

CALIFORNIA COASTAL COMMISSION

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

**RECORD PACKET COPY****M 13****DATE:** August 19, 2002**TO:** Coastal Commissioners and Interested Parties

FROM: Peter M. Douglas, Executive Director
Elizabeth A. Fuchs, Manager, Statewide Planning and Federal Consistency Division
Mark Delaplaine, Federal Consistency Supervisor

RE: Negative Determinations Issued by the Executive Director
[Executive Director decision letters are attached]

PROJECT #:	ND-037-02
APPLICANT:	Bureau of Indian Affairs
LOCATION:	Klamath River, Del Norte Co.
PROJECT:	Placement of land into trust
ACTION:	Object
ACTION DATE:	7/16/2002

PROJECT #:	ND-042-02
APPLICANT:	Department of the Air Force
LOCATION:	Vandenberg Air Force Base, Santa Barbara Co.
PROJECT:	Alternate Booster Verification Test Flights
ACTION:	Concur
ACTION DATE:	7/31/2002

PROJECT #:	ND-045-02
APPLICANT:	National Park Service
LOCATION:	Santa Monica Mountains National Recreation Area, Los Angeles Co.
PROJECT:	Heart-of-the-Park Shuttle Demonstration Project
ACTION:	Concur
ACTION DATE:	7/29/2002

PROJECT #:	ND-053-02
APPLICANT:	National Park Service
LOCATION:	Statewide Redwood Creek, Muir Beach, Marin Co.
PROJECT:	Interim Flood Reduction Measures and Floodplain Channel/Restoration
ACTION:	Concur
ACTION DATE:	7/29/2002

PROJECT #:	NE-054-02
APPLICANT:	California Resources Agency
LOCATION:	Statewide
PROJECT:	Coastal Impact Assistance Program
ACTION:	No Effect
ACTION DATE:	7/31/2002

PROJECT #:	ND-056-02
APPLICANT:	Corps of Engineers
LOCATION:	Moss Landing Harbor, Monterey Co.
PROJECT:	Maintenance dredging with nearshore and beach disposal
ACTION:	Concur
ACTION DATE:	08/15/2002

PROJECT #:	NE-060-02
APPLICANT:	Ventura County Flood Control District
LOCATION:	Port Hueneme, Ventura Co.
PROJECT:	Pump station outlet pipe repairs
ACTION:	Concur
ACTION DATE:	08/12/2002

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July 19, 2002

Larry Blevins
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Re: **ND-37-02** Negative Determination, Bureau of Indian Affairs (BIA), Placement of Four Parcels near Requa into Trust for Yurok Tribe, Del Norte Co.

Dear Mr. Blevins:

On May 10, 2002, we received the above-referenced negative determination from the BIA for the placement of four parcels (Assessor's Parcel Numbers (APN) 140-020-30, 140-020-34, 140-020-39, and 140-020-40) into trust status for the Yurok Tribe. All four parcels are located within the coastal zone, near (and immediately north of) the mouth of the Klamath River, in Del Norte County. Your negative determination stated your conclusion pursuant to federal law (15 CFR § 930.35(a)) that the proposed action would not affect the coastal zone.

Federal law dictates the manner in which a federal agency is to assess the potential effects on a state's coastal zone of an action that agency proposes to undertake. (15 CFR § 930.35(b).) Specifically, 15 CFR § 930.33(a)(1) provides that "an action which has minimal or no environmental effects may still have effects on a coastal use...or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable."

In our letters to you dated May 17, 2002, July 2, 2002, and July 12, 2002, we requested clarification of the basis for the BIA's determination. As of this date, you have not responded to our previous request #4:

- 4) *Based on the Hoopa-Yurok Settlement Act, and pursuant to 25 U.S.C. §13000i-9 (Economic development - plan for self sufficiency): (i) a copy of the Yurok Tribe's economic development plan; (ii) any subsequent amendments to such plan; and (iii) a summary of consultation with appropriate state and local officials, and testimony received and any written comments or reports, as required to be appended to the plan pursuant to 25 U.S.C. §13000i-9 (d).*

The above-referenced information that we have requested in an effort to better understand the basis of the BIA's negative determination constitutes information that must be considered in the environmental analysis that the BIA is required to undertake in order to substantiate its contention that there are no foreseeable effects on coastal resources from the BIA's proposed action. There is no evidence in the BIA's determination that it gave any consideration to this information.

