

CALIFORNIA COASTAL COMMISSION

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

**RECORD PACKET COPY W 13**

DATE: May 23, 2000

TO: COASTAL COMMISSIONERS
AND INTERESTED PARTIES

FROM: MARK DELAPLAINE, FEDERAL CONSISTENCY SUPERVISOR

RE: NEGATIVE DETERMINATIONS ISSUED BY EXECUTIVE DIRECTOR

PROJECT #:	ND-015-00
APPLICANT:	Marine Corps
LOCATION:	Camp Pendelton Marine Corps Base, San Diego Co.
PROJECT:	Operational and developmental testing of the advanced amphibious assault vehicle
ACTION:	Concur
ACTION DATE:	04/20/2000

PROJECT #:	NE-017-00
APPLICANT:	Caltrans
LOCATION:	Highway 1 in Santa Barbara and Santa Cruz Counties
PROJECT:	Replace guardrails and drainage inlets and widen shoulders
ACTION:	No effect
ACTION DATE:	05/16/2000

PROJECT #:	ND-029-00
APPLICANT:	National Park Service
LOCATION:	Santa Cruz Island
PROJECT:	Pier Replacement
ACTION:	Concur
ACTION DATE:	04/19/2000

PROJECT #:	ND-031-00
APPLICANT:	Corps of Engineers
LOCATION:	Morro Bay Harbor, San Luis Obispo Co.
PROJECT:	Repair of south breakwater
ACTION:	Concur
ACTION DATE:	04/28/2000

PROJECT #:	NE-034-00
APPLICANT:	City of San Diego
LOCATION:	Mission Beach, San Diego
PROJECT:	Boardwalk widening
ACTION:	No effect
ACTION DATE:	04/21/2000

PROJECT #:	ND-040-00
APPLICANT:	Corps of Engineers
LOCATION:	Channel Islands and Port Hueneme Harbors, Ventura Co.
PROJECT:	Six-year maintenance dredging program
ACTION:	Concur
ACTION DATE:	05/02/2000

PROJECT #:	ND-043-00
APPLICANT:	Corps of Engineers
LOCATION:	Humboldt Bay, Humboldt Co.
PROJECT:	Increased dredge material volumes
ACTION:	Concur
ACTION DATE:	05/15/2000

PROJECT #:	ND-047-00
APPLICANT:	Corps of Engineers
LOCATION:	Shelter Cove, Humboldt Co.
PROJECT:	Re-grouting of stone revetment
ACTION:	Concur
ACTION DATE:	05/12/2000

PROJECT #:	ND-058-00
APPLICANT:	Coast Guard
LOCATION:	Noyo Harbor, Mendocino Co.
PROJECT:	Maintenance Dredging
ACTION:	Concur
ACTION DATE:	05/19/2000

PROJECT #:	NE-059-00
APPLICANT:	Coastal San Luis Resource Conservation District
LOCATION:	Chorro Creek, San Luis Obispo County
PROJECT:	Construction of instream habitat improvement structures
ACTION:	No effect
ACTION DATE:	05/19/2000

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FAX (415) 904-5400



April 20, 2000

Major R.E. Kinder
Deputy Assistant Chief of Staff
Environmental Security
ATTN: Patricia Martinez
U.S. Marine Corps
Box 555010
Camp Pendleton, CA 92055-5010

Subject: Negative Determination ND-15-00 (Testing of Advanced Amphibious Assault Vehicle, Camp Pendleton, San Diego County).

Dear Major Kinder:

The Coastal Commission staff has received and reviewed the above-referenced negative determination for developmental and operational testing of the advanced amphibious assault vehicle (AAAV) at Camp Pendleton. The project involves two prototype vehicles operating in the Pacific Ocean and on Camp Pendleton to evaluate the mobility, maneuverability, and control of the vehicle. No facilities are being constructed to support this activity and weapons testing is not an element of this project. Static and mobility vehicle testing will occur in the Del Mar Boat Basin, near shore testing will occur between 0.75 and three nautical miles offshore of Red and White Beaches (existing Marine Corps training sites at Camp Pendleton), and long distance water testing would occur up to thirty nautical miles offshore of Red Beach. Access to inland testing areas would occur at Red Beach and all inland vehicle testing will take place on existing roads and trails and within active training ranges on Camp Pendleton currently used by other vehicles. The project will begin in April and run through the fall. Measures currently in place (fencing, markers and signage, area restrictions, and on-site monitors) to protect California least tern nesting areas on Red and White beaches during ongoing Marine Corps training activities will also be used to protect western snowy plover nesting areas from the proposed AAAV testing, both on the beach and along existing roads and trails to upland areas.

