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SECTION R1.0
INTRODUCTION

This section introduces the organization of comment letters received on the South Coast Study Region (SCSR) Marine Protected Areas (MPA) Project Draft Environmental Impact Report (EIR) during the public review process, and of responses to comments on the Draft EIR.

As described in Section 1.3 of this Final EIR and California Environmental Quality Act (CEQA) Guidelines, an EIR is a public information document that assesses potential adverse environmental effects of a proposed project and identifies mitigation measures and alternatives to the project that could reduce or avoid adverse environmental impacts (14 California Code of Regulations [CCR] 15121(a)).

In accordance with State CEQA Guidelines, the publication of the SCSR MPAs Draft EIR on August 18, 2010 marked the beginning of a 45-day public review and comment period. The public review process was originally slated to end on October 4, 2010, however a notable number of comments from the public and other interested parties was submitted early in the process requesting more time to review and provide comment on the Draft EIR. A significant number of comments in support of maintaining the original timeline for the public review process was also submitted. In light of the significant public request for extension, and aligned with CEQA requirements for lead agencies to provide good-faith reasoned analysis and response to comments received (State CEQA Guidelines 15088), the California Fish And Game Commission (Commission) conducted a special meeting to consider the possible extension of the Draft EIR public review and comment period. As a result of the public comments heard at this meeting, and written requests for extension received, the Commission granted a 15-day extension of the public review and comment period for the Draft EIR.

By October 19, 2010 – the final day of the 15-day extension for the public review and comment period – more than 1,000 letters total had been submitted during the public review process. All of the letters received during this period are provided in this volume. Summaries of oral comments submitted at Commission meetings during the public review period are also included here. Oral comments submitted after the close of the comment period at the Commission meeting held on October 20 and 21, 2010 that directly relate to the Draft EIR or topics discussed in the Draft EIR were also considered, and are provided.

Each comment letter received on the Draft EIR has been assigned a letter and number designation (e.g., A01); comments within each letter have been numbered in the right margin of the letter adjacent to the individual comment (e.g., A01-i-1, A01-i-2, A01-i-3…, A02-ii-1….). Comments that appear to repeat the same issue were given the same number throughout the comment letter. Each unique comment letter is followed by the Commission's response to that letter. The responses are numbered to correspond with the comments as

identified in the right margin of the letter. In addition to the unique comment letters, a total of 6 form letters (letters with similar comments and format, with no substantially different Draft EIR-relevant comments) were submitted: 33 of form letter A, 437 of form letter B, 684 of form letter C, 9 of form letter D, 11 of form letter E, and 32 of form letter F. Responses are provided for the 6 form letters.

As required by State CEQA Guidelines 15132, this section also provides responses to substantive and significant environmental issues raised in the comments. Responses are provided for each comment that raised a significant environmental issue or an issue related to the adequacy of the Draft EIR, and all comments received are acknowledged. The Commission has attempted to respond to all comments where the comment was understandable and provided evidence for the assertions presented. Comments that advocated MPA options not currently being considered were forwarded to the regulatory team for consideration, but further analysis of the need for or benefits of the advocated change to the proposed Project IPA or alternatives was not performed in the Final EIR. Also, comments regarding future projects that commenters assert could be affected by the proposed Project IPA or alternatives were responded if these reported projects were sufficiently well-defined to allow a single response. Where the exact nature and design of future projects was not specific or was unspecified or unascertained, no response was provided. Responding to comments on all possible future development or permitting scenarios for projects still in the planning stage is not required by CEQA and would require speculation and would not further the CEQA goals of informed decision-making. As stated by the California Supreme Court in Environmental Protection Info. Ctr. v. Dept. of Forestry (2008) '[W]here future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences' (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370 [7 Cal.Rptr.2d 307]) p. 372.). Conflicts between the proposed Project IPA (or alternatives) and future projects would best be handled by approaching the Commission or the Department of Fish and Game (Department) when the specific project's design, and environmental impacts, and possible conflicts with the MPA regulation in place at that time are known.

In some instances similar comments have been submitted on the same issue or theme and the responses to these comments have been incorporated into master responses. Some responses necessitated changes to the text of the Draft EIR. In such cases, the response will indicate that a change to the text was made; the corresponding text change can be found in the text volume of this Final EIR. Some comments do not address the completeness or adequacy of the Draft EIR, do not raise significant environmental issues, or do not request additional information; some comments constitute unsubstantiated narrative or opinion. In such cases, a substantive response to such comments is not required under CEQA (See CEQA Guidelines 15088). When a comment is not directed to significant environmental issues related to the proposed Project IPA and/or the Draft EIR, the comment is noted but a detailed response is not provided. Detailed responses are also not provided to comments regarding the benefits of

the proposed Project IPA or alternatives 1, 2, or 3, as the focus of the EIR is the deleterious environmental impacts of a proposed project.

SECTION R2.0
RESPONSES TO COMMENTS

This section contains comment letters received on the Draft EIR, and responses to those comments received. Master responses are provided to address major recurring themes that have been noted in comments received throughout this process. Master responses are provided first, followed by comment letters and responses to comment letters. Unless otherwise noted, all code sections cited are to the California Fish and Game Code (FGC).

To limit redundancy and improve readability, occasionally only portions of a master response have been included in response to a comment. However, a master response applies in whole to comments where relevant issues are presented, even where master responses have been summarized or abbreviated.

R2.1 MASTER RESPONSES

R2.1.1 MASTER RESPONSE 1 – IMPROPER IMPLEMENTATION OF THE MLPA

An overarching theme of some comments is that the MLPA process in general, and the SCSR MPA project in particular, either exceeds the scope of the statute, or otherwise impermissibly deviates from its requirements, particularly with its use of the State Marine Reserve (SMR) designation. Although these comments constitute unsubstantiated narrative or opinion, a discussion here is useful to understand the context within which the other themes are addressed.

At the outset, the MLPA is an environmental statute and remedial in nature; remedial statutes are liberally construed so as to effectuate their object and purpose, and the remedial effect of provisions should not be impaired by construction. (3 Sutherland Statutory Construction (6th ed.), 60:2, p. 199). This construction of Fish and Game laws has been supported in published cases; conversely, statutory interpretations of Fish and Game statutes will be rejected when they lead to absurd results in light of the clear policy statement of legislative purpose. (*In re Makings* (1927) 200 Cal. 474, 478-479; *Pennisi v. Department of Fish & Game* (1979) 97 Cal.App.3d 268 , 272-273; *Young v. Department of Fish & Game* (1981) 124 Cal.App.3d 257, 271; *Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1563).

In enacting the MLPA, the legislature stated why it was necessary to modify the existing collection of MPAs to ensure that they are designed and managed "to take full advantage of the multiple benefits that can be derived from the establishment of marine life reserves." (Section 2851(h)). "Marine life reserves," which are now called state marine reserves, are

defined in the MLPA as no-take areas. (Section 2852(d)). The MLPA also directs the MLPA Program to have an "improved" SMR component, and contemplates that the process for the establishment, modification, or abolishment of existing MPAs includes the creation of new MPAs. (Sections 2853(b)(6), 2853(c)(5), 2855(a), 2857(c)). The agenda driving this process is the one expressed by the Legislature in its detailed articulation of MLPA through its findings and declarations, definitions, goals and elements, Master Plan components, and objectives and guidelines. (Sections 2851-2853, 2856, 2867). Since the Legislature does not engage in idle acts, the fact that it expressly authorized the Commission in Section 2860 to regulate commercial and recreational fishing and any other taking of marine species in MPAs, and not just marine reserves, presumes such authority can be exercised.

Of course, how the Commission exercises that authority is a matter solely within its purview. In any case, the authorization of new SMRs cannot be reasonably construed as reflecting a bias against fishing, when the MLPA expressly states that such reserves "may help rebuild depleted fisheries." (Section 2851(f)). Further, the *Marine Life Management Act* (MLMA) links the maintenance, restoration, and enhancement of marine habitat to the primary fishery management goal of sustainability. In that respect, the Legislature also emphasizes that even fishery management decisions—which include the prevention of overfishing, the rebuilding of depressed stocks, the facilitation of conservation and long-term protection, and the restoration of marine fishery habitats—must not sacrifice long-term goals for short-term benefits. (Sections 7055(a), 7055(b), 7056(a), 7056(i)).

Some comments additionally complain that the proposed project does not adequately address such issues as funding, enforcement and monitoring. These subjects are expressly identified as Master Plan components (Sections 2856(a)(2)). Consistent with the MLPA's emphasis of timeliness over completeness, the MLPA only requires that these components be addressed in the Master Plan in the form of recommendations. There is no authority for the proposition that the MLPA requires funding, enforcement and monitoring issues to be comprehensively and finally addressed prior to, or contemporaneous with, the MPA designation process.

R2.1.2 MASTER RESPONSE 2 – INADEQUACY OF SCIENCE STANDARD

A recurring theme questions the adequacy of the science driving the MLPA process, asserting that the science being used is not the "Best Available Scientific Information" (BASI) and recommending that the process not continue until more research and study is conducted. However, state law emphasizes timeliness over certainty or perfection. By way of review, in 2004 the National Academy of Sciences sponsored a major discussion of BASI in the context of the *Magnuson-Stevens Fishery Management Act*, and noted that "best" explicitly suggests that there is no better scientific information available and implicitly suggests the use of the most relevant and contemporary data and methods. However, the MLPA process is expressly based "on sound scientific guidelines" and "the best readily available science." (Sections 2853(b)(5), 2855(a)). The MLPA use of best *readily available* science is an important qualification that emphasizes timeliness over certainty or perfection. Similarly, the *Marine Life Management Act*, which predates the MLPA, qualifies its application of BASI with the language: "...on other relevant information that the department possesses, or on the scientific information or other relevant information that can be obtained *without substantially delaying the preparation of the plan*." [*Emphasis added*] (Section 7072(b)).

The MLPA emphasis of timeliness over certainty or perfection of information is further underscored by the concept of adaptive management, which recognizes that this process proceeds in the face of "scientific uncertainty" and prospectively contemplates that "monitoring and evaluation shall be emphasized so that the interaction of different elements within marine systems may be better understood." (Section 2852.) The objective of adaptive management under the MLPA is not to reduce uncertainty through increased scientific rigor, but rather to produce practical information that guides management decisions. To date, the California experience with adaptive management of marine resources is exemplified through the *Marine Life Management Act* (Sections 90.1, 7056(g)) and the Nearshore Fishery Management Plan, which addresses the critical concepts of the *precautionary principle*, and the variability of adaptive management strategies in *data poor*, *data moderate*, and *data rich* circumstances.

That the Legislature, as a matter of public policy, has favored timeliness over certainty of information does not mean that inadequate science should be used. In that respect, external peer review is a strong guarantor of the adequacy of the science. The MLPA mandates that an external peer review process be established, and allows use of the process identified in Section 7062 of the *Marine Life Management Act* "to the extent practicable" (Section 2858). Section 7062(a) allows for submission to peer review of documents "that include, but are not limited to [marine living resources management documents]." However, such submissions are discretionary.

Also, it is important to understand that the charge of the peer review entity is not to authenticate the data presented to them, but to evaluate the scientific methodology employed and the facial plausibility of the conclusions that can be drawn there from. More importantly, the peer review entity is not expected to approve, disapprove, or comment on the wisdom of those conclusions. This must be so, because reasonable people can in good faith arrive at different conclusions using the same data and methodology.

In that regard, the Commission undertook such a peer review of the scientific basis for the Master Plan. Consistent with the statutory direction of Section 7062, the scientific design guidelines used in preparing alternative MPA recommendations were reviewed by a panel convened by Oregon Seagrant. The reviewers were selected by Seagrant independent of the Commission, and asked to review: (1) the MLPA Master Plan Science Advisory Team (SAT) guidance on MPA network design; and (2) the consideration of habitats in the design of MPAs provided by the SAT. The reviewers were also asked: (1) in general, is the document logically organized and factual? (2) are its recommendations clearly and unambiguously stated? (3) are there specific statements that you feel are incorrect or misleading? and (4) is there anything of importance that was not stated or covered? The three reviewers found the document and advice appropriate and not lacking in any way.

R2.1.3 MASTER RESPONSE 3 – INADEQUACY OF SOCIOECONOMIC ANALYSES

A variant of Master Response 1 is that the socioeconomic information is fatally deficient. However, nothing in the MLPA imposes an affirmative duty to generate socioeconomic data beyond that which is required by other applicable laws, such as the *Administrative Procedures Act* (Government Code 11346.3) or—to the extent a socioeconomic change induces significant adverse environmental impacts—the *California Environmental Quality Act*. The MLPA authorizes the establishment of a Master Plan team of scientists, one of which "may" have expertise in socioeconomics (Section 2855(b)(3)(A)). The preferred siting alternative must incorporate information and views provided by people who live in the area and other interested parties, including economic information (Section 2857(a)). Here, the term "economic information" relates back to "information" so the Commission reasonably interprets this to mean that it is the "people who live in the area and other interested parties" that provide the economic information. Conversely, neither the five MLPA Program elements in Section 2853(c), nor the eleven Master Plan components in Section 2856(a)(2), address socioeconomics. Socioeconomics, then, is only one factor to consider in the development of a siting alternative (Sections 2855(c)(2), 2857(a)), which still must be consistent with the ecosystem-based goals and elements (Section 2853) and sound scientific guidelines (Section 2857(c)) of the MLPA. Consistent with State CEQA Guidelines (14 CCR 15131(a)), there is no duty to mitigate for adverse socioeconomic impacts under the MLPA. The MLPA expressly addresses mitigation of adverse impacts "on marine life and habitat in MPAs," and if the Legislature had intended that socioeconomic impacts also be mitigated, it plainly would have said so (Section 2862). However, detailed socioeconomic information generated during the siting process may be relevant in the subsequent implementation of regulations under the *Administrative Procedures Act*.

R2.1.4 MASTER RESPONSE 4 – FAILURE TO CONSIDER EXISTING MARINE PROTECTED AREAS

There is no authority for the proposition that the MLPA requires holistic understanding of the resource contributions of existing MPAs before new ones may be considered. Indeed, such a conclusion is precluded by a plain reading of the statute. The MLPA only contemplates "an analysis of the state's current MPAs, based on the preferred siting alternative, and recommendations as to whether any specific MPAs should be consolidated, expanded, abolished, reclassified, or managed differently so that, taken as a group, the MPAs best achieve the goals of Section 2853 and conform to the guidelines in subdivision (c) of Section 2857." (Section 2856(a)(2)(F)). This indicates that the assessment of existing MPAs is driven by the configuration of the preferred siting alternative, not the reverse. That assessment of existing MPAs is intended as part of the ongoing process, as opposed to being a necessary precondition to future MPAs, is further indicated in the Master Plan component requiring "recommendations for monitoring, research, and evaluation in selected areas of the preferred alternative, including existing and long established MPAs, to assist in adaptive management of the MPA network" (Section 2856(a)(2)(H)). Also, the MLPA requires that the Fish and Game Commission "promptly act" on petitions to "add MPAs" and states that "nothing in this chapter" restricts any existing authority to designate new MPAs prior to the completion of the Master Plan." (Section 2861(a), (c)). If a comprehensive assessment of the resource contributions of existing MPAs was required before new MPAs could be created, then these provisions would be rendered null.

R2.1.5 MASTER RESPONSE 5 – FAILURE TO CONSIDER EXISTING FISHING MANAGEMENT MEASURES

The MLPA expressly states that MPAs and fisheries management are complementary. (Section 2851(d)). Similarly, the *Marine Life Management Act* declares that conservation and management programs "prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats." (Section 7055(b); see also Section 7056(b), (c)). Although MPAs and fisheries management are complementary, they are not equivalent. The purpose of habitat protection in the MLMA is to advance the "primary fishery management goal" of sustainability (Section 7056). Moreover, that which is being managed is a specific fishery—which may be based on geographical, scientific, technical, recreational and economic characteristics (Section 94)—and so may only provide limited protection of a particular habitat.

Conversely, although the MLPA considers fishery habitat (Section 2851(c), (d)), it also encompasses broader, ecosystem-based objectives that are not limited to *only* fishery management. If only existing fishery conservation and management measures were considered in designing the MLPA networks, then arguably only some of the ecosystem goals and objectives might be met. Other goals and elements would be undervalued (e.g., improving "recreational, educational and study opportunities provided by marine ecosystems" and protecting "marine natural heritage...for their intrinsic value" (Section 2853(b)). The MLPA also states that one of the purposes of the marine reserve component is to generate baseline data that allows the quantification of the efficacy of fishery management practices outside the reserve (Section 2851(e), (f)). This would be difficult to implement if the MPA design itself must consider those very same existing conservation and management measures.

Moreover, it is important to remember that the MLMA is the most comprehensive revision of state marine fishery management procedures in history. The subsequent enactment of the MLPA the following year strongly suggests the Legislature recognized that fishery conservation and management measures alone were inadequate to the task of broad ecosystem protection. Finally, had the Legislature intended existing fishery conservation and management measures to be considered in designing MPAs, then it plainly would have said so, as it did in the MLMA. (Section 7083). As it is, the fact that the MLPA allows the Commission to "regulate commercial and recreational fishing and any other taking of marine species in MPAs" (Section 2860(a)) strongly suggests that fishery measures are not intended to be considered in the design of MPAs but may in fact be subject to limitations beyond those already existing under fishery management regimes. Thus, while the design of fishery management measures should properly consider the existence of MPAs, the reverse is not true.

The conclusion that existing fishery management measures are not properly considered in designing MPAs is further bolstered by three "real world" considerations. First, the direction from the Legislature is to use "the best readily available information" and studying the interaction of existing fishery management practices would add another dimension of complexity that retards, not facilitates, the process (See Theme 1.0). Second, the subject of interaction with existing fishery management processes reflects exactly the kind of "scientific uncertainty" acknowledged by the Legislature when it authorized the application of adaptive management to the MLPA process (See Theme 2.0). Third, the unfortunate reality is that existing fishery management processes do not always work. Indeed, as evidenced by the disastrous collapse of the west coast groundfish and the red abalone fisheries, they can fail entirely. Fishery conservation and management measures alone do not necessarily guarantee either fishery sustainability or ecosystem health.

Nevertheless, to the extent practicable, information on existing fisheries management measures was considered in the development of siting alternatives. Presentations were made by Department and federal fisheries management experts, data on the locations and types of existing measures were provided, and changes were made to various proposals in response to comments on other ongoing management. The fact that the final siting alternatives overlap significantly with existing fisheries closures is one indication of the efforts taken to prevent duplication of protection while still meeting the MLPA goals described above.

R2.1.6 MASTER RESPONSE 6 – ENVIRONMENTAL JUSTICE AND ADA

Several comments have asserted that the proposed project does not comply with Environmental Justice requirements of state law. However, Environmental Justice is not a CEQA consideration. The concept was introduced into state law by Senate Bill 115 (Statutes of 1999, Chapter 690) and was originally proposed to be included in CEQA. However, those provisions were subsequently deleted by the September 3, 1999 amendments to the bill. As enacted, the bill only gave broad policy guidance to the California Environmental Protection Agency, and required it to develop a model environmental justice mission statement for boards, departments, and offices within the agency. The intent of the bill was to avoid disparate effects of "environmental hazards" (e.g. air pollution and hazardous waste facilities) on low-income and minority communities (Assembly Committee on Natural Resources, analysis of Senate Bill 115 (1999-2000 Regular Session) August 16, 1999).

The Natural Resources Agency subsequently adopted its own policy directed at ensuring that minority and low-income populations "are not discriminated against, treated unfairly, or caused to experience disproportionately high and adverse human health or environmental effects from environmental decisions." The policy also expressly states:

> "This policy is intended only to improve the internal management of the Resources Agency and does not create any right or benefit, substantive or procedural,

> enforceable at law or equity by a party against the State of California, its agencies or instrumentalities, its officers or employees, or any other person."

Two considerations are evident. First, the proposed project – an array of MPAs intended to conserve and protect public trust resources in the marine environment – is fundamentally different from a project that generates air pollution or hazardous waste. To the extent that air quality might be affected by redirection or displacement of fishing vessels, there is no evidence on the record that such changes would disproportionately impact low-income or minority communities on land. The argument that low-income and minority groups would be exposed to a greater human health risks if MPAs increase the number of contaminated fish ignores the fact that the take of fish is otherwise restricted, as by bag limits. Second, the emplacement of MPAs only affects use – not access – to the marine resources being protected. A low-income or minority person on a boat enjoys the same degree of access as everyone else. Having to transit an SMR in order to fish may be an inconvenience and may impose higher transportation costs, but those considerations are not properly considered by CEQA. Third, to the extent that shore-based fishing is affected, a similar result obtains. A low-income or minority person may indeed be inconvenienced and may have to incur slightly more transportation costs to locate to another shore-based fishing site, but there is nothing in the record to suggest that this results in a new, significant adverse environmental impact.

Moreover, it is important to note that the so-called "right to fish" is neither absolute nor fundamental, but has been characterized by the courts as only a "privilege" or a "qualified right" subject to the Legislature's regulation of fishing. The California Supreme Court has long declared that the power to regulate fishing has always existed as an aspect of the inherent power of the Legislature to regulate the terms under which a public resource may be taken by private citizens *(in re Quinn* [1973] 35 Cal.App.3d 473; *State of California v. San Luis Obispo Sportsman's Association* [1978] 22 Cal.3d 440; *Paladini v. Superior Court* [1918] 178 Cal. 369; *California Gillnetters Association v. Department of Fish and Game* [1995] 39 Cal.App.4th 1145).

In a related matter, several comments have challenged the proposed project's compliance with the Americans With Disabilities Act (ADA). At the outset, the Commission notes that the language in Title I of the ADA requiring "reasonable accommodations," applies only to employers and so is inapplicable here. Title II of the ADA provides that "no qualified individual with a disability shall, *by reason of such disability*, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (Emphasis added; 42 U.S.C. 12132.) The language applicable to public services, benefits, and programs is found in the regulations implementing Title II, and require "reasonable modifications" to public services and programs that discriminate on the basis of disability unless such modifications would fundamentally alter the nature of the service or program (28 Code of Federal Regulations [CFR] 35.130(b)(7)). Thus, in order to prove a public program or service violates Title II, a

person must show: (1) s/he is a "qualified individual with a disability"; (2) s/he was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.

