

CALIFORNIA COASTAL COMMISSION

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August 17, 2010

Captain D.A. McNair
Department of the Navy
Commander
U.S. Pacific Fleet
250 Makalapa Dr.
Pearl Harbor, HA 96860-3131

Re: **CD-033-10**, U.S. Navy, Consistency Determination, Silver Strand Training Complex (STCC), Coronado, San Diego Co.

Dear Captain McNair:

On August 12, 2010, by a unanimous vote, the California Coastal Commission conditionally concurred with the above-referenced consistency determination for the Navy's training exercises at the Silver Strand Training Complex.

During the hearing, the Commission adopted the following conditions:

Conditions:

1. **Limit on Training in STCC-N Beach Lanes 8-10 During Least Tern/Snowy Plover Nesting Season.** The Navy will refrain from using the portions of the three southernmost STCC-N Beach Lanes (Lanes Blue 2, Orange 1, and Orange 2) above the beach crest 20 ft. inland of the high tide line), during the least tern/snowy plover nesting season (April 1 – August 30).

2. **Limit on Marked Snowy Plover Nests.** The Navy will mark all snowy plover nests and 30 meter buffer areas in the same manner it has committed to for the 22 nests/buffers (i.e., the Navy will not limit the number of nests marked to 22 nests). (The Navy currently marks the nests/buffers with blue stakes, up to 30 m from nests.) For all beach lanes, if the Navy wishes to use a lane for training that contains more than two plover nests, and the location of the nests/buffers renders the lane unusable for needed training exercises, the Navy will not remove any nest/buffer markers unless the Navy submits a plan to the Executive Director for temporary removal of markers for the duration of the training event and the Executive Director concurs, in which case the Navy will limit such removal to that described in the plan that received the Executive Director's concurrence. The request will include: (1) an explanation as to why the Navy believes that the nest and buffer make the training infeasible; (2) provisions for trained monitors to be present during the training event to maximize avoidance of harm to the nests with eggs and birds; (3) a discussion of whether

nests and eggs could be relocated in a manner that would enable the training to occur without removing the markers; and (4) post-event reporting to the Commission staff as to the impact of the training on nesting success.

3. **Dog Training in STCC-N Beach Lanes 8-10 During Least Tern/Snowy Plover Nesting Season.** Dog training in the three southernmost STCC-N Beach Lanes (Lanes Blue 2, and Orange 1 and 2), which is proposed to occur only after Navy/Fish and Wildlife Service agreement on further study and management measures as specified in Condition 1.6.3 of the FWS BO Terms and Conditions, shall not occur until the Navy has submitted the agreed-upon plan and management measures to the Commission for review and concurrence.

4. **Vernal Pools.** Vernal pools containing San Diego fairy shrimp (as shown on Exhibit 7, or as may be superseded by more recent surveys conducted under Term and Condition 4.1 of the USFWS BO, which requires baseline surveying prior to conducting exercises at STCC-S) will be fenced or otherwise marked as off limits for training exercises, including foot traffic, parachute drops, and military dogs, throughout the year.

5. **Monitoring Reports.** The Navy will provide the Commission staff with a copy of all monitoring reports prepared for the U.S. Fish and Wildlife Service under the July 7, 2010 Biological Opinion.

6. **Non-military-working Dogs.** The Navy will maintain signs and enforce the existing ban on the public bringing non-military working dogs to the beach during the least tern and snowy plover nesting season, in areas owned or leased by the Navy.

7. **Coastal Trail.** The Navy will discuss and consider extending the Coastal Trail, via an easement, through the project area.

The Commission found that, if modified in accordance with the above conditions, would be fully consistent and thus consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program (CCMP).

The basis under the policies of the CCMP for the conditions is contained in the adopted staff recommendation (attached).

Pursuant to 15 CFR §930.4(b), if the Navy does not agree with the Commission's conditions of concurrence, then all parties shall treat this conditional concurrence as an objection. Section 930.4 of the CZMA regulations further provide:

(a) ... If ... a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. . . . ; and

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and

...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

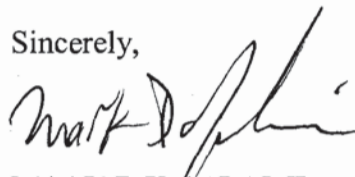
In addition, 15 CFR §930.43(d) and (e) further provide:

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (see §930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

If you have any questions, please feel free to call me at (415) 904-5289.

Sincerely,



MARK DELAPLAINE
Manager, Energy, Ocean Resources, and
Federal Consistency Division

Attachment (Adopted Staff Recommendation)

cc: San Diego District Office
Navy Region Southwest, San Diego (Admiral French, Kat Ostapuk, Alex Stone)

OCRM (David Kaiser, Kerry Kehoe)
USFWS (Sandy Vissman)

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