

CALIFORNIA COASTAL COMMISSION

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**RECORD PACKET COPY****Tu 4a****STATUS MEMO**

DATE: March 23, 1999

TO: Coastal Commissioners And Interested Parties

FROM: Peter Douglas, Executive Director
Mark Delaplaine, Federal Consistency Supervisor

RE: U.S. NAVY, Surface Warfare Engineering Facility (SWEF)
Port Hueneme, Ventura County

On April 30, 1998, the Commission staff objected to two negative determinations for radar systems at the SWEF in Port Hueneme. The Commission staff requested that the Navy submit consistency determinations for the systems. The Navy disagreed with the Commission staff and declined to submit consistency determinations. Based on this disagreement, on August 21, 1998, the Commission requested, and the Navy subsequently agreed, to seek informal mediation of the matter by the Office of Ocean and Coastal Resource Management (OCRM).¹

On October 29, 1998, the Commission staff met with the Navy and OCRM to discuss how an informal mediation process might best resolve the matter. The outcome of that meeting was memorialized in an OCRM memo to the Commission and the Navy dated November 6, 1998 (Attachment 1). This memo outlines a mutually agreed-upon process for compiling a list of Commission questions and Navy responses, which would then be submitted to an independent and objective technical panel. The goal of the panel's review would be to assist the Commission in determining whether there are effects on coastal resources from the radar facilities at the SWEF.

Working under this process, on February 10, 1999, the Commission staff, the Navy, and OCRM met to discuss how the mediation and an independent third party review should best take place. Because the Commission was interested in the make-up of the review

¹ Pursuant to federal consistency regulations 15 CFR Part 930, § 930.36 and Subpart G, § 930.110 et seq.

panel, the mediating parties agreed that once tentatively selected, the make-up of the review panel would be brought before the Commission at the next scheduled public meeting.

On March 11, 1999, several speakers addressed the Commission during the public comments portion of the agenda, expressing concerns over the openness of the third party review process, including the information that would be given to the review panel, and the make-up, internal interactions, and oversight of the review panel. These concerns are contained in a letter to the Commission dated March 11, 1999 (Attachment 2). The concerns expressed in the letter include questions over:

(a) whether a biomedical expert on the panel should be mandated (as opposed to only being "desirable");

(b) whether the "citizen observer" to monitor the proceedings could or should be a member of the affected community that has historically raised concerns over the effects of the facility; and

(c) whether all necessary information will be provided to the panel members.

The staff believes sufficient flexibility has been built into the process to assure any independent review will be both impartial and productive. The need for flexibility may conflict with the need for detailed instructions that may later be modified, and since the panel has not been selected, details such as interaction style and mechanics, completeness of information, numbers of meetings, etc., have been left to be worked out until the panel is established. The staff does not believe any important information will be withheld from the panel.

On the issue of the citizen observer, in a previous statement in the deliberations the Navy indicated in February that the citizen observer should not be someone who has been substantially involved in the SWEF proceedings to date. The Navy has modified this position, and now indicates that it is not opposed to an "involved" member of the public as a citizen observer, as long as it is understood that such person would not be participating as an authorized representative of a particular organization, but instead would be acting as an overall observer.

As of the date of this mailing, the initial panel selection has not yet taken place. Nevertheless, based on the concerns expressed at the March meeting the Commission requested that this matter be agendaized for the April Commission meeting.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

NOV - 6 1998

MEMORANDUM FOR: Peter M. Douglas
California Coastal Commission

Chuck Hogle
U.S. Navy, Port Hueneme

FROM: Jeffrey R. Benoit *YRB*
Director

SUBJECT: Outcome of October 29, 1998, Meeting to Discuss the
Surface Warfare Engineering Facility at Port Hueneme

This memorandum provides you with a report of the important issues, agreements and next steps identified at our October 29, 1998, meeting in San Francisco. Our discussions were fruitful and positive. The Office of Ocean and Coastal Resource Management (OCRM), as mediator, appreciates the commitment, flexibility and resourcefulness of both the Navy and the California Coastal Commission (Commission) to resolve the coastal management issues involving the Navy's Surface Warfare Engineering Facility (SWEF) at Port Hueneme, Ventura County.