Assuming a person is "handicapped" and/or "disabled" and "otherwise qualified" under the ADA, s/he must also show that his/her exclusion from the fishing was due to his/her disability. However, a "no-take" MPA designation applies to all fishers, not just disabled ones. Moreover, the "reasonable modification" provision of the regulations implementing Title II states: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would *fundamentally alter the nature of the services, program, or activity*." (Emphasis added.) In this case, the MLPA found that living marine resources need to be conserved and protected, and expressly authorizes state marine reserves where no extractive activities are permitted (FGC §2851(f), 2852(d)). The MLPA makes no provision for exempting certain groups from this broad prohibition, and doing so would fundamentally alter the nature of the MLPA program.

R2.1.7 MASTER RESPONSE 7 – PIECEMEALING

Several comments contend that the Draft EIR impermissibly piecemeals the project and so avoids discussing the full impacts of the project. The comments base this on the MLPA goal "to ensure that the state's MPAs are designed and managed, to the extent possible, as a network" (FGC §2853(b)(6)). At the outset, the Commission noted that by its own terms this language is qualified by the phrase "to the extent possible," which necessarily contemplates that more than one network might be necessary. Indeed, the MLPA itself distinguishes "biogeographical regions" (FGC §2852(b)) which were subsequently refined into sub-regions in the MPA process to better effectuate the purposes of the act. More importantly, the MLPA *expressly* contemplates the development of "alternative networks of MPAs, including marine life reserves in each biogeographical region…" (FGC §2856(a)(2)(D)). Further, in upholding the validity of the memorandum of understanding creating the MLPA Initiative, the court found that the agreement to prepare the MPA master plan in phases was lawful consideration (Coastside Fishing Club v. California Resources Agency (2008) 158 Cal.App.4th 1183, 1194). Accordingly, the EIR properly addresses only the South Coast and does not constitute piecemealing.

R2.1.8 MASTER RESPONSE 8 – NOTICE

Several comments requested an extension of the Draft EIR public comment period, and also complained of deficiencies in the Notice of Preparation and Notice of Availability. Although these comments do not raise significant environmental issues in the document, the

Commission notes that the original 45-day comment period was extended by the Fish and Game Commission to 60 days on September 29, 2010, and that the purpose of the NOP is only to facilitate interagency coordination (14 CCR 15375). CEQA requires only substantial compliance with notice requirements, and this was achieved (see, e.g. Public Resources Code 21092(b)(2).)

R2.1.9 MASTER RESPONSE 9 – ENFORCEMENT

CEQA requires an analysis of the impacts of proposed projects on public services and utilities. Public services include police, fire, and other typically government-provided services. For CEQA purposes it is only where the proposed project would result in adverse changes to these services that are relevant and analyzed.

In and adjacent to the SCSR a number of public agencies provide police and fire services. The Department currently patrols all waters within the SCSR and enforces the provisions of the California Fish and Game Code and implementing regulations including existing MPA regulations (Title 14, Section 632). The Commission is proposing to amend these regulations in order to implement the provision of the Marine Life Protection Act which mandates the creation of a network of marine protected areas (See FGC §2850-2863). The MLPA notes that MPAs should include several elements, such as: an "improved marine life reserve component," and specified objectives and management and enforcement measures (MLPA Section 2853(c)) (Department 2008). The regulations have been drafted to enable the public and law enforcement agencies to easily understand the locations and boundaries of MPAs as well as the types of activities that are allowed within an MPA (see Section 2.4.9 of the Final EIR). In the case of SMRs, the regulations do not allow take of any kind to occur and thus simplify enforcement when compared to the existing regulatory scheme.

The Draft EIR correctly concludes that implementation of the proposed Project IPA will not result in significant adverse impacts to enforcement and emergency response public services occurring within the SCSR. In addition, the MLPA does not preclude emergency actions necessary to public health and safety. The proposed Project IPA does not add additional geographic areas over which enforcement is expected to occur, since enforcement already occurs over all areas within the SCSR. Implementation will not require additional worker hours or equipment over what is currently being used to patrol and enforce existing fish and game provisions within the SCSR. Furthermore, the co-location of many of the proposed MPAs with existing onshore protected areas and facilities, alignment of geographic boundaries on the nearest whole minute of latitude and longitude and with discernable landmarks all contribute to the public's awareness and compliance, and enforcement partners' abilities to more easily enforce MPAs. Thus, the proposed Project IPA actually is likely to increase enforcement efficiencies in deterring and apprehending violators, especially those who intentionally fish within SMRs. Those who fish within SMRs are easily identified by the public and tips provided are more likely to result in successful enforcement actions.

The Commission believes that adequate organizational resources exist to manage and enforce the existing and proposed MPAs and that the Final EIR adequately characterizes the Department's current law enforcement resources. Department enforcement and surveillance activities utilize a combination of boat, aircraft, and land-based wardens. Furthermore, interagency coordination among local, state, and federal partner enforcement entities is ongoing. This cooperative enforcement approach results in a sharing of resources and assets, resulting in a more efficient use of Department resources, and a greater enforcement presence. Department enforcement staff will develop an enforcement plan in cooperation with these other public agencies where existing memoranda of understanding are in place to coordinate such efforts. In this case the proposed Project IPA is not going to adversely impact enforcement activities that are currently ongoing. As such the proposed Project IPA and alternatives produce no impacts cognizable under CEQA.

Several comments have asserted that state marine reserves will preclude law enforcement and other actions necessary to preserve public health, safety, and welfare. However, the "no-take" provision in the MLPA is qualified by the statement that state marine reserves shall be maintained "to the extent practicable" in an undisturbed and unpolluted state (FGC §2852(d)).

For additional details on how enforcement was appropriately factored into the design of the proposed MPAs, the capacity to effectively enforce MPAs, and the less than significant impact to the enforcement of existing laws and regulations and respective entities, please see Section 2.4.9, Section 3.6.2, Section 8.2.2.1 to Section 8.2.3.3, and specifically Section 8.2.2.1.1 of the Final EIR.

R2.1.10 MASTER RESPONSE 10 – IMPROPER OR ERRONEOUS AIR QUALITY ANALYSIS

Analysis of Commercial Fishing and CPFV Emissions

EIR Section 6.1 provides a reasonable estimate of increases in criteria pollutant emissions that might be attributed to the proposed project within the SCSR. Several comments argue that the analysis underestimates the effects of the proposed Project IPA on commercial fishing and recreational activities, and that the actual results will be much greater than those projected in the Draft EIR. These arguments are based on the assumption that the proposed project will cause a large displacement of fishing activity to more remote sites, causing increases in marine vessel operation with attendant increases in air pollution and other effects. None of the commenters provide references, data, or any other evidence in support of their argument.

Based on landing receipt records of fishing vessel operations within fishing blocks that are within or extend into coastal waters, or within fishing blocks adjacent to areas of the proposed MPAs, a large majority of the number of fishing operations within the SCSR would

not be affected at all by the proposed project. For example, coastal water fishing blocks within 10 miles of Santa Barbara Harbor include the blocks detailed in the table below.

SAMPLE FISHING BLOCK DATA

Fishing Block	Number of 2008 Operations
652	725
653	667
654	667
655	155

Source: Excerpt from Appendix C-1, Table A-4 of the Final EIR.

Of the above four fishing blocks, No. 654 would be affected by the proposed Naples SMCA and by the Campus Point SMR, which together would occupy about 21 percent of that fishing block. Thus, under the proposed Project IPA the remaining 79 percent of fishing block 654, as well as the entire areas of adjacent blocks, would remain unrestricted. Some fraction of the 667 operations for block 654 would presumably be affected, but the remaining 1,647 operations would not be affected.

One specific comment (A89_ii-18) states that the proposed project will have "enormous" impacts because it will "vastly" expand the area of coastal waters within which "no take" restrictions will be enforced. In fact, of the 2,351 square miles within the 3-mile limit of the Southern California coastline, existing restrictions already affect about 182 square miles in 42 MPAs. Under the proposed Project IPA, restrictions will increase this area to about 351 square miles within 48 MPAs, or slightly more or less depending on the alternative considered. Existing restrictions within this area apply to 7.7 percent of the coastal waters, and the proposed Project IPA would increase this fraction to about 15 percent of the same waters.

The Commission has authority to create the MPAs only within the 3-mile limit which defines the coastal waters. These waters contain important fisheries, but there are also important areas for many species beyond this limit out to about 50 miles (Ecotrust 2010:5). Obviously, if one considers the greater extent of fisheries out to 50 miles, then the proportion affected by the MPAs is much less. A referenced comment (in section VI of letter A89_ii) attempts to overstate the degree of change by comparing the strict "no take" restrictions in coastal waters along the state (14 square miles) to the area of proposed MPAs (351 square miles) within the SCSR. To be sure, the proposed Project IPA would increase the areas subject to restrictions, and in some areas the degree of protection will be increased. The effect, however, will not be a 20-fold increase in complete fishing exclusions with an equivalent increase in necessary operations, as implied by the referenced comment letter. Other comment letters (see for example C06_ii-8) argue that the Draft EIR overestimated the potential effect on commercial fishing displacement, so there is clearly disagreement on this issue. The analysis in Section

6.1 of the EIR assumes that some operations will increase as affected commercial fishermen choose to move to an area outside of an MPA. At issue is how to estimate that additional distance and how that distance of marine vessel travel will influence related environmental resources.

The assumptions with respect to additional distance that might be traversed are explained in the text (Section 6.1.3.1 of the EIR), and appendices C-1 and C-2 (specifically in Appendix C-1, Table A.3; and Appendix C-2, Table A.3b). Using the fishing blocks near Santa Barbara Harbor listed above, a fishing boat captain excluded from operations in the Naples or Campus Point MPAs (portion of block 654) might choose to work in blocks 653 or 652 closer to Santa Barbara, or at some location more distant. Based on the size and orientation of the MPAs and the portion of fishing block 654 affected, the one-way additional travel distance for this situation was estimated at just over one mile. That is, for the year 2008 data the establishment of these two MPAs would have resulted in an increased travel distance of about 1,334 miles (two miles x 667 operations).

Depending on the particular MPA and fishing block under consideration, the estimated additional one-way transit distances range from zero or small fractions of a mile, up to a maximum of just over five miles. These distances were then applied to records of vessel operation within each fishing block for the sample year (2008) and used with standard emission factors (also presented in appendices C-1 and C-2, and summarized in Table 6.1-4) to estimate increases in vessel emissions. None of the commenters objected to the assumed emission factors or to the analysis procedure beyond the criticism of the estimates of how the proposed project might displace fishing or recreational activities.

Alternate approaches to estimating increased travel distances are possible. For example, one might have computed the distance from the centroid of a new MPA to the boundary of the adjacent fishing block, with a result on the same order of magnitude as the distances used in the Draft EIR—ranging from one to three miles. A different alternative could modify an estimated distance with a proportional weighting based on the activity in adjacent fishing blocks. Such an approach, however, would have to decide whether a fishing captain would choose to move to an adjacent block with higher activity (presumably more fish) or lower activity (presumably less competition). For their study on economic effects, Ecotrust (2010:39) assumed a worst-case scenario in which fishing within the MPAs simply ceases with no adjustment. That is, there would actually be zero increase in travel distances, and a small reduction in overall commercial fishing and related air emissions would occur. Another alternative could be attempted by matching locations of proposed MPAs with nearest locations of suitable fish habitat. Comparing mapped locations of bottom habitat (figures 7-7 through 7-12 in the EIR) with the proposed MPAs does not provide any useful information, however, since the mapped habitat areas are generally continuous across and adjacent to all of the MPAs. The aggregate fishing ground location data mapped by Ecotrust (2010:10, and available at www.marinemap.org) does not provide any better resolution of data when

compared with that available from the landing receipt records provided by the Department (in Appendix C-1, Table A-3). Finally, a detailed review of fishing ground survey data compiled by Ecotrust might allow a more accurate estimate of altered travel distances. Some of this data is considered confidential, however, and in any event the results from this approach are likely to be simply a refinement of those derived from the fishing block data—not a radical departure. None of these alternatives gives the prospect of identifying effects substantially greater than those estimated in the Draft EIR.

The results of the analysis are presented in EIR Table 6.1-5, where the projected increases in criteria pollutants are compared with significance thresholds in use by each of the four Air Pollution Control Districts (APCDs) within the SCSR. Even this screening comparison is conservative, however, because the table was constructed by taking the highest single day results for commercial fishing vessels and adding them to the highest single day results for commercial passenger fishing vessels (CPFVs), which occur on different days. Of the five pollutants considered across the four APCDs, the worst result was for NO_X in the South Coast Air Quality Management District. For this pollutant, the projected increase in emissions (43.8 pounds per day) is well below the adopted threshold of 55 pounds per day. All other results have greater margins below their respective threshold limits.

As explained in Section 6.1.3.1 of the EIR, the technique used to estimate the potential added transit distances and associated emissions was based on that used in the previous EIR for the North Central Coast MPAs. Although several coordinated letters from environmental groups offered criticism of the air quality section in that EIR, the sense of the criticism was that the estimate of displacement caused by the proposed MPAs was too high and tended to overstate the related physical effects. A single critical comment (L-26 in the Final EIR for that project) addressed the qualitative discussion of recreational fishing displacement, but did not disagree with the assumptions or analysis of commercial fishing displacement and air emissions. This current EIR for the SCSR was circulated for review to the California Air Resources Board, and to each of the four APCDs having jurisdiction within the SCSR. None of these agencies with expertise and a review role over air quality issues in their jurisdictions commented on the analysis and results presented in the Draft EIR.

In summary, the air quality analysis in the Draft EIR is reasonable and adequate and meets the requirements of CEQA. Several points support this conclusion:

1. The effects of the proposed Project IPA are relatively small when either the number of fishing operations or the proportional area of the affected fisheries is considered.
2. The assumptions and the data used for the analysis are presented in the text and appendices of the Draft EIR.
3. Alternative approaches to estimating the increased travel distances associated with displaced commercial fishing operations would yield lower or similar results. There is no

evidence or indication that substantially higher estimates of displacement fishing travel distances would result from an alternative estimate.

4. The most adverse increase in criteria pollutant emissions from the potential displacement of commercial fishing activity would still be only one-third the value of the applicable significance threshold.
5. The methods and assumptions used to estimate the displacement distance and associated air quality effects are based on those used without challenge in the North Central Coast MPA EIR. No criticism of the method, assumptions, or conclusions in this Draft EIR have been offered by reviewing agencies with expertise and a review role in air quality.

Changes in Recreational Vessel Use

Several commenters disagree with the decision in the Draft EIR not to attempt a quantitative estimate of potential air emissions from changes in recreational activity. These comments allege inconsistencies within the Draft EIR in the way in which recreational activities are characterized. They also argue that sufficient data to perform a quantitative analysis of recreational changes, similar to that performed for commercial and CPFV, is either available or could have been obtained during preparation of the Draft EIR. In addition, the comments argue that the EIR should also address potential changes in terrestrial activities—increased automobile trips and distances and emissions throughout coastal Southern California—caused by the displacement of recreational fishing activities. In summary, the implication from these comments is that the potential emissions from changes in recreational fishing behavior caused by the proposed project could lead to a significant impact not identified in the Draft EIR.

The Draft EIR included quantitative estimates of the potential increase in air emissions from commercial fishing fleet operations and from CPFV operations. Beyond these two major potential sources, the Air Quality analysis in the Draft EIR (Section 6.1.3.1.2) acknowledges that there could also be some increases in private marine vessel emissions if recreational fishermen elect to travel greater distances in order to reach fishing grounds not affected by MPAs. The discussion then notes several other factors:

- The unavailability of detailed information regarding private vessel operations
- The fact that the private vessels are generally smaller than commercial and CPFVs, and have a higher proportion of gasoline powered engines
- The fact that, for the most part, the proposed Project IPA would affect areas outside of the most heavily used recreational fishing grounds

Considering these factors, the Draft EIR did not include an attempt to quantify air emissions from possible alterations in recreational vessel activity.

A brief explanation for each of the above factors will help to understand the decision made in the Draft EIR preparation and will respond to most of the objections raised by commenters regarding this aspect of the air quality analysis.

First, with respect to data availability, the Draft EIR does include information regarding recreational fishing, numbers of participants, and its importance in the region. Section 8.3 Land Use and Recreation specifically addresses this topic, and includes discussions (Section 8.3.2.2), tabulated data (tables 8.3-1 through 8.3-6), and figures (figures 8-1 through 8-6) describing coastal recreation use including fishing. Much of this information is drawn from the Regional Profile of the MLPA SCSR prepared by the Department as part of the MPA effort. Additional information regarding recreational fishing is available in this Regional Profile report (mainly in Section 5.6 and in Map 5.6-2). Unlike the commercial and CPFV data sets, however, the limited surveys upon which recreational fishing information is based do not include logbook information that allows one to correlate specific fishing grounds with origin points for recreational fishermen. One might assume that recreational fishing boats would travel the shortest distance from the nearest harbor to a fishing location, but that assumption would not be fruitful since the MPAs have been proposed at locations that generally preserve the most productive recreational fishing locations near most harbors in the SCSR. The point is that restrictions placed on less productive recreational fishing areas, at greater distances from recreational harbors, might be expected to result in a reduction of recreational fishing travel, or at least a lower probability that there would be an increase. Thus, the Air Quality section contains the assumption that recreational fishing activity is not likely to be substantially different as a result of creating the MPAs (Section 6.1.3.1.2).

One comment (part of A89_ii-18) argued that more detailed information regarding recreational fishing trips could be obtained by "…surveying marinas and other ocean entry and landing points, interviewing users and equipment suppliers, Department records of fishing licenses, Department of Motor Vehicles boat registration records, Coast Guard records, and from a number of other sources." Such an effort could provide more detail regarding the locations or point of origin for recreational fishing activity, but would not yield data about personal behavior of recreational fishermen. Such data were collected by the Ecotrust (2010) study done in conjunction with the SCSR MPAs, but are considered confidential.

There is no dispute regarding the fact that most private vessels used for recreational fishing are smaller, and have smaller engines, than commercial and CPFVs. In addition to the size differential, a greater proportion of recreational vessels are powered by gasoline engines, which have lower NO_X emissions than diesel engines. Retrofitting of marine engines, or re-powering marine vessels with cleaner engines, under the Carl Moyer program is part of the statewide and regional effort to reduce diesel exhaust emissions, but is not a substantial factor in this discussion. The reference to this program has been removed in the Final EIR text.

The observation that most of the MPAs in the proposed Project IPA would be located away from the most productive recreational fishing areas was made in the Draft EIR (Section 6.1.3.1.2, second paragraph). This point can be verified by comparing locations proposed for the MPAs with the recreational fishing maps in the Regional Profile report (Figure 5.6-2). As written in the Draft EIR, the original sentence was confusing so the text of the Final EIR has been edited to make this point more clearly.

Of the criteria pollutants analyzed in the Air Quality section, NO_X was the one that came closest to reaching a significance threshold even though it was substantially below that limit. The Draft EIR stated that even if potential emissions from activities in the recreational fleet doubled the emissions expected from the commercial fleet, the resulting emissions would still be less than significant. This statement has been deleted from the Final EIR. Numerical corrections in the air quality analysis make it no longer true (see Comment and Response A95_ii-34), and it caused confusion by implying there was a quantitative estimate related to recreational fishing changes. Based on a review of recreational fishing locations described in the paragraph above, it is possible that some recreational fishing boat trips would increase, and it is also probable that some would decrease. The EIR did not attempt an analysis to quantify these offsetting factors, and left the discussion of recreational fishing boat movement at a qualitative result of no substantial change.

Shore-based modes of recreational fishing account for about two-thirds of all recreational fishing, with the remaining third divided between use of private boats or CPFV trips which are discussed above (Department 2009, Table 5.6-4). Shore-based fishing activities occur from man-made structures (piers and public jetties) and from coastal access points at beaches and banks. These activities are important from a recreational and economic perspective, and are discussed more in Section 8.3 of the EIR. The design and placement of the proposed MPAs are intended to maintain a balance between protection of habitats and the continuation of commercial and recreational uses, as noted in Objective 2.4 for the MLPA SCSR. Consistent with this objective, the proposed MPAs are located to avoid affecting many of the shore-based points used for recreational fishing.

Using the Santa Barbara County coast as an example, there are about 33 such points available for shore-based recreational fishing (Department 2009, Map 5.6-3a). Of these, eight will be affected by the proposed MPAs as follows: Kashtayit SMCA (2), Naples SMCA (5), and Campus Point SMR (1). The Kashtayit and Naples SMCAs will both continue to allow recreational fishing, however, so they will have little or no effect. Fishing would be prohibited in the immediate vicinity of the kayak and boat launching site at Campus Point, but would continue to be allowed in the primary kayak fishing area immediately west of Campus Point and at other nearby areas. Whether this change would alter the on-shore travel behavior of recreational kayakers and fishermen at this location is difficult to predict. Most use of this site originates from the nearby community, but there are other kayak launch sites and fishing areas also close by so the likely net effect would be relatively small.

Within the entire SCSR, there are about 77 pier and jetty structures and about 121 coastal access points used for fishing. These numbers are estimates based on a visual inspection of Map 5.6-3 in the SCSR Regional Profile (Department 2009), so they may not agree perfectly with tabulations of these facilities in other reports. Of these 198 shore-based recreational fishing points, approximately 40 would be adjacent to proposed MPAs. This does not mean that activities at all 40 of these points will be affected by the proposed project, however. Recreational fishing will continue to be allowed within some of the SMCAs, and some of these locations are already affected by existing similar MPAs or other protective designations. Furthermore, like the Santa Barbara coast example above, there are other shore-based locations unaffected by any proposed MPAs, at distances closer to major population centers than the proposed MPAs. About 80 percent of all shore-based recreational fishing points would not be affected at all by the proposed project. Possible reactions by recreational fishermen who use the other 20 percent of shore-based locations could include driving to a more distant location, or driving to a closer location, or altering their mode of fishing, or not fishing at all. Thus, the net effect of the proposed Project IPA on recreational fishing travel distances on land will be a combination of no effect, some possible increases in travel distance, and some decreases in travel distances. Arguments by commenters imply that the only possible effect will be an increase in travel distance associated with all shore-based recreational fishing locations adjacent to MPAs. This implication is clearly wrong.