In conclusion, the Coastal Commission staff **agrees** that no adverse impacts to coastal resources will result from the proposed activity, and we therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35(d) of the NOAA implementing regulations. Please

contact Larry Simon of the Commission staff at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: San Diego Coast District Office
California Department of Water Resources
Governor's Washington, D.C., Office

G/land use/federal consistency/negative determination/2000/nd-015-00

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FAX (415) 904-5400



May 16, 2000

John Luchetta
Senior Environmental Planner
CALTRANS
50 Higuera Street
San Luis Obispo, CA 93401-5415


RE: **NE-017-00**, No-Effects Determination to replace guardrails and drainage inlets and widen shoulders on State Highway 1 in Santa Barbara and Santa Cruz Counties.

Dear Mr. Luchetta:

The Coastal Commission has received and reviewed the above-referenced consistency submittal. The proposed project includes replacing guardrails and drainage inlets and widening shoulders on Highway 1 in Santa Barbara County near Gaviota (between postmiles 47.25 and 47.95), and in Santa Cruz County between the junction of Highway 152 and a point 1.14 miles north of the Buena Vista Drive overcrossing.

Neither project would affect natural drainage courses, wetlands, or ocean views, and both projects incorporate mitigation measures to control soil erosion and non-point source pollution. In conclusion, the Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We, therefore, concur with the conclusion that the proposed activity does not require a consistency certification pursuant to 15 C.F.R. Section 930.50. If you have any questions, please contact Larry Simon of the Coastal Commission staff at (415) 904-5288.

Sincerely,


(for) PETER M. DOUGLAS
Executive Director

cc: South Central Coast District Office
Central Coast District Office
Department of Water Resources
Governor's Washington, D.C., Office



CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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April 19, 2000

Tim Setnicka
National Park Service
Channel Islands National Park
1901 Spinnaker Drive
Ventura, CA 93001

RE: **ND-29-00** Negative Determination, National Park Service, Pier Replacement,
Santa Cruz Island, Santa Barbara Co.

Dear Mr. *Tim*

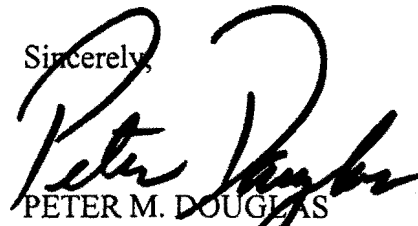
The Coastal Commission staff has received the above-referenced negative determination from the National Park Service for the replacement of the existing pier at Prisoner's Harbor on the north side of Santa Cruz Island. The existing pier is deteriorated and will be removed. The proposed pier will be the same length (372 ft.) but slightly wider (up to 8 ft. wider) than the existing (16 to 24 ft. wide) pier. More piles will be needed to accommodate the added width; the total number of piles will be between 173 and 250 piles. The existing piles to be removed are creosote-treated; these will be disposed of on the mainland at an authorized disposal site. The new piles will not be creosote-treated. Noise impacts from pile driving will not affect any marine mammals or other sensitive species. Measures have been incorporated into the project to protect nearby kelp and eelgrass habitat, as well as cultural resources. Finally, the Park Service is coordinating with the Channel Islands National Marine Sanctuary to make sure that Sanctuary resources will be protected and that the Sanctuary has all the information it needs¹ to assure the project is consistent with Sanctuary regulations.

