

## CALIFORNIA COASTAL COMMISSION

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

## RECORD PACKET COPY



**DATE:** August 21, 2000

**TO:** COASTAL COMMISSIONERS  
AND INTERESTED PARTIES

**FROM:** MARK DELAPLAINE, FEDERAL CONSISTENCY SUPERVISOR

**RE:** NEGATIVE DETERMINATIONS ISSUED BY THE EXECUTIVE  
DIRECTOR [Note: Executive Director decision letters are attached]

# Th 9

|              |   |
|--------------|---|
| PROJECT #:   | ND-048-00   |
| APPLICANT:   | Marine Corps  |
| LOCATION:    | Del Mar Beach Recreation Area, Marine Corps Base, Camp Pendleton, San Diego Co. |
| PROJECT:     | Replace 43 rental trailers with 31 permanent duplex rentals                     |
| ACTION:      | Concur  |
| ACTION DATE: | 07/28/2000  |

|              |  |
|--------------|--|
| PROJECT #:   | ND-049-00                                |
| APPLICANT:   | Corps of Engineers                       |
| LOCATION:    | Port of Los Angeles                      |
| PROJECT:     | Pier 400 North Channel Deepening Project |
| ACTION:      | Concur                                   |
| ACTION DATE: | 08/01/2000                               |

|              |  |
|--------------|--|
| PROJECT #:   | ND-062-00                                  |
| APPLICANT:   | Army                                       |
| LOCATION:    | Moss Landing Harbor District, Monterey Co. |
| PROJECT:     | Practice Landing Army Vessels              |
| ACTION:      | Concur                                     |
| ACTION DATE: | 07/27/2000                                 |

|              |  |
|--------------|--|
| PROJECT #:   | NE-071-00  |
| APPLICANT:   | Oregon State University                              |
| LOCATION:    | Cape Saint George, near Crescent City, Del Norte Co. |
| PROJECT:     | Placement of two antennas                            |
| ACTION:      | No effect  |
| ACTION DATE: | 08/08/2000   |

|              |   |
|--------------|---|
| PROJECT #:   | ND-077-00   |
| APPLICANT:   | Navy  |
| LOCATION:    | Space and Naval Warfare Systems Center, Point Loma, San Diego |
| PROJECT:     | Construction of Supplemental Weather Spherical Radome         |
| ACTION:      | Concur  |
| ACTION DATE: | 07/28/2000  |

|              |  |
|--------------|--|
| PROJECT #:   | ND-080-00                                    |
| APPLICANT:   | Navy   |
| LOCATION:    | Naval Weapons Station Seal Beach, Orange Co. |
| PROJECT:     | Construction of a Fire Station               |
| ACTION:      | Concur                                       |
| ACTION DATE: | 07/27/2000                                   |

|              |  |
|--------------|--|
| PROJECT #:   | NE-081-00  |
| APPLICANT:   | Caltrans   |
| LOCATION:    | I-5 from Mexican Border to Orange County Border, San Diego Co. |
| PROJECT:     | Replacement of Overhead Signs                                  |
| ACTION:      | No effect  |
| ACTION DATE: | 07/27/2000   |

|              |  |
|--------------|--|
| PROJECT #:   | NE-083-00  |
| APPLICANT:   | Scripps Institution of Oceanography  |
| LOCATION:    | Offshore of Pillar Point, San Mateo Co.  |
| PROJECT:     | Modify previously reviewed ATOC project to allow cable to remain to consider its use for passive acoustic uses |
| ACTION:      | No effect  |
| ACTION DATE: | 07/28/2000   |

|              |   |
|--------------|---|
| PROJECT #:   | NE-086-00   |
| APPLICANT:   | UCSB  |
| LOCATION:    | UCSB and Santa Barbara Airport, City and Co. of Santa Barbara |
| PROJECT:     | Sewer line replacement  |
| ACTION:      | No effect   |
| ACTION DATE: | 08/16/2000  |

|              |  |
|--------------|--|
| PROJECT #:   | NE-088-00  |
| APPLICANT:   | Caltrans   |
| LOCATION:    | Camino del Mar Bridge over San Dieguito River, City of<br>Del Mar, San Diego Co. |
| PROJECT:     | Bridge Barrier and Walkway Replacement   |
| ACTION:      | No effect  |
| ACTION DATE: | 08/10/2000   |



## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
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July 28, 2000

T.P. Lhuillier  
U.S. Marine Corps  
Environmental Security  
Box 555010  
Camp Pendleton, CA 92055-5010

Attn: Patricia Martinez

RE: **ND-048-00**, Negative Determination for the replacement of 43 rental trailers with 31 permanent duplex rentals, Del Mar Beach Recreation Area, Marine Corps Base, Camp Pendleton.

Dear Mr. Lhuillier:

The Coastal Commission staff has received and reviewed the above-referenced negative determination. The proposed project includes the replacement of 43 rental trailers with 31 permanent duplex rentals on beach adjacent to the Del Mar Boat Basin, Marine Corps Base, Camp Pendleton. The Marine Corps proposes to replace the trailers because they do not meet seismic or wind standards and will construct the new duplexes in the same area as the existing trailers.

The Commission staff believes that proposed duplexes will not significantly affect coastal resources. The proposed trailers are located on federal land and are not within the coastal zone as defined by federal law.<sup>1</sup> In order to trigger the requirement for a consistency determination, the project would have to affect land or water uses or natural resources of the coastal zone.<sup>2</sup> In this case, the project does not affect any uses or resources of the coastal zone. The Marine Corps excludes the public from the beach where the proposed development will be located. Therefore, the project will not affect existing public access to the shoreline or public recreational use of the coast. The project will not directly or indirectly affect marine resources. The project is located adjacent to the Del Mar Boat Basin. However, the duplexes will be behind an existing Quay wall and will not result in new impacts to the shoreline. In addition, because the development is isolated from the marine environment on the east and by a wide beach on the west (probably created by the jetty protecting Oceanside Harbor and the Del Mar Boat Basin), it is unlikely that the new structures will require additional shoreline protection. The Marine Corps will protect water quality resources through the development of a storm water pollution prevention plan, which the Marine Corps will submit to the Commission staff for its review. The proposed project site is an already developed area that does not

<sup>1</sup> 16 USC § 1453(1).

<sup>2</sup> 16 USC § 1456(C)(1)

July 28, 2000

ND-048-99

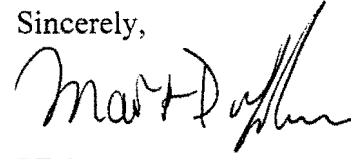
Page 2

support any sensitive resources, including endangered or threatened species. Finally, the project site is already developed with recreational facilities for military personnel. Therefore, the proposed development is consistent with existing use of the site and will not alter its visual characteristics.

In conclusion, the Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We, therefore, concur with the negative determination made pursuant to 15 C.F.R. Section 930.35(d). If you have any questions, please contact James R. Raives of the Coastal Commission staff at (415) 904-5292.

Sincerely,

(for)



PETER M. DOUGLAS  
Executive Director

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

PMD/JRR

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
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July 27, 2000

David Feil  
U.S. Army, 481st Transportation Company  
1480 Railroad Avenue, Bldg 597 Mare Island  
Vallejo, CA 94592

RE: **ND-062-00**, Negative Determination for an Army operation on the beach adjacent to the Moss Landing Harbor District.