The tabulated recreational fishing data from 2007 (reviewed and summarized in the SCSR Regional Profile [Department 2009] Section 5.6) includes information regarding location, catch, and effort (e.g. number of trips or fishing days); but does not include data on origin or home location for fishermen. More recent data collected by Ecotrust (2010) as part of the MPLA effort may include such data, but is confidential. The aggregate of such data is similar to what was available in prior surveys, and does not include on-shore travel distance. In the absence of a clear and consistent pattern of travel changes that might be predictable, the additional effort to collect more detailed information about private recreational fishermen travel patterns is not warranted.

R2.2 COMMENT LETTERS AND RESPONSES

R2.2.1 Overview

This section contains all of the comments received during the Draft EIR's public comment period, and responses to those comments. Table R2-1 lists all of the comment letters received, including those from federal agencies, state agencies/legislature, regional and local agencies, local governments, organizations, and individuals. Table R2-1 also contains the unique number assigned to each comment letter, the name of the commenter, and the page number on which the comment letter can be found.

Comments from federal agencies, and their responses, are located in Section R2.2.2 below. Comments from state agencies/legislature and their responses, are located in Section R2.2.3 below. Comments from regional and local agencies, and their responses, are located in Section R2.2.4 below. Comments from local governments, and their responses, are located in Section R2.2.5 below. Comments from organizations, and their responses, are located in Section R2.2.6 below. Comments from individuals, and their responses, are located in Section R2.2.7 below. Comments received at Commission meetings, are located in Section R2.2.8 below. Comments received as form letters, are located in Section R2.2.9 below.

TABLE R2-1
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A01_i	Carolynn	Petru	City of Rancho Palos Verdes	Local Government	v1 p727
A01_ii	Carolynn	Petru	City of Rancho Palos Verdes	Local Government	v1 p731
A02	David	Valentine	N/A	Individual	v2 p659
A03	Chris	Goldblatt	N/A	Individual	v2 p663
A04	Fred	Rohrs	N/A	Individual	v2 p667
A05_i	Philip	Friess	LA County Sanitation District	Regional and Local	v1 p133
A05_ii	Philip	Friess	LA County Sanitation District	Regional and Local	v1 p137
A06_i	Matthew	Kilroy	City of Redondo Beach	Local Government	v1 p735
A06_ii	Matthew	Kilroy	City of Redondo Beach	Local Government	v1 p739
A07_i	John	Ugoretz	N/A	Individual	v2 p671
A08_i	Kira	Redmond	SB Channelkeeper, Audubon California, SD Coastkeeper, Heal the Bay, CA Coastkeeper Alliance, OC Coastkeeper, Ocean Conservancy, Defenders of Wildlife, Wishtoyo, SM Baykeeper, Ventura Coastkeeper, NRDC, WildCoast	Organization	v1 p863
A08_ii	Kira	Redmond	SB Channelkeeper, Audubon California, SD Coastkeeper, Heal the Bay, CA Coastkeeper Alliance, OC Coastkeeper, Ocean Conservancy, Defenders of Wildlife, Wishtoyo, SM Baykeeper, Ventura Coastkeeper, NRDC, WildCoast	Organization	v1 p867
A09	Eric	Gillies	California State Lands Commission	State	v1 p69
A10	Nita	Shidler	N/A	Individual	v2 p677
A11_i	Yvette	Williams	N/A	Individual	v2 p681
A11_ii	Yvette	Williams	N/A	Individual	v2 p685

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A12_i	Jeff	Crumley	N/A	Individual	v2 p689
A12_ii	Jeff	Crumley	N/A	Individual	v2 p693
A13	David	Valentine	N/A	Individual	v2 p697
A14	Tim	Barnett	N/A	Individual	v2 p717
A15_i	Philip	Friess	LA County Sanitation District	Regional and Local	v1 p141
A15_ii	Philip	Friess	LA County Sanitation District	Regional and Local	v1 p145
A16	Carl	Lind	N/A	Individual	v2 p721
A17	Steven	Hoch	Brownstein Hyatt Farber Schreck	Organization	v1 p873
A18_i	David	Cooke	Allen Matkins Leck Gamble Mallory & Natsis LLP	Organization	v1 p877
A18_ii	David	Cooke	Allen Matkins Leck Gamble Mallory & Natsis LLP	Organization	v1 p881
A19_i	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p149
A19_ii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p153
A20_i	Merit	McCrea	N/A	Individual	v2 p725
A20_ii	Merit	McCrea	N/A	Individual	v2 p731
A20_iii	Merit	McCrea	N/A	Individual	v2 p735
A20_iv	Merit	McCrea	N/A	Individual	v2 p741
A20_v	Merit	McCrea	N/A	Individual	v2 p747
A20_vi	Merit	McCrea	N/A	Individual	v2 p753
A20_vii	Merit	McCrea	N/A	Individual	v2 p757
A20_viii	Merit	McCrea	N/A	Individual	v2 p851
A20_ix	Merit	McCrea	N/A	Individual	v2 p859
A20_x	Merit	McCrea	N/A	Individual	v2 p867
A20_xi	Merit	McCrea	N/A	Individual	v2 p875
A21	Darren	Miller	N/A	Individual	v2 p883
A22	William	Barnett	N/A	Individual	v2 p887
A23	Fred	Rohrs	N/A	Individual	v2 p895
A24_i	Dale	Ghere	N/A	Individual	v2 p899
A24_ii	Dale	Ghere	N/A	Individual	v2 p905
A24_iii	Dale	Ghere	N/A	Individual	v2 p911
A25	Bob	Nunn	N/A	Individual	v2 p919
A26	Sherri	Lightner	San Diego City Council, 1st District	Local Government	v1 p743
A27	David	Valentine	N/A	Individual	v2 p923

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A28	David	Valentine	N/A	Individual	v2 p925
A29	David	Valentine	N/A	Individual	v2 p927
A30_i	Richard	Drury	Ocean Conservancy	Organization	v1 p885
A30_ii	Richard	Drury	Ocean Conservancy	Organization	v1 p889
A31_i	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p157
A31_ii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p161
A31_iii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p185
A31_iv	Tom	Rosales	South OC Wastewater Authority	Regional and Local	v1 p195
A32_i	Richard	Drury	Ocean Conservancy, NRDC, Heal the Bay, SB Channelkeeper, OC Coastkeeper, SD Coastkeeper, CA Sea Grant, WiLDCOAST	Regional and Local	v1 p199
A32_ii	Richard	Drury	Ocean Conservancy, NRDC, Heal the Bay, SB Channelkeeper, OC Coastkeeper, SD Coastkeeper, CA Sea Grant, WiLDCOAST	Regional and Local	v1 p203
A33_i	Dennis	Long	Monterey Bay Sanctuary Foundation	Organization	v1 p899
A33_ii	Dennis	Long	Monterey Bay Sanctuary Foundation	Organization	v1 p903
A34_i	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	v1 p907
A34_ii	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	v1 p911
A34_iii	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	v1 p917
A35_i	Joel	Greenberg	RFA SoCal Chapter	Organization	v1 p921
A35_ii	Joel	Greenberg	RFA SoCal Chapter	Organization	v1 p925
A36_i	Garry	Brown	OC Coastkeeper	Organization	v1 p929
A36_ii	Garry	Brown	OC Coastkeeper	Organization	v1 p933
A37	John	Culwel	N/A	Individual	v2 p931
A38_i	April	Bucksbaum	The Baum Foundation	Organization	v1 p937
A38_ii	April	Bucksbaum	The Baum Foundation	Organization	v1 p941
A39_i	Linda	Krop	Environmental Defense Center	Organization	v1 p945
A39_ii	Linda	Krop	Environmental Defense Center	Organization	v1 p949
A40	Rosleen	Reynolds	N/A	Individual	v2 p935

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A41_i	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p255
A41_ii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p259
A41_iii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p269
A41_iv	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p291
A41_v	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p299
A41_vi	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p303
A41_vii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p307
A41_viii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p311
A41_IX	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p437
A41_x	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p441
A41_xi	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p445
A41_xil	Richard	Bell	Municipal Water District of Orange County	Regional and Local	v1 p451
A42	Joe	Nguyen	N/A	Individual	v2 p939
A43_i	Martin	Garrick	CA Assembly, 74th District	State	v1 p73
A43_ii	Martin	Garrick	CA Assembly, 74th District	State	v1 p77
A44	Wendy	Tochihara	N/A	Individual	v2 p943
A45_i	Steve	Parkford	Long Beach Neptunes	Organization	v1 p963
A45_ii	Steve	Parkford	Long Beach Neptunes	Organization	v1 p967
A45_iii	Steve	Parkford	Long Beach Neptunes	Organization	v1 p971
A46	Pam	Nelson	N/A	Individual	v2 p947
A47_i	Rob	Southwick	Southwick Associates, Inc.	Organization	v2 p3
A47_ii	Rob	Southwick	Southwick Associates, Inc.	Organization	v2 p7
A48	Mario	Reina	N/A	Individual	v2 p951
A49	Michael	Gratland	N/A	Individual	v2 p957

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A50	Nick	Ekdahl	N/A	Individual	v2 p961
A51_i	Michael	Godfrey	N/A	Individual	v2 p965
A51_ii	Michael	Godfrey	N/A	Individual	v2 p969
A52	David	Levinson	N/A	Individual	v2 p973
A53_i	Eric	Stewart	N/A	Individual	v2 p977
A53_ii	Eric	Stewart	N/A	Individual	v2 p981
A54	Tonia	McMahon	Moffatt & Nichol	Organization	v2 p39
A55	Dennis	Sapitan	N/A	Individual	v2 p985
A56	Joe	Exline	Fisheries Information Network	Organization	v2 p43
A57_i	Lia	Protopapadakis	SM Bay Restoration Commission	Organization	v2 p47
A57_ii	Lia	Protopapadakis	SM Bay Restoration Commission	Organization	v2 p51
A57_iii	Lia	Protopapadakis	SM Bay Restoration Commission	Organization	v2 p55
A57_iv	Lia	Protopapadakis	SM Bay Restoration Commission	Organization	v2 p59
A58_i	Earl	Warren	N/A	Individual	v2 p989
A58_ii	Earl	Warren	N/A	Individual	v2 p993
A59_i	Jim	Martin	California Fisheries Coalition, RFA, CA Sea Urchin Commission, Alliance of Communities for Sustainable Fisheries	Organization	v2 p63
A59_ii	Jim	Martin	California Fisheries Coalition, RFA, CA Sea Urchin Commission, Alliance of Communities for Sustainable Fisheries	Organization	v2 p67
A60_i	Daniel	Dalager	City of Encinitas	Local Government	v1 p747
A60_ii	Daniel	Dalager	City of Encinitas	Local Government	v1 p751
A61	Wendy	Tochihara	RSG	Individual	v3 p3
A61_ii	Wendy	Tochihara	RSG	Individual	v3 p7
A62	Kurt	Schindler	N/A	Individual	v3 p11
A63	Waiman	Meinhold	N/A	Individual	v3 p15
A64	Garrett	Brugh	N/A	Individual	v3 p19
A65	Kathryn	Rhodes	N/A	Individual	v3 p23
A66_i	Isabelle	Kay	UC San Diego Natural Reserve System	State	v1 p81
A66_ii	Isabelle	Kay	UC San Diego Natural Reserve System	State	v1 p85

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A67	Phil	Friess	Los Angeles County Sanitation District	Regional and Local	v1 p465
A67_i	Phil	Friess	Los Angeles County Sanitation District	Regional and Local	v1 p469
A68_i	Bob	Bertelli	N/A	Individual	v3 p35
A68_ii	Bob	Bertelli	N/A	Individual	v3 p39
A69_i	Tonia	McMahon	Moffatt & Nichol	Organization	v2 p73
A69_ii	Tonia	McMahon	Moffatt & Nichol	Organization	v2 p77
A70	Joanne	Williamson	N/A	Individual	v3 p45
A71_i	Philip	Friess	Los Angeles County Sanitation District	Regional and Local	v1 p473
A71_ii	Philip	Friess	Los Angeles County Sanitation District	Regional and Local	v1 p477
A72_i	Peter	Cota-Robles	City of Encinitas	Local Government	v1 p755
A72_ii	Peter	Cota-Robles	City of Encinitas	Local Government	v1 p759
A73_i	Cy	Oggins	California State Lands Commission	State Government	v1 p89
A73_ii	Cy	Oggins	California State Lands Commission	State Government	v1 p93
A74_i	Robert	Hoffman	NOAA NMFS	Federal	v1 p35
A74_ii	Robert	Hoffman	NOAA NMFS	Federal	v1 p39
A75_i	David	Ott	City of Solana Beach	Local Government	v1 p777
A75_ii	David	Ott	City of Solana Beach	Local Government	v1 p781
A76_i	Joseph	Farlo	N/A	Individual	v3 p49
A76_ii	Joseph	Farlo	N/A	Individual	v3 p53
A77	Ron	Saenz	SANDAG	Regional and Local	v1 p491
A78_ii	Jim	Martin	Recreational Fishing Alliance	Organization	v2 p83
A79_ii	Robert	Fletcher	PSO	Organization	v2 p87
A79_iii	Robert	Fletcher	PSO	Organization	v2 p115
A80_ii	Joseph	Exline	N/A	Organization	v2 p187
A81_ii	Vennise	Forte	Southern California Coastal Tribal Nations, Indian Organizations, and Native Americans in Southern California	Organization	v2 p197
A82_i	Justin	Schlaefi	N/A	Individual	v3 p93
A82_ii	Justin	Schlaefi	N/A	Individual	v3 p97
A83_ii	Michael	Ploessel	N/A	Individual	v3 p105

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A84_ii	Mark	Hansen	Southern California Yachting Association (SCYA)	Organization	v2 p213
A85_ii	Michael	Gin	City of Redondo Beach	Local Government	v1 p807
A86_ii	Russell	Galipeau	Channel Islands National Park (National Park Service)	Federal	v1 p43
A87_ii	Brian	Meux	Santa Monica Baykeeper	Organization	v2 p221
A88_ii	Michael	Beanan	South Laguna Civic Association	Organization	v2 p227
A89_ii	Susan	Petrovich	Brownstein Hyatt Farber Schreck	Organization	v2 p243
A90_ii	Ken	Gensor	Santa Monica City Council	Local Government	v1 p811
A91_ii	Jacob	Armstrong	Department of Transportation (DOT)	State	v1 p107
A92_i	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p495
A92_ii	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p525
A92_iii	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p529
A92_iv	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p581
A92_v	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p597
A92_vi	Phillip	Friess	LA County Sanitation Districts	Regional and Local	v1 p647
A93_ii	Bob	Osborn	United Anglers	Organization	v2 p293
A93_iii	Bob	Osborn	N/A	Individual	v3 p111
A94_ii	Antonio	Villaragosa	City of Los Angeles	Local Government	v1 p817
A94_iii	Bill	Rosendahl	City of Los Angeles	Local Government	v1 p821
A95_ii	Steven	Fukuto	United Anglers	Organization	v2 p297
A95_iii	Steven	Fukuto	United Anglers	Organization	v2 p339
A95_iv	Steven	Fukuto	United Anglers	Organization	v2 p365
A95_v	Steven	Fukuto	United Anglers	Organization	v2 p375
A95_vi	Bob	Osborn	United Anglers	Organization	v2 p385
A95_vii	Steven	Fukuto	United Anglers	Organization	v2 p389
A95_viii	Bob	Osborn	United Anglers	Organization	v2 p405
A96_ii	Andy	Stern	City of Malibu	Local Government	v1 p825
A96_iii	Andy	Stern	City of Malibu	Local Government	v1 p829
A96_iv	Andy	Stern	City of Malibu	Local Government	v1 p835
A97_i	Greg	Wade	City of Imperial Beach	Local Government	v1 p839
A97_ii	Greg	Wade	City of Imperial Beach	Local Government	v1 p847
A98_ii	Andrew	Weissman	City of Culver City	Local Government	v1 p851

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A99_ii	Cassidy	Teufel	California Coastal Commission	State	v1 p115
B01_i	Leroy	Baca	LA County Sheriff's Dept.	Regional and Local	v1 p673
B01_ii	Leroy	Baca	LA County Sheriff's Dept. - Avalon Station	Regional and Local	v1 p677
B01_iii	Leroy	Baca	LA County Sheriff's Dept. - Marine Del Rey Station	Regional and Local	v1 p681
B01_iv	Leroy	Baca	LA County Sheriff's Dept. - Malibu/Lost Hill Station	Regional and Local	v1 p685
B01_v	Leroy	Baca	LA County Sheriff's Dept. - Lomita Station	Regional and Local	v1 p689
B02	Susan	Baldwin	SANDAG	Regional and Local	v1 p693
B03	Lynette	Vesco	US Dept. of Interior, BOEMRE	Federal	v1 p49
B04	Richard	Bell	Municipal Water District of OC	Regional and Local	v1 p697
B05	Mark	Denny	OC Parks	Local Government	v1 p857
B06	John	Hemler	Unified Port of San Diego	Regional and Local	v1 p701
B07	Richard	Earnest	San Dieguito River Park Joint Powers Authority	Regional and Local	v1 p705
B08	Scott	Sobiech	US FWS	Federal	v1 p53
C01_i	Colleen	Clementson	SANDAG	Regional and Local	v1 p711
C01_ii	Colleen	Clementson	SANDAG	Regional and Local	v1 p715
C02_ii	Ray	Hillborn	N/A	Individual	v3 p115
C03_ii	CL	Stathos	Department of Defense (DOD)	Federal	v1 p57
C04_ii	Joseph	Farlo	Watermen's Alliance	Organization	v2 p411
C05_ii	Jerry	Karnow	California Fish and Game Wardens' Association	Organization	v2 p429
C06_ii	Shelley	Luce	Santa Monica Bay Restoration Commission	Organization	v2 p433
C06_iii	Lia	Protopapadakis	Santa Monica Bay Restoration Commission	Organization	v2 p443
C06_iv	Lia	Protopapadakis	Santa Monica Bay Restoration Commission	Organization	v2 p619
C06_v	Lia	Protopapadakis	Santa Monica Bay Restoration Commission	Organization	v2 p623
C07	Brandon	Farrelly	N/A	Individual	v3 p151
C08	Bob	Bertelli	N/A	Individual	v3 p155
C09	Charles	Boehmke	LA County Sanitation Districts	Regional and Local	v1 p721

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
C10_i	Greg	Helms	Ocean Conservancy	Organization	v2 p627
C10_ii	Greg	Helms	Ocean Conservancy	Organization	v2 p631
C10_iii	Greg	Helms	Ocean Conservancy	Organization	v2 p639
C11	Lance	Morgan	N/A	Individual	v3 p159
C12	Steven	Robert	N/A	Individual	v3 p163
C13	Alan	Throop	N/A	Individual	v3 p167
C14	Tamlorn	Chase	N/A	Individual	v3 p171
C15	Jonathon	Claypool	N/A	Individual	v3 p175
C16	Suzanne	Kretschmer	N/A	Individual	v3 p179
C17	John	Lee	N/A	Individual	v3 p183
C18	Eric	Lund	N/A	Individual	v3 p187
C19	Greg	O'Loughlin	N/A	Individual	v3 p191
C20	Bethany	Fee	N/A	Individual	v3 p195
C21	Jeff	Kruthers	N/A	Individual	v3 p199
C22	Diane	Nygaard	N/A	Individual	v3 p205
C23	Helene	Farber	N/A	Individual	v3 p209
C24	George	Greer	N/A	Individual	v3 p213
C25	Richard	Frickman	N/A	Individual	v3 p217
C26	Edward	Ramirez	N/A	Individual	v3 p221
C27	Vicki	Lee	N/A	Individual	v3 p225
C28	Ted	Lieu	California State Assembly	State	v1 p121
C29	Josh	Fisher	California Lobster & Trap Fishermen's Association	Organization	v2 p649
C30	Dave	Carlson	N/A	Individual	v3 p229
C31	Dennis	Hollingsworth	California State Senate	State	v1 p125
C32	Ken	Franke	PSO	Organization	v2 p653
C33	Corey	Scott	N/A	Individual	v3 p233
C34	Michael	Gratland	N/A	Individual	v3 p237
C35	David	Holmes	N/A	Individual	v3 p241
D01	Phillip	Friess	LA County Sanitation	Commission Meeting	v3 p249
D02	Karen	Garrison	NRDC	Commission Meeting	v3 p251
D03	George	Osborn	PSO	Commission Meeting	v3 p251
D04	Steven	Fukuto	United Anglers	Commission Meeting	v3 p252

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
D05	Kaitlin	Gaffney	Ocean Conservancy	Commission Meeting	v3 p252
D06	Jonathan	Bishop	State Water Resources Control Board	Commission Meeting	v3 p253
D07	Phillip	Friess	LA County Sanitation	Commission Meeting	v3 p253
D08	Richard	Bell	Municipal Water District of Orange County	Commission Meeting	v3 p254
D09	Atta	Stevenson	Fort Bragg Intertribal Water Commission	Commission Meeting	v3 p254
D10	Michael	Sheehy	Santa Barbara Channelkeeper	Commission Meeting	v3 p254
D11	Randy	Yonemura	National Heritage Council	Commission Meeting	v3 p254
D12	Lia	Protopapadakis	Santa Monica Bay Restoration Commission	Commission Meeting	v3 p255
D13	Guy	Grenmeir	N/A	Commission Meeting	v3 p255
D14	Jeff	Russell	NRDC	Commission Meeting	v3 p255
D15	Stephanie	Sekich	Surfrider Foundation	Commission Meeting	v3 p255
D16	Dave	Westhoff	SCRSG member	Commission Meeting	v3 p255
D17	Whitney	Graves	N/A	Commission Meeting	v3 p255
D18	Sarah	Amenzada	CA Coastkeeper Alliance	Commission Meeting	v3 p256
D19	Lela	Monroe	NRDC	Commission Meeting	v3 p256
D20	Ray	Hiemstra	Orange County Coastkeeper	Commission Meeting	v3 p256
D21	Paul	Hobe	Ocean Conservancy	Commission Meeting	v3 p256
D22	Greg	Helms	Ocean Conservancy	Commission Meeting	v3 p256
D23	Seguida	Grand	N/A	Commission Meeting	v3 p256
D24	Jonathan	Alexander	N/A	Commission Meeting	v3 p257
D25	Jen	Eckerlee	NRDC	Commission Meeting	v3 p257
D26	Megan	Megan	San Diego Coastkeeper	Commission Meeting	v3 p257
D27	Samantha	Samantha	Ocean Conservancy	Commission Meeting	v3 p257
D28	Dan	Bacher	Fish Sniffer Magazine	Commission Meeting	v3 p257
D29	Sarah	Sikich	Heal the Bay	Commission Meeting	v3 p257
D30	Pamela	Flick	Defenders of Wildlife	Commission Meeting	v3 p258
D31	Kaitlin	Gaffney	Ocean Conservancy	Commission Meeting	v3 p258
D32	George	Osborn	PSO, United Anglers, Fish and Game Wardens Association	Commission Meeting	v3 p258
D33	Marcella	Gutierrez	Wildcoast Coasta Salvaje	Commission Meeting	v3 p258