In conclusion, we **agree** with your conclusion that no adverse impact to coastal resources would result from the project, and we hereby **concur** with your negative determination for the project

¹ An engineering study, environmental and cultural site assessment maps and reports for the Prisoner Harbor area, and an expected timeline for the project.

made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: Ventura Area Office
California Department of Water Resources
Governors Washington D.C. Office
Channel Islands National Marine Sanctuary
Army Corps of Engineers (Ventura Field Office)

CALIFORNIA COASTAL COMMISSION

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April 28, 2000

Robert E. Koplin, Chief
Planning Division
U.S. Army Corps of Engineers
Los Angeles District
Attn: Hayley Lovan
P.O. Box 532711
Los Angeles, CA 90053-2325

RE: **ND-031-00** Negative Determination, Army Corps, Modification to previously-concurred-with negative determination (ND-106-95) for Breakwater Repairs, Morro Bay, San Luis Obispo County

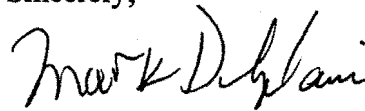
Dear Mr. Koplin:

On December 11, 1995, the Coastal Commission staff concurred with a negative determination for repairs to the south breakwater at Morro Bay Harbor in Morro Bay (copy attached). The project was not implemented at that time and has been resubmitted with an updated Draft Environmental Assessment and a few minor modifications. The repairs are now scheduled to occur from June through October 2000. Issues of concern upon resubmittal are limited to potential impacts to kelp, eelgrass, and snowy plovers. Snowy plover impacts will be avoided because the Corps is only requesting authorization of sea-based construction (only land-based construction could have affected the plovers). The Corps expects to use the sea-based construction alternative; if not, the Corps will return to the Commission staff with a modified consistency or negative determination. The Corps has consulted with resource agencies (including the U.S. Fish and Wildlife Service and National Marine Fisheries Service) and has included measures to avoid impacts to kelp, as well as avoid (or, where avoidance is not feasible, mitigate) impacts to eelgrass habitat. These agencies have concluded that the project's impacts will be minimal and that the project will not adversely affect environmentally sensitive habitat.

Under the federal consistency regulations a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." As discussed in the above paragraph, we have concurred

with a very similar negative determination for this project (ND-106-95). We therefore **concur** with your negative determination for the updated project made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,


(for) PETER M. DOUGLAS
Executive Director

Attachment

cc: Santa Cruz Area Office
California Department of Water Resources
Governors Washington D.C. Office

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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April 21, 2000

Terri Williams
Deputy Director
Coastal Parks Division
City of San Diego
2581 Quivira Ct.
San Diego, CA 92109-8398

Applicant: City of San Diego
Project: New Mission Beach Boardwalk Widening
Location: Mission Beach, San Diego

Coastal Commission Federal Consistency Jurisdiction No: JUR-00-013

Coastal Commission File No.: NE-034-00, 6-99-90, 6-00-01

U.S. Army Corps of Engineers Notice No.:

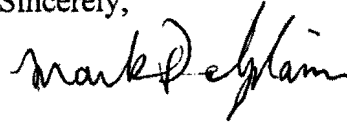
If a nationwide permit, NWP number:

The Coastal Commission staff has received your request to identify Commission jurisdiction for the purposes of processing an individual, nationwide, general or regional permit from the Army Corps of Engineers (Corps). Pursuant to the federal Coastal Zone Management Act (CZMA), the Corps cannot issue a permit for an activity, either in or out of the coastal zone, that affects land and water uses or natural resources of the coastal zone until the applicant has complied with the requirements of Section 307(c)(3)(A) of the CZMA. (16 USC Section 1456[c][3][A].) The applicant can meet these requirements by receiving a Commission concurrence with either (1) a consistency certification prepared by the applicant or (2) a showing that the activity does not affect the coastal zone. Alternatively, the applicant can satisfy these requirements by the issuance of a Commission approved coastal development permit. Since the Commission cannot delegate federal consistency authority to local governments, a coastal development permit issued by a local agency does not replace the requirement for a consistency certification. However, if an activity is within the Ports of San Diego, Long Beach, Los Angeles, or Port Hueneme and is identified in the Commission certified Port Master Plan, then no consistency certification is necessary.

The Coastal Commission staff has reviewed the information submitted for the above-referenced project, and has made the following determination:

The project is within the Coastal Commission's coastal development permitting jurisdiction and has received a Commission-issued permit in part and will receive a Commission-issued permit for the remainder of the project. Therefore, no further Coastal Commission review for consistency with the Coastal Zone Management Act is necessary.