Dear Mr. Feil:

The Coastal Commission staff has received and reviewed the above-referenced negative determination, which provides for a one-day Army practice landing operation on the beach adjacent to Moss Landing Harbor District. The Army proposes to sail up to four vessels, permitting only two at a time to land on this beach, which is immediately south of the south jetty. The operation includes the use of up to ten 2-½ ton trucks, ten HMMWV (High Mobility Multipurpose Wheeled Vehicles), and three bulldozers. The Army will conduct the operation on August 5 and it will last from 6:00 a.m. to 6:00 p.m. The Commission staff believes that the proposed activity will not significantly affect coastal resources. Although the activity is occurring on a public beach on a Saturday, the access impacts will not be significant for the following reasons: (1) the public beach is currently used to dispose of sand from dredging activities within Moss Landing Harbor; (2) parking limitations make it difficult for people to use this beach; and (3) the operation will only last one day. The proposed operation will be located near an area that supports coastal dune habitat. The Army has agreed to stay out of the habitat area and to rope off the dunes so that the Army personnel know to avoid this area. Therefore, the project will not significantly affect this sensitive resource.

In conclusion, the Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We, therefore, concur with the negative determination made pursuant to 15 C.F.R. Section 930.35(d). If you have any questions, please contact James R. Raives of the Coastal Commission staff at (415) 904-5292.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Douglas".  
PETER M. DOUGLAS  
Executive Director

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

PMD/JRR





**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



August 1, 2000

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

Subject: Negative Determination ND-49-00 (Pier 400 North Channel Deepening and Disposal Project, Port of Los Angeles, Los Angeles County).

Dear Mr. Koplin:

The Coastal Commission staff has received and reviewed the above-referenced negative determination for modifications to Stage 2 of the Pier 400 Deep Draft Navigation Improvement (DDNI) Project in the Port of Los Angeles. The proposed modifications include: (1) dredging to remove 325,000 cu.yds. of previously-dredged material placed on the Pier 400 Stage 2 landfill but which migrated into the North Channel prior to completion of the Pier 400 landfill containment dikes; (2) dredging 520,000 cu.yds. of sediment to deepen the Pier 400 from its authorized depth of -50 to -53 feet MLLW in order to accommodate larger container vessels; and (3) disposal of the 845,000 cu.yds. of dredged material at the Cabrillo Shallow Water Habitat Extension Area (260,000 cu.yds.), the North Turning Basin Borrow Pit (351,000 cu.yds.), and the LA-2 ocean disposal site (234,000 cu.yds.).

Since 1993 the Commission has concurred with numerous consistency determinations (CD-57-92, CD-2-97, and CD-50-00), negative determinations (ND-103-97 and ND-25-99), and port master plan amendments (POLA PMPA Nos. 12, 13, 15, 17, and 19) for construction of the Port of Los Angeles DDNI project, which included channel deepening, landfill and terminal construction, and mitigation measures for impacts to marine habitat. The subject negative determination is a further refinement of the original DDNI project.

The Corps of Engineers states in the Draft Supplemental Environmental Assessment (SEA) for the proposed project that:

*Additional sediments are needed to meet previous environmental commitments to cap the Cabrillo Shallow Water Habitat Extension (CSWHE) with clean sand and to fill the north turning basin borrow pit, returning the turning basin to its authorized navigation channel depth of -81 feet MLLW. The proposed modification will provide sufficient sediments to meet both commitments. Excess material will be disposed of at the LA-2 Ocean Disposal Site.*

...

*At the same time, dredged sediments, which have redeposited in the north channel (which have reduced depths to less than the design depth of -50 feet MLLW) have to be removed to restore the channel to design depths. These deposits resulted from construction of the Pier 400 Stage II area. These materials (approximately 250,000 cubic meters) [325,000 cu.yds.] would have to be redredged as part of the DDNI project even if no further deepening of the North Channel was proposed. The volume of the infill material is insufficient to completely meet the volume needed to completely fulfill the environmental commitments discussed above. Deepening the channel was then considered to provide the desired volume of dredged materials.*

The above-referenced "environmental commitments" were included in Commission actions on the DDNI project. The 86-acre extension of the Cabrillo Shallow Water Habitat was approved by the Commission in its concurrence with CD-2-97 and certification of PMPA 17 in 1997. This extension area must be capped with a layer of sand to optimize its use as foraging habitat by the California least tern, and the current proposal to complete this capping with 260,000 cu.yds. of clean material is consistent with past Commission actions. The dredging of the North Turning Basin borrow pit (and its subsequent backfilling) was approved by the Commission in ND-25-99 in order to provide structurally suitable fill material for the Stage 2 Pier 400 landfill. Backfilling the borrow pit to its original depth using 351,000 cubic yards of dredged material is required under ND-25-99 and eliminates a less than productive marine habitat in the existing borrow pit.

During construction of the DDNI project (which has involved the dredging of over 50 million cu.yds. of sediments since the mid-1990s) unexpected shortfalls and excesses of particular types of sediments have occasionally forced the Corps and the Port to modify dredging plans in order to obtain the necessary type and quantity of sediments to construct particular project components. The proposed project is necessary because of another unexpected shortfall in suitable dredged materials needed to meet DDNI project specifications for the aforementioned capping and backfilling elements. In addition, the proposed deepening of the North Channel from -50 to -53 feet MLLW is consistent with the recent Commission concurrence with CD-50-00, which included deepening the main and inner harbor channels to -53 feet MLLW to accommodate the next generation of deep-draft container vessels. A total of 611,000 cu.yds. of material is necessary to complete the Cabrillo extension and backfill the North Turning Basin borrow pit. As the required removal of the North Channel infill sediments would only yield

325,000 cu.yds. of material, deepening this channel to -53 feet MLLW would provide the additional materials needed to meet the aforementioned project environmental commitments, would allow new-generation container ships to enter the North Channel, but also would require disposing 234,000 cu.yds. of excess material at the LA-2 ocean disposal site, as there are no alternative upland disposal sites currently available in the port.

All sediments to be dredged are suitable for unconfined ocean disposal. The sediments placed at Pier 400 and which migrated into the North Channel were tested as a part of the DDNI project and found to be clean sand. The materials to be dredged to deepen the North Channel underlay sediments which were previously tested as a part of the DDNI project and found suitable for ocean disposal; further testing of these sediments is therefore not required to determine their suitability for ocean disposal. The sediments proposed for the Cabrillo extension site will be placed using a floating spillbarge with a downspout to accurately construct an even sand cap. Turbidity impacts generated by disposal of clean, coarse-grained materials at the borrow pit and Cabrillo extension sites will be localized and short-lived. Disposal of clean sediments at LA-2 will likewise not generate adverse impacts on marine resources.

