Wildlife Service (USFWS) inquiring about the presence or absence of any federally-listed endangered or threatened species or designated critical habitat in the proposed project area that may be affected by the proposed activity;
- i. For work occurring on tribal lands, an approval letter from the tribe;
- j. Results of a migratory bird survey (if work is being proposed in "partially infested stands" between March 15 and September 15).

A copy of the notification package should be sent to the U.S. Fish and Wildlife Service, National Marine Fisheries Service (if appropriate), California Coastal Commission (for projects which may affect the coastal zone), State Water Resources Control Board, and the appropriate Regional Water Quality Control Board.

19. The permittee shall not commence work 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 maintains 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.

20. The permittee shall ensure that all contractors receive a copy of this RGP and are made aware of the conditions and restrictions it contains. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

21. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

22. This RGP is certified pursuant to Section 401 of the Clean Water Act (Water Quality Certification) subject to the following conditions:

- a. The Section 401 certification and its conditions are subject to modification or revocation upon appropriate administrative or judicial review.
- b. Permittees shall take steps to secure, as appropriate, a Streambed Alteration Agreement with the California Department of Fish and Game. In order to ensure that beneficial uses associated with State fish and wildlife and especially that state-listed species habitats are adequately protected, a copy of the full notification package prepared by prospective permittees for the Corps (see Special Condition #16) shall be sent at the same time to the Environmental Services Office, Department of Fish and Game, Region V, 330 Golden Shore, Suite 50, Long Beach, CA 90802)
- c. A copy of the full notification package prepared by prospective permittees for the Corps shall be sent at the same time to the appropriate Regional Water Quality Control Board(s), Attention: "Regulation and Enforcement Staff", to help applicants meet requirements of appropriate water quality control plans.
- d. To help State Board staff maintain its data base of certification activities, a copy of the notification package shall also be sent to the Water Quality Certification Program, Division of Water Quality, State Water Resources Control Board, P.O. Box 944213, Sacramento 94244-2130.

## Mark Delaplaine

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**From:** Gorsuch, Gregory M. CDR BUMED [GMGorsuch@US.MED.NAVY.MIL]  
**Sent:** Thursday, September 17, 1998 5:06 AM  
**To:** 'Mark Delaplaine'  
**Cc:** 'Charlow, Kevin'; 'Juras'; 'Khalil, Katherine'; 'Quick, Gilbert'  
**Subject:** RE: Navy SWEF, Port Hueneme, Ventura Co., California

Sir,

I could read your documents well. I just returned from a Tuscon meeting and met two physicists one from Lawrence Livermore and one from Lawrence Berkeley who could intelligently discuss the issues of concern. Once I am sure that they would be willing to work with you I'll give you their names. One is on the SCC 28 (Standards Coordinating Committee-28) of the ANSI/IEEE that wrote the current national standard. However, I was led told by Space and Naval Warfare Systems Command that they had decided upon a single voice person on this issue, therefore I'll have to also seek their approval/input also.

I can't say that I understood much of what you sent as it seems to be couched in legal terminology/jargon and the historical background disjointed. How does your office interface with the Federal Government (EPA, DoD) for instance and California State Government? Are you simultaneously working through General Counsel for the Navy, DoD or other legal groups on this matter?

V/R CDR Gorsuch (Greg)

> -----Original Message-----

> From: Mark Delaplaine [SMTP:mdelaplaine@coastal.ca.gov]  
> Sent: Tuesday, September 15, 1998 6:16 PM  
> To: 'Gorsuch, Gregory'  
> Subject: Navy SWEF, Port Hueneme, Ventura Co., California

>  
> This is a little later than I had expected, but it took me some time to  
> put it together. Here is the cover memo asking the questions I will be  
> seeking answers to.

>  
> <<Questions for Navy Radar Facilities.doc>>

>  
> If you can't open, let me know and I'll put the text directly into the  
> e-mail.