Sincerely,



Mark Delaplaine
Federal Consistency Staff

cc: San Diego Area Office (Diana Lilly)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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May 2, 2000

Robert E. Koplin, Chief
Planning Division
U.S. Army Corps of Engineers
Los Angeles District
Attn: Larry Smith
P.O. Box 532711
Los Angeles, CA 90053-2325

RE: **ND-040-00** Negative Determination, Army Corps, Extension to previously-concurred-with consistency determination (CD-52-94) for 6-Year Maintenance Dredging Program for Channel Islands and Port Hueneme Harbors, Ventura County

Dear Mr. Koplin:

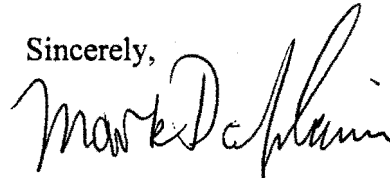
In 1994 the Coastal Commission concurred with the Army Corps' consistency determination for the 6-year Maintenance Dredging Program for Channel Islands and Port Hueneme Harbors, including maintenance dredging to existing dredged depths and beach disposal of up to 6.9 million cu. yds. of clean sandy material at Silver Strand and Hueneme beaches. In our comments on your recent Administrative Draft for the continuation of this program, we noted that we would consider reviewing this matter as a negative determination for the upcoming six year period if the Corps would continue to include measures to avoid effects to snowy plover nesting (measures which would also protect least terns and grunions), and if the U.S. Fish and Wildlife Service agreed these measures were adequate.

The Corps has committed to measures equivalent to those committed to in CD-52-94 (see attached summary of that action), including: (a) scheduling completion of activities prior to March 15 each year (with additional coordination and avoidance measures triggered in the event this deadline is not met, and with an absolute deadline of March 31 each year); and (b) submitting requested information providing ongoing implementation and monitoring details to the Commission staff, including pre-and post-project start and end dates, bathymetry, volumes, and locations of all dredge and disposal sites.

According to the Corps, to date snowy plovers have not historically used Silver Strand and Hueneme beaches in recent years. The Corps has consulted with the Fish and Wildlife Service, which states that if scheduled during the non-nesting season, the project may benefit plovers by rebuilding sandy beaches. The Fish and Wildlife Service concludes that, as scheduled, the project's impacts will be minimal and that the project will not adversely affect environmentally sensitive habitat.

Under the federal consistency regulations a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." As discussed on the previous page, the Commission has concurred with a similar consistency determination for this project (CD-52-94). We therefore **concur** with your negative determination for this project made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,



(fwd)

PETER M. DOUGLAS
Executive Director

Attachment

cc: Ventura Area Office
California Department of Water Resources
Governors Washington D.C. Office

CALIFORNIA COASTAL COMMISSION

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**EXECUTIVE SUMMARY****CD-52-94**

The U.S. Army Corps of Engineers ("Corps") has submitted a consistency determination for the 6-year Maintenance Dredging Program for Channel Islands and Port Hueneme Harbors. The dredging is needed to maintain existing navigation channels in the two harbors. At Channel Islands Harbor 2.2 million cu. yds. would be dredged biennially (every other year). At Port Hueneme a one-time dredging of 260,000 cu. yds. would occur. Both projects would utilize beach disposal of the predominantly sandy material; disposal would be at Silver Strand and Hueneme Beaches. Total dredging would be 6.9 million cu. yds. over the six year period.

The project is similar to previous Corps dredging and beach disposal projects at Channel Islands Harbor and Port Hueneme. As in these past reviews, the major issue raised by this project is the need to assure the dredging and disposal are accomplished in a manner minimizing impacts to habitat resources and public access and recreation. In past reviews, habitat issues of concern were impacts to grunions and least terns, and mitigation measures focused on avoiding the March 15-Sept. 15 period whenever possible. When unforeseen contingencies (e.g., late winter storms or mechanical failures) extended dredging beyond March 15, the Corps committed to using diked, single-point disposal to minimize turbidity and grunion smothering.

A new issue not previously raised arises due to the need to protect the western snowy plover, a newly listed threatened species under the Endangered Species Act. If dredging and disposal do not extend beyond March 15, the snowy plover would not be affected. In the event the project does extend beyond March 15, the Corps proposes a contingency plan to protect the plover, under which: (1) the Corps will coordinate with the Coastal Commission and other concerned State and Federal resource agencies; (2) disposal will be limited to diked or single-point disposal to reduce turbidity; (3) a qualified biologist will survey and map the area for potential snowy plover nesting activity, and will perform field operations to determine potential impacts; (4) if any adverse impacts to the plover nests would occur, dredging will stop; and (5) in no event will disposal extend beyond March 31. Finally, the Corps has included additional measures to protect pismo clams.