The Corps states that all water quality commitments and mitigation measures associated with ongoing DDNI project dredging and disposal activities would be maintained with the proposed project modifications. Regarding potential project impacts on the endangered California least tern, the Draft SEA states that:

*To minimize potential impacts on the Federally-listed California least tern and permit construction to occur year-round, Resource Agencies, including the USFWS, the NMFS, the EPA and the California Department of Fish and Game (CDFG), developed a strategy, which is included in the EIS/EIR (USACE and POLA, 1992), that permitted disposal activities at Pier 400 landfill and Main Channel borrow pit year-round.*

The U.S. Fish and Wildlife Service stated in its May 15, 2000, comment letter on the Draft SEA that:

*... the proposed refinements do not make any material change to the project description in a manner not considered in the BO. Therefore, we believe that the proposed project refinements do not warrant reinitiation of the 1992 Biological Opinion which remains in effect.*

In conclusion, the proposed activities are similar to previous DDNI construction elements and subsequent modifications previously concurred with by the Commission (CD-2-97 and CD-50-00) and the Executive Director (ND-103-97 and ND-25-99) and found to be consistent with the California Coastal Management Program. The proposed dredging and disposal will occur in existing navigation channels and authorized disposal sites, and the subject dredged sediments are clean and suitable for unconfined aquatic disposal. Potential impacts to marine resources from the proposed project will not be significant and appropriate mitigation measures are incorporated into the project. 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,

*Elizabeth A. FUCHS / (for)*

PETER M. DOUGLAS  
Executive Director

cc: South Coast District Office  
Port of Los Angeles  
California Department of Water Resources  
Governor's Washington, D.C., Office

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
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August 8, 2000

B. Walton Waldorf  
Oregon State University  
College of Oceanic & Atmospheric Sciences  
Oceanography Adm. Bldg. 104  
Corvallis, OR 97331-5503

RE: **NE-071-00**, No-Effects Determination for the installation of two antennas,  
Cape St. George, near Crescent City, Del Norte Co.

Dear Mr. Waldorf:

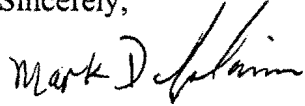
The Coastal Commission has reviewed the above-referenced consistency submittal for the installation and maintenance of two antennas on federal (Coast Guard) land, 200 meters north of an existing Coast Guard antenna, at Cape St. George, north of Crescent City. The purpose of the antennas is to conduct scientific studies using remote sensing to measure surface currents on ocean waters. One antenna (the transmit antenna) will be 45 ft. tall, and the second (the receiver antenna) will be 12 feet tall. Each antenna will be a whip antenna supported with guide wires.

The proposed antennas are called Coastal Ocean Dynamics Applications Radar (CODAR) and measure electromagnetic energy reflected by surface waves in the ocean to determine the surface speed of the water beneath the surface of the ocean. The Commission staff concurred with a No Effects Determination for a similar antenna project in the Pt. Sur area last year (NE-99-99).

The visual impact from the antennas will not be significant because of the small size and unobtrusive nature of the whip antennas, the existing large Coast Guard antenna nearby, and surrounding structures and uses (including an air field). Although the area is publicly accessible, the project's impacts on public access and recreation will be minimal given the small sites of the antennas; thus the effective areas open to access, and recreational quality in the area, will not be adversely affected. These radar antennas are a not risk to human health, because they only emit a mild electromagnetic energy wave (75 watts at 4.6-4.8 MHz frequency) that is significantly lower than most military radar facilities and comparable to the power emitted by Ham or CB radios. Finally, the project will not affect environmentally sensitive habitat, and vegetation disturbance will be minimal.

In conclusion, the Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We, therefore, concur with the no-effects determination made 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: North Coast Area Office  
Department of Water Resources  
Governor's Washington D.C. Office

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
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July 28, 2000

Gary E. Curtis, Head  
Facilities Management and Operations Office  
Space and Naval Warfare Systems Center  
53560 Hull St.  
San Diego, CA 92152-500180

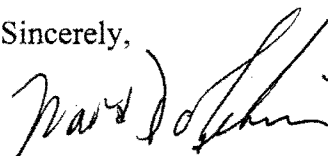
RE: **ND-077-00**, Negative Determination, Navy, Weather radome, Point Loma, San Diego

Dear Mr. Curtis:

The Coastal Commission staff has received the above-referenced negative determination for the construction of an 18 ft. diameter supplemental weather spherical radome to provide all-weather protection to an existing radar antenna at the Space and Naval Warfare Systems Command, on the west side of the Point Loma peninsula in San Diego. As the project site is already developed, the visual impacts on public views would be minimal. Other coastal resources (e.g., water quality, environmentally sensitive habitat) would not be affected.

The Coastal Commission staff agrees with your determination that the proposed project will not adversely affect coastal zone resources. We therefore concur with the negative determination made pursuant to 15 C.F.R. Section 930.35(d). 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: San Diego Coast Area Office  
Department of Water Resources  
Governor's Washington D.C. Office

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
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July 28, 2000

G.T. Hemstock  
Department of the Navy, Southwest Division  
Naval Facilities Engineering Command  
Planning and Real Estate Department  
1220 Pacific Highway  
San Diego, CA 92132-5190

RE: **ND-080-00** Negative Determination, Navy Fire Station Replacement, Naval Weapons Station, Seal Beach, Orange Co.

Dear G.T. Hemstock:

The Coastal Commission staff has received the above-referenced negative determination for the demolition of an existing and construction of a new, 7,400 sq. ft., fire station at the Naval Weapons Station in Seal Beach. The project would be located on federal land and within an existing developed portion of the Naval Weapons Station, and the Navy has incorporated revegetation and landscaping features, measures to reduce erosion and runoff into the nearby Seal Beach National Wildlife Refuge, and archaeological protection measures. The project is compatible in scale with surrounding development. Existing land use at the site will not change, and the activity will not alter or affect any scenic coastal public views, environmentally sensitive habitat or marine resources, public access and recreation, or any other coastal resources.

Therefore, we **agree** with your conclusion that the activity would not adversely affect any coastal resources, and we hereby **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,

A handwritten signature in black ink, appearing to read "Mark Douglas".

(for) PETER M. DOUGLAS  
Executive Director

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



## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
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July 27, 2000

Bruce L. April  
Department of Transportation  
District 11  
P.O. Box 85406  
San Diego, CA 92186-5406

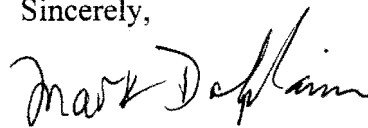
Re: **NE-81-00** No Effects Determination, Caltrans, Sign Replacement, I-5, City and County of San Diego

Dear Mr. Hull:

The Coastal Commission has received your "No Effects" Determination for the replacement of 600 existing signs on the shoulder or median of Interstate 5 (I-5) in various locations throughout the City and County of San Diego. Caltrans believes these replacements to be exempt from the need for coastal development permits, based on the Commission's regulations that implement Coastal Act Section 30610, which incorporate guidelines for public utility repair and maintenance activities.

We **agree** with your "No Effects" letter, your statement that the sign replacements would not adversely affect any environmentally sensitive habitat, recreational traffic, cultural resources, or any other coastal zone resources, and your conclusion that no consistency certification needs to be submitted for this project. This agreement does not affect any jurisdiction our San Diego Area Office may have; for a determination of the applicability of the above-referenced permit exemptions, please contact our San Diego office at (619) 767-2370 (contact: Lee McEachern). If you have questions about this letter, please contact Mark Delaplaine, federal consistency supervisor, at (415) 904-5289.

