

CALIFORNIA COASTAL COMMISSION

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STATUS MEMO

DATE: May 19, 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, which the staff subsequently reported to the Commission (Attachment 2). 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. The outcome of that meeting was memorialized in an OCRM memo to the Commission and the Navy dated April 6, 1999 (Attachment 1). This memo outlines a mutually agreed-upon (by the agency staffs) process for establishing an independent and

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

objective technical panel to review the questions and information compiled to date and assist the Commission in determining whether there are effects on coastal resources from the radar facilities at the SWEF.

Because the Commission was interested in the make-up of the review 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 April 13, 1999, the Commission selected Lee Quaintance to serve as the citizen observer. During the Commission deliberation on that matter, several speakers addressed the Commission expressing concerns over the process as agreed to by the Commission staff (and summarized in Attachment 1). At the end of the hearing, the Commission directed the staff to bring this matter back for further consideration at the May 1999 Commission meeting (subsequently postponed to the June 1999 meeting).

Several of the concerns expressed at the April meeting are contained in letters to the Commission dated March 11, 1999, April 3, 1999, and April 22, 1999 (Attachment 3). The concerns expressed in these letters include questions over:

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

(b) whether the panel should write its own consensus report, with OCRM taking the responsibility to write up its interpretation of the panel members' opinions; and

(c) whether all necessary information will be provided to the panel members, and whether panel members will have access to all the information now contained in the Commission file on the matter.

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 the writing of the panel's report and panel member 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, and that panel members are free to seek additional information if they so desire.

As of the date of this mailing, the initial panel selection has not yet taken place; OCRM has compiled a list of experts and is currently in the process of contacting the following prospective panel members:

<u>Name</u>	<u>Affiliation</u>
Ed Mantiply	National Air and Radiation Lab., EPA
Robert Liburdy	Lawrence Berkeley National Lab.
Ross Adey	University of California Riverside
Craig Byus	University of California Riverside
Asher Shepard	Consultant to Judge Advocates on similar Issues, Redlands, California
Carl Durney	Dept. of Electrical Engineering, University of Utah
Robert Beason	SUNY-Genesco (Birds)
Charles Wolcott	Cornell (Birds)
James Manitakos	SRI International, Menlo Park, California
Ronald Petersen	Bell Labs., Murray Hill, New Jersey
Richard Tell	Richard Tell Assoc., Las Vegas, Nevada
Eleanor Adair	Brooks Air Force Base, Texas
John D'Andrea	Brooks Air Force Base, Texas
John Osepchuk	Full Spectrum Consulting, Concord, MA
Peter Valberg	Gradient Corporation, Cambridge, MA (Harvard affiliation)
W. Arthur Guy	Bio-electromagnetics Consulting, Seattle, WA
Linda Erdreich	Epidemiologist (Human effects), NY
Kenneth Foster	Univ. of PA (Bio-engineering)

Any panel members tentatively selected will be reported to the Commission at the June meeting. Even though the panel selection has not been completed, in response to Commission concerns discussed above (and expressed at the April meeting) the staff has placed this matter before the Commission for a discussion of the expert review process. The Commission may also review a full or partial panel selection, if further progress is made in the panel selection.

- Attachments: (1) April 6, 1999, OCRM memo summarizing February 10, 1999, meeting.
- (2) November 6, 1998, OCRM memo to the Commission and the Navy dated which the staff subsequently reported to the Commission
- (3) The BEACON letters of March 11, 1999, April 3, 1999, and April 22, 1999.

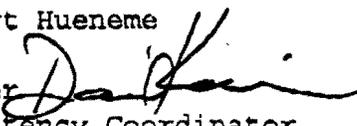


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL OCEAN SERVICE
 OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
 Silver Spring, Maryland 20910

April 6, 1999

MEMORANDUM FOR: Mark Delaplaine
 California Coastal Commission

Chuck Hogle
 U.S. Navy, Port Hueneme

FROM: David W. Kaiser 
 Federal Consistency Coordinator

SUBJECT: Outcome of February 10, 1999, Meeting to Discuss the
 Surface Warfare Engineering Facility at Port Hueneme

This memorandum provides you with a report of the agreements and next steps identified at our February 10, 1999, video conference meeting held in Silver Spring, Maryland and San Francisco, California. The Office of Ocean and Coastal Resource Management (OCRM) appreciates the assistance of the Navy in setting up the video conference and for providing conference facilities for the California Coastal Commission (Commission). OCRM is also pleased that the mediation is proceeding along the lines that we agreed to in October 1998, as outlined in OCRM's memorandum to the Navy and the Commission (November 6, 1998). The next steps that we identified, which are detailed below, will keep us moving forward in our efforts to resolve the coastal management issues involving the Navy's Surface Warfare Engineering Facility (SWEF) at Port Hueneme, Ventura County.