With these measures, the project is consistent with the marine resources policies (Sections 30230 and 30233) of the Coastal Act because it: (1) is an allowable use under Section 30233(a); (2) complies with all applicable water quality standards; (3) provides for avoidance, monitoring, and mitigation measures to protect marine resources and other environmentally sensitive habitat; and (4) provides for beach replenishment of suitable sandy material as required by Section 30233(b). Finally, by replenishing public beaches and avoiding dredging during the peak recreational season, the project would improve recreation and is consistent with the public access and recreation policies of the Coastal Act.



CALIFORNIA COASTAL COMMISSION

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May 15, 2000

Scott E. Clark, Chief
Engineering Technical Services
Attn: Tamara Terry
U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, CA 94111

Re: **ND-43-00** Negative Determination, Army Corps, Modification to Five-Year Dredging Program, Spring and Fall Maintenance Dredging, Humboldt Bay, Humboldt Co.

Dear Mr. Clark:

On June 6, 1998, the Commission concurred with the Army Corps' consistency determination for a Five Year Maintenance Dredging Program for Humboldt Bay, consisting of biannual Spring and Fall dredging, with disposal at the Humboldt Open Ocean Disposal Site (HOODS) (CD-45-98). After conducting a harbor channel deepening proposal (which the Commission also concurred with in CD-111-94), the Corps recently performed post-dredging hydrosurveying, which revealed the need to expand the regularly-scheduled maintenance dredging quantities to avoid instability in channel side-slopes, at least until such time as the new (i.e., deepened) channel dimensions reach a natural angle of repose.

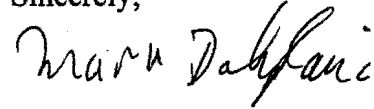
Previously authorized quantities were 125,000 - 250,000 cu. yds. for Spring dredging, and 340,000 - 700,000 cu. yds. for Fall dredging. The proposed new dredge quantities would be increased to 400,000 cu. yds. for Spring dredging, and 500,000 - 1,000,000 cu. yds. for Fall Dredging. Disposal of the material would be at the same location previously authorized, the HOODS site (approximately 3 miles offshore), unless the shoreline monitoring accompanying the Corps' dredging program provides evidence over time that shoreline erosion is beginning to occur (an event that would trigger reassessment of dredging practices and additional coordination with the Commission).

Under the federal consistency regulations (Section 930.35(d)), a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." As the Corps points out in its negative determination, this project is similar to the originally-authorized five-year dredging program (CD-45-98), the harbor deepening project (CD-111-94), an emergency dredging session (ND-24-98), and the numerous individual spring and Fall dredge session consistency

and negative determinations (including ND-128-97, ND-17-97, ND-91-96, ND-61-95, ND-10-95, CD-111-94, CD-64-94, CD-48-93, and ND-33-93), thereby qualifying it for review under the negative determination process.

We therefore concur with your negative determination made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,



(for) PETER M. DOUGLAS
Executive Director

cc: North Coast Area Office
California Dept. of Water Resources
Governors Washington, D.C. Office

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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May 12, 2000

Peter LaCivita
Environmental Section
Attn: Ms. Ngim
U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, CA 94111

Re: **ND-47-00** Negative Determination, Army Corps, Shelter Cove Seawall Repair,
Shelter Cove, Humboldt Co.

Dear Mr. LaCivita:

The Coastal Commission staff has received the above negative determination for repairs to deteriorated grout in a shoreline protective device, which the Commission previously authorized and determined necessary to protect existing sewage treatment and other public service facilities near the bluff edge, at Shelter Cove in Humboldt County. The proposed repairs would not expand the footprint or the effect of the seawall on shoreline processes in the area. The grout repairs would use a color selected to blend into the surrounding rocks.

Under the federal consistency regulations (Section 930.35(d)), a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." As the Corps points out in its negative determination, this project is similar to the originally-authorized project (CD-100-93), as well as with subsequent repairs we concurred with through the negative determination process (ND-2-95), thereby qualifying it for review under the negative determination process.

We therefore **concur** with your negative determination made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Delaplaine", written over the typed name.