Sincerely,

  
(for) PETER DOUGLAS  
Executive Director

cc: San Diego Area Office



## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
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July 28, 2000

Peter Worcester  
Scripps Institution of Oceanography  
University of California, San Diego  
9500 Gilman Drive  
La Jolla, CA 92093

Re: **NE-083-00** - No Effects Determination for a 45-Day Extension for Cable Removal - Modification to NE-111-99, NE-103-99, CC-110-94 & CDP 3-95-40, Scripps Institution of Oceanography (Scripps) California Acoustic Thermometry of Ocean Climate/Marine Mammal Research Program (ATOC/MMRP)

Dear Mr. Worcester:

On November 19, 1999, the Coastal Commission staff concurred with a "No Effects" determination (NE-111-99) for a nine-month extension of Scripps' plans to remove the ATOC/MMRP cable and sound source. As we noted in our concurrence, the cable and sound source removal was among the conditions of approval by the Commission and by NOAA's National Marine Sanctuary Program. In its extension request, Scripps agreed to take all efforts necessary to complete the removal operations by August 31, 2000; Scripps has honored this commitment through its implementation of a scheduled plan to cut the cable next week at Pillar Point, and remove the cable and the sound source at Pioneer Seamount by mid August, 2000.

We recently received communications from San Francisco State University (SFSU), which requests retention of the cable (not the active sound source), to be converted for passive oceanographic acoustic monitoring purposes. This use has been supported by the National Oceanic and Atmospheric Administration's (NOAA's) Office of Oceanic and Atmospheric Research, which has urged that the Commission grant a further year's extension to enable this use to be considered. NOAA and SFSU have requested Scripps to seek additional extensions from the Commission and the Sanctuary Program for retaining the cable (while still removing the active acoustic source, the power source at Pioneer Seamount), pending further discussions with interested agencies and environmental groups about whether to retain the cable, and, if so, how it would most appropriately be used for scientific purposes and to the benefit of the marine environment.

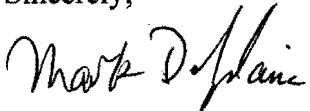
The major issue raised by this proposal is the concern that if Scripps does not remove the cable as currently scheduled for mid-August of this year, it may be left in place due to lack of funding. This concern has been addressed by NOAA's commitment to arrange for the transfer of the cable to NOAA, and to provide the necessary funding to enable Scripps to remove the cable in the

event the affected regulatory agencies determine that it should be removed. In addition, Scripps has also committed that it will use any funds it saves by not having to remove the cable for further ATOC/MMRP-related marine mammal research.

Based on these commitments, we concur with Scripps' "No Effects" determination for an extension to run at least through the date of the September 2000 Commission meeting, at which time if the Commission so desires it can hold a public hearing on an additional extension to cover the remaining period necessary to consider this plan (i.e., through at least August 2001). We understand that, for all practical purposes, the effect of segmenting our review to this one and a half month extension authorization, with a subsequent extension request possibly to be scheduled for a Commission hearing, means that Scripps will not be removing the cable this year. However, if such removal is directed, NOAA will be responsible for funding its removal.

Please contact Mark Delaplaine at (415) 904-5289 if you have any questions.

Sincerely,

  
(for) PETER M. DOUGLAS  
Executive Director

cc: Santa Cruz Area Office  
NMFS (Office of Protected Resources)  
NOAA (Office of Oceanic and Atmospheric Research - David Evans)  
NOAA (National Marine Sanctuary Program - Helen Golde)  
OCRM (David Kaiser)  
California Department of Water Resources  
Governor's Washington D.C. Office  
MBNMS (Bill Douros)

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
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VOICE AND TDD (415) 904-5200



August 16, 2000

Pat Yochum  
Penfield & Smith  
101 E. Victoria St.  
P.O. Box 98  
Santa Barbara, CA 93102

RE: **NE-86-00**, No-Effects Determination, University of California, Santa Barbara, Sewer pipe replacement, City and County of Santa Barbara

Dear Ms. Lund:

The Coastal Commission has reviewed the above-referenced consistency submittal for the replacement of an existing sewer line across and under the Goleta Slough. The project spans several jurisdictions, and is partly located within the coastal development permit of the Coastal Commission, the City of Santa Barbara (Airport segment) and Santa Barbara County. The City and County coastal development permits are appealable to the Coastal Commission; therefore, the project is entirely within either the Commission's original or appeals jurisdiction. In these types of cases, the Commission staff typically waives any applicable federal consistency jurisdiction, as the Commission retains sufficient authority to address any coastal issues raised through the permit and appeals process.

We, therefore, **concur** with your "no effects" determination and your 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,

A handwritten signature in dark ink, appearing to read "Mark Delaplaine".

(ftr) PETER M. DOUGLAS  
Executive Director

cc: Ventura Area Office  
Department of Water Resources  
Governor's Washington D.C. Office  
Army Corps, Ventura Field Office

## CALIFORNIA COASTAL COMMISSION

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



August 10, 2000

Bruce L. April  
Department of Transportation  
District 11  
P.O. Box 85406  
San Diego, CA 92186-5406

Re: **NE-88-00** No Effects Determination, Caltrans/City of Del Mar, Camino del Mar Bridge,  
Del Mar, San Diego Co.

Dear Mr. April:

The Coastal Commission has received your "No Effects" Determination for the City of Del Mar's repair and maintenance of the Camino del Mar Bridge over the San Dieguito River. Caltrans' letter to us appears to confuse permit exclusions (pursuant to the Commission's regulations that implement Section 30610 of the Coastal Act) with federal consistency requirements. Permit exclusions apply to whether or not the project needs to receive a coastal development permit. Nevertheless, because the Commission is reviewing the matter as a coastal development permit (#6-00-48), no further federal consistency review is needed. This is because any project that receives a Commission-issued coastal development permit automatically satisfies any applicable federal consistency requirements.

If you have questions about this letter, please contact Mark Delaplaine, federal consistency supervisor, at (415) 904-5289.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Delaplaine".

(for) PETER DOUGLAS  
Executive Director

cc: San Diego Area Office

## CALIFORNIA COASTAL COMMISSION

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



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# Th 9 /Misc.

## STATUS MEMO

DATE: August 22, 2000

TO: Coastal Commissioners and Interested Parties

FROM: Mark Delaplaine, Federal Consistency Supervisor

RE: **CD-52-00**, EPA, Palos Verdes Shelf Pilot capping study

On June 16, 2000, the Commission concurred with a consistency determination submitted by Environmental Protection Agency for a pilot study of in-situ capping using up to 500,000 cu. meters of sand for demonstration capping project (part of EPA's ongoing Superfund<sup>1</sup> investigation of the large area of DDT- and PCB-contaminated sediments on the Palos Verdes (PV) Shelf), offshore of San Pedro, City and County of Los Angeles (CD-52-00). At the subsequent Commission meeting (July 13, 2000) during its deliberation on proposed findings for the action, project opponents (Montrose Chemical Corp.) raised issues with respect to a court order issued between the time of the Commission's concurrence and the hearing on findings. Because this matter was not relevant to the adoption of findings, the staff agreed to look into the allegations raised and report back to the Commission at a subsequent meeting.

Attached are letters from the law firm representing Montrose Chemical Corp. (Latham & Watkins), dated July 12, 2000, and from EPA, dated July 12, 2000. Montrose alleged: (1) that the U.S. Federal District Court<sup>2</sup> "...found EPA's assessments of capping, ecological risk, and human health risk to be tainted by misconduct, and has sanctioned EPA accordingly..."; and (2) "... these tainted assessments constitute the principal basis for both EPA's 'pilot' project and its consistency determination..."; and (3) "EPA cannot proceed at this time with its 'pilot' project

<sup>1</sup> the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

<sup>2</sup> Judge Real's June 26, 2000 Minute Order

and must withdraw its consistency determination from the ... Coastal Commission, as it has not provided the competent supporting data and information required by law." Montrose's letter contains the court order it refers to.