>  
> Also, did you find a contact at Lawrence Livermore or Berkeley Labs who  
> I could contact for a local workshop discussing radar standards in  
> general? << File: Questions for Navy Radar Facilities.doc >>

# **LCP Status Central Coast Area As of January 1, 1998**

## **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**

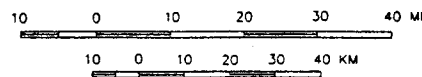
- Sweet Springs Marsh
- Otto/South Bay
- Morro Bay
- Pismo Beach
- Grover Beach

## **Legend**

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



Central Coast  
Location Map



NOTE: Coastal Zone Boundary for illustrative purposes only.








California Coastal Commission  
Technical Services Division

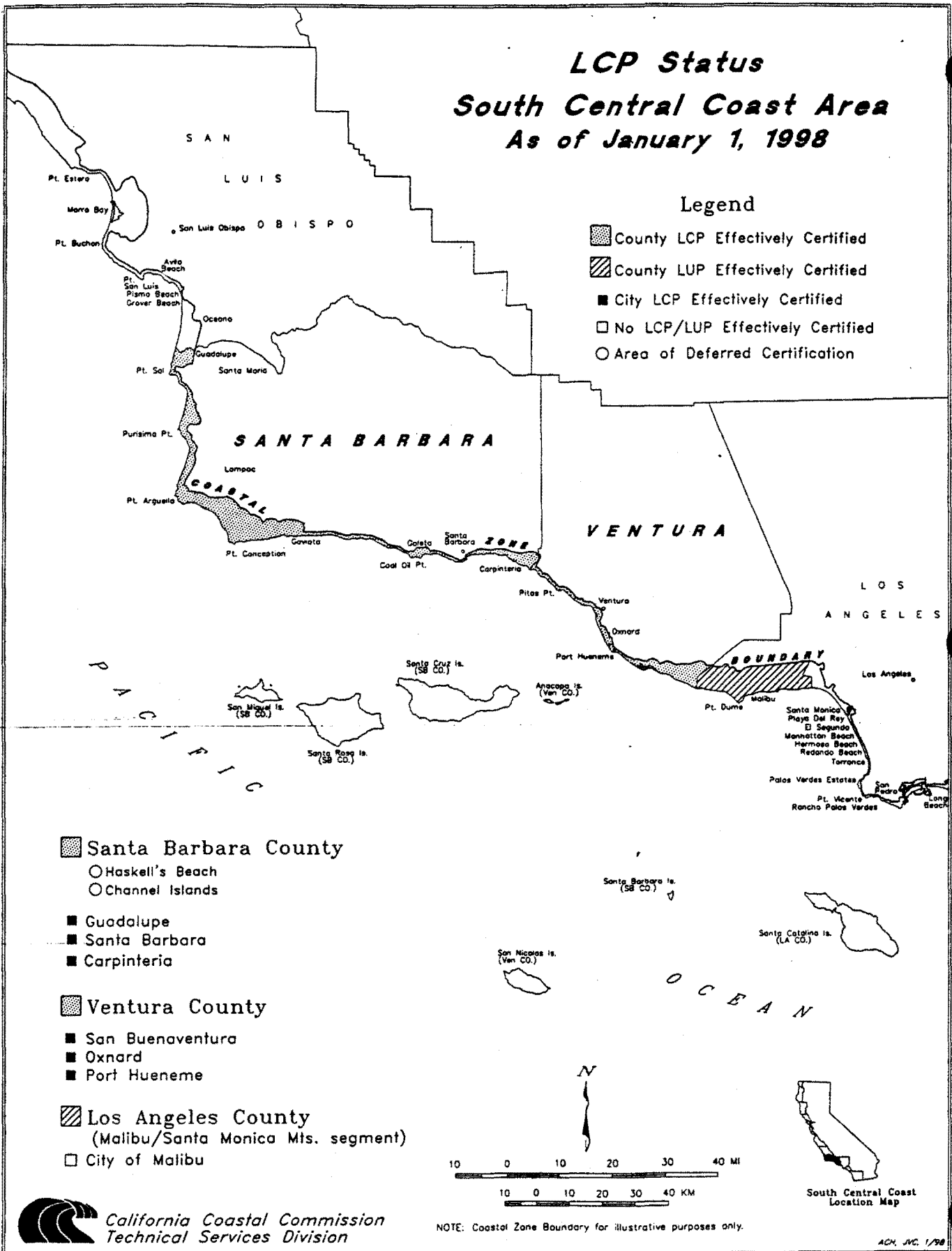
EXHIBIT NO. 3  
APPLICATION NO.