The proposed action would remove the subject parcels from the protection currently in existence through regulation under the California Coastal Act. Such a removal allows the potential for substantial adverse coastal zone effects from unregulated development on these parcels. The proposed site for the trust status lies along the steep, forested, northern banks above the lower Klamath River estuary, a designated environmentally sensitive habitat area. The site is visible from many public vantage points along the river, open ocean and beaches, and from as far away as approximately 3½ miles to the southeast along U.S. Highway 101 near the town of Klamath. In addition, two of the parcels have direct frontage along the Klamath River, a designated "recreational river" within the National Wild & Scenic Rivers System and an enumerated "navigable water" under Section 103 of the California Harbors and Navigation Code. Portions of the properties are located within that watercourse's 100-year floodplain. The properties are also bisected by Requa Road, a significant accessway to coastal visitor-serving facilities at the mouth of the Klamath River, including Redwood State and National Park's Klamath Overlook vista point and the Coastal Trail, a segment of the California Coastal Trail.

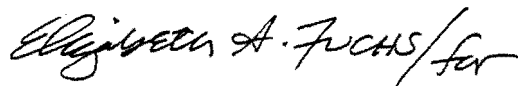
Future ground-disturbing development on the parcels, including the construction of homesites, access roads, utilities placement, or other structural improvements could result in geologic instability and stormwater-caused destabilization of soil materials which could have hydrologic and water quality impacts to the Klamath River and adjacent properties if not properly designed and mitigated. Any significant development at the site would likely be visible for great distances and could profoundly alter the visual resources of the lower Klamath River valley area. Depending upon the design of such improvements interference with public access to and along the river could possibly result. Furthermore, the Land Use Plan of the certified Local Coastal Program (LCP) of the County of Del Norte recognizes the riverfront portions of the properties as intended for visitor-serving facility development, a high-priority land use under both the County's LCP and the Coastal Act. In addition, though not currently zoned as Timber Production Zone, if significant portions of the forested areas of the site were to be converted to non-timberland uses, this could have a cumulative adverse effect on the timber production landbase of the lower Klamath River basin.

In addition to the foregoing considerations based on the proposed action's location and on the coastal resources that are present at this location, as we noted in our letter of May 6, 2002, BIA's placement of these parcels into trust is a federal agency activity that must be considered to affect the coastal uses and resources of the coastal zone of the state of California as a matter of law. Pursuant to section 930.33(b) of the regulations that implement the Coastal Zone Management Act (CZMA; 15 CFR Part 930, Subparts B and C)), "Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal

use or resource." Under section 930.31(b), "the term federal 'development project' ... *includes the acquisition... of any coastal use or resource.*" (Emphasis added.) Under section 930.11(b), "the phrase 'any coastal use or resource' means any ... natural resource of the coastal zone. ... Natural resources include ... physical resources that are found within a State's coastal zone.... ...physical resources include, but are not limited to,...land...."

In conclusion, due to the change in regulatory protections, the sensitive coastal resources present on and adjacent to the subject parcels, and the potential for adverse effects on those resources from development, the failure of the BIA's determination to reflect consideration of relevant information, and principles of applicable law, the Coastal Commission staff disagrees with the BIA's determination that the proposed action will not have an effect on coastal uses or resources. We therefore object to the BIA's negative determination and we conclude that the proposed project requires a consistency determination pursuant to Section 307(c)(2) of the CZMA (16 USC § 1456(c)(2)) and to regulations that implement that statutory provision at 15 CFR Part 930, Subpart C. If you have any questions, please contact Larry Simon of the Coastal Commission staff at (415) 904-5288.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elizabeth A. Fuchs/for", written over the typed name Peter M. Douglas.

PETER M. DOUGLAS
Executive Director

cc: North Coast District Area Office
OCRM
Attorney General's Office (Sacramento, San Diego)
Governor Gray Davis
NOAA General Counsel
Yurok Tribe

CALIFORNIA COASTAL COMMISSION

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July 31, 2002

Department of the Air Force
30th Space Wing (AFSPC)
30 CES/SEV
806 13th Street, Suite 116
Vandenberg Air Force Base, CA 93437-5242

Attn: Jim Johnston

Re: **ND-042-02** Negative Determination, for the booster tests of the National Missile Defense Program, Vandenberg Air Force Base, Santa Barbara County.