EPA's response stated its disagreement with Montrose's interpretation of the court order and stated EPA's belief that "...the impact of the Court's Order is limited to the litigation before the Court..." and that the Court's Order was not "...intended to invade, control or otherwise limit administrative processes - either that of the Coastal Commission or of EPA."

In addition, on August 2000, EPA commenced implementation of the pilot capping project, and, at the time of this writing, has placed nine bargeloads (approximately 9,000 cu. meters) of cap material at the site.

The Commission staff has invited Montrose Corp. to submit any arguments it chooses to support a position that the consistency determination should be "reopened" based on the applicable provisions of the federal consistency regulations concerning "changed circumstances" (i.e., 15 CFR Section 930.44). As of the date of this writing, no such submittal has been received.

Attachments



## LATHAM &amp; WATKINS

ATTORNEYS AT LAW

505 MONTGOMERY STREET, SUITE 1900  
 SAN FRANCISCO, CALIFORNIA 94111-2562  
 TELEPHONE (415) 391-0600  
 FAX (415) 395-8095

PAUL R. WATKINS (1800-1073)  
 DANA LATHAM (1898-1074)

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## MOSCOW OFFICE

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 PHONE + 7-095 785-1234, FAX 785-1235

## NEW JERSEY OFFICE

ONE NEWARK CENTER, 18TH FLOOR  
 NEWARK, NEW JERSEY 07101-3174  
 PHONE (973) 638-1234, FAX 638-7288

## VIA FACSIMILE

John Lyons, Esq.  
 Attorney Advisor  
 Office of Regional Counsel  
 U.S. Environmental Protection Agency, Region IX  
 75 Hawthorne Street  
 San Francisco, CA 94105

Rc: *Consistency Determination for U.S. EPA's Plan to Cap a Portion of the  
 Palos Verdes Shelf*

Dear Mr. Lyons:

On or about May 15, 2000, Region IX of the U.S. Environmental Protection Agency ("EPA") submitted to the California Coastal Commission (the "Commission") an Environmental Information Document regarding its so-called "pilot" capping project, indicating that EPA believed its "pilot" cap was consistent with the California Coastal Management Program ("CCMP"). Since May, there have been important developments that have undermined fatally any basis upon which EPA might proceed at this time with its "pilot" project or continue to assert that the project is consistent with the CCMP.<sup>1</sup> The crux of these developments is that, as you know, the U.S. federal district court with jurisdiction over EPA's activities at the Palos Verdes Shelf ("PVS") has found EPA's assessments of capping, ecological risk, and human health risk to be tainted by misconduct, and has sanctioned EPA accordingly. These tainted assessments constitute the principal basis for both EPA's "pilot" project and its consistency determination. Continued reliance upon them would be arbitrary, capricious, and an abuse of

<sup>1</sup> This letter is submitted on behalf of Montrose Chemical Corporation of California, Aventis Cropscience USA Inc., Atkemix Thirty-Seven, Inc., and Chris-Craft Industries, Inc.

## NEW YORK OFFICE

885 THIRD AVENUE, SUITE 1000  
 NEW YORK, NEW YORK 10022-6002  
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## SAN FRANCISCO OFFICE

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135 COMMONWEALTH DRIVE  
 MENLO PARK, CALIFORNIA 94025  
 PHONE (650) 320-4800, FAX 482-7500

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80 RAFFLES PLACE, #14-20  
 UDD PLAZA 2, SINGAPORE 048674  
 PHONE + 65-538-1101, FAX 538-1171

## TOKYO OFFICE

INFINI AKASAKA, 8-7-19, AKASAKA, MINATO-KU  
 TOKYO 107-0052, JAPAN  
 PHONE + 81-3-3423-3970, FAX 3423-3971

## WASHINGTON, D.C. OFFICE

1001 PENNSYLVANIA AVE., N.W., SUITE 1300  
 WASHINGTON, D.C. 20004-2505  
 PHONE (202) 637-2200, FAX 637-2201

RECEIVED  
 JUL 12 2000  
 FILE NO. 011427-0030

CALIFORNIA  
 COASTAL COMMISSION

Attachment 1

LATHAM &amp; WATKINS

John Lyons, Esq.  
July 12, 2000  
Page 2

discretion. EPA cannot proceed at this time with its "pilot" project and must withdraw its consistency determination from the California Coastal Commission, as it has not provided the competent supporting data and information required by law.

## I. BACKGROUND.

The "pilot" capping project is part of EPA's ongoing Engineering Evaluation/Cost Analysis ("EE/CA") of the PVS - the Superfund investigation EPA initiated in July 1996. The three primary components of the EE/CA have been an evaluation by the United States Army Corps of Engineers ("Army Corps") of the feasibility of capping, and separate risk assessments for the ecosystem and human health by EPA's contractor SAIC. EPA also has relied upon the results of the trustees' Natural Resources Damages Assessment ("NRDA") for the PVS, completed in large part by October 1994.

During discovery in the *U.S. v. Montrose* case, it was demonstrated that the United States has engaged in a pattern of serious misconduct in the preparation and presentation of scientific and technical information regarding the PVS, infecting both the EE/CA and the NRDA. The government repeatedly misrepresented and sought to conceal key scientific data and research findings, undermining its allegations of harm to human health and the environment from the presence of DDT at the PVS. Through a motion for sanctions filed in April 1999, defendants brought this misconduct to the attention of the Court, which recently granted the motion "on the basis of the papers that were presented" by the defendants.<sup>2</sup> The motion was predicated on a host of incidents where the government manipulated evidence, concealed data, and disregarded its own procedures, in connection with both the EE/CA and the NRDA.

## II. THE SANCTIONS MOTION.

On July 5, 2000, the Court in the *U.S. v. Montrose* case entered an order granting defendants' motion for sanctions. See Attachment A. Pursuant to the order, the Court struck twelve of the government's expert witnesses, including three key experts working on the EE/CA. The stricken EE/CA experts include Michael Palermo, the author and lead investigator of the Army Corps' capping feasibility study upon which EPA has relied, K. John Scott, the author and lead investigator of EPA's draft ecological risk assessment, and Iris Winstanley, the author and lead investigator of EPA's human health risk assessment. The order precludes the federal government from replacing the stricken experts and recovering costs incurred in connection with their work. It also precludes the government from recovering any costs related to the Technical Advisory Committee ("TAC") set up in conjunction with the EE/CA, as EPA's setting up of the TAC was an attempt to make a pre-ordained capping decision appear legitimate. In addition, the defendants may recover the costs and attorney fees incurred in connection with the government's misconduct.

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<sup>2</sup> Transcript of June 26 hearing, page 10.

LATHAM &amp; WATKINS

John Lyons, Esq.

July 12, 2000

Page 3

The sanctions against EPA were granted because EPA repeatedly ignored evidence that capping the PVS is unsafe and unnecessary. EPA refused to consider flaws in the proposed capping plan in order to make capping appear safe and effective, when in truth it is neither. This misconduct was far reaching, affecting the seismic analysis for the cap, and the ecological and human health risk assessments.