This report is divided into the following sections: Purpose of the Informal Negotiations and OCRM's Role as Mediator, Proposed Negotiation Steps, Questions to Present to the Commission and the Public, the Navy's Response to the Questions, Independent Technical Review, Future Planning Actions for the SWEF, and Final OCRM Report to the Commission.

Purpose of the Informal Negotiations and OCRM's Role as Mediator

The SWEF uses various radar emissions to simulate combat scenarios to test a ship's combat systems. The Commission, and residents of Ventura County, are concerned that the radar emissions pose public health risks and may affect coastal uses (public access near the SWEF, coastal shipping, and commercial and recreational fishing). The Navy does not believe that the SWEF poses public health risks or causes coastal effects.

The Commission requested that the Navy provide, pursuant to the Coastal Zone Management Act (CZMA) federal consistency requirement, a consistency determination and other information for the SWEF. The Navy declined and, instead, provided the Commission with negative determinations.

ATTACHMENT 1



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The Commission requested that OCRM informally mediate the matter. The Navy agreed. The purpose of the informal negotiations is for OCRM, as mediator, to assist the Commission in determining, relying on advice from an independent and objective technical panel, whether radar emissions from the SWEF will adversely affect the public's use of coastal resources. OCRM will provide its findings to the Commission and the Navy for appropriate action.

The Navy and the Commission have agreed that all interaction, documents, requests, etc. shall be from the Commission or the Navy to OCRM. Public involvement and interaction will occur through the Commission (either through the Commission staff or Commission meetings) and then to OCRM. OCRM will not act on or pass through information or requests provided by either the Navy or the Commission, until OCRM has obtained the agreement of the other party or, if either party requests and OCRM believes the request is appropriate and reasonable.

OCRM's point of contact for this informal negotiation is:

Mr. David W. Kaiser
Federal Consistency Coordinator
Office of Ocean and Coastal Resource Management
1305 East-West Highway, 11th Floor (N/ORM3)
Silver Spring, Maryland 20910
Voice: (301) 713-3098, extension 144; Fax: (301) 713-4367
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The Commission's point of contact is:

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The Navy's point of contact is:

Mr. Chuck Hogle
Naval Surface Warfare Center
Port Hueneme Division
4363 Missile Way
Port Hueneme, California 93043-4307
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Internet: hogle_chuck@phdnswc.navy.mil

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Proposed Negotiation Steps

The Navy and the Commission have agreed that the informal negotiations will follow the following steps:

1. **Negotiation Questions.** The Commission staff and the Navy have agreed on a set of questions regarding the SWEF and coastal effects. The questions will eventually be used to focus OCRM's and the technical panel's deliberations regarding coastal effects. These questions are contained in this memorandum, see below.
2. **Navy Response.** The Navy shall prepare a response to these questions.
3. **OCRM Review and Report.** OCRM, the Navy and the Commission staff shall briefly review the questions and the Navy's response. Following this review, OCRM shall provide the Commission with a report that includes the questions, the Navy's response and proposed next steps. The parties shall endeavor to complete steps 1, 2 and 3 by December 16, 1998.
4. **Commission Review and Public Input.** Commission staff will transmit OCRM's report on the questions and the Navy's response to Commission members and the public on or about December 18, 1998, and will discuss the report at the Commission meeting in Los Angeles on January 12-15, 1999 (subject to availability of the Navy's response).
5. **Commission Decision.** At the January Commission meeting, the public will have the opportunity to comment on the questions, the Navy's response and the negotiation's next steps. Following review of the Navy's response to questions, public comments and Commission deliberations, the Commission will determine which issues have been resolved, which issues require additional review or request that OCRM add or modify questions.
6. **Technical Panel.** OCRM, the Navy and the Commission will agree on the make-up of the technical panel and technical panel review timeframe. OCRM will contact and secure the commitments of technical panel members. OCRM will consult with the technical panel to address those issues requiring additional review.
7. **OCRM Report.** OCRM will provide the Commission and the Navy with its report on coastal effects, based on the review by the technical panel.