This memorandum is divided into the following two subject areas that we discussed at the February 10 meeting: the Technical Panel, and Citizen Observer.

The Technical Panel

Make up of the Panel. The Panel should consist of 3-5 members. The Panel members need to be objective and not be substantially involved with the Department of Defense. At least one of the Panel members should have clearance to review classified materials. It is desirable that one of the Panel members have bio-medical expertise and one of the Panel members have wildlife expertise. Public agency Panel members are preferred, but, depending on availability of the public agencies, universities or private contractors may be selected.

ATTACHMENT 1



Panel Pool. The following entities and persons are included in the Panel pool:

Priority Panel Pool:

- National Telecommunications Information Administration (U.S. Department of Commerce).
- Terminal Doppler Radar Program (Federal Aviation Administration).
- National Air and Radiation Laboratory (U.S. Environmental Protection Agency).
- Raymond Neutra (California Department of Health Services) (Bio-medical effects).
- United States Fish and Wildlife Service.
- Dr. Robert Libudy (Lawrence Berkeley National Laboratory).
- Dr. Craig Byus (University of California Riverside).
- Dr. Asher Sheppard (Consultant to Judge Advocates on similar issues, Redlands, California).
- Carl Durney (Department of Electrical Engineering, University of Utah).

Secondary Panel Pool (Not in any particular order):

- James Manidakos, Jr. (Environmental Engineer, SRI International, Menlo Park, California).
- Ronald Petersen (Lucent Technologies/Bell Laboratories, Murray Hill, New Jersey).
- Richard Tell (Richard Tell Associates, Inc., Las Vegas, Nevada).
- Dr. Eleanor Adair (Senior Scientist, Brooks Air Force Base, Texas) (Bio-medical effects).
- Dr. John Osepchuk (Full Spectrum Consulting, Concord, Massachusetts).
- Peter Valberg (Gradient Corporation, Cambridge, Massachusetts).
- W. Arthur Guy (Bio-electromagnetics Consulting, Seattle, WA).

Selection of the Panel. OCRM will solicit the participation of the candidates listed in the priority Panel pool, see above. If 3-5 of the priority Panel pool candidates agree to participate, then the rest of the Panel pool will not be contacted. If OCRM cannot obtain the participation of 3-5 participants from the priority Panel pool, OCRM will contact the candidates in the secondary Panel pool until 3-5 have agreed to participate. Once OCRM obtains commitments from the Panel selectees, OCRM will forward to the Commission and the Navy the names and background information of the selected Panel members. The Commission will review the Panel selection at the first Commission meeting after OCRM forwards the Panel names. The Commission and the Navy will then provide OCRM with their concurrence or objection with the Panel selection, immediately following that Commission meeting.

Funding for the Panel. Funds are not available to compensate Panel members for their participation. However, the Navy has agreed to cover the travel costs for the Panel members to attend the two meetings (the first meeting is to get the Panel started and the second meeting is the report of their findings, see below under process).

Process for the Panel's Review of the Materials. Once OCRM receives concurrence from the Commission and the Navy on the make-up of the Panel, OCRM will provide to the Panel its charge and the materials. Approximately two to three weeks after the Panel receives this information OCRM, the Navy, the Commission and the Citizen Observer will meet with the Panel members (at one location or through a video-conference), to discuss the charge to the Panel and the materials, discuss the process, and answer any questions that the Panel members may have. The Panel members will then have six weeks to conduct their review.