A. Seismic Risk.

EPA relied upon the Army Corps' Dr. Palermo to investigate the feasibility of capping. He in turn deferred to Dr. Mary Ellen Hynes, also of the Army Corps, on issues related to seismic risk. However, she conducted only a 10-day "preliminary feasibility study" of seismic stability issues on a shoestring budget,<sup>3</sup> and testified that her "study" was anything but final. Rather, it was less than 1% of the work required to analyze these issues.<sup>4</sup> She admitted that her conclusions were extremely uncertain and could not be relied upon without performing significant additional work at a cost of tens of millions of dollars.<sup>5</sup> Accordingly, Dr. Hynes agreed that "additional studies would have to be done before a decision to actually proceed with a cap could be made."<sup>6</sup>

Even though EPA became aware of these seismic issues in September 1999 at the latest, EPA states that "[a]nalyzes of seismically induced shear stresses that may occur in a cap and effluent affected sediments were performed," and that EPA will rely on the "[r]esults from this evaluation" in determining where to place the cap.<sup>7</sup>

B. Ecological Risk.

Dr. John Scott testified that he does not consider himself an expert on the ecological risks at the PVS, and is "not very familiar with the ecology" there.<sup>8</sup> He further

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<sup>3</sup> Deposition of Mary E. Hynes, September 1-3, 1999 ("Hynes Depo."), pp. 24-27 (assignment was to "conduct a very, very rapid feasibility study concerning capping of these offshore materials within a very, very limited time frame based on limited information that was available at the time"), 69.

<sup>4</sup> Hynes Depo., pp. 268-29.

<sup>5</sup> Hynes Depo., pp. 27-28, 91-93, 314-15.

<sup>6</sup> Hynes Depo., pp. 27-28.

<sup>7</sup> Engineering Evaluation/Cost Analysis Report for the Palos Verdes Shelf, dated March 2000, p. 56.

<sup>8</sup> Deposition of Kenneth Scott, June 1-4, 1999 ("Scott Depo."), pp. 85, 149 ("Q: Sir, do you consider yourself an expert on the ecological risks at the Palos Verdes Shelf as of today? A: I do not."); *id.* at 214 ("Q: You're not really familiar with the ecology out at the Palos Verdes Shelf, are you, sir, or the Channel Islands? . . . A: I am not very familiar with the ecology.").

LATHAM &amp; WATKINS

John Lyons, Esq.  
July 12, 2000  
Page 4

testified that he had no basis on which to make certain statements in his report; indeed, he had not even tried to find out whether any evidence supported his contentions.<sup>9</sup>

### C. Human Health Risk.

In calculating the alleged human health risk of DDT on the PVS, the government's experts assumed, without any basis, the existence of a large population of anglers who fish for white croaker in the deep waters of the PVS.<sup>10</sup> In fact, Iris Winstanley testified that she did not know whether any anglers fished for white croaker on the PVS.<sup>11</sup> All of the available evidence indicates that very few anglers fish for white croaker anywhere on the PVS, and virtually none actually eat the croaker that they might catch.<sup>12</sup> In order to fabricate a sufficiently impressive risk level, the government was further required to assume that each member of this large imaginary population consumed massive quantities of white croaker over a period of decades.<sup>13</sup> None of these assumptions have any basis in any evidence of record.

### III. THE "PILOT" PROJECT AND THE COASTAL COMMISSION PROCEEDINGS.

In May, EPA submitted a 10-page narrative document to the Commission stating that it had determined its "pilot" project to be consistent with the CCMP and seeking the Commission's concurrence in that regard. On June 16, prior to the Court's rulings on the sanctions motion, the Commission agreed with EPA's determination, apparently assuming that EPA's EE/CA studies were reliable and trustworthy. Now, staff at the Commission are proposing that the Commission adopt findings regarding the consistency determination.

Before the Commission adopts findings on the basis of the EE/CA studies that are the subject of the Court's sanctions, EPA must withdraw its application for the consistency determination. These studies are instrumental to EPA's consistency determination. As EPA stated on page one of its May submittal to the Commission in support of its determination:

EPA has recently decided to undertake a field pilot study of in-situ capping as part of its ongoing Superfund investigation of the Palos Verdes Shelf. . . . This investigation has included an evaluation of

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<sup>9</sup> Scott Depo., June 1-4, 1999, pp. 58, 64, 68-71.

<sup>10</sup> SAIC, "Human Health Risk Evaluation for Palos Verdes Shelf," tbl. 4-2 (April 1, 1999).

<sup>11</sup> Deposition of Iris B. Winstanley, May 3, 1999 ("Winstanley Dep."), pp. 44, 74, 238-39, 692.

<sup>12</sup> Milton S. Love & Stephen R. Hansen, "Recreational Vessel Fishery for White Croaker on the Palos Verdes Shelf," at 27-30 & tbls. 2-8, 3-5, 3-7 (April 2, 2000).

<sup>13</sup> Winstanley Depo., pp. 44, 74, 238-39, 692.

LATHAM &amp; WATKINS

John Lyons, Esq.  
July 12, 2000  
Page 5

human health and ecological risks posed by contaminated sediments as well as an evaluation of potential clean-up actions.<sup>14</sup>

EPA is required by law to provide "comprehensive data and information sufficient to support" its consistency statement.<sup>15</sup> EPA can no longer in good faith rely upon its tainted EE/CA investigations for this purpose. To do so would be arbitrary and capricious. EPA can no longer seriously assert that these investigations provide competent substantial evidence of the "pilot" project's consistency with the CCMP.

Furthermore, EPA is not presently in a position to provide any alternative information to support its consistency determination. Deposition testimony provided by EPA officials (including Mr. Fred Schaffler, Mr. Michael Montgomery, and Mr. Keith Takata, EPA's principal representatives for the EE/CA) revealed that the agency's primary decisionmakers are unfamiliar with the administrative record compiled on these issues.

Under these circumstances, EPA must not proceed at this time with its "pilot" project. To do so on the basis of a corrupted record and unreliable science is extremely risky and potentially dangerous, and certainly not in the public interest. In the event EPA does proceed, EPA will be solely responsible for any adverse consequences that result.

#### IV. MONITORING THE "PILOT" CAP.

By letter to EPA dated June 29, 2000, our consultant Geosyntec described the monitoring that we intend to conduct of any "pilot" capping exercise. See Attachment B. By letter dated June 30, 2000, Mr. Schaffler of EPA responded, raising the issue of whether Geosyntec's plans "will interfere with EPA's activities." See Attachment C.

As you are aware from the June proceedings, the Commission is very concerned that adequate monitoring of any capping exercise be undertaken. Our monitoring proposal is based on prudent engineering considerations and will not materially interfere with any capping activity.

While we believe EPA should not begin capping this summer, if EPA does so, we need your prompt assurance that you will continue to cooperate with us in our effort to undertake legitimate monitoring of this risky undertaking.

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<sup>14</sup> Environmental Information Document for Pilot Cap Placement, Palos Verdes Shelf Capping Demonstration Project, U.S. EPA, May 2000, at 1.

<sup>15</sup> See 15 C.F.R. § 930.39(a).

LATHAM &amp; WATKINS

John Lyons, Esq.  
July 12, 2000  
Page 6

V. CONCLUSIONS.

For the reasons stated above and in our prior submittals to EPA and the Commission, EPA must withdraw its consistency application and stand down on the "pilot" cap, pending development of a legitimate record demonstrating the need for any such cap and that it can be undertaken without unreasonable risk.

If you have any questions or would like to discuss this matter, please do not hesitate to contact me at (415) 395-8136.