CC-119-98

# LCP Status South Central Coast Area As of January 1, 1998

## Legend

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



Exh. 3, p. 2



# **LCP Status South Coast Area As of January 1, 1998**

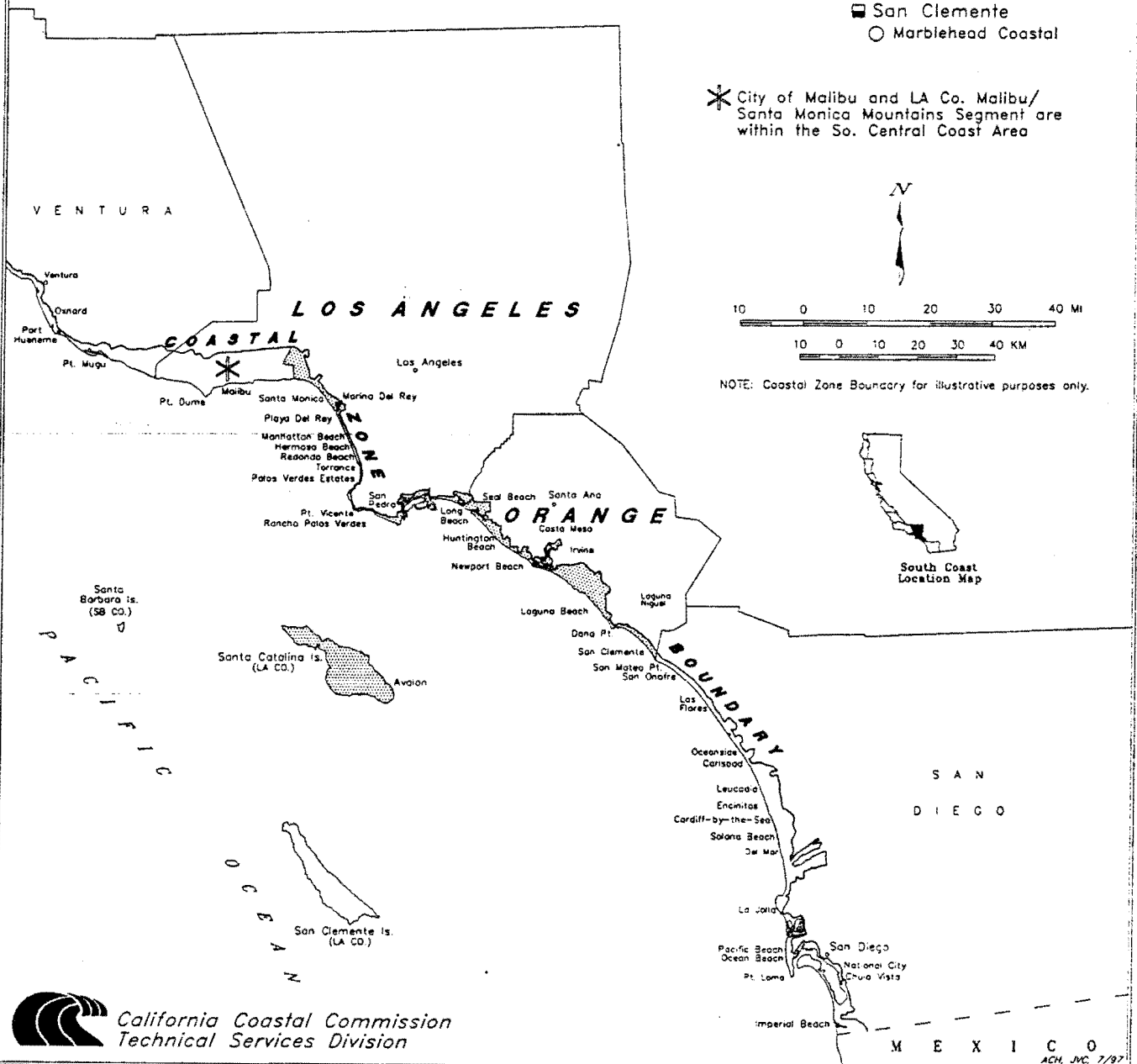