At the end of the six week review period, OCRM, the Navy, the Commission and the Citizen Observer will meet with the Panel to discuss their findings. After this meeting the Panel members will provide their reports to OCRM. OCRM will then prepare and submit a draft report to the Navy, the Commission, the Citizen Observer and the Panel members for their review and comment. This draft report will describe the mediation process and discussions, summarize the Panel's findings and include draft recommendation's on a process to resolve the CZMA federal consistency issue. The Panel's findings will be attached to OCRM's report. Depending on the comments received, further discussions with the Panel and the parties may be necessary (either by meeting or conference call). OCRM will then submit its final report, including the Panel's findings, to the Commission.

Once the Panel is selected and while it is deliberating, all communications between the Panel and others (Navy, Commission, the public, etc.) shall be through OCRM. OCRM will pass on any additional and appropriate request or information to or from the Panel. Panel members may communicate with each other on an informal basis. Panel members will be asked to inform OCRM of any inter-Panel communications.

Materials to be Provided to the Panel. The materials that will be provided to the Panel will be:

- **Cover memorandum from OCRM.** This will include a background of the issue and this mediation, the charge to the Panel, and the process. The background information will be derived primarily from the memorandum from Mark Delaplaine, Commission, to Interested Parties (Sep. 15, 1998). The Mark Delaplaine memorandum will be attached to OCRM's cover memorandum.
- **OCRM's memorandum to the Commission and the Navy (Nov. 6, 1998).** This memorandum contains other background information and the questions that the Panel will evaluate.
- **The Navy's Response to the Questions.** This is the document that the Navy provided in response to OCRM's November 6, 1998, memorandum. The document is from J.W. Philips, Navy, to David Kaiser, OCRM (Dec. 14, 1998).
- **The Document from The Beacon Foundation to the Commission (Jan. 5, 1998) [sic].** This document responds to the Navy's December 14, 1998, response to the questions contained in OCRM's November 6, 1998, memorandum. (The Beacon document is dated January 5, 1998, but it is actually a January 5, 1999, document.)
- **RadHaz Survey of December 1998.** This is a survey conducted by the Navy for the AN/SPQ-98 and MK-99 radars.
- **Radiation Hazard Reports of 1989, 1994, 1996 and 1997.** This will include classified versions of these reports to those Panel members who hold proper clearances.

Charge to Panel. The Panel will be charged with:

The Panel is charged with providing, to the Navy and the California Coastal Commission (Commission), through the mediator, the Office of Ocean and Coastal Resource Management (OCRM), an objective scientific evaluation on

whether, and to what extent, the operation of the Navy's Surface Warfare Engineering Facility (SWEF) at Port Hueneme, Ventura County, California, poses impacts to any land or water use or natural resource of the coastal zone or impacts safe public access to the coastal zone. The Panel, in making its evaluations, shall use the materials and questions provided by OCRM. Each Panel member is asked to provide its own independent finding. Panel members may communicate with one another and shall inform OCRM of such inter-Panel communications. Requests to use additional information or to communicate with the Navy, the Commission or others shall be made through OCRM. Panel members shall have six weeks to complete their evaluations.

Citizen Observer

The Navy and the Commission have agreed that a citizen of Ventura County may observe the interactions between the Panel and the Navy, the Commission and OCRM. This person must be acceptable to both the Commission and the Navy. Members of community organizations are eligible, but only so long as they represent the community-at-large and not their particular organization. Each Citizen Observer candidate shall provide the following information: name, professional background, residence, a brief statement of personal interest, and a brief statement describing their objectivity and ability to represent the community-at-large and not just the interests of a particular group or organization. The Navy and the Commission will provide to OCRM lists of potential observers. OCRM, the Navy and Commission staff will then agree on a pool of mutually acceptable observers. The Commission will then select the Citizen Observer from this pool at the first available Commission meeting. OCRM will then provide the Citizen Observer with necessary information and logistical details.

The Citizen Observer may participate in the following manner:

- The Citizen Observer may attend the two formal meetings, discussed above, with the Panel (and any other meetings that may be convened with the Panel). These meetings are the initial meeting with the Panel and the meeting where the Panel members will discuss their findings with OCRM, the Navy, the Commission and the Citizen Observer.
- The Citizen Observer shall be given a copy of all materials provided to the Panel, but the Observer shall not provide its own evaluation of the materials.