TABLE R2-2 (CONTINUED)
LIST OF ALL COMMENT LETTERS

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
D34	Karen	Garrison	NRDC	Commission Meeting	v3 p259
D35	Vern	Goehring	California Fisheries Coalition	Commission Meeting	v3 p259
D36	Paul	Weakland	N/A	Commission Meeting	v3 p259
D37	Jerry	Desmond	Recreational Boaters of CA	Commission Meeting	v3 p259
D38	Maggie	Hoolihan	City of Encinitas	Commission Meeting	v3 p260
D39	Grace	Chan	LA County Sanitation Districts	Commission Meeting	v3 p260
D40	Richard	Bell	Orange County Water District	Commission Meeting	v3 p260
D41	Mary Jane	Folly	N/A	Commission Meeting	v3 p260
D42	Al	Parker	N/A	Commission Meeting	v3 p260
D43	Jeff	Sporcich	N/A	Commission Meeting	v3 p260
D44	Bill	Vitalle	N/A	Commission Meeting	v3 p261
D45	Paul	Lebowitz	SCRSG member	Commission Meeting	v3 p261
D46	Steven	Fukuto	United Anglers	Commission Meeting	v3 p261
D47	Joseph	Nguyen	N/A	Commission Meeting	v3 p261
D48	Bob	Osborn	United Anglers	Commission Meeting	v3 p261
D49	Paul	Romanowski	N/A	Commission Meeting	v3 p261
D50	Mike	Hawkinson	N/A	Commission Meeting	v3 p261
D51	Joe	Exline	Oceanside Anglers Club	Commission Meeting	v3 p262
D52	Michael	Gratland	N/A	Commission Meeting	v3 p262
D53	Bill	Vitali	N/A	Commission Meeting	v3 p262
D54	Paul	Lebowitz	RSG member	Commission Meeting	v3 p262
FLA	N/A	N/A	N/A	Form Letter	v3 p275
FLB	N/A	N/A	N/A	Form Letter	v3 p343
FLC	N/A	N/A	N/A	Form Letter	v4 p223
FLD	N/A	N/A	N/A	Form Letter	v5 p599
FLE	N/A	N/A	N/A	Form Letter	v5 p621
FLF	N/A	N/A	N/A	Form Letter	v5 p645

R2.2.2 Comments from Federal Agencies

The first group of comment letters is those received from federal agencies. Table R2-2 lists the comment letters received from federal agencies, along with the unique number assigned to each comment letter, the name of the commenter, and the page number of the comment letter. Responses to each letter immediately follow the letter.

TABLE R2-2
FEDERAL AGENCY COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A74_i	Robert	Hoffman	NOAA NMFS	Federal	35
A74_ii	Robert	Hoffman	NOAA NMFS	Federal	39
A86_ii	Russell	Galipeau	Channel Islands National park (National Park Service)	Federal	43
B03	Lynette	Vesco	US Dept. of Interior, BOEMRE	Federal	49
B08	Scott	Sobiech	US FWS	Federal	53
C03_ii	CL	Stathos	Department of Defense (DOD)	Federal	57

Subject: Fwd: MLPA CEQA Comments
From: Susan Ashcraft
Date: Mon, 18 Oct 2010 12:18:00
To: "Im, Angie" <AIM@dfg.ca.gov>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Please process.

****NOTE NEW PHONE NUMBER & ADDRESS*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
sashcraft@dfg.ca.gov | www.dfg.ca.gov

"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of October

---- Forwarded message ----
Subject: Fwd: MLPA CEQA Comments
From: MLPAComments
Date: Mon, 18 Oct 2010 12:06:00
From MLPA Comments - DFG

---- Forwarded message ----
Subject: MLPA CEQA Comments
From: Eric Chavez <Eric.Chavez@noaa.gov>
Date: Mon, 18 Oct 2010 12:05:00
Comments from NOAA's National Marine Fisheries Service are attached. A hard copy version will arrive shortly by mail.

---- End forwarded message ----
---- End forwarded message ----

Attachment: Ltr_MLPA So Coast_Final.pdf
Attachment: eric_chavez.vcf
Attachment: Mime8.822

Responses to Comment Letter A74_i

Response to Comment A74_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

OCT 18 2010

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

To Whom It May Concern:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the Draft Environmental Impact Report (DEIR) for the California Marine Life Protection Act (MLPA) Initiative South Coast Study Region and offers the following comments pursuant to the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA).

Open lagoon systems in southern California serve important ecological functions (e.g., nursery grounds) for a variety of marine species, but they must remain in this open full tidal flow condition to maximize these functions. Tidal flow restriction can impair water quality (e.g., dissolved oxygen levels, temperature, increased nutrients, etc.), resulting in the loss of fauna and flora, including submerged aquatic vegetation. Urban development activities, especially water reservoir and dam construction, have altered the natural transport of sediment. These facilities reduce the size of flood flows that historically flushed sediment from estuaries and lagoons and deposited it on nearby beaches. As a result, it is often necessary to perform maintenance dredging of lagoon/wetland inlet flood shoal areas and associated beach/nearshore disposal to maintain adequate tidal flows to these areas. Therefore, NMFS believes the DEIR should explicitly state that maintenance dredging of lagoon/wetland inlet flood shoal areas and associated beach/nearshore disposal, beach replenishment, dredging for beach replenishment, and ancillary activities associated with beach replenishment are considered consistent with the goals of the MLPA designation, whether it be State Marine Reserve, State Marine Conservation Area, or State Marine Park. A74_ii-1

For example, in sections 3.5.40 (Swami's SMCA) and 3.5.48 (Tijuana River Mouth SMCA) of the DEIR, the language mentions the following with regard to beach nourishment and other sediment management activities being allowed:

"Proposed Modification of Other Regulated Activities: The proposed regulations would allow beach nourishment or other sediment management activities and operations and maintenance of artificial structures inside the conservation area pursuant to any required federal, state, and local permits, or as otherwise authorized by the Department." (Pages 3-39 and 3-44) A74_ii-2

The language should be modified to clarify that these other activities, most notably dredging, are allowed and could occur in the future, as opposed to only allowing projects with existing permits to continue. This clarification could be achieved by revising the above sections of the DEIR to read "...would allow

beach nourishment, including the dredging and placement of sediment, or other sediment management activities...pursuant to any required permits for projects now and in the future, or as otherwise authorized by the Department". A74_ii-2

The Beach Nourishment section (Section 6.4.2.2.1) should also be revised to make it clear that the activities mentioned above, and dredging in particular, are included. The DEIR states:

"The California Fish and Game Commission (Commission) does not have authority to permit or prohibit beach nourishment in the marine or estuarine environment and the MLPA cannot supersede otherwise lawful activities that are not within the authority of the Commission to regulate (Department 2009b)." (Page 6.4-10) A74_ii-3

Revising this section to state "...beach nourishment, including the dredging and placement of sediment, in the marine or estuarine environment..." would provide the desired clarification.

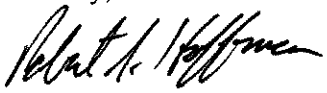
Finally, the DEIR should clarify that agencies with permitting authority will continue now and in the future to issue permits under existing laws. One example of where this issue warrants clarification is Section 6.3.1, which reads:

"...there are existing activities and artificial structures such as wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment that occur throughout the south coast study region (SCSR). These activities are regulated by other federal, state, and local agencies, whose jurisdiction cannot be pre-empted through designation of Marine Protected Areas (MPAs) under Marine Life Protection Act (MLPA) of 1999. Of the 35 MPAs in the proposed Project IPA regulation, 23 have been identified as having various existing activities regulated by other agencies. These activities are addressed within the proposed Project IPA regulations to explicitly allow these regulated activities to continue under current permits." (Page 6.3-1) A74_ii-4

To avoid any potential eonfusion, the final sentence of that section could be modified to state "...to explicitly allow these regulated activities to continue under existing permitting authority for projects now and in the future".

NMFS appreciates the opportunity to comment on the Draft Environmental Impact Report for the California Marine Life Protection Act Initiative South Coast Study Region. Please contact me at 562-980-4043, or via email at Bob.Hoffman@noaa.gov if you have any questions concerning this issue.

Sincerely,



Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation Division

Responses to Comment Letter A74_ii

Response to Comment A74_ii-1: The Draft EIR neither permits nor authorizes any activities within MPAs. The Draft EIR examines the direct and indirect adverse physical environmental impacts from the regulations being proposed by the Fish and Game Commission. This regulatory proposal is the proposed Project for the purposes of CEQA. Where existing restoration activities are known to occur within MPAs that are the subject of the current regulatory action, language has been added to the proposed regulation that would allow restoration activities to continue subject to the required permit or authorization. Based on a review of restoration activities known to be occurring within MPAs subject to the current regulatory action and the regulations proposed within these MPAs no impact to restoration activities is expected to occur from implementation of the proposed Project IPA.

Response to Comment A74_ii-2: See response to A74_ii-1. In addition, CEQA does not require an evaluation of speculative future project that may occur especially where the details of these projects are not known with enough certainty to determine if they fall within the current regulatory exemption contained within the proposed regulation. Should future projects find that the regulation in place at that time could pose a conflict with the construction, operation or maintenance of this project, then the project proponent should consult with the Commission to determine the appropriate relief if necessary.

Response to Comment A74_ii-3: See responses to A74_ii-1 and A74-2. Should future projects find that the regulation in place at that time could pose a conflict with the construction, operation or maintenance of this project, then the project proponent should consult with the Commission to determine the appropriate relief if necessary.

Response to Comment A74_ii-4: See response to A74_ii-1. For clarification, the Commission retains jurisdiction over take of marine wildlife within California. The MPA regulations only regulate the take of marine species, and generally provide exemptions for activities that result in the incidental take of marine species during otherwise lawful activity. The Commission is not asserting general regulatory authority over beach dredging activities. The exemption contained with the MPA regulations encompass all activities associated with exempted activity. For instance, dredging conducted as necessary for beach nourishment activities are exempted within certain MPA that allow beach nourishment to occur. Also where the MPA regulations allow operation and maintenance of existing artificial structures within MPAs, all activities necessary to operation or maintenance of these structures would be included in this exemption.

United States Department of the Interior

NATIONAL PARK SERVICE
Channel Islands National Park
1901 Spinnaker Drive
Ventura, California 93001-4354

IN REPLY REFER TO:

October 19, 2010

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Ref: MLPA CEQA and Title 14. Fish and Game Commission Notice of Proposed Changes in Regulation Comments – South Coast Region

The National Park Service (NPS), Channel Islands National Park (CHIS), is very supportive of the Marine Life Protection Act and applauds State efforts to protect and conserve California's diverse coastal and marine habitats and wildlife. Furthermore, the park is pleased that the existing MPAs surrounding and within the waters of CHIS will remain unchanged. However, specific proposed changes in the Commission's Integrated Preferred Alternative (IPA) in the MLPA CEQA and Notice of Proposed Changes in Regulation could impact existing MPAs surrounding CHIS. Our comments follow:

Page 3 of the Notice of Proposed Changes in Regulation:

Comment 1: Ref: **San Miguel Special Closure.**

CHIS appreciates the typographical error correction. Correct declinations and accompanying visual aids are essential to support visitor compliance and regulation enforcement. CHIS encourages the Department of Fish and Game to provide graphical depictions of the MPAs along with coordinates in the regulations booklet handed out to the public to facilitate compliance. A86_ii-1

Comment 2: Ref: **"Pre-existing activities and artificial structures including but not limited to wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment occur throughout the heavily urbanized south coast study region. These are activities that may result in incidental take. However, these activities are regulated by other federal, state, and local agencies, whose jurisdiction cannot be pre-empted through designation of MPAs under MLPA. Out of the 35 MPAs in the proposed regulation, 23 have been identified as having various existing activities regulated by other agencies (refer to Table 1). These activities are specified within the proposed MPA regulations to make explicit that these regulated activities are allowed to continue under current permits."**

CHIS believes that this is a very workable solution to any and all infrastructure that is permitted within an MPA. CHIS asks the State to clarify whether this regulation applies to infrastructure within the State Marine Reserve (SMR) and whether under the regulation the infrastructure would be re-permitted in the future. A86_ii-2

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This proposed ruling would have potential implications to the Northern Channel Islands MPAs, specifically CHIS. Several SMRs exists within CHIS which contain docks, piers and/or mooring buoys. To the best of our knowledge none of these pre-existing structures were specified in the description of the MPAs. All of these facilities are permitted by the State of California and are required to allow reasonable and safe public access to Channel Islands National Park and serve to support island logistics. The NPS must maintain and reconstruct these facilities on a cyclic basis. We can only conclude that SMRs within state waters of Channel Islands National Park and National Marine Sanctuary would be converted to "no-take" SMCAs in the future based on the proposed change in regulations. The NPS would oppose this change as outlined in comment 3 below. We believe that incidental take associated with the repair or replacement of these facilities can be managed through the NEPA/CEQA process. A86_ii-3

Furthermore, it is important for the public to have the opportunity to access and experience SMRs, especially within a national park, and the best place to do this is where infrastructure is already in place.

Comment 3. Ref. **"It should be noted, however, that in cases where a State Marine Reserve (SMR) is proposed over the area of activity, designation as a State Marine Conservation Area (SMCA) is more appropriate than an SMR due to the incidental take associated with those activities, which conflicts with an SMR designation. Ten of the 23 MPAs with identified activities were proposed as SMRs by stakeholders. Therefore, the designation is changed from SMR to SMCA that only allows take associated with those activities identified. For purposes of this discussion, these are referred to as "no-take SMCAs" and reflected as a different color shown in Figure 1."**

CHIS understands the intent of this recommendation, but requests reconsideration in applying it to existing MPAs. We believe that incidental take can be managed through the NEPA/CEQA process and ask that the State take the following into consideration in its decision: A86_ii-3

a) Keep the Rules for Fishers Simple – no-take in SMRs and limited take in SMCAs: Adding a "no-take" designation to an SMCA will cause more confusion to fishers. Our law enforcement rangers observe that fishers often claim that they are unaware of their position. This holds especially true if they are new to the area or they do not have navigational equipment on board their vessel. MPA maps are not printed in the Fish and Game regulation booklet, thus fishers lack a visual orientation to existing regulations. Second, rangers observe that fishers exhibit consistent confusion in SMCAs, even if they are aware of their location. The most difficult regulations to enforce are those within the SMCA because they vary by location. We seek to provide exemplary resource protection while providing for positive visitor experiences. Successful fishers who confidently know where they are able to fish and what they are able to fish contribute to greater support and stewardship of MPAs. A86_ii-4
b) SMR adjacent to a SMCA: Within CHIS there is one SMR that is adjacent to a SMCA. Under proposed new regulations, that SMR could be converted to a "no-take" SMCA because of ongoing dock and mooring buoy maintenance. This is the Anacapa SMR which has been closed to fishing for over 30 years. As stated in (a) above this will complicate visitor understanding and exacerbate existing enforcement challenges.
c) Anchoring is allowed in a SMR: Consider the following scenario that highlights why we believe an approved NEPA/CEQA process would appropriately allow the park to mitigate incidental take

more effectively than a change in regulations. What would happen if it were determined that seagrass or eelgrass beds or other habitats were being adversely impacted due to anchor drag and management agencies proposed the installation of mooring buoys to mitigate the impact? Would this action to protect habitat be permissible and would it require the SMR to be converted from an SMR to a "no-take" SMCA? Or would the designation of the SMR stand and mitigation measures and subsequent public access be denied? Preventing public access into SMR should be the lowest management action, especially if the impact could be mitigated.

In conclusion, CHIS requests that California's Office of Administrative Law address the current problem of dealing with cyclic maintenance and habitat mitigation measures in SMRs in the most direct and logical manner. We believe that this can be accomplished through a permit process with supporting NEPA/CEQA documentation without re-designating the areas as "no-take" SMCAs. Thank you for the opportunity to comment. If you have any questions I can be reached at (805) 658-5702. A86_ii-3

Sincerely,

Russell E. Galipeau, Jr.
Superintendent
Channel Islands National Park

Responses to Comment Letter A86_ii

Response to Comment A86_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A86_ii-2: MPAs are not intended to prohibit take associated with maintenance of existing structures. To clarify, the Commission has identified MPAs with existing structures, and designated them as no-take SMCAs with allowances for maintenance activities associated with existing structures and activities. The Northern Channel Islands MPAs established in prior Commission rulemakings are not the subject of the current Commission regulatory action that is the subject of this Draft EIR analysis. Potential conflict between existing facilities and the existing MPA designations will need to be addressed by future Commission action as necessary. These future actions will require additional CEQA reviews. *No changes to the Draft EIR are required.*

Response to Comment A86_ii-3: See response to Comment A86_ii-2. It should also be noted that regulations are promulgated by Fish and Game Commission under the control of the California Administrative Procedures Act (APA). CEQA is intended to aid the Commission in its rulemaking function but is not a substitute for APA or the rulemaking function of the Fish and Game Commission. *No changes to the Draft EIR are required.*

Response to Comment A86_ii-4: Comment noted. See response to Comment A86_ii-3. *No changes to the Draft EIR are required.*

Letter B03

United States Department of the Interior

BUREAU OF OCEAN ENERGY
MANAGEMENT, REGULATION AND ENFORCEMENT

Pacific OCS Region
770 Paseo Camarillo
Camarillo, California 93010-6064

September 27, 2010

Mr. Thomas Napoli
MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

RE: Review of the Draft Environmental Impact Report: California Marine Life Protection Act Initiative South Coast Marine Protected Areas Project, State Clearinghouse # 2010071012

Dear Mr. Napoli and the MLPA Initiative,

In response to the notice of availability, August 18, 2010, regarding the Draft Environmental Impact Report: California Marine Life Protection Act Initiative South Coast Marine Protected Areas Project, the Bureau of Ocean Energy Management, Regulation and Enforcement (formerly the Minerals Management Service) offers the attached comments.

Thank you for the opportunity to participate in the process. If you have any questions about our comments please call Lisa Gilbane at (805) 389-7826 or Lisa. Gilbane@boemre.gov or send written comments to 770 Paseo Camarillo, 2nd Floor, Camarillo, CA 93010.

Sincerely,

Lynnette Vesco
Regional Supervisor
Office of Leasing and Environment

Enclosures

Bureau of Ocean Energy Management, Regulation and Enforcement
(formerly the Minerals Management Service)
Comments on the Draft Environmental Impact Report: California Marine Life Protection Act Initiative South Coast Marine Protected Areas Project.

Comments are listed with the page number first.

9-2 and 9-3, Section 9.3.1, line 5 through 15 of that paragraph. Strike the sentences, "However, some uncertainty exists...and development of undeveloped leases from new platforms." Add:

> The fate of thirty six of the undeveloped leases was resolved in 2009, when pending litigation was concluded with no appeal to the Supreme Court (Amber Resources et al. v. United States, U.S. court of Federal Claims Nos. 02-30C, 04-1822C, and 05-249C (consolidated)). Thirty of the thirty six leases have been relinquished and only six remain. These six leases remain due to logistical issues but will not reach development. B03-1

9-3, Section 9.3.1.1.1 - Rocky Point (Plains Exploration and Production Company). The Rocky Point Unit leases (OCS-P 0452 and 0453) have been terminated. Delete the paragraphs. B03-2

9-3, Section 9.3.1.1.2 - Bonito Unit (Plains Exploration and Production Company). The Bonito Unit leases (OCS-P 0499, 0500, 0443, 0446, 0449 and part of 0450) have been terminated. Delete the paragraph. B03-3

9-4, Section 9.3.1.1.3 - Sword Unit (Samedan Oil Company). Lease OCS-P 0319 has been terminated. The other leases (0320, 0322, and 0323A) have not been relinquished yet but cannot reach development. B03-4

9-4, Section 9.3.1.1.4 - Cavern Point Unit (Venoco, Inc.). The Cavern Point Unit leases (OCS-P 0210 and 0527) have been terminated. Delete the paragraph. B03-5

9-4, Section 9.3.1.2.1 Gato Canyon Unit (Samedan Oil Company). The Gato Canyon Unit lease is still active and under litigation due to logistical issues but will not reach development. B03-6

9-5, Section 9.3.2.1 Redevelopment of Carpinteria Field (Carone Petroleum Corporation). Please change 1,300 to 1,500 to 300 to 500 in the in the sentence on line 8. Total production would increase from approximately ~~1,300 to 1,500~~ 300 to 500 barrels of oil per day (bpd) to approximately 6,000 bpd through January 2020, at which time total production would decline. B03-7

9-11, Section 9.3.5 Hydrokinetic Power Projects. Please mention that BOEMRE has jurisdiction over leasing lands in Federal waters for hydrokinetic power projects and works with FERC through a MOU signed in April 2009. See our website for more information (http://www.boemre.gov/offshore/RenewableEnergy/PDFs/DOI_FERC_MOU.pdf). B03-8

Responses to Comment Letter B03

Response to Comment B03-1: The commenter suggests an editorial revision to clarify the current status of offshore leases based on 2009 litigation. The text in Section 9.3.1 of the EIR has been revised to reflect the current status of offshore lease development.