Dear Mr. Johnston:

The Coastal Commission staff has received the above referenced negative determination. The Air Force proposes to conduct four booster test flights for the Ballistic Missile Defense System at Vandenberg Air Force Base. The booster test flights will use an existing launch facility (LF-23) and will require the installation of 0.75 to 1.3 miles of underground fiber optic cable to connect the launch site to a communications facility. The Purpose of the booster test flights is to verify booster and silo designs and demonstrate booster vehicle maneuverability.

This project is similar to ND-016-99, which was recently approved by the commission, and CD 6-99, Theatre Defense Missile Project, and will be incorporated into the Theatre Defense Missile program. Therefore, the public access, marine mammal, air quality, and other resource impacts will be similar to the effects from the Theatre Defense Missile program.

The Commission staff agrees that the project is the same or similar to an activity previously approved by the commission. We therefore concur with your negative determination made pursuant to Section 15 CFR 930.35(d) of the NOAA implementing regulations. Please contact Kathleen Stycket of the Commission staff at (415) 904-5295 should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter Douglas", written over the typed name and title.

PETER M. DOUGLAS
Executive Director

cc: South Central Coast Area Office
OCRM

CALIFORNIA COASTAL COMMISSION

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July 29, 2002

Woody Smeck
National Park Service
Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, CA 91360-4207

RE: **ND-045-02**, Negative Determination for the Heart-of-the-Park Shuttle
Demonstration Project, Santa Monica Mountains National Recreation
Area, Los Angeles County.

Dear Mr. Smeck:

The Coastal Commission staff has received and reviewed the above-referenced negative determination. The National Park Service (Park Service) proposes to implement the Heart-of-the-Park Shuttle Demonstration Project for the Santa Monica Mountains National Recreation Area (Recreation Area). The program includes the operation of a tourist shuttle system that would serve many popular sites within the Recreation Area. The Heart-of-the-Park Demonstration Shuttle Project is a one-year, weekend-service-only program that uses mini-buses to travel in a bi-directional loop around the central part of the park, using Malibu Canyon Road, the Pacific Coast Highway, Kanan Dume Road, and the Mulholland Highway. The purpose of the demonstration shuttle is to determine how well a park shuttle transit system could solve some of the most serious transportation challenges, such as roadway congestion, lack of accessibility, and limited parking. The Park Service expects that the program will serve 23,500 to 30,500 passengers during the first year of operation.

The proposed shuttle system would use a fleet of four compressed natural gas or equivalent clean-fuel mini-buses. The shuttle buses would stop at 13 sites including Malibu Creek State Park, Malibu Lagoon State Beach, Solstice Canyon, Zuma Beach, Paramount Ranch, Tapia Park, Backbone Trailhead, Rocky Oaks, Peter Strauss Ranch, and four other flag stop sites. Some of these shuttle stops will require some improvements to accommodate the mini-buses and enhance public usability. These improvements include shuttle aprons and turn lanes, signage, information kiosks, public restrooms, overhead canopies, and benches.

The proposed project will improve public access and recreational resources of the coastal zone by providing transportation to several coastal recreation areas and public beaches. In addition, the project will reduce vehicular traffic within the Santa Monica Mountains. By reducing traffic, the project will further improve the

ability of people, who choose not to use the shuttle buses, to drive to public beaches in the area. Therefore, the project will improve public access and recreational uses of the coastal zone. The proposed project involves minor construction activities, including a small amount of grading and paving. All of the construction activities will be adjacent to existing roads, parking areas, and other park facilities and will be visually consistent with these areas. Therefore, the project will not affect visual resources of the coastal zone.