Questions to Present to the Commission and the Public

OCRM, the Navy and Commission staff have agreed that the following questions are the questions and issues that need to be addressed to determine whether coastal effects from the SWEF are reasonably foreseeable. These questions, along with the Navy's responses, will be submitted to the Commission for its consideration at the January meeting.

1. Do the radar frequency (RF) emissions from the SWEF pose a risk to people who use coastal resources?

In answering this question, the following questions should also be considered:

- 1.a. Do the SWEF RF emissions affect public access and recreation at public beaches and La Janelle Park, coastal shipping, or commercial or recreational fishing?

- 1.b. What is the maximum level (and duration) of foreseeable exposure that could be received by a shipboard person?

- 1.c. Does the evidence support the Navy's conclusion that no harmful exposure could occur on a nearby ship (including transiting ships, moored ships, dredging ships, fishing vessels, etc.)?

- 1.d. How does the lowered height of the radar on Building 5186 affect exposure calculations to ships and public areas?

- 1.e. Can reflection of SWEF radar emissions off metal ship structures focus and intensify exposure?

2. Is there potential for adverse effects on wildlife from SWEF radar emissions?

3. What is the baseline worst case scenario for SWEF radar emissions in the uncontrolled environment?

In answering this question, the following questions should also be considered:

- 3.a. What are the maximum RF levels that could be emitted at the same time and what would be the effect of such levels on the uncontrolled environment?

- 3.b. What are the maximum RF levels that could be directed at a particular point, i.e., a shipboard person, and what would be the

effect of such levels on a point in the uncontrolled environment?

3.c. What are the expected operational maximum RF levels and what effect would such emissions have on the uncontrolled environment?

3.d. Are multiple source RF emissions a factor in any worst case scenario (i.e., a ship moving through several radar beams)?

3.e. What is the distinction between RF emission capabilities "as installed" versus "as operated?"

3.f. What controls are in place to ensure that an RF standard is not exceeded?

3.g. What are the consequences to people in the uncontrolled environment if an RF standard was exceeded by various percentages? Are there thresholds above an RF standard that the Commission could use to determine whether the Commission should be concerned?

4. How will the Navy interact with the Commission in the future?

In answering this question, the following questions should also be considered:

4.a. What technical information should the Navy provide and the Commission seek, and what will be available, in reviewing modifications to the SWEF?

5. With what RF standards does the Navy comply? What do those standards mean? What is the status of evolving international RF emission standards and would the international standards be useful in determining whether SWEF RF emissions pose a risk to coastal users? How will the Navy respond if/when the international standards change?

6. How do SWEF RF emissions compare to other radar emissions?

7. To what extent is the Navy, in response to these questions, relying on information that is not available to the public?

The Navy's Response to the Questions

The Navy will provide a response to the questions described above. The Navy's response will build upon previous information provided by the Navy but will be organized and written in less technical jargon. The primary purpose of the Navy's response is to provide the Commission (and the public) with information that will assist the

Commission in deciding whether the Navy's previously submitted Negative Determinations meet the requirements of the CZMA, and what questions will be provided, through OCRM, to the technical panel.

Independent Technical Review

OCRM, the Navy and the Commission have agreed, in principle, that OCRM may rely on a panel of technical experts to review the Navy's response to the questions when determining whether the SWEF RF emissions cause coastal effects. The selection of the technical panel, the charge to the technical panel, what the panel will consider, how long the panel will have and how the panel will function will be agreed to by both parties. The make up and dynamics of the technical panel will be determined once the parties agree as to which Navy answers require additional review. OCRM will contact the panel members shortly after the January Commission meeting. All interaction with the technical panel will be through OCRM. The technical panel will report to OCRM.

Once OCRM, the Commission and the Navy understand what types of expertise will be needed on the technical panel, OCRM will request appropriate organizations to participate. Potential panel members may or may not include: the National Telecommunications Information Administration, within the U.S. Department of Commerce; the Terminal Doppler Radar program, within the Federal Aviation Administration; the National Air and Radiation Laboratory, within the U.S. Environmental Protection Agency; and possibly, one or two university programs.