Response to Comment B03-2: In accordance with the clarifying revisions requested by Comment B03-1 above, the comment requests that text concerning a specific offshore oil lease be deleted, as the lease has been terminated. Text in Section 9.3.1 of the Draft EIR has been deleted.

Response to Comment B03-3: In accordance with the clarifying revisions requested by Comment B03-1 above, the comment requests that text concerning a specific offshore oil lease be deleted, as the lease has been terminated. Text in Section 9.3.1 of the Draft EIR has been deleted.

Response to Comment B03-4: The comment requests revisions to the EIR text to clarify the status of a specific offshore oil lease. Section 9.3.1 of the EIR has been revised.

Response to Comment B03-5: In accordance with the clarifying revisions requested by Comment B03-1 above, the comment requests that text concerning a specific offshore oil lease be deleted, as the lease has been terminated. Text in Section 9.3.1 of the Draft EIR has been deleted.

Response to Comment B03-6: The comment requests revisions to the EIR text to clarify the status of a specific offshore oil lease. Section 9.3.1 of the EIR has been revised.

Response to Comment B03-7: The agency suggests an editorial change to clarify the production capacity of a particular offshore lease. The text in question has been revised to reflect the agency comment.

Response to Comment B03-8: The agency suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The agency requests inclusion of the 2009 MOU outlining hydrokinetic renewable energy Federal agency jurisdiction. The text in question has been revised to reflect the agency comment.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011

In Reply Refer To:
FWS-CP-11B0009-11CPA0002

OCT 20 2010

Ms. Marija Vojkovich
Regional Manager, Marine Region
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, California 90720

Subject: Comments on *South Coast Marine Protected Areas Project* Draft Environmental Impact Report

Dear Ms. Vojkovich:

The Carlsbad Fish and Wildlife Office (CFWO) has reviewed the Draft Environmental Impact Report for the South Coast Protected Areas Project (DEIR) to support the California Marine Life Protection Act. This letter provides comments from the U.S. Fish and Wildlife Service (Service), concerning the designation of regional network of marine protected areas in southern California relative to restoration and maintenance dredging of lagoon/wetland inlet flood shoal areas and the associated beach/nearshore disposal activities.

Through the CFWO Coastal Program, we are providing technical and financial assistance for the implementation or maintenance of in-water coastal restoration projects for the benefit of Service trust resources. We want to ensure that the expected benefits of these projects are not hindered by designation of a State Marine Reserve (SMR) or State Marine Conservation Area (SMCA) within the footprint of these projects. These restoration projects may include in-water dredging and beach nourishment/nearshore disposal activities located within the boundaries of the proposed Bolsa Chica Basin SMCA (SMR in Alternatives 1 and 3), Batiquitos Lagoon SMCA (SMR in Alternatives 1 and 3), Del Mar SMR, San Dieguito Lagoon SMR, Famosa Slough SMCA (SMR in Alternatives 1 and 3), Swami's SMCA, San Elijo Lagoon SMCA (SMR in Alternatives 1 and 3), Tijuana River Mouth SMCA, and Upper Newport Bay SMCA (SMR in Alternative 3). In addition, maintenance dredging of existing waterways and associated beach nourishment/nearshore disposal may also be necessary to maintain adequate tidal flows to protect biological resources. Therefore, we recommend that the Final Environmental Impact Report clarify that activities associated with implementation and maintenance of habitat restoration projects, and maintenance of existing waterways for biological resource protection will be allowed in designated SMRs or SMCAs. B08-1

Thank you for considering our comments. If you have any questions, please contact Carolyn Lieberman at (760) 431-9440, extension 240.

Sincerely,

Scott A. Sobiech
Deputy Field Supervisor

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Responses to Comment Letter B08

Response to Comment B08-1: Due to its identification as the Commission's preferred regulatory proposal, the proposed Project IPA has undergone more detailed regulatory analysis than the three original MPA proposals to ensure the feasibility of intended levels of future use within MPAs. Although the alternatives have not undergone the same level of analysis as the proposed Project IPA, they were drafted under the same guidelines as the proposed Project, and represent three separate efforts by affected, concerned, and knowledgeable parties to achieve the objectives and goals set forth by the MLPA. Should an alternative be selected for adoption instead of the proposed Project IPA, it is expected that additional analysis (similar to what was performed for the proposed Project IPA) will be conducted for the adopted alternative. Should the Commission adopt an MPA analyzed by the SAT under an alternative other than the IPA, then the Commission would adopt exemption language similar to what is used throughout the proposed Project IPA, allowing the continued operation and maintenance of existing facilities, allowing habitat restoration activities as well as specifically allowing other existing activities that may result in incidental take. The Commission does not intend to impair existing lawful uses that have incidental take as a result of the operation or maintenance of these activities. Also, see response to comment A69_ii-2.

DEPARTMENT OF DEFENSE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION 9
937 N. Harbor Drive, Box 81
San Diego, California 92132-0058

5090
Ser N40JRR.cs/0029
October 15, 2010

Mr. Thomas Napoli, Staff Environmental Scientist
MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson Avenue, Suite C
Los Alamitos, CA 90720

SUBJECT: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) REGARDING MARINE PROTECTED AREAS (MPAs) IN THE CALIFORNIA SOUTH COAST STUDY REGION PURSUANT TO THE MARINE LIFE PROTECTION ACT (MLPA)

Dear Mr. Napoli:

We appreciate this opportunity to provide the enclosed comments on the DEIR for the MPAs in the South Coast Study Region, on behalf of the Department of Defense (DoD) in California which has been an active participant in the MLPA planning and alternative development process. The DoD supports the Integrated Preferred Alternative (IPA) and is pleased to continue providing input as the final regulations are prepared. C03_ii-1

The area off the coast of Southern California is vital to national defense. Its proximity to Fleet homeports, Naval Air Stations, Navy Bases and other DoD training ranges in the southwestern U.S. make this a unique training resource. This area is vital to maintain military readiness through use of the training ranges; conduct Research, Development, Test and Evaluation; conduct operational spacelift and ballistic launches; and prepare for other military missions. The DoD has many programs designed to promote the highest level of environmental stewardship consistent with its national security mission requirements. Military activities were considered by the Blue Ribbon Task Force in the design of the Integrated Preferred Alternative (IPA) and the three alternatives and found to be consistent with the purposes of the IPA and the goals of the MLPA.

We concur with the proposed regulations that specifically cite existing regulations found in the preamble to Section 632, Title 14, California Code of Regulations as follows;"[n]othing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents." Therefore, "military operations are already exempt within all MPAs under existing law." C03_ii-2

For clarity, in our comments, we recommend adding a paragraph to section 4.6 of this CEQA document for Military Activities that acknowledges the exemptions described in the preamble to Section 632, Title 14 of the CCR. C03_ii-3

We look forward to continuing to work with the State of California in this important environmental planning process. For further information please contact DoD's representative to the MLPA process, Mr. Michael Huber, DoD Regional Environmental Coordination Program Manager at (619) 532-2303, or via E-mail at Michael.Huber@navy.mil.

Sincerely,

C.L. STATHOS
By Direction

Enclosed: DoD Comments on Draft Environmental Impact Report for Marine Protected Areas in the California South Coast Study Region for the Marine Life Protection Act

DoD REGION IX
COMBINED COMMENTS

Date:
15 October 2010

DESCRIPTION: Combined Comments on Draft Environmental Impact Report
California Marine Life Protection Act Initiative,
South Coast Study Region

ITEM #	PAGE #	SECTION #	COMMENTS	ACTION		
1	7-5 & 8.2-8	Footnote Table8.2-1	Change "San Nicholas Islands" to "San Nicolas Islands" Use "San Nicolas" throughout document.			C03_ii-4
2	ES-6	Table ES-1	Does "B" stand for Beneficial? This is not identified in the legend. The proposed IPA is not indicated as having a beneficial impact on biological resources. If this is correct what is the purpose of the project?			C03_ii-5
3	ES-6	ES.4.2	Change "potential to result in potential environmental" to "potential to result in environmental"			C03_ii-6
4	ES-6	ES.4.2	Change "However, under this alternative the benefits of the proposed" to "Under this alternative the benefits of the proposed". However would indicate a contradiction to the sentence above.			C03_ii-7
5	2-5	2.2	Add "U.S. DoD" and "U.S. Coast Guard".			C03_ii-8
6	3-17	3.5.1	After "Proposed Modification of Other Regulated Activities: None" add: "**Implementation Notes**: MPAs are not intended to regulate, and would not regulate, activities and operations of the U.S. military (see 14 CCR 632: "Nothing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents.").			C03_ii-9
7	3-43	3.5.45	After "Proposed Modification of Other Regulated Activities: None" add "**Implementation Notes:** MPAs are not intended to regulate, and would not regulate, activities and operations of the U.S. military (see 14 CCR 632: "Nothing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents.")			C03_ii-10

8	4-3	4.6	Add section 4.6. MILITARY ACTIVITIES. Although the proposed IPA and alternatives consist of changes in allowable fishing and other uses within specific areas along a portion of the California coast, no substantial impacts are expected to military activities. The military has a very substantial presence in the Southern California area, with over 113,500 Active Duty members and 155,600 DoD Employees. The waters of the Southern California area are unique and essential to national defense. They provide for Military Readiness; Research, Development, Test and Evaluation; Training Ranges; and Installations. The DoD has many programs designed to promote the highest level of environmental stewardship consistent with its national security mission requirements. Existing regulations in the preamble to Section 632, Title 14, CCR, state that "Nothing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents." Under existing law, military operations are currently exempt within all MPAs, thus no substantial impacts are expected.			C03_ii-11
9	7-20	7.1.2.1.6	Under Mugu Lagoon, change "The following special-status birds have been reported within the lagoon:" to "The following special-status birds have on occasion been reported within the lagoon:"			C03_ii-12
10	7-28	7.1.2.1.9	After "while Love et al. (2010) surveyed this species at Farnsworth Bank, west of Santa Catalina Island." add "A population of purple hydrocoral exists off the northern end of San Clemente Island."			C03_ii-13
11	7-33	7.1.2.1.15	Change "There are two military closures on San Clemente Island where the designation and allowed uses have not been specified (MarineMap Consortium 2010)." to "Effective June 21, 2010, a Safety Zone exist around San Clemente Island, from the high tide line and extending seaward 3nm, divided into eight sections. Unless scheduled (via http://www.scisland.org) for hazardous military training and testing activities, six sections (A, B, C, D, E, F) are available to the public for recreational and commercial activities (e.g. fishing, diving, sailing). Section G (SWAT 1) Safety Zone is permanently closed to the public for all activities. Vessels must have authorization from KRAKEN (channel 16) to transit within 3nm of SCI through section G. Wilson Cove Safety Zone is permanently closed to the public for all activities. However, vessels may transit parallel along the shoreline inside the Safety Zone between 2nm to 3nm offshore. For San Nicolas Island see paragraph 8.4.2.3.1."			C03_ii-14
12	7-42	7.1.2.5.2	After, "approximately one abalone per 30,020 feet squared, or less than 0.1 percent of historic levels, with no evidence of recruitment." add "Black			C03_ii-15

			abalones have been observed in ten locations on the western side of San Clemente Island (Naval Auxiliary Landing Field, San Clemente Island Black Abalone (Haliotis cracherodii) Survey, 2008)"			
13	8.2-8		Change "San Nicholas Island" to "San Nicolas Island" Use "San Nicolas" throughout document.			C03_ii-16
14	8.2-12	8.2.2.1.5	Renumber "8.2.2.1.5 "to "8.2.2.5" and move as needed. The DoD is not a Law Enforcement Asset.			C03_ii-17
15	8.2-13	Table 8.2-3	Change "Port Hueneme Construction Battalion Center" to "Naval Construction Battalion Center Port Hueneme" Change "Coronado Naval Base Fleet and Industrial Supply Center" to "Fleet and Industrial Supply Center" Change "Coronado Naval Amphibious Base, Coronado CA" to "Naval Amphibious Base, Coronado CA" Change "North Island Naval Air Station North Island" to "Naval Air Station North Island" Change "Point Loma Naval Base Point Loma" to "Naval Base Point Loma" Change "San Diego Naval Station Base San Diego" to "Naval Base San Diego" Change "San Diego Naval Mine and Anti-submarine Warfare Training Center Command" to "Naval Mine and Anti-submarine Warfare Center Complex"			C03_ii-18
16	8.4-13	8.4.2.3.1	In paragraph <u>San Nicolas Island</u> Change "Regulations promulgated by the U.S. Army Corps of Engineers (see 33 CFR 334.980) designate the waters surrounding San Nicolas Island as a restricted area, and restrict vessel traffic in two portions of the restricted" to "Regulations promulgated by the U.S. Army Corps of Engineers (see 33 CFR 334.980) designate the waters surrounding San Nicolas Island as a restricted area extending to about 3 miles seaward. However they do allow certain fishing operations in two portions of the restricted" Change "Section Charlie). In these areas, no vessels" to "Section Charlie). In all areas, no vessels" Change "regulations also provide that dredging, dragging" to "regulations also provide that in sections Bravo and Charlie, up to within 300 yards of the shore, dredging, dragging" Change "Thus, the restricted areas at San Nicolas Island must be avoided by all vessels except for those engaged in fishing" to "Information on closed areas of San Nicolas Island is broadcast by the Navy Monday through Friday at 0900 and 1200 on 2638 kHz and 2738 kHz and by the Coast Guard on VHF-FM channel 16, and via Recorded Message at (805) 989-1470." In paragraph <u>San Clemente Island</u>			C03_ii-19

			Change "The safety zone completely surrounds San Clemente Island and is subdivided into nine mapped sections, with eight sections titled Sections A through G and a ninth section designated around Wilson Cove." to "The safety zone completely surrounds San Clemente Island and is subdivided into eight mapped sections, with seven sections titled Sections A through G and am eighth section designated around Wilson Cove." Change "safety zone by non-military vessels is not be prohibited." To "safety zone by non-military vessels is not prohibited."			
17	8.5-18	8.5.3.3	Add: 10. San Nicolas Island, Naval Outlying Landing Field. 11. San Clemente Island, Naval Auxiliary Landing Field.			C03_ii-20
18	10.2-12	10.2.1.23	Delete "The SCRSG Work Group 1 proposal recommends that the Department and U.S. Department of Defense should coordinate regulatory language similar to Vandenberg SMR."			C03_ii-21
19	10.3-8	10.3.1.17	Delete "The work group recommends that Department and US Department of Defense should coordinate regulatory language similar to Vandenberg SMR.			C03_ii-22
20	10.4-2	10.4.1.1	Delete "The work group recommends that the Department and U.S. Department of Defense should coordinate regulatory language similar to Vandenberg SMR."			C03_ii-23
21	10.4-5	10.4.1.7	After "scientific research, or operations of the U.S. military." add "However, there are concerns that designation of this area as an SMRMA may create management conflicts. Mugu Lagoon is already closed to fishing and will continue to remain closed for the long-term. Multiple agencies are party to the closure under the CERCLA Action Memorandum Agreement of 1997. An MPA would not add to this protection of the Mugu Lagoon and could complicate the management of it."			C03_ii-24

Responses to Comment Letter C03_ii

Response to Comment C03_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment C03_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment C03_ii-3: The regulation for the proposed Project IPA adequately notes that it is not the intention of the Commission to expressly regulate the activities of DOD agencies. The regulation being proposed regulates the take of marine species within State waters.

Response to Comment C03_ii-4: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text has been corrected throughout the document.

Response to Comment C03_ii-5: The commenter is correct in interpreting the "B" symbol in Table ES-1 to connote a beneficial impact; the table footnotes have been updated to reflect this information.

Response to Comment C03_ii-6: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to improve readability.

Response to Comment C03_ii-7: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to improve readability.

Response to Comment C03_ii-8: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to include two additional federal agencies.

Response to Comment C03_ii-9: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. As requested by the Department of Defense (DoD), a paragraph of Implementation Notes discussion has been added to Section 3.5.1, authorizing current and future U.S. military uses as stated in Section 632, Title 14, California Code of Regulations (CCR).

Response to Comment C03_ii-10: As described in Response C03_ii-9, a paragraph of Implementation Notes discussion has been added to Section 3.5.45, authorizing current and future U.S. military uses as stated in Section 632, Title 14, California Code of Regulations (CCR).

Response to Comment C03_ii-11: The comment suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. As requested by the DoD an additional section discussing impacts to U.S. military uses have been added to the Section 4, Disciplines Excluded from Detailed Environmental Analysis.

Response to Comment C03_ii-12: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to clarify species occurrence at Mugu Lagoon.

Response to Comment C03_ii-13: The comment requests that text indicating the existence of a purple hydrocoral population off the northern end of San Clemente Island be added to the Draft EIR's description of the existing environment relative to biological resources. The text in Section 7.1.2.1.9 of the Draft EIR has been revised to clarify species occurrence off the northern end of San Clemente Island.

Response to Comment C03_ii-14: The comment suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. As requested by the DoD previously unspecified designations and uses within the San Clemente Island Safety Zone are included.

Response to Comment C03_ii-15: The comment requests that text concerning the findings of a DoD black abalone survey be added to the Biological Resources section of the EIR. Section 7.1.2.5.2 of the Draft EIR has been modified as requested.

Response to Comment C03_ii-16: The commenter reiterates Comment C03_ii_4. Please refer to Response C03_ii_4.

Response to Comment C03_ii-17: The comment points out that the U.S. Department of Defense (DoD) is not a law enforcement asset, and requests that the description of the DoD's operations be relocated so as not to be a subset of Section 8.2.2.1 (Law Enforcement Assets) of the Draft EIR. Section 8.2.2.1.5 has been renumbered to Section 8.2.2.5 to address this concern.

Response to Comment C03_ii-18: The commenter suggests a minor text correction that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to accurately reflect the military installation names.

Response to Comment C03_ii-19: The commenter suggests a text modification that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to accurately reflect the military Safety Zone regulations adjacent to San Clemente and San Nicolas islands.

Response to Comment C03_ii-20: The commenter suggests the inclusion of two additional airports within the project area. The military airfields on San Clemente and San Nicolas islands have been added to the list.

Response to Comment C03_ii-21: The comment suggests deletion of text that would not affect the meaning or adequacy of the Draft EIR. As requested by the DoD text in questions has been removed to eliminate repetition.

Response to Comment C03_ii-22: The comment suggests deletion of text that would not affect the meaning or adequacy of the Draft EIR. As requested by the DoD text in questions has been removed to eliminate repetition.

Response to Comment C03_ii-23: The comment suggests deletion of text that would not affect the meaning or adequacy of the Draft EIR. As requested by the DoD text in questions has been removed to eliminate repetition.

Response to Comment C03_ii-24: The commenter suggests inclusion of additional discuss of the Mugu Lagoon's existing closure under the CERCLA Action Memorandum Agreement of 1997. As requested by the DoD a brief historical summary has been add that would not affect the meaning or adequacy of the Draft EIR.

R2.2.3 Comments from State Agencies/Legislature

The following group of comment letters is those received from state agencies/legislature. Table R2-3 lists the comment letters received from state agencies/legislature, along with the unique number assigned to each comment letter, the name of the commenter, and the page number of the comment letter. Responses to each letter immediately follow the letter.

TABLE R2-3
STATE AGENCY/LEGISLATURE COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A09	Eric	Gillies	California State Lands Commission	State	69
A43_i	Martin	Garrick	CA Assembly, 74th District	State	73
A43_ii	Martin	Garrick	CA Assembly, 74th District	State	77
A66_i	Isabelle	Kay	UC San Diego Natural Reserve System	Organization	81
A66_ii	Isabelle	Kay	UC San Diego Natural Reserve System	Organization	85
A73_i	Cy	Oggins	California State Lands Commission	State Government	89
A73_ii	Cy	Oggins	California State Lands Commission	State Government	93
A91_ii	Jacob	Armstrong	Department of Transportation (DOT)	State	107
A99_ii	Cassidy	Teufel	California Coastal Commission	State	115
C28	Ted	Lieu	California State Assembly	State	121
C31	Dennis	Hollingsworth	California State Senate	State	125

Letter A09

Subject: MLPA South Coast CEQA Scoping comments
From: Eric Gillies
Date: Thu, 02 Sep 2010 09:59:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Tom,

Can CSLC get copies of the scoping comments from the NOP that was circulated in July 2010. Thanks. A09-1

Also, I wanted to let you know that we are in progress of mapping our leases off the coast. I plan to have a separate layer that will be just the CDFG leases for the artificial reefs. Our records show 27 leases with CDFG with 32 locations where reefs are placed. A09-2

Eric

Eric Gillies
Staff Environmental Scientist
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825
Office (916) 574-1897; Fax (916) 574-1885
eric.gillies@slc.ca.gov

Attachment: TEXT5.htm
Attachment: Mime5.822

Responses to Comment Letter A09

Response to Comment A09-1: Regarding the request for scoping comments, yes, Department staff will provide comments received during the scoping/NOP process upon request. *No changes to the Draft EIR are required.*

Response to Comment A09-2: Comment noted. *No changes to the Draft EIR are required.*

From: Sherrie Fonbuena
To: FGC
Date: 10/14/2010 9:25 AM
Subject: Fwd: MLPA Letters
Attachments: Martin Garrick.pdf

Responses to Comment Letter A43_i

A43_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0074
(916) 319-2074
FAX (916) 319-2174

Assembly
California Legislature

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1910 PALOMAR POINT WAY, SUITE 106
CARLSBAD, CA 92008
(760) 929-7998
FAX (760) 929-7999

MARTIN GARRICK
REPUBLICAN LEADER
ASSEMBLYMEMBER, SEVENTY-FOURTH DISTRICT

September 28, 2010

Mr. Jim Kellogg, President
California Fish and Game Commission
1416 9th Street, 13th Floor
Sacramento, CA 95814

Dear President Kellogg and Commissioners:

We write to express our concern about the process surrounding the Draft Environmental Impact Report (DEIR) for the South Coast phase of the Marine Life Protection Act (MLPA). Together we represent literally millions of California citizens and outdoor enthusiasts. The MLPA will have serious economic impacts on the fishing industry, those who serve the industry, on coastal communities and will close prime fishing areas in Southern California as it has in the Central Coast and North Central Coast. A43_ii-1

While the MLPA itself may be controversial, there should be no question that our constituents should have adequate time to review and comment on the DEIR. We are aware of the very serious concerns expressed by fishermen, and also by the California Fish and Game Wardens Association, which indicate that the time allotted for comment on the Draft EIR is insufficient. We agree that the DEIR is extremely complex for such a short comment period which allots 45-days to impacted constituencies. A43_ii-2

We understand that prominent fishing and hunting organizations, municipalities, the Los Angeles County Sanitation Districts, and even California's game wardens have requested a 90-day comment period on the DEIR. We believe this is a reasonable and appropriate request. A43_ii-3

The adoption of the South Coast marine protected areas will be the most far-reaching regulation ever promulgated by the Commission. Allowing a 90-day comment period on the DEIR will allow affected industries, trade associations and citizens to provide meaningful analysis as to the effect the regulation will have, and as such will provide all Commission members with information needed to help make an informed decision. A43_ii-4

We ask you to direct your staff to allow for a 90-day comment period on the South Coast MLPA DEIR. A43_ii-5

Sincerely,

Martin Garrick

MARTIN GARRICK
Assembly Republican Leader

Representing the communities of: Carlsbad, Del Mar, Encinitas, San Marcos, Solana Beach, Vista and portions of Escondido, Oceanside and San Diego

Printed on Recycled Paper

Jean Nielsen

Responses to Comment Letter A43_ii

Response to Comment A43_ii-1: Comment noted. See Master Response 3. *No changes to the Draft EIR are required.*

Response to Comment A43_ii-2: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A43_ii-3: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A43_ii-4: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A43_ii-5: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Subject: FW: comments on the Draft EIR for the South Coast MPA
From: MLPAComments
Date: Wed, 20 Oct 2010 15:49:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
To: "FGC" <FGC@fgc.ca.gov>

From: Isabelle Kay [mailto:ikay@ucsd.edu]
Sent: Tuesday, October 19, 2010 5:46 PM
To: MLPAComments; fgc@fgc.ca.gov
Subject: comments on the Draft EIR for the South Coast MPA

To whom it may concern:
Please find attached my comments on the Draft EIR. I was not certain where to submit them.
Please let me know if neither of these addresses were adequate.