Most of the construction activities will occur on already disturbed areas (i.e. road right-of-ways and parking areas) and will not affect biological resources. However, at the proposed shuttle stop at Rocky Oaks, the Park Service will construct a kiosk near an existing oak tree. In order to avoid impacts the Park Service will design the facility to avoid effects on the oak tree. At Peter Strauss Ranch, proposed trail improvements will result in some impacts to vegetated areas. The Park Service has previously identified several sensitive plant species (including Lyon's pentachaeta, Malibu baccharis, and Plummer's mariposa lily) in the area. However, Park Service biologists believe that the affected area does not have the proper soil conditions for these plants, and thus they are unlikely to be affected by the project. The Park Service will conduct surveys of the site prior to construction to determine if any of these plant species are present. If the Park Service identifies any sensitive species at this site, it will reconfigure the trail to avoid these species. In addition, the Park Service has identified wetlands near the proposed shuttle stop at Zuma Beach. However, these wetlands are located over 200 feet from the proposed shuttle stop, which is a sufficient buffer for the habitat. Therefore, with the mitigation measures described above, the project will not affect habitat resources of the coastal zone.

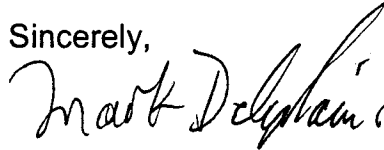
Finally, the proposed project will not significantly affect water quality resources of the coastal zone. At the Malibu Creek, Zuma Beach, Backbone Trail, and Rocky Oaks shuttle stops, the Park Service will pave the ground surface to allow shuttle access. At all of these locations, the amount of paving would be minor and would not significantly affect water absorption, drainage, or runoff. At Paramount Ranch chip seal would be added to the surface, and at Tapia Park and Peter Strauss Ranch new decomposed granite would be added. The project would not substantially add new runoff or introduce waste discharge to the area. In addition, the project will benefit water quality (and air quality) resources by providing an alternative means of transportation to recreational areas in the Santa Monica Mountains, and thus reduce automobile related pollutants. This beneficial effect is maximized by the Park Service's proposed use of clean burning fuel vehicles. Therefore, the project will not adversely affect water or air quality resources of the coastal zone.

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 CFR Section 930.35.

In concurring with this negative determination, the Commission staff assumes that the Park Service is the lead agency for all development activities. However, the staff notes that California Department of Parks and Recreation (State Parks) is the lead CEQA agency. The Park Service's negative determination and this concurrence do not authorize State Parks to conduct development activities associated with this project within the coastal zone. If State Parks proposes any such activities, it must apply for a coastal development permit from the Commission.

If you have any questions, please contact James Raives of the Coastal Commission staff at (415) 904-5292.

Sincerely,


(for) PETER M. DOUGLAS
Executive Director

cc: South Central Coast District

PMD/JRR

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July 29, 2002

Nancy Hornor
National Park Service
Golden Gate National Recreation Area
Fort Mason
San Francisco, CA 94123

Attn: Jennifer Vick

RE: **ND-053-02**, National Park Service, Lower Redwood Creek Interim Flood Reduction Measures and Floodplain/Channel Restoration, near Muir Beach, Marin Co.

Dear Ms. Hornor:

The Coastal Commission staff has reviewed the above-referenced National Park Service negative determination for interim flood reduction and floodplain/channel restoration measures at Lower Redwood Creek, upstream of Muir Beach in Marin County. As discussed in its Environmental Assessment for the project, the Park Service proposes several flood reduction measures for Redwood Creek along Pacific Avenue (adjacent to Muir Beach). These measures include:

- (1) excavation of sediment from two high points in the channel extending from approximately 350 feet upstream to approximately 450 feet downstream of the Pacific Way Bridge;
- (2) removal of woody debris and sediment from an additional 300 feet of channel in the reach between Pacific Way Bridge and the Muir Beach parking lot;
- (3) removal of dead trees at risk of falling into the channel in the reaches described above;
- (4) excavation of a pilot channel through the willow alder grove downstream of the parking lot;
- (5) installation two armored dips in the levee road;
- (6) removal of a flapgate on the more downstream culvert in the levee road;
- (7) installation of willow mattresses at two floodplain channel inverts upstream of the Pacific Way Bridge; and

July 29, 2002

Page 2

(8) excavation of a small trench at the low point on Pacific Way east of the Pacific Way Bridge.