## **Legend**

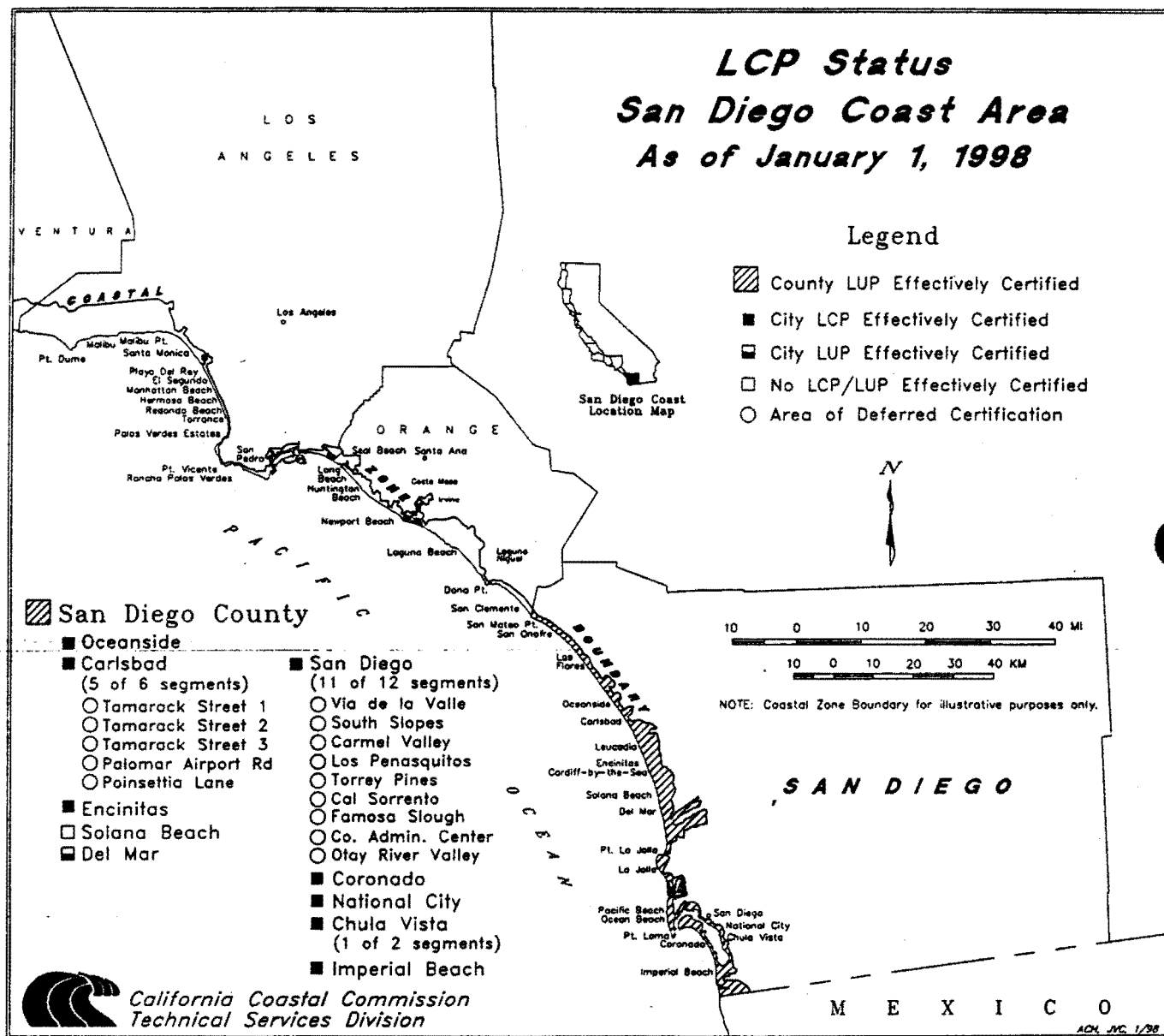
- County LCP Effectively Certified
- City LCP Effectively Certified
- City LUP Effectively Certified
- No LCP/LUP Effectively Certified
- Area of Deferred Certification