Thank you,
Isabelle Kay

Manager and Academic Coordinator
Natural Reserve System
UC San Diego
9500 Gilman Drive
La Jolla, California 92093-0689
office: 858 534 2077
cell: 858 229 4677
ikay@ucsd.edu
http://nrs.ucsd.edu

Attachment: TEXT40.htm
Attachment: SouthCoast DEIR comments IK.pdf
Attachment: Mime51.822

Responses to Comment Letter A66_i

A66_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

UNIVERSITY OF CALIFORNIA, SAN DIEGO

Letter A66_ii UCSD

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

NATURAL RESERVE SYSTEM
9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0689

TELEPHONE: (858) 534-2077
FAX: (858) 822-0696
e-mail: ikay@ucsd.edu

October 19, 2010

Fish and Game Commission
Via email to MLPAComments@resources.ca.gov, fgc@fgc.ca.gov

Re: Comments on the DRAFT ENVIRONMENTAL IMPACT REPORT
California Marine Life Protection Act Initiative South Coast Study Region (State Clearinghouse #2010071012)

Thank you for the extensive research and clear presentation of this large and complex document, and for making it easily available online.

Please note the following minor items pertaining to the La Jolla area in particular:

While it is correct that the Scripps Institution of Oceanography discharges marine lab and public aquarium waste seawater, it should be made clear that the discharge is covered by an NPDES permit and utilizes best management practices to reduce the level of regulated substances discharged to less than significant. A66_ii-1

Under existing protected areas listed, the University of California's Scripps Shoreline Underwater Reserve should be referred to by its new name (since 1980): Scripps Coastal Reserve. It is co-located with the Scripps ASBS and the existing San Diego-Scripps Marine Life Refuge. A66_ii-2

In Section 3.5, which discusses each MPA, please explain the criteria for the assigned levels of protection, and the reasoning/data behind the levels of expected benefit from MPAs with very high-high levels of protection. A66_ii-3
Specifically, please also address why the level of protection for the proposed San Diego Scripps SMCA is only moderate-low. A66_ii-4

In section, 8.2.2.1 Law Enforcement Assets, there is no reference to local (e.g. San Diego) lifeguards and police, who are a major component in the enforcement program for the Scripps Coastal Reserve and the La Jolla Ecological Reserve (proposed San Diego Scripps SMCA and Matlahuyl SMR, respectively.) A66_ii-5

In section 8.3, the conclusion at the end of the following statement regarding the University of California Natural Reserve System is not entirely correct: " Reserves adjacent or overlapping MPAs proposed in the proposed Project IPA include the Scripps Coastal Reserve and Coal Oil Point Natural Reserve. Proposed MPAs within the IPA adjacent to these reserves include Campus Point SMR and San Diego Scripps Coastal SMCA. *Proposed regulations are consistent with adjacent UC Natural Reserve management, and no impacts to Natural Reserves have been identified.*" (My italics.) At the Scripps Coastal Reserve the proposal is to restrict the authority of the Natural Reserve System to administer permits for research and teaching, including authorizing collection of marine species. This will drastically affect our ability to use and make available these areas for educational purposes. A66_ii-6

Finally, while it is understandable that fisheries should receive a large degree of attention, as the perceived impacts are obvious, I do not think the likely benefits to the fisheries and other sectors of the economy (education, recreation, tourism, quality of life, etc.) are equally well documented. A66_ii-7

Thank you for the opportunity to comment.

Sincerely,

Isabelle Kay

Isabelle Kay
Reserves Manager and Academic Coordinator
UC San Diego Natural Reserve System

Responses to Comment Letter A66_ii

Response to Comment A66_ii-1: The comment points out that the marine lab waste outfall at Scripps Institute of Oceanography is authorized by a NPDES permit with BMPs to reduce pollutant discharges, and requests that this be made clear. A footnote has been added to the text in Section 6.3.2.2.5 in the Draft EIR to reflect this fact.

Response to Comment A66_ii-2: The commenter suggests minor text changes that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to correctly list existing protected resources.

Response to Comment A66_ii-3: The comment asks that Section 3.5 of the Draft EIR be revised to explain the criteria for assigning Level of Protection (LOP), and to explain the reasoning behind the expected benefits for MPAs with "very high-high" LOP. As described in Section 2.4.8 of the Draft EIR, the MLPA Science Advisory Team (SAT) developed a method for evaluating the LOP that would be provided by each proposed MPA based on the consumptive uses that would be allowed. The SAT evaluation method examined the proposed take regulations, including fishing techniques and target species, and considered the potential for direct and indirect impacts to the marine ecosystem to occur. The method considered impacts caused by direct alterations of habitat, as well as potential effects from removal of certain species from the ecosystem. Based on this information, the SAT assigned a LOP for each type of consumptive use considered. Finally, LOPs for each MPA were determined by matching the consumptive uses allowed within each MPA with the LOPs for those uses. LOPs ranged from Very High to Low, although only SMRs and no-take SMCAs were eligible for the Very High designation. These areas are expected to offer the highest level of protection because consumptive uses would be completely prohibited, and their adverse effects would not occur in these areas. For more information regarding the SAT guidelines and the criteria for determining LOPs, please refer to the SAT's document entitled *Methods Used to Evaluate Draft MPA Proposals within the MLPA South Coast Study Region*, available online at http://www.dfg.ca.gov/mlpa/pdfs/agenda_040109d1.pdf.

Response to Comment A66_ii-4: The comment requests an explanation for why the LOP for the proposed San Diego-Scripps SMCA is only "moderate-low." As described in Response A66_ii-3 above, the SAT developed LOPs for each MPA based on the consumptive uses allowed there, in accordance with the methods document cited in that response. Within the proposed San Diego – Scripps Coastal SMCA, proposed regulations would allow the recreational take of coastal pelagic species (except for market squid) by hook and line only. According to the SAT methods, this type of consumptive use would have a LOP of "moderate-low" in waters less than 30 meters deep, "moderate-high" in waters 30 to 50 meters deep, and "high" in waters deeper than 50 meters. Because this SMCA is proposed along the coast, where a substantial portion of the proposed SMCA would have

water depths less than 30 meters, a LOP of "moderate-low" was assigned. Also refer to the SAT document referenced in response to comment A66_ii-3.

Response to Comment A66-ii-5: Comment noted. The Commission is not requesting enforcement assistance from lifeguards. However, the Commission recognizes that lifeguards are an invaluable asset to coastal resource management programs and they may contribute to MPA enforcement efforts by reporting incidents to Cal-TIP or law enforcement officers. See also response to Comment A13-31 and Master Response 9. *No changes to the Draft EIR are required.*

Response to Comment A66_ii-6: The Commission disagrees with the assertion that the proposed regulatory action would significantly restrict the availability of UC Natural Reserves for educational purposes. Goal 3 of the MLPA (refer to Section 2.4.1 of the Draft EIR) clearly demonstrates the intention of the proposed regulations to improve educational and study opportunities. Under the proposed regulations, take of living marine resources for scientific purposes would be allowed within MPAs of all types with a valid scientific collecting permit authorized by the Department. *No changes to the Draft EIR are required.*

Response to Comment A66_ii-7: The Commission appreciates the desire of the commenter to include additional information regarding potential positive socioeconomic effects of the proposed Project and alternatives 1, 2 and 3. However, because it does not fundamentally alter the impact analysis in the Draft EIR, no change to the Draft EIR is warranted. *No changes to the Draft EIR are required.*

Letter A73_i

Subject: SCH # 2010071012 DEIR Comments
From: Ben Lichty
Date: Tue, 19 Oct 2010 11:24:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
cc: "DeLeon, Jennifer" <Jennifer.DeLeon@slc.ca.gov>

Tom,

Please see the attached letter that was mailed out on Thursday, 10/14/2010.

~~~~~~~~~~~~

Ben Lichty
Graduate Student Assistant, Division of Environmental Planning and Management
California State Lands Commission
100 Howe Ave., Suite 100-South
Sacramento, CA 95825-8202
(916) 574-1890 work
lichtyb@slc.ca.gov<mailto:lichtyb@slc.ca.gov>

Attachment: TEXT10.htm
Attachment: 2010071012 MLPA South Coast DEIR.pdf
Attachment: Mime15.822
~~~~~~~~~~~~

Responses to Comment Letter A73_i

A73_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
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from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890
Contact FAX: (916) 574-1885

October 14, 2010

File Ref: SCH 2010071012

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Subject: Draft Environmental Impact Report for the California Marine Life Protection Act Initiative South Coast Study Region

Introduction and Jurisdiction

Staff of the California State Lands Commission (CSLC) has reviewed the subject Draft Environmental Impact Report (DEIR) for the California Marine Life Protection Act Initiative South Coast Study Region Project (Project), which is being prepared by the Department of Fish and Game (DFG) on behalf of the Fish and Game Commission. The Fish and Game Commission is the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) with respect to the Project because of its intent to amend regulations related to Marine Protected Areas (MPAs) pursuant to authority established through passage of the Marine Life Protection Act (MLPA) (Stats. 1999, Ch. 1015). The CSLC has prepared these comments as a trustee and responsible agency because of its trust responsibility for any and all projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

As general background, the CSLC has jurisdiction and authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, and lakes. Uses and restrictions of these lands are governed by Article X, Sections 3 and 4, of the California Constitution, the common law Public Trust Doctrine, and Public Resources Code section 6000 et seq. The CSLC also has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code section 6301). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, and lakes, are subject to the Public Trust. Additionally, the CSLC is the state entity responsible for locating the offshore federal-state boundary.

The Public Trust is a sovereign public property right held by the state or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes; however, the CSLC may authorize other uses not

inconsistent with the Public Trust on a case by case basis. Public Trust values and uses include, but are not limited to, swimming, boating, and general water-related recreational purposes, preservation of lands in their natural state for scientific study, as open space, and as wildlife habitat. A lease from the CSLC is required for any portion of a project extending onto state owned sovereign lands, which are under its exclusive jurisdiction; use of lands under the jurisdiction of legislative or federal grantees requires permission from that grantee/trustee of sovereign Public Trust lands. For further information, please refer to the Commission's Public Trust Policy Statement at http://www.slc.ca.gov/Policy Statements/Public Trust Home Page.html.

Background

The DEIR analyzes the effects of designing and implementing the southern California coast component of a statewide network of MPAs, as required by the MLPA, and other marine managed areas and Special Closures determined appropriate to help fulfill the MLPA. Specifically, the area subject to this analysis includes state waters between Point Conception (Santa Barbara County) and the California border with Mexico (San Diego County).

As part of DFG's earlier efforts related to revising the MPA system pursuant to the MLPA, CSLC staff has had discussions with staff of the MLPA Initiative, DFG, and the Department of Parks and Recreation (State Parks) about the use of sovereign land as part of the MLPA process. During these discussions, the CSLC staff expressed concern that some areas proposed as MPAs (1) may have existing leases with the CSLC that could conflict with certain MPA designations or (2) may be under the jurisdiction of local grantees; this concern was also raised in the CSLC staff's comments on the Notice of Preparation (NOP) for this DEIR. CSLC staff has assembled existing lease information into a Geographic Information Systems (GIS) database and has provided this information to both MLPA Initiative and DFG staff. CSLC strongly recommends that this information be used to identify and avoid potential land use conflicts by adjusting MPA boundaries and designations as necessary prior to certification of the final EIR. CSLC staff encourages and is available for additional discussion on specific areas proposed for MPAs where CSLC leases may be present. A73_ii-1

Information on existing uses within legislative or federal grants should be obtained from the individual grantees. As a courtesy, we have provided a list and maps of the legislative and federal grants to both MLPA Initiative and DFG staff.

General Comments

1. Jurisdiction/Existing Leases: Need for Review of MPA Boundaries and Designations. The CSLC supports efforts to protect, enhance, and restore marine resources, as enhancing those values is consistent with the Public Trust. However, to the extent such protections involve designations by the Fish and Game Commission that restrict or prevent other Public Trust uses, in particular the operation and maintenance of existing uses or facilities on tide and submerged lands leased by the CSLC to third parties, CSLC staff recommends that DFG carefully review the boundaries and designations of the MPAs identified in the A73_ii-2

Project in relation to the locations and boundaries of existing leases. This will require coordination with CSLC staff since lease boundaries are generally not readily determined. Proposed MPA boundaries and designations should then be revised as necessary and incorporated into the final EIR and subsequent rulemaking by the Fish and Game Commission to ensure MPA designations and restrictions do not unlawfully limit the ability of lessees to exercise their rights and responsibilities under that lease. While the DEIR discusses options for excepting or excluding already-leased areas and areas containing infrastructure requiring periodic maintenance, including boundary adjustment or a "less stringent" designation, the CSLC is concerned that certain MPA boundaries and designations proposed in the DEIR under the "Integrated Preferred Alternative" (proposed Project) conflict with existing CSLC leases. A few examples of these potential conflicts are provided below in "Specific Comments." DFG should review and consider the GIS lease information provided by the CSLC when preparing the final EIR to determine if there are other potential conflicts. A73_ii-2 A73_ii-1

2. Jurisdiction/Future Leases: Revise DEIR to Encompass Present and Future Projects. In addition to the CSLC's interest in maintaining appropriate jurisdictional authority over sovereign lands already leased under existing legal authority, the CSLC is concerned about designations that may interfere with its ability to approve future leases in areas designated as MPAs. This consideration necessarily requires a balance between the MLPA's specific directive to improve the effectiveness of the MPA network in order to protect the marine ecosystem, a goal supported by the CSLC and consistent with the Public Trust, and the need for the CSLC to preserve its ability to exercise its discretionary authority to balance Public Trust uses when approving leases on state lands. While the DEIR makes efforts to identify and allow projects and activities under existing leases/permits to continue without a conflicting MPA designation being imposed over the boundaries of those leases/permits, the current DEIR language and analysis does not address the possibility of future leasing/permitting decisions by the CSLC. CSLC staff therefore recommends that sections of the DEIR related to allowable uses and other agencies' permitting authorities be revised to encompass both present and future projects rather than just existing projects. A73_ii-3

3. Jurisdiction/Access: Need for Further Analysis of Potential Restrictions on Access, Navigation, and Vessel Traffic. There are constitutional rights to fishing, access, and navigation on the public lands and the waters of California. CSLC staff would like to participate in any discussions about restricting public access, navigation, and vessel traffic in any of the proposed MPAs. Specifically, the statements on pages 2-13, 3-9, and 3-10 of the DEIR indicating that restrictions on activities including "diving, kayaking, and snorkeling... may be necessary" in a SMR are of interest to the CSLC because of the implications related to the Public Trust and Article X, section 4 of the State Constitution. Additionally, CSLC staff recommends that the Fish and Game Commission consult with counsel when considering restrictions on access and navigation. A73_ii-4

Specific Comments

Section 3 - Project Description:

4. As discussed above, the Project Description needs to acknowledge that the CSLC and other agencies with independent leasing/permitting authority may issue leases/permits in the future under existing law that cannot be superseded by the Fish and Game Commission's rulemaking. A73_ii-5

5. The wording in the DEIR related to operations and maintenance of existing structures in the "Proposed Modification of Other Regulated Activities" sections of the specific MPA descriptions appears to be inconsistent from one MPA to another. For example:

   - The descriptions on pages 3-17 and 3-18 for the Kashtayit State Marine Conservation Area (SMCA) and Naples SMCA indicate that continued "operation and maintenance" activities of artificial structures "pursuant to any required permits or as otherwise authorized by the Department" would be allowed;
   - In contrast, the description on page 3-24 for the Blue Cavern (Catalina Island) SMCA indicates "maintenance" activities of artificial structures "pursuant to any required federal, state, and local permits, or as otherwise authorized by the Department" would be allowed. A73_ii-6

   As discussed in the General Comments section above, CSLC staff is concerned about any restrictions that may prevent lessees from conducting activities pursuant to their lease terms; these activities could include operations, maintenance, replacement, removal, etc. CSLC staff suggests revising the descriptions for consistency as follows: "New regulations propose allowing continuation of activities related to the operation and maintenance of artificial structures, and continuation of activities related to implementation of existing lease conditions, pursuant to any required federal, state, and local permits or leases, or as otherwise authorized by the Department."

6. The last sentence of Section 3.4.2 (page 3-10) provides that "an SMCA designation would not prohibit maintenance and operation activities associated with existing structures and facilities...." The DEIR further indicates that where an existing facility or use occurs within a proposed MPA, the MPA designation would be an SMCA rather than a State Marine Reserve (SMR), or alternatively, that the boundary would be adjusted to exclude the area, because SMRs are intended to be "genuine no take areas." In at least two instances, however, CSLC staff has identified proposed SMRs whose boundaries overlap existing leased areas. For example: A73_ii-7

   - In Figure 3-10 and Appendix A1, Campus Point in Santa Barbara County is being proposed as an SMR; however, the existing Venoco Ellwood Marine Terminal lies within the boundary of the proposed SMR. There are also two oil and gas seep tents associated with offshore oil and gas lease PRC 3242 that may also lie within the Campus Point SMR boundary; and

- In Figure 3-2 (and Figure 1-3), the Campus Point area is designated as a new SMCA (No Take); however, in Figure 3-10, Appendix A1, and the Project Description the area is designated as an SMR.

A73_ii-7

CSLC recommends that DFG correct the Campus Point MPA designation to an SMCA or otherwise revise the document to ensure that activities authorized by the existing leases are not affected.

7. The DEIR contains a footnote error on Page 3-16, Table 3-3. Footnote 5 explains the designation for Campus Point SMR, which is labeled as footnote 6 in the table; information for footnote 5 is missing. Additionally, the explanation in the footnote does not appear to be completely correct with respect to existing leases and/or conflicts with the SMR designation (see comment above). To ensure existing activities authorized under leases for the Ellwood Marine Terminal and PRC 3242 are not restricted, the document should be revised to designate Campus Point as an SMCA and the footnote should be eliminated. A73_ii-8

Section 6 - Physical Resources:

8. Section 6.3.1.2.1 – Public Trust Doctrine: The Public Trust Doctrine is described too narrowly in the first paragraph and should be revised to more accurately reflect the CSLC's duties as extending beyond merely "title to lands under navigable waters up to the high water mark." Please see the Public Trust jurisdiction discussion in the "Introduction and Jurisdiction" section above concerning waterborne commerce, navigation, and fisheries. The second paragraph should also be revised to eliminate numerous inaccuracies, or should be deleted in its entirety. For example: (1) the statement that the CSLC manages public uses of navigable waters through its leasing program is not accurate, and (2) the last sentence of the second paragraph, stating that "most" tide and submerged lands are owned by local authorities through past legislative grants, is similarly incorrect. A73_ii-9

9. Page 6.4-6, Santa Barbara Channel Oil and Gas Platforms – As stated above, the proposed Campus Point SMR boundary overlaps with oil and gas lease PRC 3242, and as such, creates a conflict between the "no take" restrictions of the SMR designation and the needs of the leaseholder. However, this section also cites the proposed Campus Point as an SMCA when the proposed Project and alternatives designate the area an SMR. The narrative on page 6.4-6 should be revised as necessary to ensure lease activities are not restricted and the MPA designation for Campus Point is presented as an SMCA throughout. A73_ii-7

10. The discussion on Pages 6.4-11 and 6.4-12 regarding Impact MR-1 and MR-2 again incorrectly states that there are no MPAs proposed over oil and gas facilities or active leases designated as SMRs; however, the proposed Campus Point MPA, identified as an SMCA elsewhere in the DEIR but as an SMR in this section, overlaps with the Ellwood Marine Terminal near Goleta and oil and gas lease PRC 3242 (see comment above).

