



DEPARTMENT OF THE NAVY

**COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131**

IN REPLY REFER TO:

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N01CE1/1265

November 23, 2010

Mr. Mark Delaplaine
Manager, Energy, Ocean Resources, and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Dear Mr. Delaplaine:

The Navy would like to thank the California Coastal Commission (CCC) and your staff for all of the effort that went into the federal consistency review process associated with the Consistency Determination (CD) submitted by the Navy in June 2010. The Navy is additionally appreciative of your staff for their participation in the meeting held on August 10, 2010, prior to the Commission hearing, during which we attempted to resolve our differences.

This letter responds to your August 17, 2010, letter that contains the findings of the August 12, 2010, Commission hearing regarding CD-33-10 for Navy training at the Silver Strand Training Complex (SSTC). As the Navy conveyed at the hearing, the Navy does not agree with the inclusion of the Commission's conditions of concurrence. Further, the Navy letter of August 20, 2010, informed the Commission, in accordance with 15 C.F.R. § 930.4(a)(1), that the Navy did not accept the conditions in the August 17, 2010 letter and requested to use the remainder of the 90-day period to attempt to resolve differences. The Navy thanks the Commission staff for participating in the September 8, 2010 meeting to further attempt to resolve these differences. Unfortunately, the Navy and the Commission still have points of disagreement. Therefore, pursuant to 15 C.F.R. § 930.4(b), the Navy is treating the Commission's conditional concurrence as an objection. As required by 15 C.F.R. § 930.43(d)(2)(e), the Navy is hereby notifying the Commission of its decision to proceed with the activities described in CD-33-10.

The Navy has determined that the conditions of concurrence proposed by the CCC are not necessary for the proposed activities to be consistent to the maximum extent practicable with the applicable enforceable policies of the California Coastal Management Program (CCMP) as the Navy's proposed activities are

fully consistent with all enforceable policies. The Navy stands by the analysis and conclusions set forth in its original CD submission, particularly with regard to the coastal resource status of non-mobile resources, such as fairy shrimp and vernal pools, on SSTC and regarding the enforceability of state policies designed to protect non-mobile resources, such as habitat, which are not located in the Coastal Zone (CZ). The habitat protection policy cited by CCC as the basis for its conditions of concurrence is only enforceable with regard to habitat occurring within the CZ. The habitat within SSTC is, by definition, outside the CZ. Additionally, the Navy's thorough and extensive consultation with the U.S. Fish and Wildlife Service (FWS) on these same resources fully meets the resource protection intent and requirements of the state policies in question. While the Navy's FWS consultation does not, necessarily, preclude the Navy from voluntarily adopting further measures, as described at the hearing and in meetings with the staff, the additional conditions cannot be enacted without severely negatively impacting training requirements, which are a fundamental need for the proposed activities and the primary purpose and mission of SSTC. The Navy recognizes and appreciates California's role in protecting the nation's coastal resources and stands by its previous offers to voluntarily implement the following protective measures in accordance with the purposes and policies of the U.S. National Environmental Policy Act and Endangered Species Act:

a. As a result of continued successful California Least Tern nesting throughout SSTC-North, the Navy has shown that unbuffered nesting is compatible with military training. Consequently, the Navy believes that the ongoing and proposed protective measures for the Western Snowy Plover and California Least Tern at SSTC will adequately protect these species at a population level and ultimately achieve the same goals as the Commission's condition. The Navy will continue its successful management program for these species, including marking and providing a 30-m buffer on up to 22 concurrently active Snowy Plover nests found in lanes 1-14 plus buffering all Snowy Plover nests exceeding 22 located in lanes 9 and 10 (also identified as beach lanes Orange 1 and Orange 2). All nests, regardless of buffering, will be marked and monitored. We anticipate the SSTC will remain a large, productive nesting site for both Least Terns and Snowy Plovers.

b. The Navy agrees to and looks forward to working with the Commission staff in the development of the military dog training impacts study. Since this effort will be a collaborative process between the Navy, Coastal Commission and U.S. Fish and Wildlife staffs, we do not believe that Commission concurrence of the final study will be necessary.

c. The Navy will flexi-stake vernal pools 1-7, which are the most biologically significant vernal pools at SSTC, so they can be avoided year round. Year-round avoidance of the other pools is not possible because the area in which they occur is required for training that is essential to the proposed action. Training in the vernal pool area will not begin until after development of a management and monitoring plan and collection of baseline data. The plan will include the following: (a) focused invasive plant monitoring, visual inspection, and photographic documentation of vernal pools and their watersheds annually; (b) plant, topographic, hydrological, and water quality monitoring every two years; (c) protocol fairy shrimp surveys of the vernal pools every three years; (d) a protocol for determining when pools are considered dry and the qualifications of personnel responsible for making those determinations; and (e) measures to minimize the potential for adverse effects to fairy shrimp from management activities. Annual monitoring reports required by the U.S. Fish and Wildlife Service will be provided to Commission staff and will identify management measures that will minimize any training impacts detected by monitoring. The Navy is willing to work closely with Commission staff in the development of the plan, including participation by Commission staff in meetings and review of the draft plan. The Navy believes that through implementation of the management plan, the ecological integrity of the vernal pools will be maintained and fairy shrimp populations will persist in all occupied vernal pools.

d. The Navy will provide Commission staff copies of monitoring reports prepared for the U.S. Fish and Wildlife Service under the July 7, 2010, Biological Opinion. The Navy will also provide the Commission an annual update on the progress of the Navy's monitoring programs via an informational presentation during the non-voting phase of the annual October Commission meeting in San Diego.


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e. Consistent with other applicable laws and to the extent possible and practical, the Navy will maintain signs and enforce the existing ban on the public bringing non-military working dogs to Navy-controlled beach areas.

f. The Navy does not believe the condition regarding the Coastal Trail relates to the proposed activities; however, the Navy has an ongoing dialogue with the City of Imperial Beach regarding the Coastal Trail.

The Navy views its relationship with the State of California as essential to meeting its national security mandate and looks forward to continuing our professional relationship with the Commission and your Staff.

Sincerely,


K. L. GREGORY
Rear Admiral, U.S. Navy
Fleet Civil Engineer
By direction

Copy to:
Chief of Naval Operations (N456)
Commander, Navy Region Southwest (N00, N40)
Commanding Officer, Naval Base Coronado (N00)