- The Citizen Observer may ask questions of the Panel members in any meetings held with the Panel.
- The Citizen Observer shall not provide any materials or have any other contact with the Panel. All contact with the Panel shall be through OCRM. If the Observer wants to pose a question to the Panel, outside of the meetings, the Observer shall provide its question to OCRM. OCRM will then notify the Navy and the Commission and forward to the Panel any reasonable and appropriate question and relay any response to the Navy, the Commission and the Observer.
- The Navy has offered to provide any travel funds for the Citizen Observer to attend the two meetings with the Panel.

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Commander Naval Sea Systems Command
NSWC HQ code 04V
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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
 Director

JRB

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 2



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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
Internet: david.kaiser@noaa.gov

The Commission's point of contact is:

Mr. Mark Delaplaine
Federal Consistency Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219
Voice: (415) 904-5289; Fax: (415) 904-5400
Internet: mdelaplaine@coastal.ca.gov

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
Voice: (805) 228-8225; Fax: (805) 228-8740
Internet: hogle_chuck@phdnswc.navy.mil

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 Jenelle 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 Foundation

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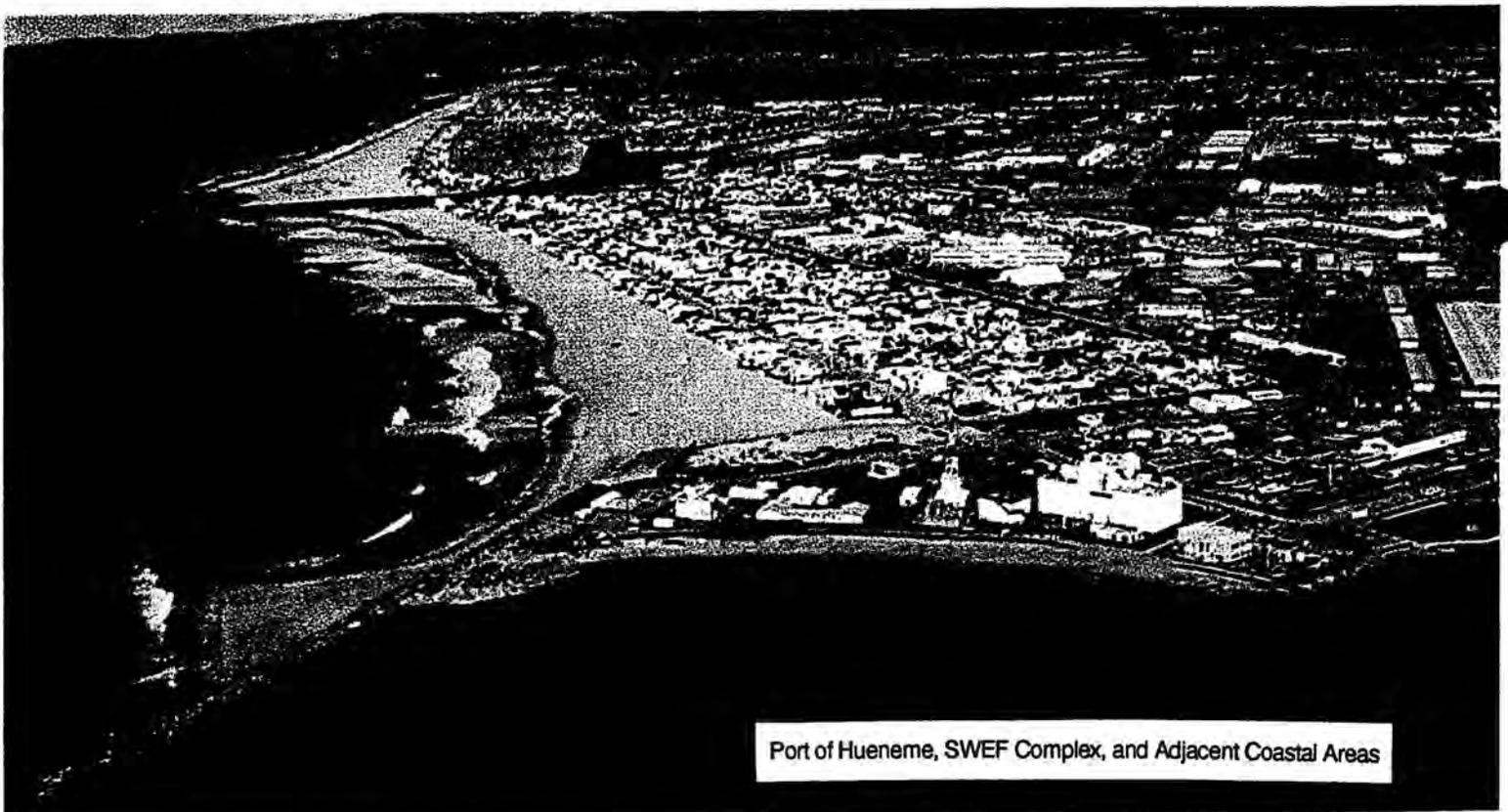
A Nonprofit Public Benefit Corporation