Respectfully,

*Karl Lytz (mt)*

Karl S. Lytz  
of LATHAM & WATKINS

Enclosures

cc: Mr. Mark Delaplaine, California Coastal Commission  
Mr. John Dickson, California Coastal Commission  
Mr. James Raives, California Coastal Commission  
Mr. Larry Simon, California Coastal Commission  
Mr. Frank Bachman, Montrose Chemical Corporation of California  
Jose Allen, Esq., Skadden Arps  
Robert Skinner, Esq., Ropes & Gray

*Attachment "A"*

(Psend)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL

CASE NO.: CV-90-3122-R

Date: JUNE 26, 2000

TITLE: UNITED STATES OF AMERICA et al V. MONTROSE CHEMICAL etc et al

PRESENT:

HON. MANUEL L. REAL JUDGEWilliam Horrell  
Deputy ClerkLeonore LeBlanc  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Steven O'Rourke DOJ  
John Saurenman Dep A/G  
Layn Phillips  
Peter Gregora  
Ellen Mahan  
Steven Talson

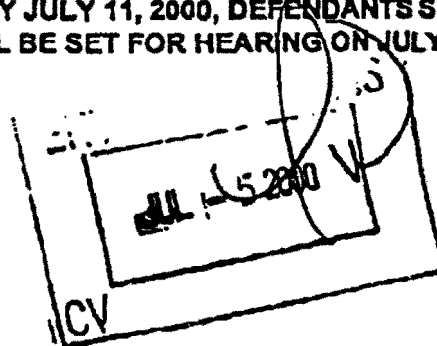
ATTORNEYS PRESENT FOR DEFENDANTS:

Paul Galvani  
Karl Lytz  
Cary Lerman  
Jose Allen

PROCEEDINGS: 1) State of California's motion requesting the Court enter the Government's proposed order re State law counterclaims  
2) Hearing re sanctions due to be levied against government due to governmental misconduct

AS TO MOTION # 1, THE COURT HAS SIGNED THE ORDER RE STATE LAW COUNTERCLAIMS, THEREBY RENDERING THE MOTION MOOT.

THE COURT HEARS ARGUMENT OF COUNSEL RE MOTION # 2. THE COURT ORDERS: SUPPLEMENTATION OF THE RECORD OF ALL EPA RESPONSE ACTIVITIES WITH RESPECT TO FALOS VERDES SHELF; TO PRECLUDE RECOVERY OF EPA'S COSTS RELATED TO THE P.V. SHELF TECHNICAL ADVISORY COMMITTEE; TO STRIKE THE EXPERTS LISTED IN EXHIBIT A OF DEFENDANTS' ALTERNATE PROPOSED ORDER, WITH THE EXCEPTION OF ROBERT SPIES, ROBERT EGANHOUSE, JOHN CONNOLLY, AND PETER THOMAS; TO PRECLUDE THE U.S. FROM INTRODUCING EXPERTS TO REPLACE THE STRICKEN EXPERTS; TO PRECLUDE THE U.S. RECOVERY OF COSTS INCURRED IN CONNECTION WITH THE STRICKEN AND WITHDRAWN EXPERTS. DEFENDANTS' MAY BRING A MOTION TO RECOVER THEIR COSTS AND ATTORNEY FEES IN CONNECTION WITH THEIR MOTION RE GOVERNMENT MISCONDUCT. THE STATE PLAINTIFFS SHALL FILE RESPONSE PAPERS RE THEIR CLAIMS NON-INVOLVEMENT IN THE EXPERT MISCONDUCT BY JULY 11, 2000, DEFENDANTS SHALL RESPOND BY JULY 18, 2000, AND THE MATTER SHALL BE SET FOR HEARING ON JULY 24, 2000 AT 10:00 A.M.

MINUTES FORM 11  
CIVIL - GEN

Initials of Deputy Clerk

WH



*Attachment "B"*

29 June 2000

Mr. Fred Schauffler  
United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Subject: Notification of Independent Baseline Monitoring Activities  
Palos Verdes Shelf Pilot Cap Placement Project

Dear Mr. Schauffler:

As discussed at the meeting with Frank Bachman and me in your office on Friday, 23 June 2000, Montrose Chemical Corporation of California (Montrose) plans to conduct independent monitoring during the Palos Verdes Shelf Pilot Cap Placement project. Montrose monitoring activities may include, geophysical surveys (e.g., bathymetry, side-scan sonar, sub-bottom profiling, transmissometer surveys), underwater video surveys, deployment of sediment traps and recovery of sediment and water quality samples, and tracer particle deployment and tracking. To facilitate communication and thereby avoid conflicts during monitoring, Montrose volunteered to provide EPA with advanced notice of its on-water monitoring activities. Accordingly, we are hereby notifying you of our planned baseline monitoring activities.

The Montrose baseline monitoring program will include geophysical and video surveys in the area of and around the pilot cap cells, deployment of sediment traps around the periphery of the placement cells, and water sampling. The attached figure shows the approximate locations at which we plan to deploy our sediment traps. Sediment traps will be anchored to the bottom. At each location, two sediment traps will be moored to the seafloor. One the sediment trap will be located about 6 ft above the seafloor, whereas the other will be located at mid-depth in the water column.

We anticipate deploying the sediment traps during the first week of July and leaving them in place for the duration of the pilot cap placement program.

HG0340/PV\_NOTIF2

Regional Offices:  
Albany, GA • Austin, TX • Boca Raton, FL • Chicago, IL  
Columbia, MD • Huntington Beach, CA • Walnut Creek, CA

Laboratories:  
Alpharetta, GA • Atlanta, GA  
Boca Raton, FL

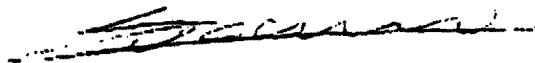
**GEOSYNTEC CONSULTANTS**

Privileged and Confidential  
Attorney - Client Work Product  
Attorney - Client Privileges Asserted

Mr. Fred Schaffler  
29 June 2000  
Page 2

This information about our baseline monitoring activities is provided to you for coordination purposes. If you have any questions about our baseline monitoring activities, please contact me at GeoSyntec Consultants at (714) 969-0800.