(for) PETER M. DOUGLAS
Executive Director

cc: North Coast Area Office
California Dept. of Water Resources
Governors Washington, D.C. Office

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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May 19, 2000

Dave Stalters
Chief, Environmental Division
U.S. Coast Guard
Civil Engineering Unit Oakland
2000 Embarcadero, Suite 200
Oakland, CA 94606-5337

RE: **ND-058-00** Negative Determination, Coast Guard, Modification to Army Corps
Negative Determination (ND-27-00), Noyo Harbor Maintenance Dredging, Mendocino Co.


Dear Mr. Stalters:

On April 14, 2000, the Commission staff concurred with a negative determination submitted by the Army Corps of Engineers for the maintenance dredging of 38,000 cu. yds. of material from Noyo Harbor, with disposal at the historically used adjacent upland disposal site just north of the harbor. We determined the Corps' activity to be similar to activities for which consistency determinations had been prepared in the past (including Consistency and Negative Determinations CD-4-85, CD-13-88, ND-18-93, and ND-37-95).

The Coast Guard has submitted a request for a slight expansion of the Corps' project, consisting of the Corps removing an additional 100 cu. yds. from the Coast Guard's mooring area (i.e., at Station Noyo River), with disposal of the material at the same upland site.

Under the federal consistency regulations, a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." We agree with the Coast Guard that this project is similar to a number of Army Corps Consistency and Negative Determinations we have concurred with. We therefore **concur** with your negative determination made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,

(for) 

PETER M. DOUGLAS
Executive Director

cc: North Coast Area Office
California Department of Water Resources
Governors Washington D.C. Office

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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May 19, 2000

Malcolm McEwen
545 Main St., Ste. B-1
Morro Bay, CA 93442

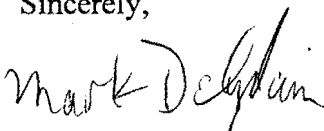
RE: **NE-059-00**, No-Effects Determination, Coastal San Luis Resource
Conservation District, in-stream habitat restoration, Chorro Creek, near Morro
Bay/Los Osos, San Luis Obispo Co.

Dear Mr. McEwen:

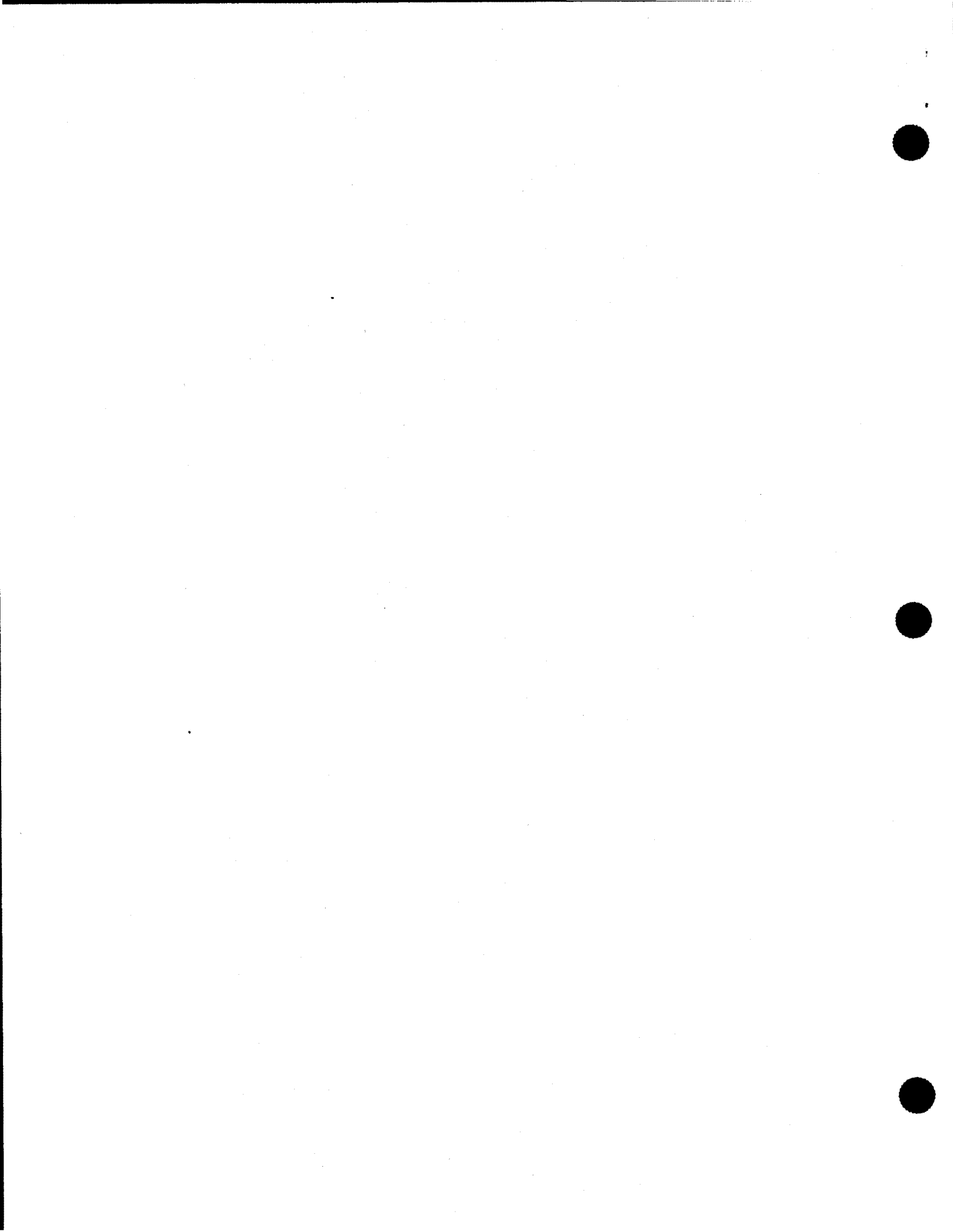
The Coastal Commission has received the above-referenced consistency submittal for in-stream habitat improvements in Chorro Creek that are similar to those for which we concurred with a "No Effects" determination last year (NE-061-99). We determined that last year's project would "restore the stream to its more natural conditions and ... improve ... visual quality." The current project would provide similar enhancement benefits and is being performed in consultation with the Dept. of Fish and Game and the National Marine Fisheries Service.