Future Planning Actions for the SWEF

The Navy and the Commission have agreed to improve coordination and planning for future projects or changes that may result in modifications to the SWEF. The Navy has committed to describe the process that the Navy uses when making changes to the SWEF. These procedures will clarify the Navy's process, ensure that the Commission, as well as other environmental regulatory organizations, clearly understand when in the process that they will be notified as well as the type of information that will be provided. These procedures will also, to the extent possible, ensure that information released addresses the issues at hand in a clear (easily understood) and complete manner.

Final OCRM Report to the Commission

After the technical panel reports to OCRM, OCRM will discuss the panel's findings with the Navy and the Commission. OCRM will then make its final report to the Commission. OCRM will base its finding of coastal effects on the panel's findings. OCRM will also provide

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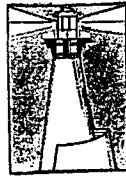
recommendations for the Commission and the Navy for final resolution of this negotiation. If the questions and Navy response are considered at the January Commission meeting, then a final report should be issued in the Spring of 1999. After this report is issued, the Commission will take a formal consistency action on the Negative Determinations that were previously objected to by the Commission's Executive Director.

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The Beacon
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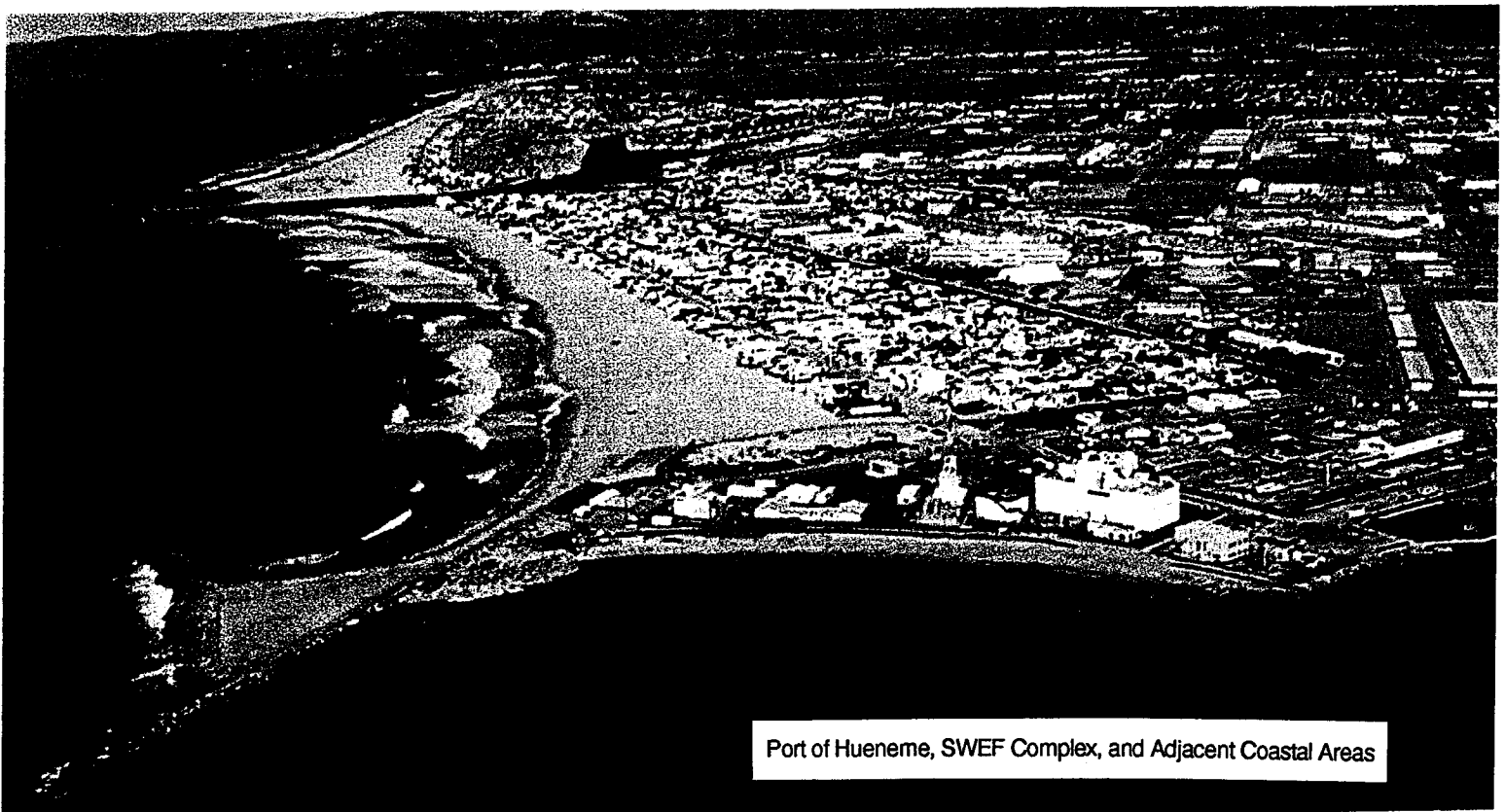
A Nonprofit Public Benefit Corporation