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 3

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

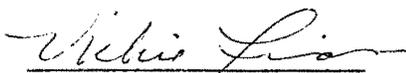
1. Commission Direction on Panel Expertise is Discarded. In January you determined a bio-medical expert was needed as well as a member or access to a wildlife expert. The draft February ground rules say these skills are "desirable but not necessary."

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.

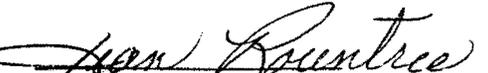
5. The Citizen Observer Becomes Window Dressing. The Navy seeks exclusion of anyone with knowledge of the issues and states no member of the Beacon is acceptable. The observer is precluded from making "its own evaluation of the materials." Both CCC and Department of Commerce staff support selection of a Beacon board member and we believe we are the informed and appropriate choice.



Vickie Finan



Gordon Birr



Jean Rountree



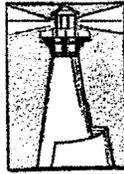
Lee Quaintance



Don Dodd



Ellen Spiegel



The Beacon
Foundation

Box 352
3844 Channel Islands Blvd
Oxnard, CA 93035

A Nonprofit Public Benefit Corporation

April 3, 1999

Complete Document Has Been Transmitted to Commission Staff

To: The California Coastal Commission Members and Alternate Members
From: The Beacon Foundation

Re: SWEF Mediation Ground Rules For Expert Panel

The Commission requested this Status Briefing at its March 13, 1999 meeting. At that meeting, public and Commissioner comments were universally critical of proposed ground rules for the panel being established in the mediation regarding a Consistency Determination for operations of the Surface Warfare Engineering Facility (SWEF) at Port Hueneme.

On March 30, 1999, the Office of Coastal Resource Management ("OCRM") issued a revised third version of the "agreements" on ground rules reached at the February 10, 1999 closed planning meeting of Navy, OCRM and CCC staff. A copy of this March 30th version is provided here as Attachment One. The revisions are inadequate to provide an independent, comprehensive and open expert review.

The Commission staff report for this briefing dated March 23, 1999 concludes: "... details such as interaction style and mechanics, completeness of information, number of meetings, etc., have been left to be worked out until the panel is established." With the exception of decisions on the number of meetings, there are fixed provisions on each of these concepts in the March 30th ground rules. There is no mechanism to change these rules after the panel is established and the rules now set, as discussed below, are prejudicial to a process worthy of public trust.

We urge the Commission to give specific instructions to its staff to reform the ground rules. This informal mediation should not go forward under the present ground rules and should not proceed at all if reforms are rejected by the Navy.

- Putting Mediation in Perspective

“Mediate” -- To resolve or seek to resolve differences by working with all conflicting parties.

Encarta Encyclopedia Dictionary, 1997

A California Coastal Commission publication ¹ outlines operation of the Federal Consistency provisions of the Federal Coastal Zone Management Act (CZMA). It notes that all lands of the federal government are excluded from the coastal zone. However (page 4), by authority of this act: “If activities on excluded lands affect the coastal zone, they must be reviewed for consistency with the CCMP [the California Coastal Management Program of which the key policy component is the Coastal Act].”

Notification to the Coastal Commission of an activity affecting the coastal zone is an affirmative obligation of each federal agency. The notification must review whether the proposed action is undertaken in a manner that is “consistent to the maximum extent practicable” with requirements of the Coastal Act. The publication notes (page 5):

“The federal agency’s consistency determination must be based upon an evaluation of the relevant provisions of the CCMP. The consistency determination must include a detailed description of the proposed activity, its associated facilities, and their combined coastal effects, and any information necessary to support the federal agency’s conclusion.” [underlining shown is in the publication]

As an exception, a Negative Determination may be presented for CCC consideration under appropriate circumstances (page 5):

“A federal agency may decide that a consistency determination is not required either because the activity is the same or similar to a past activity previously approved by the Commission or because a thorough assessment establishes that there would be no effects upon the coastal zone.”