- Los Angeles County (2 of 4 segments)
- Los Angeles
- Santa Monica
  - Beach
  - Civic Center
- 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
- Costa Mesa
- Newport Beach
- Irvine
- Laguna Beach
  - Irvine Cove
  - Hobo Canyon
  - Blue Lagoon
  - Treasure Island
  - Three Arch Bay
- Laguna Niguel
- Dana Point
  - Dana Strands
- San Clemente
  - Marblehead Coastal

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





## 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.

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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.

1965p



**US Army Corps  
of Engineers®**

# **SPECIAL PUBLIC NOTICE**

## **REGIONAL GENERAL PERMIT**

**Regional General Permit (RGP) No. 41**  
**Removal of Invasive, Exotic Plants**

**LOS ANGELES DISTRICT**

**Date:** August 17, 1998

**Point of Contact:** Eric Stein Phone: (213) 452-3415 Email: [estein@spl.usace.army.mil](mailto:estein@spl.usace.army.mil)

### **TO WHOM IT MAY CONCERN:**

The District Engineer, Los Angeles District Corps of Engineers has re-issued Regional General Permit (RGP) No. 41, which authorizes the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S including wetlands within the portions of California in the Los Angeles District of the Corps of Engineers (Los Angeles, Orange, Riverside, San Diego, San Bernardino, Imperial, Ventura, Santa Barbara, Mono, Inyo, and San Luis Obispo counties). This general permit has been issued under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and applies to anyone wishing to remove exotics in a manner which is consistent with the terms and conditions of this RGP. A copy of the RGP is attached to the Public Notice.

RGP 41 was originally issued on August 15, 1996 for a two year trial basis. The Corps is hereby re-issuing RGP 41 for a period of five years, with a new expiration date of August 15, 2003.

The purpose of this RGP is to provide a mechanism for expedited approval of invasive weed removal projects, for the purpose of habitat recovery. Projects whose purpose is both habitat recovery and flood control would be eligible to use the RGP. The RGP would not be appropriate for use on projects whose sole purpose is flood control or removal of native vegetation. The RGP is not intended to be a planning tool; however, the Corps encourages people to begin invasive weed control efforts at the top of a watercourse to minimize reinfestation of previously treated areas. The Corps, in cooperation with The Nature Conservancy, has prepared a technical document on methods for control and management of giant reed (*Arundo donax*) and salt cedar (*Tamarix* spp.). This document is available upon request from the Los Angeles District of the Corps of Engineers.

### **Public Comment:**

A Public Notice soliciting input regarding the need to modify RGP 41 prior to its re-issuance was issued on June 12, 1998 and sent to all interested parties (Corps mailing list), including appropriate state and Federal agencies. Comments were received from the following agencies/individuals:

National Marine Fisheries Service  
Arizona Game and Fish Department  
Southern California Association of Governments  
Riverside County Parks and Open Space District  
Santa Barbara County Flood Control District

Bureau of Reclamation  
California Department of Fish and Game  
County of Orange  
City of San Diego

EXHIBIT NO. 5

APPLICATION NO.