To: The California Coastal Commission
From: The Beacon Foundation

March 11, 1999
Re: SWEF Panel Ground Rules

For more than three years the Navy has stonewalled Commission requests for the filing of consistency determinations for the Naval Surface Warfare Center (SWEF). This massive radar complex overlooks two public beaches, sport and commercial fishing areas and a commercial deep water port. It is adjacent to the Silver Strand residential community that predates the SWEF by more than sixty years.

In August 1998, Commission staff asked the U.S. Department of Commerce to mediate a "serious disagreement" with the Navy. At your January 1999 meeting you received testimony and gave direction regarding the make up and function of an expert panel.




Port of Hueneme, SWEF Complex, and Adjacent Coastal Areas

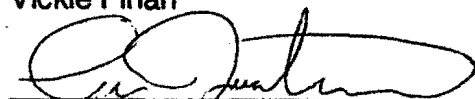
The mediation ground rules established by the Commission in January were, in February, countermanded by Navy demands. A thorough and objective process that will restore public trust cannot be achieved by a panel hobbled by the proposed February 10, 1999 ground rules.

ATTACHMENT 2

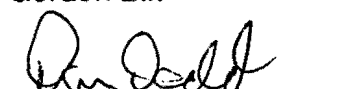
The February 10, 1999 draft ground rules have these fatal deficiencies:

1. Commission Direction on Panel Expertise is Discarded. In January you determined a bio-medical expert was needed as well as a member or access to a wildlife expert. The draft February ground rules say these skills are "desirable but not necessary."
2. Criteria for the Panel is too Narrow. The February ground rules say that "Federal agency Panel members are preferred." Why? It says members should "not be affiliated with the Department of Defense" but one secondary pool member is an Air Force employee and others may be with firms dependent on military contracts. Why aren't the two eminent wildlife experts who have previously provided testimony to the Commission (Brian James Walton and Franklin Gress) included in the pool?
3. This is not a Review Panel but a Focus Group. The February ground rules ask panelists to work "independently" and expressly discourages interaction. It will only meet once after an initial meeting to receive materials. Based on impressions from the second meeting, the Commerce Department will write a "final" report that will be reviewed in draft by the Navy and CCC staff but will not be reviewed by the panel.
4. The Panel is effectively Screened from all but the Navy side of the Record. It gets all the in house Navy RADHAZ surveys but none of the critical analysis. As currently drafted the list of materials going to the panel would include nothing authored by CCC staff. In place of the excellent CCC September 15, 1998 summary memo and attachments, the panel would receive a background memo by the Department of Commerce. Only one of the Beacon submissions would be available to the Panel. Panel access to additional material, even on the request of individual panelists, is subject to an absolute Navy veto for which no explanation is required.
5. The Citizen Observer Becomes Window Dressing. The Navy seeks exclusion of anyone with knowledge of the issues and states no member of the Beacon is acceptable. The observer is precluded from making "its own evaluation of the materials." Both CCC and Department of Commerce staff support selection of a Beacon board member and we believe we are the informed and appropriate choice.

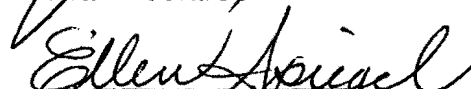

Vickie Finan


Lee Quaintance


Gordon Birr


Don Dodd


Jean Rountree


Ellen Spiegel