The Coastal Commission staff **agrees** that the project will not adversely affect coastal zone resources. We, therefore, **concur** with the conclusion that the proposed activity does not require a consistency certification pursuant to 15 C.F.R. Section 930.50. If you have any questions, please contact Mark Delaplaine of the Coastal Commission staff at (415) 904-5289.

Sincerely,


(for) PETER M. DOUGLAS
Executive Director

cc: Central Coast Area Office
Department of Water Resources
Governor's Washington D.C. Office
Tiffany Welch, Corps of Engineers



**SWEF - Navy Response
To CCC Objection**

MISC

8052286147 P. 02/07

W 13



**DEPARTMENT OF THE NAVY
PORT HUENEME DIVISION
NAVAL SURFACE WARFARE CENTER
4363 MISSILE WAY
PORT HUENEME, CALIFORNIA 93043-4307**

IN REPLY REFER TO:

23 May, 2000

RECORD PACKET COPY

RECEIVED

MAY 24 2000

CALIFORNIA
COASTAL COMMISSION

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

Re: CD-4-400 Navy's Consistency Determination for Establishment of Virtual Test Capability (VTC) at the Surface Warfare Engineering Facility (SWEF), Naval Construction Battalion Center (NCBC), Port Hueneme, Ventura County

Dear Mr. Douglas,

This is to inform you that Navy will proceed with its proposed action, the establishment of Virtual Test Capability (VTC) at the Surface Warfare Engineering Center (SWEF), Port Hueneme, CA. The Navy has concluded that the VTC is consistent, to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

In 1998, the Navy voluntarily entered into informal mediation with the California Coastal Commission (CCC) to resolve the disagreement on consistency issues related to the potential impact of SWEF radar operations on the resources of the coastal zone. As part of the informal mediation which was overseen by the National Oceanic and Atmospheric Administration's (NOAA's) Office of Coastal Resources Management (OCRM), a technical panel including four non-DoD members was selected and charged with providing the CCC and the Navy their independent and objective scientific evaluation on whether SWEF operations impact the resources of the coastal zone. The Navy worked with CCC and OCRM to select the panel members. The Navy agreed to the late addition of a fifth panel member as well as allowing a citizen observer to participate in the process, all as urged by the Commission.