Sincerely,

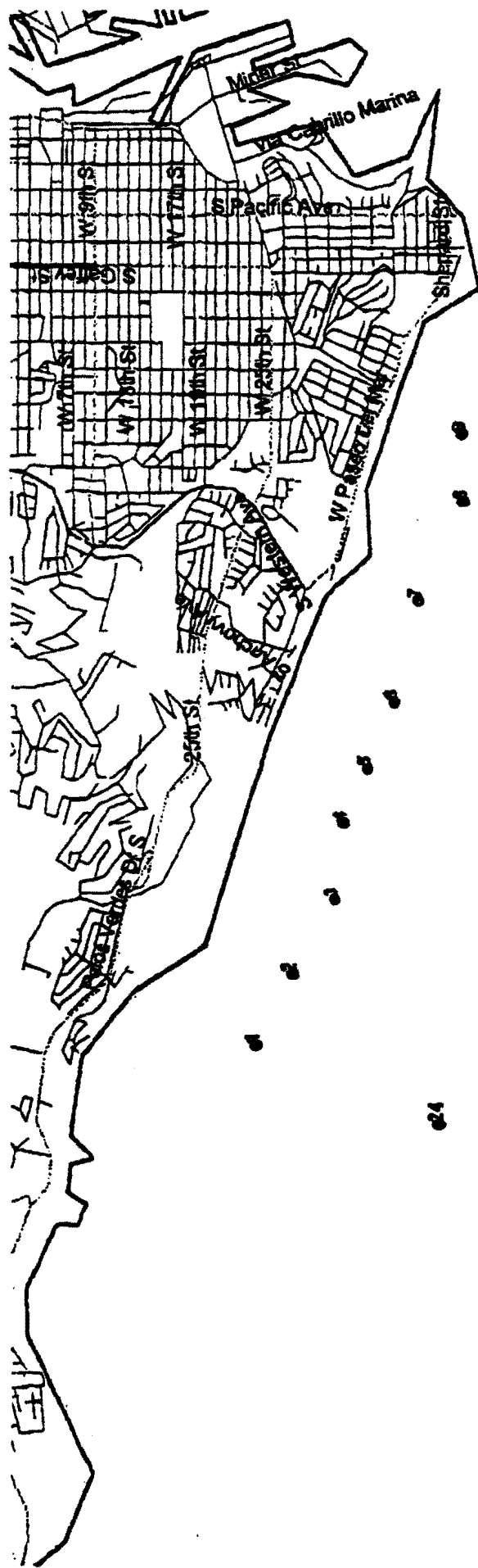


*E. C. Kavazanjian, Jr.* Edward Kavazanjian, Jr., Ph.D., P.E., G.E.  
Principal

HG0340/PV\_NOTIF2



**SEDIMENT TRAPS LOCATION  
PALOS VERDES SHELF, CALIFORNIA**



22



24

3

**2. Kriminale**

1

**HG0340-05**

**0340G007 AP**

**GEOSYNTEC CONSULTANTS**



*Attachment "C"*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

SENT VIA FACSIMILE AND REGULAR MAIL

June 30, 2000

Frank Bachman  
Montrose Chemical Corporation  
600 Erickson Ave. NE, Suite 380  
Bainbridge Island, WA 98110

Dear Mr. Bachman:

Today I received two letters (both dated June 29, 2000) from Ed Kavazanjian of GeoSyntec Consultants, submitted on behalf of Montrose Chemical with respect to monitoring activities for EPA's pilot capping project at the Palos Verdes Shelf. I have not had an opportunity to review the letters in detail, but given that one of them discusses baseline monitoring activities, including the deployment next week of certain monitoring devices, I wanted to get an initial response back to you as soon as possible.

Until I have adequate time to review the letters and discuss the contents with other members of the project team, I cannot determine whether or not the monitoring activities and deployment of equipment that GeoSyntec plans to undertake will interfere with EPA's activities. Therefore, if, for example, sediment collection devices are deployed next week and we later determine that some of them (e.g., the ones closest to the pilot capping cells) will interfere with or pose a risk to our monitoring activities, EPA will ask Montrose to remove that equipment. Similarly, I cannot assure you at this time that Ed's summary of the meeting we had on June 23<sup>rd</sup> accurately reflects my understanding of the outcome of that meeting.

We may also need additional information from GeoSyntec about certain activities in order to evaluate the potential for conflicts. If that's the case, and unless I hear differently from you, I will call Ed directly to request the information.

Finally, I noted that on the second and third pages of the letters from GeoSyntec, there is a header stating "Privileged and Confidential, Attorney-Client Work Product, Attorney-Client Privileges Asserted." Since these appear on letters from Dr. Kavazanjian to me, I am assuming that the headers are there in error. Please let know if I am incorrect in making this assumption.

Mr. Frank Bachman  
June 30, 2000  
Page 2

Please give me a call at (415) 744-2359 if you have any questions regarding the above.

Sincerely,



Frederick K. Schauffler  
Remedial Project Manager  
AZ/CA Cleanup Section (SFD-7-1)

cc: Ed Kavazanjian







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

By Facsimile

July 12, 2000

Karl Lytz  
Latham & Watkins  
505 Montgomery Street  
San Francisco, CA 94111

Re: U.S. EPA Palos Verdes Shelf - Pilot Cap Placement Project

Dear Karl:

Today at approximately 4:30 pm, I received your letter (by facsimile) concerning the California Coastal Commission's consistency determination with regard to the U.S. EPA Palos Verdes Shelf Pilot Cap Placement Project. Since your letter was obviously intended as a last minute effort to influence Commission action scheduled for tomorrow, I have not attempted in this letter to address the numerous misstatements of both fact and law contained in your letter. Instead, this letter focuses on the threshold matters that may be useful to the Commission's staff in assessing the arguments presented in your letter. For the record, I also take strong exception to the fact that your letter was issued at the last minute. In the past, despite the differences between our clients, both of us had engaged in the practice of advising the other, by telephone, of significant developments in a timely manner. I regret that you have chosen to abandon such courtesies.

EPA strongly disagrees with your interpretation of Judge Real's June 26, 2000 Minute Order. Specifically, EPA believes the impact of the Court's Order is limited to the litigation before the Court. EPA does not believe that the Court's Order was intended to invade, control or otherwise limit administrative processes - either that of the Coastal Commission or of EPA.

EPA also strongly disagrees with your assertion that the technical work in question should be disregarded. But even if that work is not considered, there is ample legal and technical justification for EPA's investigation of the contaminated Palos Verdes Shelf sediments, of which the Pilot Cap Placement Project is just a part. Under Section 104(a) and (b) of the Comprehensive Environmental Response Compensation and Liability Act, as amended, EPA is authorized to undertake investigations, including related engineering studies, when a hazardous substance is released into the environment or there is a substantial threat of a release. See 42 U.S.C. Section 9604(a) and (b). In making the decision to begin a Superfund investigation of the Palos Verdes Shelf in 1996, EPA determined that existing information documented "the release of hazardous substances to the food chain(s)." U.S. EPA, Region 9, Engineering Evaluation and Cost Analysis Approval Memorandum (July 10, 1996) ("EE/CA Approval Memorandum"). EPA also went further and determined that "the effluent-affected DDT and PCB contaminated sediments on the Palos Verdes shelf pose a threat to human health and the environment" and concluded that EPA should initiate a Superfund investigation of the Palos Verdes Shelf. Id.

Attachment 2.

Karl Lytz  
July 12, 2000  
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The EE/CA Approval Memorandum discusses in detail the bases for these conclusions, made after sixteen months of careful EPA review of the extensive information available at the time. An index of the 141 documents that EPA considered in making this decision was also attached to the EE/CA Approval Memorandum.

As you are well aware, EPA has not made any decision selecting capping as a Superfund cleanup action for the Palos Verdes Shelf. EPA is continuing its investigation of the feasibility of capping and is continuing its evaluation of the need for any response action at the Palos Verdes Shelf. The Pilot Cap Placement Project is an important component of EPA's continuing investigation of the DDT and PCB contaminated sediments present on the Palos Verdes Shelf.

In correspondence earlier this year, you took EPA to task for the time it has taken EPA to investigate the myriad releases of DDT and other hazardous substances related to your client's, past DDT manufacturing operations in Los Angeles County. EPA is now poised to conduct a critical component of its investigation that will aid the agency in completing its investigation in a timely manner and **now** you are arguing that such action be delayed. While I can appreciate how such delay may benefit your client's interest, I do not see how delaying the Pilot Cap Placement Project will advance the public's interest in having two key questions answered: is there a need for a response action for the Palos Verdes Shelf and is capping a feasible option that should be considered as a short or long term solution. Obviously, the Pilot Cap Placement Project is important in answering the latter question. And, in fact, the Project is being conducted, in part, to answer questions which your consultants have raised.

I trust this makes our position clear on this matter.

Sincerely,



John Lyons

Assistant Regional Counsel

cc: John Dickson, California Coastal Commission  
Larry Simon, California Coastal Commission