The proposal also includes several floodplain and channel restoration activities for area approximately one half mile upstream of Pacific Way and east of Highway 1. The restoration activities at this site include:

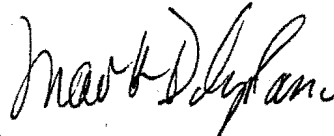
(1) removal of the four-foot high levee adjacent to Redwood Creek and grading of portions of the manually built-up creek bank at seven locations along 1,800 linear feet of channel;

(2) installation of approximately 18 individual engineered log jams at seven locations in 1,300 linear feet of the creek channel for habitat enhancement and erosion protection; and

(3) revegetation of newly graded areas.

The project represents an interim solution; the Park Service is developing a long-term restoration plan for lower Redwood Creek. In the interim, the Park Service has coordinated with the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and other federal and state resource agencies, and has included measures to protect environmentally sensitive habitat and other coastal zone resources. The proposed activities are located on federal land, and have been designed to improve sensitive habitat and public access and recreation. The Commission staff agrees that the proposed project will not adversely affect coastal zone resources. The Commission staff therefore concurs with your negative determination made pursuant to 15 CFR § 930.35. If you have any questions about this negative determination concurrence, please contact James Raives of the Coastal Commission staff at (415) 904-5292.

Sincerely,



(for) PETER M. DOUGLAS
Executive Director

cc: North Central Coast District

Army Corps, San Francisco District

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July 31, 2002

Christopher Potter
Resources Agency
1416 Ninth St., Ste. 1311
Sacramento, CA 95814

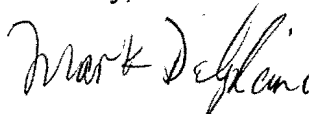
Re: **NE-054-02** No Effects Determination, Resources Agency, Coastal Impact Assistance
Program Final Plan, Statewide

Dear Mr. Potter:

The Coastal Commission has received your request for a federal consistency authorization for the expenditure of \$15,477,740 in federal grant funds for a variety of activities throughout the California coastal zone. The funds would be used for coastal resource protection activities and planning, and any development activities arising from the funded programs would be subject to coastal development permit review by the Commission or, where applicable, the San Francisco Bay Conservation and Development Commission (BCDC).

We agree with your "No Effects" letter and your conclusion that no consistency certification needs to be submitted for this project. If you have questions about this letter, please contact Mark Delaplaine, federal consistency supervisor, at (415) 904-5289.

Sincerely,


(for) PETER M. DOUGLAS
Executive Director

cc: BCDC
OCRM

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August 15, 2002

Arijs A. Rakstins, Chief
Engineering Technical Services
Attn: Tamara Terry
Environmental Section
U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, CA 94111

Re: **ND-056-02** Negative Determination, Army Corps, Maintenance Dredging,
Moss Landing Harbor, Monterey Co.

Dear Chief Rakstins:

The Coastal Commission staff has received the above-referenced negative determination for the Year 2002 maintenance dredging of federal channels in Moss Landing harbor. The project includes the maintenance dredging of 40,295 cubic yards (cu. yds.) of material at the Moss Landing Harbor Federal channels, with beach and ocean disposal, as follows: (1) 20,227 cu. yds. of clean sandy material from the Entrance Channel to be disposed as beach nourishment at the historically used South Sandspit Disposal site; and (2) 20,068 cu. yds. of clean but silty material from the Entrance, Lagoon, and Interior Channels to be disposed at the historically used, EPA-approved (and previously used) SF-12 offshore disposal site at the end of Sandholt Pier (at a 48 ft. water depth). Dredging depths for all channels would be to previously-dredged depths of -15 ft. MLLW (with 1 ft. of overdredge, or to -16 ft. MLLW). The Corps' initial proposal was to include a Harbor District-requested additional 5 ft. of advanced maintenance dredging; however the Corps has now eliminated that component from the proposal. No upland disposal site is available at this time, and the project does not including dredging of any contaminated material or any upland disposal.

The sediments have been tested based on the Inland Testing Manual, and the disposal has been divided into the two components described above: beach replenishment for the clean sandy material and SF-12 disposal for clean but not beach-compatible material. While a historic concern in Moss Landing has been the level of DDT in dredged sediments, the test results for this year's dredging shows significantly reduced levels of DDT (i.e., 1/6th to 1/8th of historic levels). Moreover, the test results establish that the all material proposed for beach or ocean disposal meets applicant testing standards. EPA has also reviewed the test results and stated the material is acceptable for beach and ocean disposal.