CC-119-98

## Consideration of Comments:

### Summary of modifications to originally proposed RGP based on public comment

1. The following plants are being added to the list of species covered under the RGP:
  - cape ivy - *Delaireia odorata* (formerly called German Ivy, *Senecio mikanioides*)
  - alligator weed - *Alternanthera philoxeroides*
  - perennial pepperweed - *Lepidium latifolium*
  - white top, hoary cress - *Cardaria draba*
  - Russian olive - *Elaeagnus angustifolia*
  - myoporum - *Myoporum laetum*
2. A requirement that pesticide mixing outside waters of the U.S. or at locations devoid of vegetation is being added.
3. The RGP will be modified to allow biomass burning provided all appropriate local permits have been obtained and the burning does not occur within 1,000 feet of native riparian or wetland habitat areas.
4. The condition for stockpiling has been modified to require that stockpiles must be placed in previously disturbed or degraded areas, cannot be placed within 50 feet of flowing water, must be placed in such a manner that it is not dispersed by currents or other forces, and must be disposed of within 3 months of initial creation of the stockpile by either removal to an appropriate upland disposal area or by burning. Stockpiling is prohibited during the flood season (November 15-April 15.)
5. The following conditions are being added to the RGP as conditions of the Section 401 Water Quality Certification:
  - b. To help State Board staff maintain its data base of certification activities, a copy of the notification package shall also be sent to the Water Quality Certification Program, Division of Water Quality, State Water Resources Control Board, P.O. Box 944213, Sacramento 94244-2130.
  - c. Under activities authorized in "fully infested stands"--shall be revised to state:  
"1. Broadcast foliar application of herbicides which are approved by the U.S. Environmental Protection Agency (USEPA) for use in wetlands and by the California Department of Pesticide Regulation for use within the State..."

### Response to specific public comment:

The following agencies either expressed support for or did not object to the reissuance of RGP 41: National Marine Fisheries Service, Southern California Association of Governments, Santa Barbara County Flood Control District, and The City of San Diego.

### Bureau of Reclamation

The Bureau of Reclamation recommended that the scope of RGP 41 be expanded to include the State of Arizona. In addition, Bureau of Reclamation recommended that the Corps consider authorizing (on a case-by-case basis) removal of native species that lie within the flood channel of a

Response: During the evaluation for the original issuance of RGP 41, resource and regulatory agencies expressed concern over the potential abuse of RGP 41 in Arizona. Therefore, the original authorization did not include the State of Arizona. The Corps has received no indication of a change in this position (see comment below from Arizona Game and Fish Dept.); therefore, RGP 41 will continue to be invalid throughout the State of Arizona.

By definition, general permits must ensure that the authorized activities do not result in greater than minimal impacts, including cumulative impacts. Furthermore the purpose of this RGP is to provide a mechanism for expedited approval of invasive weed removal projects, for the purpose of habitat recovery. Authorization of removal of native vegetation from streams would be inconsistent with the purpose of the RGP and has the potential to result in greater than minimal impacts. In some circumstances, removal of native vegetation may be authorized by nationwide general permits 26 or 31.

#### Arizona Game and Fish Department

ADEQ stated that the Federally listed endangered southwestern willow flycatcher have been documented nesting in salt cedar. Simply removing salt cedar may not ensure successful re-establishment of native trees and may displace flycatcher. Therefore, ADEQ requests that removal of salt cedar along the Colorado River be excluded from RGP 41.

Response: During evaluation for the original issuance of RGP 41, resource agencies and the public commented that willow flycatcher was known to nest in salt cedar. Due to concerns over abuse of RGP 41 in Arizona, the original authorization was not valid in the State of Arizona. The Corps has received no indication of a change in this position; therefore, RGP 41 will continue to be invalid throughout the State of Arizona.

#### California Department of Fish and Game

CDFG suggested that RGP 41 be conditioned to avoid work completely during the nesting season or have language requiring appropriate surveys and monitoring during the breeding season to avoid impacts to nesting birds. CDFG also suggested that pesticide mixing occur off-site or at locations devoid of vegetation and only applied during calm days.