In the event of disagreement between the federal agency and the CCC regarding a consistency determination or a negative determination the OCRM is available under the act for discussions or mediation. **There is no requirement to engage in flawed or fruitless mediation.** It is noted (page 6):

¹ California Coastal Commission, Federal Consistency In A Nutshell, adapted from a publication by the Office of Ocean and Coastal Resource Management, U.S. Department of Commerce, revised 5/92

"... if mediation efforts are unsuccessful, or are simply not utilized, either party may resort to judicial action to resolve the serious disagreement. Judicial review may be sought without first having exhausted the mediation process." [underlining shown is in the publication]

- **Reforming The March 30, 1999 version of the February 10th DRAFT Ground Rules**

1. Panel Expertise. The revised draft ground rules say membership of a biomedical and wildlife expert is "desirable."² Achievement of this goal is undermined by panel selection preferences and priorities set by the ground rules. "Public agency Panel members are preferred" and the OCRM is to seek panelists in a set priority order. The first three choices are unnamed persons from three federal agencies. the first two agencies listed do not appear likely to have staff with the requisite expertise. We urge the Commission to instruct that the first priority should be selection of at least one panelist with biomedical and one with wildlife expertise and that there be no preference for unnamed persons from public agencies.
2. Panel Deliberations and Report. The revised draft ground rules expand the number of scheduled substantive panel meetings from one to two. Members are to make "independent" findings but they may now interact. Individual panel members are now allowed to provide reports of their findings that will be included with an OCRM report to the CCC that the panel members will now have an opportunity to review. Control over the panel findings remains in the OCRM. We urge the Commission to instruct that the panel control and write its own consensus report (that may include minority reports) and upon which the OCRM, the Navy, Commission staff and the Citizen Observer may provide comment if they wish to do so.

Control Over Materials Made Available To The Panel. The revised ground rules, just as the prior version provides: "The panel in making its evaluations, shall use the materials and questions provided by OCRM."

Prior versions essentially restricted the panel to the Navy side of the record. The newest version, for the first time, provides that one CCC staff report will go to the panel -- the important CCC summary memo dated September 15, 1998. For the first time also, a full list is set forth of Navy documents it wishes the panel to receive and it omits the very important 1996 Navy RADHAZ survey.

² Prior versions of the ground rules said it was "desirable but not necessary"

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Provided to the Commission in a separate document, is a Beacon Foundation analysis dated April 3, 1999 of the December 1998 Navy RADHAZ Report. This latest Navy RADHAZ Survey discredits key findings of the 1996 Navy RADHAZ survey. Our April 3rd analysis explains our reasons for requesting inclusion of the 1996 RADHAZ Survey in the Panel documents and further specifically asks that our April 3rd analysis be provided to the Panel along with two of our earlier submissions analyzing the 1996 RADHAZ Survey.

We ask The Commission to direct that all of the attachments to the September 15th CCC summary memo be provided to the panel as well as the memo itself. Further we ask that the Navy 1996 Radhaz Survey be a required inclusion in the documents provided. We also request a Commission instruction that without any additional approvals the panel is to have access to all documents in the Commission's public record.

3. The Citizen Observer. The Coastal Commission required the addition of a Citizen Observer to the expert panel. The prior and present proposed ground rules go into great detail to restrict the citizen observer from providing any materials or offering any evaluation.

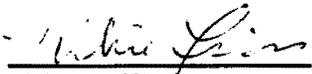
The Navy previously specifically rejected any member of the Beacon Foundation as the Citizen Observer. Now, in the March 30th draft ground rules, an elaborate and circuitous process is devised to create a pool of Observer candidates including persons said to have independently approached the Navy. Citizen observer "candidates" may now be members of "community organizations ... but only so long as they represent the community-at-large and not their particular organization." Candidates are to submit, among other things, a "... statement describing their objectivity and ability to represent the community-at-large."