Section 7 – Biological Resources:

11. While the DEIR discusses marine invasive species and non-indigenous aquatic species (NAS) on pages 7-38 through 7-39 as part of the Environmental Setting, an analysis and discussion of the potential for these species to increase or spread as a result of Project implementation is lacking in section 7.1.3.3 Environmental Impacts. The DEIR should evaluate the potential for the new MPAs to exacerbate or accelerate the introduction or spreading of invasive species and/or NAS within the MPAs, including an analysis of pathways such as increased recreational traffic to these protected areas (e.g., for purposes of diving) and changes in community dynamics that would favor non-indigenous species (such as through restricting take of certain species). A73_ii-10

12. Page 7-56 discusses pinto and threaded abalone; however, the Abalone Recovery and Management Plan states that threaded abalone are synonymous with the pinto abalone. This should be clarified in the EIR. A73_ii-11

Section 8 – Social Resources:

13. Section 8.1.1 "Regulatory Framework" would be more accurate if stated as "Legal and Regulatory Framework." A73_ii-12

14. Section 8.1.1.2 – State/Local: Public Resources Code sections 6309, 6313, and 6314, which pertain to the CSLC's administration of the Shipwreck and Historic Maritime Resources Program, should be briefly summarized. All abandoned shipwrecks and all submerged archaeological sites and historic resources on or in the tide and submerged lands of California are under the jurisdiction of the CSLC (Public Resources Code section 6313(a)). Public Resources Code section 6314 prohibits unauthorized removal or damage to submerged archaeological or historic resources, including shipwrecks, aircraft, and Native American sites. The CSLC may grant permits for salvage operations, including archaeological investigations, on submerged archaeological or historic sites when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource (Public Resources Code section 6313(d)). Recreational diving that does not disturb the subsurface or remove artifacts from a submerged archaeological site or historic resource does not require a permit (Public Resources Code section 6309(g)). A73_ii-13

15. Table 8.1-1 Shipwreck Locations Near Existing MPAs and Table 8.1-2 Shipwreck Locations Near Proposed Integrated Preferred Alternative (IPA) MPAs: As described in the accompanying text, the locations of most shipwrecks are unknown. We suggest that the word "Reported" be replaced with "Potentially Located" throughout these tables in the headings (i.e., "Number of Shipwreck Locations Potentially Located within 1 Mile of the MPAs). The word "Reported" connotes too much certainty that the resources are present within a specific area. A73_ii-14

16. Section 8.1.3.3 Environmental Impacts, Impact CR-1 and CR-2: Because the analysis presented indicates no adverse impact, and a possible benefit, CSLC staff recommends these be listed instead as "Potential Impact CR-1" and "Potential A73_ii-15

Impact CR-2." The analysis should also reflect the possibility that increased use of MPAs by dive boats may lead to unauthorized collection of artifacts. In addition, CSLC staff offers the following suggestions for revised language:

- Potential Impact CR-1: Substantial Adverse Effects on Historical Resources: Reword the first paragraph as follows: "Current state law prohibits all unauthorized salvage and removal of artifacts from shipwrecks, aircraft, and other historical resources. The proposed Project IPA would not modify existing state law." These changes would provide more accurate information since the legal framework is contained in statutes, not regulations. A73_ii-15
- Potential Impact CR-2: Substantial Adverse Effects on Archeological Resources: Reword the first paragraph as follows: "Current state law prohibits all unauthorized salvage and removal of artifacts from shipwrecks, aircraft, Native American sites, and other archaeological resources. The proposed Project IPA would not modify existing state law." These changes would provide more accurate information since the legal framework is contained in statutes, not regulations.

17. Section 8.2.1.3 – Underwater Cables: CSLC staff recommends revising the last paragraph to include a statement that these cables require a lease from the CSLC and that the lessees (the cable operators) are required to conduct periodic cable burial surveys to ensure that the cables with not cause adverse interaction with fishing gear or marine life. The lessees also have the right to maintain and repair the cables. A73_ii-16

18. Section 8.3 - Public Trust Doctrine and CSLC (Land Use and Recreation): Section 8.3.1.2.2 (Public Trust Doctrine) should be revised in the same manner as described in Specific Comment #8 above. In order to clarify the CSLC's jurisdiction, the first sentence of paragraph 3 in Section 8.3.2.1 (Land Uses) should be reworded to state "The SLC has primary jurisdiction over the area between the mean high tide line and three nautical miles offshore, which is the majority of the SCSR." The following paragraph of the same section should then be expanded to add some of the uses already noted as being subject to leases or permits, including intakes and outfalls, fiber optic cables, and oil and gas pipelines. A73_ii-17

19. Section 8.4.1.2 – State: Please include a brief discussion of the California Constitutional right of access to navigable waters. A73_ii-18

20. Section 8.4.1.2.2 – State Lands Commission: The first sentence should be revised to read: "The SLC's Land Management Division oversees the leasing of offshore moorings, while the SLC's Marine Facilities Division regulates . . ." The last sentence should be deleted altogether because the CSLC, as the landowner, does have direct authority of any project affecting sovereign lands, especially if there is an existing offshore moorage in the project area. Also, the Commission could decide in the future that it is in the best interest of the State to authorize an offshore moorage in the project area (see "General Comment" #2 above). A73_ii-19

Section 9 – Cumulative Impacts:

21. The last statement in Section 9.3.2 (Page 9-5) is not accurate. There are three exceptions to the California Sanctuary Act that can allow new oil production offshore in Santa Barbara County. The proposed Ellwood Full Field Development (Venoco, Inc.) provided in Section 9.3.2.2 is one example of a project that can be allowed by one of the exceptions. The statement should be revised accordingly. A73_ii-20

22. The first line of Section 9.3.2.2 on Page 9-5 should be revised to reflect that Venoco, Inc. has applied to the county of Santa Barbara in addition to the CSLC and the city of Goleta. This section should also reference the 2008 Draft EIR that was prepared for the Full Field Development Project, which can be found at: www.slc.ca.gov/Division Pages/DEPM/DEPM Programs and Reports/Venoco_Santa Barbara/Venoco Santa Barbara.html. It should also be noted that the proposed oil and gas lease boundary extension of PRC 3242 of this project would encompass most of the proposed Campus Point SMR (see comments above). A73_ii-21 A73_ii-7

23. The lease renewal for the Ellwood Marine Terminal (PRC-3904.1) was approved by the CSLC on June 1, 2009. Section 9.3.2.4 on Page 9-6 should be revised to reflect the current lease status. In addition, Venoco is proposing to realign the pipeline (Line 96) leading to the marine terminal to have its oil production piped to Las Flores Canyon in Santa Barbara County, known as the Line 96 Modification Project. If constructed, this would eliminate the barging operations at the Ellwood Marine Terminal and the terminal would eventually be decommissioned. As provided in the comment on Page 3-10 above, this facility is within the current boundary of the proposed Campus Point SMR. A73_ii-22 A73_ii-7

Section 10 – Alternatives:

24. Alternative 1 includes the addition of the Helo SMR on Page 10.2-3, Section 10.2.1.5. Under that designation, the DEIR states that current oil activities would be permitted to continue without interference with this proposed SMR; however, such an assurance appears to conflict with the legislative direction and the Master Plan prepared under the MLPA that SMRs be "genuine no-take areas." Additionally, the Campus Point SMR designation discussed in the proposed Project, which encompasses the same area, does not include similar assurances (see several comments on the Campus Point SMR above). CSLC staff recommends the Helo SMR designation in Alternative 1 be modified to an SMCA, or that the document be otherwise revised to ensure consistency in designations and their levels of protection. A73_ii-23

25. The Campus Point SMR identified in Alternative 2 (Section 10.3.1.3, Page 10.3-2) includes a statement that "...incidental take related to the normal maintenance and cleaning of marine fouling organisms from, or normal operation of any included existing hydrocarbon mining infrastructure as currently placed" would be allowed in the SMR. As stated earlier, this statement appears to conflict with the proposal that the SMR designation be used only for areas where no take will be allowed. Please explain why take would be allowed in the SMR under alternative 2 but not under the proposed Project. Additionally, the characterization of what activities would be A73_ii-24

allowed may not provide sufficient flexibility for operators under current leases, as discussed above in "General Comments." A73_ii-24

26. The UCSB SMR identified in Alternative 3 (Section 10.4.1.4, Page 10.4-3) appears to encompass the same geographic area as the Campus Point SMR identified in the proposed Project as well as in Alternative 2. CSLC staff is unclear as to the purpose of this difference. If it does encompass the same area, CSLC staff recommends revising the designation and/or allowed activities in accordance with the above comments related to the existing leases and activities located within the boundary of the MPA. A73_ii-25

27. The CEQA Guidelines citation on Page 10.5-1, Section 10.5 regarding the identification of an environmentally superior alternative is not correct. The CSLC believes the author intended to cite section 15126.6, subdivision (e)(2) as a basis for not identifying an environmentally superior alternative. Please clarify. A73_ii-26

Thank you for the opportunity to review and make comments on the DEIR for the Project. If you have any questions regarding sovereign lands subject to the CSLC's jurisdiction, please contact Susan Young, Public Land Manager at (916) 574-1879 or by e-mail at Susan.Young@slc.ca.gov. If you have any questions regarding the environmental review comments, please contact Jennifer Deleon at (916) 574-0748 or by e-mail at Jennifer.Deleon@slc.ca.gov.

Sincerely,

Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Rebecca Ota
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Thomas Napoli
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Office of Planning and Research
S. Young, CSLC
J. Deleon, CSLC

Responses to Comment Letter A73_ii

Response to Comment A73_ii-1: The Commission appreciates the input and assistance from the State Land Commission (SLC). As is correctly noted in the SLC comments, the Commission does not regulate land uses over state sovereign lands. The Commission does have jurisdiction to regulate the take of the biological resources that reside in or above state submerged lands within the SCSR. It is this jurisdiction that is being exercised in the present action. Like many other agencies (such as regional water quality control boards, local air quality management district, and the California Coastal Commission, to name a few), this jurisdiction can and should be exercised concurrently with the SLC jurisdiction over state owned sovereign lands including the sea bed under the SCSR. The Commission and the Department have tried to avoid potential conflict with submerged land lessees or permittees. However, conflicts with the jurisdiction of the State Lands Commission are not expected to occur.

Response to Comment A73_ii-2: The Commission is sensitive to the concerns of the SLC, however it should be noted that the SLC does not have jurisdiction to regulate the take of marine species within the SCSR. SLC-permitted public trust activities would need to be consistent with the regulations promulgated by the Commission, as well as other agencies with responsibility over air quality, water quality, public health and coastal management. Where offshore leases were identified, changes in the regulation were incorporated into the proposed Project IPA so as to avoid any significant adverse physical environmental impacts from implementation of the proposed Project IPA. (See response A73_ii-7). The Commission appreciates the input and advice from the SLC and will continue to identify address potential conflict between the Commission regulations and SLC Lessees.

Response to Comment A73_ii-3: The Commission understands the SLC concern regarding future leases and potential concerns over existing and proposed Commission regulations. Should these future lessees determine that their activities could result in take of marine species, then the Commission and Department would be available to work to resolve conflicts or craft the appropriate relief. However the proposed Project IPA is not intended to address all potential future use conflicts. It is expected that future project will be reviewed on a case by case basis.

Response to Comment A73_ii-4: Comment noted.

Response to Comment A73_ii-5: Comment noted.

Response to Comment A73_ii-6: Comment noted. The Commission regulations attempt to provide relief to existing uses within certain proposed MPAs that may result in incidental take of marine species.

Response to Comment A73_ii-7: It is acknowledged that oil and gas lease PRC 3242 overlaps with the Campus Point MPA and that PRC 3242 includes the Ellwood Marine Terminal and two oil and gas seep tents. Section 3.5.5 of the Final EIR has been amended to reflect the proposed regulation options in the amended regulatory package before the Commission. Option 2 for the Campus Point SMR would change the designation from an SMR to an SMCA and allow the operation and maintenance of artificial structures inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the Department. See section 3.5.5 of the Final EIR. Thus, those oil and gas facilities within PRC 3242 will be allowed to continued operations as authorized. The text of Sections 6.4.2.1.1 and 6.4.3.3 has been modified to reflect the above. Additionally, Figures 1-3 and 3-2 have been changed to clarify the Campus Point MPA options.

Response to Comment A73_ii-8: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The footnote has been deleted, as suggested, and further details regarding the proposed Campus Point MPA are provided in response A73_ii-7.

Response to Comment A73_ii-9: The commenter suggests editorial changes to that would not affect the meaning or adequacy of the Draft EIR. The text has been revised to clarify the SLC's duties relative to the Public Trust Doctrine.

Response to Comment A73_ii-10: The comment requests that the biological resources analysis in the Draft EIR be revised to include an analysis on the potential for increased spread of invasive aquatic species due to the proposed regulations. The Commission disagrees. The MLPA calls for adaptive management. The MLPA requires that the Master Plan include recommendations for monitoring and evaluation in selected areas for adaptive management. The MLPA also requires that all MPAs have measurable goals and objectives. If monitoring results are not consistent with the goals and objectives of an individual MPA, the region, and overall network, recommendations should be developed for altering the MPAs and their management. No changes to the Draft EIR are required.

Response to Comment A73_ii-11: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to clarify that pinto and threaded abalone are synonymous.

Response to Comment A73_ii-12: The comment suggests renaming subsection 8.1.1 of the Draft EIR from "Regulatory Framework" to "Legal and Regulatory Framework." While the Commission concurs that such a change would more explicitly encompass the statutes, in addition to the regulations, governing particular resources in the subsection heading, the change would not materially improve the Draft EIR. Each of the analysis sections in the Draft EIR contains a "Regulatory Setting" section, and these sections serve to communicate the ways in which the relevant human activities resources are regulated,

whether by statute, or through regulations or other mechanisms. *No changes to the Draft EIR are required.*

Response to Comment A73_ii-13: The comment states that Public Resource Code sections 6309, 6313, and 6314 should be briefly summarized in Section 8.1.1.2. Section 8.1.1.2 of the Draft EIR has been revised to incorporate the references to the Public Resources Code that pertain to the California State Lands Commission administration and authority of the Shipwreck and Historic Maritime Resources Program.

Response to Comment A73_ii-14: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. However, the text in question has been revised to improve readability.

Response to Comment A73_ii-15: Though the Commission notes that illegal activities, such as the collection of historical artifacts, occur throughout the SCSR, the proposed Project IPA would not increase the risk or success of such illegal activities. A review of cultural resource sites within MPA was conducted and no areas of significant concentration of artifacts were identified within MPAs subject to the current Commission regulatory action and as such, potential shifts of dive boats to MPAs are not expected to result in significant impacts to historical artifacts. *No changes to the Draft EIR are required.*

Response to Comment A73_ii-16: Commenter recommends revisions to Section 8.2.1.3 Underwater Cables to include requirements for SLC lease, periodic burial surveys for potential fishing interference and discussion of maintenance and repair.

The Draft EIR states that underwater cables are subject to the permitting requirements of "development," as described in Section 8.3.1. The Land Use and Recreation section includes the permitting requirements of the California State Lands Commission. All cable maintenance activities would be subject to the permitting requirements of all applicable agencie,s and therefore are not discussed. The text was not revised in response to this comment.

Response to Comment A73_ii-17: The comment states that Section 8.3.1.2.2 should be revised as described in Comment A73_ii-9, and suggests other revisions to Section 8.3 that would not affect the meaning or adequacy of the Draft EIR. The text has been revised accordingly.

Response to A73_ii-18: This comment requests acknowledgement of the right to access to navigable waters within the State of California. Section 8.4.1.2 has been revised accordingly.

Response to Comment A73_ii-19: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to clarify SLC's oversight and regulatory divisional structure.

Response to Comment A73_ii-20: The text of Section 9.3.2 of the Draft EIR has been modified as requested.

Response to Comment A73_ii-21: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text has been revised to include the County of Santa Barbara as a permitting agency.

Response to Comment A73_ii-22: The commenter suggests a change that would not substantially affect the meaning or adequacy of the Draft EIR. The text has been revised to include SLC 2009 approval date.

Response to Comment A73_ii-23: Should the Commission adopt an MPA analyzed by the SAT under an alternative other than the IPA, then the Commission would adopt exemption language similar to what is used throughout the proposed Project IPA, allowing the continued operation and maintenance of existing facilities, allowing habitat restoration activities, as well as specifically allowing other existing activities that may result in incidental take. The Commission does not intend to impair existing lawful uses that have incidental take as a result of the operation or maintenance of these activities.

Response to Comment A73_ii-24: Comment noted. Section 3.5.5 of the Final EIR has been amended to reflect the proposed regulation options in the amended regulatory package before the Commission. Option 2 for the Campus Point SMR would change the designation from an SMR to an SMCA and allow the operation and maintenance of artificial structures inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the Department. See section 3.5.5 of the Final EIR.

Response to Comment A73_ii-25: The geographical area of the UCSB MPA in Alternative 3 is identical to the Campus Point MPA, and both have been designated as an SMCA as per 14 CCR Part 632 (refer to response to comment A73_ii-7). The different nomenclature is an artifact of the MLPA planning process used to develop alternative proposals, and has occurred because different working groups within the Regional Stakeholder Groups sometimes used different names to indicate the same MPA. As with the Campus Point SMCA, the UCSB MPA would allow the existing facilities within the overlapping areas of PRC 3242 to operate as per their existing permits (refer to response to comment A73_ii-7).

Response to Comment A73_ii-26: The commenter suggests a minor editorial change that would not affect the meaning or adequacy of the Draft EIR. The text has been revised to reflect the correct section and subdivision of the CEQA Guidelines.

DEPARTMENT OF TRANSPORTATION
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Letter A91_ii

Flex your power!
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October 19, 2010

11-SD-5
PM 2.31 – 45.57
South Coast Marine Protection Areas
DEIR

Thomas Napoli
MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

The California Department of Transportation (Caltrans) received a copy of the Draft Environmental Impact Report (DEIR) for the proposed South Coast Marine Protection Areas located in proximity to the Interstate 5 (I-5). Caltrans has the following comments:

- The project should not interfere with future I-5 widening plans that are identified in the I-5 North Coast Corridor project DEIR/DEIS that is currently out for public review. Please coordinate with Caltrans on any questions or issues regarding future I-5 widening at it relates to this proposed project. A91_ii-1
  - The Integrated Preferred Alternative (IPA) identified in the DEIR is most consistent with Caltrans current plans.
- The DEIR does not identify other proposed projects that interface with the proposed South Coast Marine Protection Areas, including the I-5 North Coast Corridor project and LOSSAN/double tracking rail project. A91_ii-2
- The DEIR does not fully identify a No Build Baseline for freeway, rail, and restoration/mitigation. A91_ii-3
- The DEIR does not identify the fact that the I-5 crosses several of the lagoons recommended for adjustments to their status under the Marine Life Protection Act (MLPA). There is no mention of the need to expand I-5 through the lagoons, changes to existing bridge structures and fill that are currently proposed, and what the effect of the MLPA classifications would have on the ability of Caltrans to complete the expansion. A91_ii-4

- The DEIR does not identify allowable activities/use change within the South Coast Marine Protection Areas, including construction, maintenance, and restoration. A91_ii-5

  - How would the proposed South Coast Marine Protection Areas affect future activities for restoration, permit, etc?

  - Please clarify what types of permits would be required for completing construction within each of the differing MLPA classifications. The DEIR does not identify the necessity for future upgrades to existing infrastructure including freeways, roads, railroad, sewer lines, utility lines, and other infrastructure that currently cross some of the proposed MLPA areas in lagoons. A91_ii-5

  - Page 2-15 states "The Fish and Game Commission does not have authority to regulate activities such as maintenance of existing artificial structures and ongoing point-source discharges. Therefore, these types of activities were not considered in the levels of protection process." Does this mean the Fish and Game Commission does not have authority to regulate new construction and upgrades to facilities other than through existing permits such as the 1600 and California Endangered Species Act? Please clarify. A91_ii-6

  - Section 2.4.1.1 Other Programs and Activities states that "the proposed regulatory changes are not intended to prohibit ongoing activities that have existing authorization from other federal and state agencies. In order to maintain compatibility with existing uses that are expected to continue (i.e. harbors, outfalls, dredging, or other activities), it has been recommended that some areas be designated with less restrictive regulation." Although I-5 crosses San Dieguito, San Elijo, and Batiquitos Lagoons, different alternatives designate some or all of these lagoons as State Marine Reserve (SMR), the most restrictive classification. A91_ii-7

  - Current studies to restore San Elijo Lagoon are considering construction of a new inlet with potential for some inlet stabilization structures. The study proposes bridge structures at Pacific Coast Highway (PCH), the railroad, and I-5 to enhance flows within the lagoon. In addition, grading within the lagoon will be required for the restoration. The DEIR needs to clarify what activities are covered under restoration for each of the designations. If building new inlets and bridges are not allowed under the SMR option, then there would be adverse impacts to resources in San Elijo Lagoon from the change in designation. A91_ii-8

- Section 7.1.2.2 discusses Habitat Restoration Activities, but only identifies artificial reef construction and does not identify restoration that is planned or ongoing in the estuaries proposed for changes in status. The DEIR does not identify the restoration activities that have occurred at San Dieguito Lagoon in the last two years or restoration plans for San Elijo Lagoon. A91_ii-9

- Pages 7-23 through 7-25 identifies each of the lagoons in San Diego County; however, the detail is limited.
  - Page 7-23 identifies that culverts connect all three sections of Aqua Hedionda Lagoon, the I-5, railroad, and PCH bridges. Please update the DEIR to identify the structures as Bridges, not culverts. These three structures cross each of the northern San Diego County Lagoons. A91_ii-10
  - There are current plans to expand both the railroad bridges and I-5 bridges.
- Section 8.3 Land Use and Recreational Resources identifies a number of planning documents, but did not include SANDAG's Regional Transportation Plan (RTP) that discusses planned improvements to infrastructure. A91_ii-11

If you have any questions on the comments Caltrans has provided, please contact Leila Ibrahim of the Development Review Branch at (619) 688-6954.

Sincerely,

JACOB M. ARMSTRONG, Chief
Development Review Branch

Responses to Comment Letter A91_ii

Response to Comment A91_ii-1: The comment states that the proposed Project should not interfere with the future I-5 widening plans that are identified in the I-5 North Coast Corridor (NCC) project currently proposed by Caltrans. Section 9.3 of the Draft EIR has been revised to include discussion of these projects.

Response to Comment A91_ii-2: The comment asserts that the Draft EIR does not identify other projects that interface with the proposed MPAs, including the NCC project and the LOSSAN/double tracking rail project. Section 9.3 of the Draft EIR has been revised to include discussion of these projects.