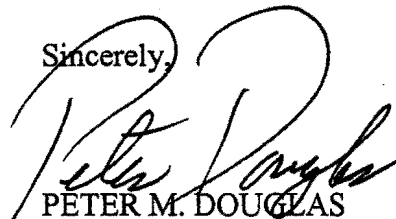
Snowy plovers do not nest at the beach disposal site, and the Corps will maintain a 50 ft. separation from any sea otters frequenting the dredge and disposal areas. Thus, measures necessary to support environmentally sensitive habitat, including threatened and endangered species, have been incorporated into the project.

At its most recent (August) meeting the Commission granted a coastal development permit (CDP) with conditions to the Moss Landing Harbor District for related Harbor District maintenance dredging in the non-federal channels in the harbor (CDP 3-01-049). The Commission has also reviewed a number previous Corps Consistency and Negative Determinations and Harbor District CDPs for dredging at the harbor, including Corps Consistency Determinations CD-11-81, CD-38-83, CD-97-98, Corps Negative Determinations CD(ND)-9-87, CD(ND)-18-90, ND-31-93, and ND-42-96, and Harbor District CDPs CD-3-96-020, 3-98-032-G, and 3-99-011.

Under the federal consistency regulations (Section 930.35(a)), 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 past dredging and disposal operations that the Commission has authorized, thereby qualifying it for review under the negative determination process.

In conclusion, we agree with the Corps that this project would not adversely affect coastal zone resources and is similar to Consistency and Negative Determinations with which we have concurred. We therefore **concur** with your negative determination made pursuant to Section 15 CFR 930.35 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: Central Coast Area Office
Department of Water Resources
Governor's Washington D.C. Office
Moss Landing Harbor District
Monterey Bay National Marine Sanctuary

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August 12, 2002

Jeff Pratt
Ventura County Flood Control District
800 S. Victoria Ave.
Ventura, CA 93009

Attn: Pam Lindsey

Re: **NE-060-02** No Effects Determination, Ventura County Flood Control District,
Emergency Repairs to Hueneme Pump Station Outlet Pipe

Dear Mr. Pratt:

The Coastal Commission staff has received your "No Effects" Determination for an emergency repair pump station pipeline repair project where the Hueneme Drain enters the J Street Drain in Oxnard/Port Hueneme. The repairs are needed because a rusted outlet pipe (Pipe #3) has rusted through, allowing backflows from Ormond Lagoon to the pump station. The repairs are limited to replacement-in-kind facilities.

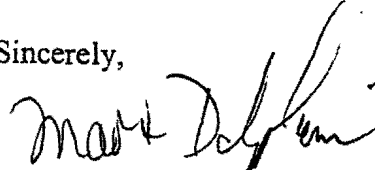
Failure to perform the repairs could cause fish entrainment and could lead to flooding and adverse effects on Ormond Lagoon. The Flood Control District has coordinated with the U.S. Fish and Wildlife Service over potential effects on tidewater gobies, which are found in the project vicinity. The project repairs would benefit and not adversely affect gobies and other environmentally sensitive habitat.

In the following types of cases, especially where adverse effects are minimal, the Commission staff generally waives the federal consistency requirement for activities that are: (1) subject to coastal development permit (CDP) reviews which are appealable to the Coastal Commission; (2) exempt from such reviews, for example as repair and maintenance activities; or (3) subject to local emergency CDP reviews, where the follow-up CDP is appealable to the Coastal Commission.

In this case, the Coastal Commission staff declines to assert federal consistency jurisdiction, due to the fact that: (1) this project has or will receive a locally issued CDP, an emergency CDP, or a repair and maintenance waiver and is located within an area where any CDP issued would be appealable to the Coastal Commission; and (2) the proposed project would not significantly affect coastal resources or raise coastal issues of greater than local concern.

In conclusion, we agree with your "No Effects" letter and your conclusion that no consistency certification needs to be submitted for this project. If you have questions about this letter, please contact Mark Delaplaine, federal consistency supervisor, at (415) 904-5289.

Sincerely,

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

(ds) PETER DOUGLAS
Executive Director

cc: Ventura District Office
Army Corps, Ventura Field Office (John Markham)