The technical panel reviewed the SWEF RADHAZ surveys and other information on the SWEF operations. The panel indicated that the SWEF was generally being operated safely with no impacts to the coastal zone. The panelists verified that SWEF is operated in compliance with DoD Standards and that SWEF Radio Frequency (RF) emissions in the uncontrolled areas surrounding the facility are even within the more restrictive limits of the Federal Communications Commission (FCC) Guidelines.

The panel identified only two areas of concern. These areas were potential exposure of RF energy to personnel on tall ships and potential exposure to roosting birds at the SWEF. The Navy has incorporated enhancements to the SWEF operations to eliminate these potentialities. These enhancements were based on the recommendations of the panel. The Navy has agreed to

install video cameras to monitor for tall ships and roosting birds and has developed a tall ship exclusion zone to prevent the potential for exposure to ship personnel.

In recognition of a panel member's recommendation and to further the public understanding of the Navy's RF safety program, the Navy has designated a RF Safety Officer. In support of another recommendation, the Navy has committed to provide the CCC an annual report on SWEF RF emissions and operations. The Navy has also committed to informing the CCC and the public about changes to the DoD Standards that may effect SWEF operations.

Finally, in recognition of the technical panel's recommendation for a better radar survey (referred to as a public exposure assessment study), the Navy has committed to enhancements to the RADHAZ Surveys of SWEF. These improvements include at least doubling the number of test points in the uncontrolled areas, describing the test equipment and its sensitivity and accuracy, performing a worst case test scenario, and incorporating an executive summary to facilitate the public's understanding of the document. Furthermore, to improve information exchange and public relations, the Navy would identify a point of contact to answer any questions from the CCC or the public about the results.

The CCC staff recommendations of April 11, 2000 concludes that the Navy "had adequately responded to the panel members' recommendations and has included commitments that enable the Commission and its staff to agree that these radar modifications would not adversely affect coastal zone resources." The staff report also agrees that the Navy's consistency determination for the proposed Virtual Test Capability was "consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program."

The staff report then urged that the Navy consider doing a public exposure assessment study and also having a non-DoD member participate on the study and report-writing team. Commission staff explained at the April 11, 2000 meeting ("April meeting") that these were issues for the Navy to consider and were not necessary for the Commission to support the consistency determination.

Nevertheless, the Navy reconsidered its position on the public exposure assessment and announced at the April meeting that a comprehensive RF survey would be conducted. The survey would incorporate the process improvements to the RF studies described above. This study will establish an accurate baseline of current operations and provide CCC and the public with useful safety data. At the CCC's urging at the April meeting, the Navy also agreed to provide equipment operational logs with the annual reports on radar operations.

As stated by the Commissioners at the April meeting and again in the CCC's April 17, 2000 correspondence, the addition of a non-DoD member to the survey has become a condition precedent to the CCC's approval of the consistency determination. The Commissioners stated that this request went to the trustworthiness of the data in our study and the objectivity of the survey panel. This request was not tied to a specific enforceable policy of the CCMP. By letter dated April 13, 2000, the Navy stated its position that having a non-DoD person participate in the new RF survey is not required to achieve federal consistency under CZMA.

The issue of the participation of a non-DoD representative on a radar survey study voluntarily undertaken by the Navy is not an appropriate condition precedent to the CCC's approval of the consistency determination. This issue is not tied to an enforceable policy of the CCMP of which the Navy is aware nor did the CCC's April 17, 2000 disapproval letter identify how the proposed action would be "inconsistent with specific elements of the management program," as required under the CZMA regulations.

The Commission has failed to recognize the Navy's extensive efforts to achieve a successful conclusion to this issue. As indicated by Mr. Kaiser of OCRM and your staff at the April meeting, the Navy has been very cooperative over the last year and half and has repeatedly accommodated the requests of the CCC and the public. The Navy conducted extensive discussions with CCC and OCRM regarding the panel's recommendations and believed that all parties were satisfied that the proposed enhancements would support approval of the Navy's consistency determination. For a single reason unrelated to the effect of the SWEF operations upon the coastal resources, the Commission ignored the findings of the technical panel and the recommendations of Commission's staff and disagreed with the consistency determination.

The Navy has done everything necessary, and more, to address these consistency issues. The Navy has determined that the proposed action will be consistent to the maximum extent practicable with the enforceable policies of the CCMP as required by the CZMA.

Sincerely,



J. W. PHILLIPS