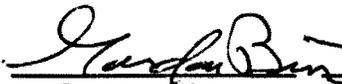
There would be a two step review process. First the candidates would be reviewed by staff and only those "mutually acceptable" to the CCC staff and to the Navy would go on to the full Coastal Commission. Commissioners would sift through the surviving "acceptable" resumes in public session and pick one as the Citizen Observer. This is a misuse of the Commission and the public and reflects basic misunderstanding of the purpose of the Citizen Observer.

The Commission introduced the requirement for a citizen observer that it should choose. Both CCC staff and OCRM staff have stated in that someone from The Beacon Foundation is the appropriate choice. The Citizen Observer needs to be knowledgeable and involved in the issue. Ties with a non-profit environmental organization like The Beacon in no way conflicts with carrying out the role of Citizen Observer and no one should be required to disclaim such an affiliation. There is a successful precedent for a Citizen Observer with ties to an involved environmental organization in the panel review of Navy ocean sound experiments

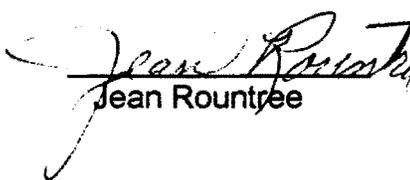
This is not just a "community issue" but a serious inquiry that may set precedent for statewide military compliance with the Coastal Zone Management Act. Our nearly four years of participation, our fifteen appearances before the Commission, and our numerous analytical submissions are our resume and should qualify a member of the board of The Beacon Foundation as the Citizen Observer. We ask the Commission to now instruct that a member of the Board of the Beacon Foundation will be the Citizen Observer.

Sincerely yours,
For The Beacon Foundation


Vickie Finan


Gordon Birr


Lee Quaintance


Jean Rountree


Ellen Spiegel


Don Dodd



The Beacon
Foundation

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R E C E I V E D

APR 22 1999

CALIFORNIA
COASTAL COMMISSION

April 22, 1999

Mr. Mark Delaplaine
Federal Consistency Coordinator
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: SWEF Expert Panel
Access to the Record

Dear Mr. Delaplaine:

In our submission of April 3, 1999 and testimony at the April 13, 1999 Coastal Commission meeting we requested revisions in the SWEF informal mediation ground rules. One of our concerns is Panel access to the Commission record.

1. Materials Provided to the Panel at Commencement of its Inquiry. The draft ground rules dated April 6, 1999 lists documents that will be provided to each panelist at the outset. The list now includes the 1996 Navy RADHAZ survey previously omitted. We note also, that it now includes the CCC staff summary dated of September 15, 1998. We request confirmation that all of the attachments to the summary memo will accompany it in the packet going to the panel members. Some of these attachments are included in the materials already listed but many are not and we believe they are all vital to a Panel overview.

At the April 13th meeting, Mr. Douglas indicated he was prepared to discuss with the Navy and OCRM additional materials that might be provided to the panel at the outset. We request that the following Beacon Foundation submissions, totaling 28 pages, be added:

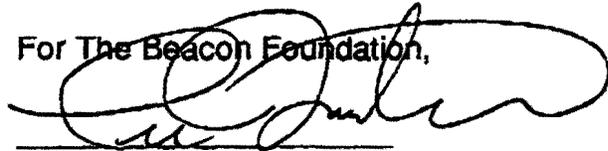
- April 3, 1999 comments on Navy 1998 RADHAZ Survey Report.
- August 9, 1997 analysis of the 1996 RADHAZ Survey Report (this was part of a more lengthy submission dated August 20, 1997).
- October 27, 1997 comments on the 1996 RADHAZ Survey Report
- August 10, 1998 timeline on CCC consideration of the SWEF matter

2. Materials Available to the Panel during its Review. All CCC staff reports, Navy submissions and submissions by others in the Coastal Commission record for this

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matter should be freely accessible to expert panel members. No approval by anyone should be required to bring forward to the panel any item in this record. We also support the request made by a member of the Commission at the April 13th hearing that the ground rules provide an ability for panel experts to bring into the process materials additional to the record provided. To deny an ability for the experts to bring forth writings of their own or by others would undercut the thorough review for which the panel is being assembled.

For The Beacon Foundation,



Lee Quaintance, Secretary
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