Response: RGP 41 already precludes activities in partially infested stands during the nesting season unless prior surveys document that the area is not be used by breeding birds. This restriction does not apply to fully infested stands because they typically do not support nesting birds. The notification requirement of the RGP allows the Corps to consider potential concerns regarding migratory birds and coordinate with CDFG and USFWS on a case-by-case basis. When necessary, special conditions are added to project-specific authorizations to ensure that nesting birds are not impacted by clearing activities. The suggested restrictions on pesticide mixing in vegetated areas and aerial application of pesticides on windy days will be included in the reauthorization.

#### County of Orange

The County of Orange recommended that the 30 day limit on stockpiles and the restriction on burning during the breeding season be eliminated.

Response: The Corps agrees with Orange County's points on burning and stockpiling. The RGP will be modified to allow biomass burning provided all appropriate local permits have been

obtained and the burning does not occur within 1,000 feet of native riparian or wetland habitat areas.

The new restrictions on stockpiling will be modelled after the language in nationwide permit 12. 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 must be placed in previously disturbed or degraded areas, cannot be placed within 50 feet of flowing water, must be placed in such a manner that it is not dispersed by currents or other forces, and must be disposed of within 3 months of initial creation of the stockpile by either removal to an appropriate upland disposal area or by burning.

#### Riverside County Park and Open Space District

Riverside County suggested that the RGP be expanded to authorize removal of sparse, isolated patches of invasive weeds that are below the definition of "partially infested stands", i.e. less than 50% cover of invasive weeds. Riverside County also recommended elimination of the restriction on burning during the breeding season based on the fact that the duration of the burn is typically only a few hours.

Response: The Corps agrees that removal of sparse, isolated patches of invasive weeds is critical to overall control efforts. However, we believe it would be difficult to condition a general permit to ensure that such activities result in no more than minimal impacts. Furthermore, it would be unlikely that mechanized landclearing is used to remove sparse, isolated clumps of invasive weeds. These small patches are typically removed using herbicide application and/or hand tools; neither of which is regulated under Section 404 of the Clean Water Act.

The Corps agrees with Riverside County's point on burning. The RGP will be modified to allow biomass burning provided all appropriate local permits have been obtained and the burning does not occur within 1,000 feet of native riparian or wetland habitat areas.

#### **Other Authorizations:**

1. **Water quality certification:** On August 13, 1998, the State Water Resources Control Board issued a Section 401 Water Quality Certification for RGP 41, contingent upon the following conditions:
  - a. The four conditions of the 401 certification issued in 1996 will be included in the current version of RGP 41.
  - b. To help State Board staff maintain its data base of certification activities, a copy of the notification package shall also be sent to the Water Quality Certification Program, Division of Water Quality, State Water Resources Control Board, P.O. Box 944213, Sacramento 94244-2130.
  - c. Under activities authorized in "fully infested stands"--shall be revised to state:  
"1. Broadcast foliar application of herbicides which are approved by the U.S. Environmental Protection Agency (USEPA) for use in wetlands and by the California Department of Pesticide Regulation for use within the State..."



2. **Coastal zone management consistency determination:** The California Coastal Commission has concurred that the proposed RGP complies with and would be conducted in a manner which is consistent with the Coastal Zone Management Program.
3. **State and/or local authorization:** Permittees must comply with all appropriate state and local permitting requirements and fees. These may include the need for additional permits (including requirements to protect State-listed endangered species) from the California Regional Water Quality Control Board, California Coastal Commission (local coastal development permits), and California Department of Fish and Game.

In accordance with the National Environmental Policy Act, and Environmental Assessment (EA) was prepared for this Regional General Permit. The EA may be viewed at, or requested from the Los Angeles District of the Corps of Engineers. In addition, the Material Safety Data Sheet (MSDS) for "Rodeo" brand herbicide is available, upon request, from Monsanto or from the Regulatory Branch of the Los Angeles District of the Corps of Engineers. A copy of the revised RGP is attached to this public notice. For more information, contact Dr. Eric Stein at (213) 452-3415.