Response to Comment A91_ii-3: The comment contends that the Draft EIR does not "fully identify a No Build Baseline for freeway, rail, and restoration/mitigation." The meaning of this comment is unclear, as neither the proposed Project nor any of the alternatives considered in the Draft EIR include any freeway or rail construction, or restoration/mitigation activities. As required by the CEQA statute and guidelines, Section 10.0 of the Draft EIR identified and evaluated a reasonable range of alternatives to the proposed Project, and this range included a "No Project" alternative (see Section 10.1 of the Draft EIR) under which the proposed regulatory changes would not be made.

Response to Comment A91_ii-4: The comment points out that the Draft EIR does not identify the currently proposed improvements to I-5 within some of the proposed MPAs, and does not state what effect the proposed MPA designations would have on Caltrans' ability to complete the proposed improvements. Section 9.3 of the Draft EIR has been revised to include proposed and probable future transportation improvements by Caltrans, including the I-5 North Coast Corridor Project. The highway corridor traverses the Batiquitos Lagoon (existing SMP/SMCA proposed for expansion), San Elijo Lagoon (existing SMP proposed for slight expansion and re-designation as an SMCA), and San Dieguito Lagoon (existing SMP that would be expanded and redesignated as an SMR under alternatives 1, 2, and 3, but proposed for deletion under the proposed Project IPA). The existing Agua Hedionda and Buena Vista Lagoon SMPs are also traversed, although these MPAs would be removed under the proposed Project IPA.

While this comment does not directly address the content or adequacy of the Draft EIR, compatibility of the proposed regulations with future planned roadway improvements along the I-5 corridor is an important concern. The regulatory language being proposed for Batiquitos Lagoon SMCA and the San Elijo Lagoon SMCA provides that "Operation and maintenance, habitat restoration, research and education, maintenance dredging and maintenance of artificial structures inside the conservation area is allowed pursuant to any required federal, state and local permits, or activities pursuant to Section 630, or as otherwise authorized by the Department." The Caltrans Draft EIR/Draft EIS for this project indicates

that Caltrans is currently working with the Department to mitigate impacts that may be expected to occur as a result of the construction and operation of the NCC (http://www.dot.ca.gov/dist11/Env_docs/I-5NCCDraft.html). Both the construction activities as well as mitigation activities could be authorized pursuant to a 1600 Agreement, Incidental Take permits, mitigation monitoring agreement or an authorization letter from the Department. The existing regulatory language for the San Dieguito Lagoon SMP does not exempt other regulated activities similar to what is being proposed for the Batiquitos and San Elijo Lagoons. However the proposed Project IPA proposes to remove the existing take restriction under Title 14, Part 632(b)(116) of the California Code of Regulations. This will result in elimination of any potential conflict between the existing MPA regulations and the proposed NCC Project.

As such, no significant barriers to the construction of the NCC project are expected from implementation of the proposed Project IPA and no significant impacts to transportation or related disciplines have been indentified in the Draft EIR.

Response to Comment A91_ii-5: The comment asserts that the Draft EIR does not identify allowable use changes within the proposed MPAs, including construction, maintenance, and restoration. Any future project that may result in take within an MPA would need to implement avoidance measures to avoid take or contact the Commission for possible changes to the conflicting regulations. CEQA does not require, nor will the Commission engage in, speculation as to possible future projects and their conflict with MPA regulations that may be in place at that time. Where ongoing construction or restoration activities have been identified as occurring within the MPA boundaries of the proposed Project IPA, exemptions have been crafted that would allow these activities to continue. Should the proposed Project IPA, or regulations promulgated in the future, be identified as conflicting with future activities, then the project proponent would need to contact the Commission regarding the applicability of the conflicting regulation to these future activities as well as possible regulatory relief by the Commission.

Response to Comment A91_ii-6: The comment requests clarification of the Commission's statutory authority to regulate new construction and upgrades to facilities. The Commission and Department retain jurisdiction over the management and take of species within the state's sovereign boundaries, including within MPAs. The Commission does not directly regulate construction activities that may occur within MPAs, but should those activities result in take of species subject to protections under state law or regulation, then the project proponent would need to contact the Department or the Commission to obtain the appropriate authorization for the type of take occurring or to request a change in state regulation to accommodate the desired activity. The Department's take authorization may occur through the granting of 1600 (lake/streambed alteration) agreements, 2081 (incidental take) permits, or other forms of written authorization that would satisfy the MPA exemption language that allows incidental take "as otherwise authorized by the Department."

Response to Comment A91_ii-7: The comment points out that under some of the alternatives evaluated in the Draft EIR, estuaries and lagoons traversed by the I-5 corridor are proposed for designation as SMRs. As described in Section 10.0 of the Draft EIR, the alternatives were developed by the South Coast Regional Stakeholder Groups' (SCRSG) three workgroups; the alternatives have not been as extensively refined as the proposed Project IPA, and changes to an alternative may be necessary if the alternative were to be adopted by the Commission. Section 10.0 of the Draft EIR states:

> "It is possible that the regulatory language and the designated MPA types being proposed under these alternatives could potentially conflict with existing uses permitted by other federal or state agencies that the Commission lacks the authority to regulate (or which it was not the intent of the BRTF to regulate). However, it is anticipated that if the Commission decides to adopt one of the alternatives, appropriate revisions to the proposed regulatory language and designations would be made as applicable and allowed."

Thus, it is expected that, should one of the alternatives be selected by the Commission, the proposed designations would be reviewed in light of the Commission's statutory authority and regulatory intent. Should an alternative be selected for adoption instead of the proposed Project IPA, it is expected that additional analysis (similar to what was performed for the proposed Project IPA) will be conducted for the adopted alternative. Should the Commission adopt an MPA analyzed by the SAT under an alternative other than the IPA then the Commission would adopt exemption language similar to what it issued throughout the proposed Project IPA, allowing the continued operation and maintenance of existing facilities, allowing habitat restoration activities as well as specifically allowing other existing activities that may result in incidental take. The Commission does not intend to impair existing lawful uses that have incidental take as a result of the operation or maintenance of these activities.

Thus, it is expected that, should one of the alternatives be selected by the Commission, the proposed designations would be reviewed in light of the Commission's statutory authority and regulatory intent. Proposed SMR designations in areas containing existing bridges and other artificial structures requiring maintenance (including Batiquitos Lagoon, San Elijo Lagoon, San Dieguito Lagoon, and Los Penasquitos Marsh) would likely be revised to allow these activities, similar to the designations under the IPA.

Response to Comment A91_ii-8: The comment states that current restoration plans for the San Elijo Lagoon could require some construction and grading, and requests clarification as to whether these activities would be considered "restoration" under the various MPA designations. The term "restoration" is not defined in the Public Resources Code, nor in the Commission's regulations, and the Commission therefore retains the latitude to interpret this term within the context of the regulations. Because marine and estuarine

restoration activities are usually intended to benefit living marine resources, and are therefore highly compatible with the goals and objectives of the MLPA, the Commission will likely interpret this term broadly. It is not the Commission's intent in promulgating the proposed regulations to prohibit marine and estuarine restoration projects. If certain activities associated with a restoration project do not fall within the meaning of the term, as interpreted by the Commission, those activities could be authorized by the Department on a case-by-case basis through a Letter of Authorization or other appropriate means.

Response to Comment A91_ii-9: The comment points out that the discussion of restoration activities in Section 7.1.2.2 of the Draft EIR is limited to artificial reefs, and does not include recent lagoon restoration projects. Estuarine restoration projects are discussed briefly in Section 7.1.2.1.6 of the Draft EIR; however, Section 7.1.2.2 of the Draft EIR has been revised to include a description of these efforts.

Response to Comment A91_ii-10: The three embayments that comprise the lagoon are connected to each other through channels that pass underneath of exiting bridges. The bridges do not connect the bays, but rather the channels under each bridge connect the bays. The suggested revision may mislead the reader into assuming that no hydraulic connection occurs. No revision is necessary.

Response to Comment A91_ii-11: The comment states that SANDAG's Regional Transportation Plan is not included in the referenced planning documents. In the interest of completeness, Section 9.3 of the Draft EIR has been modified to include a discussion of future highway and rail improvements, including the SANDAG Regional Transportation Plan.

October 19, 2010

Thomas Napoli
MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Re: Draft Environmental Impact Report for the Marine Life Protection Act South Coast Study Region Marine Protected Areas Project

Dear Mr. Napoli,

Thank you for your consideration of the following comments regarding the Draft Environmental Impact Report (DEIR) prepared for the California Marine Life Protection Act South Coast Study Region Marine Protected Areas Project. Specifically, this DEIR evaluates the proposed designation of those state marine reserves and state marine conservation areas detailed in the Integrated Preferred Alternative developed through the Marine Life Protection Act Initiative (MLPAI) process in the South Coast Study Region. Coastal Commission (Commission) staff appreciates the extended opportunity provided by the Fish and Game Commission for the submittal of comments and information during your development of a Final Environmental Impact Report.

Public Access

During the South Coast Regional Stakeholder phase of the MLPAI process, some participants raised concerns about whether the proposed regulation of extractive activities in offshore and nearshore marine protected areas (MPAs) is consistent with the public's right to access the coast and ocean. It is the Commission staff's understanding that the proposed designation of state marine reserves and state marine conservation areas in southern California would in no way impede or limit the ability of the public to access, enter, transit or visit coastal areas including beaches, intertidal areas and nearshore and offshore waters. A99_ii-1

To the contrary, we believe that, as provided for in Goal 3 of the *Regional Goals and Objectives and Design and Implementation Considerations for the MLPA South Coast Study Region*, in many locations the designation of state marine reserves and state marine conservation areas will serve to encourage the visitation and non-consumptive recreational use of coastal and marine areas in southern California. Non-consumptive recreational activities such as beach visitation, wildlife viewing, surfing, diving, kayaking and boating will not be restricted or prohibited from occurring within any of the marine protected areas currently being considered.

As described within Section 30001.5 of the California Coastal Act, one of the basic goals of the state for the coastal zone is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners." The participation of Commission staff in the South Coast Regional Stakeholder Group has helped ensure that public access considerations were integrated into the MLPAI process and that the designation of marine protected areas currently being evaluated in the EIR remains consistent with this state priority. A99_ii-2

We recommend that the Final EIR reference the relevant public access policies of the California Coastal Act (for example Section 30210 and Section 30211) in Chapter 8.3 (Land Use and Recreation). A99_ii-3

Ongoing and Future Restoration, Remediation and Maintenance

The definitions of a state marine reserve, state marine conservation area, and state marine park included in the DEIR all include the terms "protect or restore" in reference to marine species, communities, habitats and ecosystems. However, the stated "allowable uses" for each of these MPA types only notes that "restoration" may be permitted by the managing agency within state marine reserves. Restoration, adverse impact remediation, and resource management and maintenance activities directed at the protection and enhancement of marine biological resources do not appear to be designated as allowable uses within either state marine conservation areas or state marine parks. Further, the restrictions section of the definition for these types of MPAs includes clear prohibitions on the injury, damage, or take of any marine resources – all of which may be indirect and/or temporary consequences of restoration, remediation or resource management/maintenance activities.

Commission staff believes that restoration, adverse impact remediation, and resource management and maintenance activities are clearly consistent with the goals and intent of the MPAs that are being evaluated in the EIR. However, based on a narrow reading of the MPA definitions, it appears that permitting or otherwise providing authorization for these types of activities within state marine conservation areas or state marine parks may not be allowable. We suggest the Final EIR clarify this issue in Chapter 7.0 (Biological Resources) and provide further details about the permitting process that would be available if such uses are permissible. A99_ii-4

Recreational Activities and State Parks

As described in the DEIR, the Integrated Preferred Alternative appears to provide for the expansion of commercial fishing for market squid offshore of Crystal Cove State Park and within the boundaries of the existing Crystal Cove State Marine Conservation Area and Robert E. Badham State Marine Conservation Area, areas in which commercial squid fishing is currently prohibited. The use of high wattage lights associated with squid fishing may have the potential to affect onshore recreational activities and state park/state beach resources in this area. The discussion included under the heading "Criterion LAND-2" in Section 8.3.3.3 of the DEIR appears to briefly reference this issue by noting that "The Department of Parks and Recreation has expressed concern to the Commission over loss of protections in existing State Parks underwater park units, and conflicts between management objectives for some existing state beaches and proposed MPAs within the IPA." Commission staff requests that this section of the DEIR include a more direct and specific discussion and evaluation of the concerns raised by the A99_ii-5

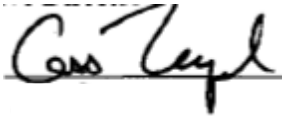
California Department of Parks and Recreation regarding potential conflicts with state beach management objectives. Please also include in this evaluation a more complete description of the "regulatory options for Crystal Cove SMCA, Refugio SMCA, Doheney SMCA, and Swami's SMCA addressing State Parks management conflicts [that] were incorporated into the proposed Project IPA for consideration." A99_ii-5

Integrated Preferred Alternative

Finally, we would like to note our continued support for the proposed Integrated Preferred Alternative that is described and evaluated in the DEIR. In our involvement in the South Coast Regional Stakeholder phase of the MLPAI process, Commission staff approached the designation process with a balanced consideration for both the marine resource protection and fishing protection provisions of the California Coastal Act while also adhering to the guidance and guidelines developed by the Scientific Advisory Team, Blue Ribbon Task Force and the California Department of Fish and Game. We therefore support the Integrated Preferred Alternative because it provides a balance of different interests. We strongly encourage the Fish and Game Commission to move forward with the designation of the MPAs included in this proposed project and request the careful consideration of the concerns raised by the California Department of Parks and Recreation regarding management objectives for state recreational resources. A99_ii-6

Thank you for your consideration of the comments included above. If you have any questions or would like clarification of any of the points raised above, please feel free to contact me at (415) 904-5502.

Sincerely,



Cassidy Teufel
Coastal Program Analyst

cc: Alison Dettmer, Deputy Director, California Coastal Commission

Responses to Comment Letter A99_ii

Response to Comment A99_ii-1: Comment noted. The Commission appreciates the California Coastal Commission's recognition that the South Coast Study Region MPAs will not impede or limit public access. *No changes to the Draft EIR are required.*

Response to Comment A99_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A99_ii-3: The comment requests that discussion of public access policies of the California Coastal Act (CCA) be included in the Final EIR, and cites Sections 30210 and 30211 of the CCA as examples. Section 8.3 of the Draft EIR has been modified to incorporate Section 30210 of the CCA.

Section 30211 of the CCA prohibits coastal development from interfering with the public's right to access the coast. However, the proposed Project IPA is not a development project, and is therefore not subject to the provisions of Section 30211 of the CCA. Public access to coastal areas would not be impacted by the Project IPA since the project areas are within open waters (seaward of the mean high tide line) and do not include beach areas. In addition, non-consumptive recreational activities would not be restricted within any of the proposed Project IPA areas. Because Section 30211 is not applicable to the proposed project, no discussion of this section was added to the Draft EIR text.

Response to Comment A99_ii-4: The comment requests that the Final EIR clarify whether or not restoration activities would be permitted within the MPAs. Because marine and estuarine restoration activities are usually intended to benefit living marine resources, and are therefore highly compatible with the goals and objectives of the MLPA, the Commission believes that it is not the Commission's intent in promulgating the proposed regulations to prohibit marine and estuarine restoration projects. Regulatory language proposed for many of the MPAs explicitly allows restoration activities to occur; in other MPAs, these activities could be authorized on a case-by-case basis by the Department.

Response to Comment A99_ii-5: In February 2003, the *Crystal Cove State Park Public Use Plan* of 1982 was updated through adoption of the *Preservation and Public Use Plan* for the park's historic district. The 2003 Plan provides long-range recommendations on public access, historic preservation, interpretation, and use. The offshore portion of the park extends to a 120 foot-depth contour along the length of the park's 3.25-mile coastline is a designated Underwater Park. The marine and shore habitat immediately adjacent to the park's Historic District maintains several special designations, and is classified as the Irvine Coast Marine Life Refuge by the Department, an Area of Special Biological Significance by the State Water Resources Control Board, and as an Underwater Park by the State Parks and Recreation Commission. The 2003 Plan defines underwater parks as "spacious underwater areas of outstanding scenic or natural character, containing significant ecological, historical,

archeological, or other features". The purpose of designating underwater parks is to "preserve natural, scenic, and cultural values and to perpetuate them as outstanding examples of California's underwater environment and history."

The 2003 Plan was adopted after the MLPA was enacted, and the Plan acknowledges the MLPA's mandate to improve the MPA network within the SCSR, stating:

> "California Department of Fish and Game is currently considering proposals to reclassify the offshore area as part of a statewide Marine Managed Area mandate. The proposal may result in a reclassification of the existing Underwater Park and Irvine Coast Marine Life Refuge to a "State Marine Park" or "Marine Reserve." Currently, recreational sport fishing and commercial fishing uses are permitted along the offshore areas. Future designation changes may add increased protection and boundary definitions to the area."

Thus, redesignating the offshore portion of the existing State Park as an MPA was taken into consideration in the most recent Plan for the park.

The proposed take regulations for the Crystal Cove SMCA would not directly conflict with the provisions of the 2003 Plan, as the Plan does not address (either by prohibiting or allowing) the take of marine resources. Additionally, non-consumptive scuba diving is the dominant recreational form occurring in the underwater park, and would not be prohibited or restricted under any of the regulations proposed. However, as stated by the commenter, if the Crystal Cove SMCA is adopted by the Commission with Take Option A, incompatibilities could potentially result between recreational uses at Crystal Cove State Park and commercial squid fishing techniques involving high wattage lights. (The commercial take of market squid is currently prohibited within the Crystal Cove SMCA, but would be allowed under this Take Option). The likelihood for this to occur would be highest in late February, when market squid move closer to shore to spawn in shallower waters. A video of squid fishing techniques is available online at http://vimeo.com/3449551, and provides an example of the type of nighttime disturbance that could potentially occur within the State Park if this Take Option were selected. Although not in direct conflict with the 2003 Plan, Take Option A's potential to disrupt recreational uses within the State Park is a relevant concern, and the Commission will take this comment into consideration when determining which, if any, Take Option to adopt at this location. Take Option B would not allow commercial take of near shore pelagic species within the Crystal Cove SMCA, and the potential incompatibility would be avoided if this regulatory take option were selected.

STATE CAPITOL
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FAX (916) 319-2153

DISTRICT OFFICE
500 CENTER STREET
EL SEGUNDO, CA 90245
(310) 615-3515
FAX (310) 615-3520

Assemblymember.Lieu@assembly.ca.gov

Assembly
California Legislature

TED W. LIEU
FIFTY-THIRD ASSEMBLY DISTRICT

COMMITTEES
GOVERNMENTAL ORGANIZATION
JUDICIARY
RULES
VETERANS AFFAIRS

SELECT COMMITTEES
AEROSPACE, CHAIR
CONSUMER FINANCIAL PROTECTION, CHAIR

September 27, 2010

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California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

Re: Consideration of possible extension of public review and comment period for the Draft Environmental Impact Report regarding the Marine Life Protection Act, California South Coast study region.

Dear President Kellogg and Members of the Fish and Game Commission:

I am writing to express my strong support of the Marine Life Protection Act (MLPA) process and the establishment of a network of marine protected areas (MPAs) along the southern California coast. This is a critical effort that has involved a strong diversity of interests, including fishing representatives, environmental groups, municipalities and recreational ocean users.

As an elected official, I am impressed by the openness of this public process. The process has moved forward, following a careful timeline with dozens of meetings since 2008 with dozens of opportunities for public comment about concerns and suggestions regarding MPA establishment in Southern California. Consideration of MPAs for southern California has included scientific and economic evaluation, stakeholder review and refinement, consideration by a Blue Ribbon Panel and the Fish and Game Commission, CEQA scoping meetings, and a comprehensive Draft Environmental Impact Report (DEIR). C28-1

MPAs are an important tool to help protect southern California's valuable marine ecosystems, and will help keep our region's fishing industry sustainable for future generations. It is important that we continue to move forward with setting these protections in a timely manner. I respectfully encourage the Commission to keep moving forward along its pre-established timeline for the South Coast MLPA implementation, and to avoid any unnecessary extension of the comment deadline for the DEIR for this project. C28-2

Thank you for your hard work in ensuring the protection of Southern California's marine life. Should you have any questions regarding this letter, please contact me at (310) 615-3515.

Sincerely,

Ted W. Lieu

TED W. LIEU
Assemblymember, 53rd District

Printed on Recycled Paper

Responses to Comment Letter C28

Response to Comment C28-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment C28-2: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

SACRAMENTO OFFICE
STATE CAPITOL, ROOM 305
SACRAMENTO, CA 95814
TEL (916) 651-4036
FAX (916) 447-9008

WWW.SEN.CA.GOV/HOLLINGSWORTH

California State Senate

SENATOR DENNIS HOLLINGSWORTH
THIRTY-SIXTH SENATE DISTRICT
REPUBLICAN LEADER

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DISTRICT OFFICES
1870 CORDELL COURT, SUITE 107
EL CAJON, CA 92020
TEL (619) 596-3136
FAX (619) 596-3140

27555 YNEZ ROAD, SUITE 204
TEMECULA, CA 92591
TEL (951) 676-1020
FAX (951) 676-1030

September 23, 2010

Mr. Jim Kellogg, President
California Fish and Game Commission
1416 9th Street, 13th Floor
Sacramento, CA 95814

Dear President Kellogg and Commissioners:

We are concerned about the process surrounding the Draft Environmental Impact Report (DEIR) for the South Coast phase of the Marine Life Protection Act (MLPA). Many thousands of our constituents are sportsmen, both hunters and fishermen. The MLPA will have serious negative economic impacts on the fishing industry, those who serve the industry, on coastal communities and will close prime fishing areas in Southern California as it has in the Central Coast and North Central Coast. C31-1

While the MLPA itself may be controversial, there should be no question that our constituents should have adequate time to comment on the DEIR. We have been made aware of the very serious concerns expressed by fishermen and also by the California Fish and Game Wardens Association that the time allotted for comment on the Draft EIR is insufficient. We agree with them and you that the DEIR is extremely complex for such a short comment period as the current 45-days allotted.

We understand that very prominent fishing and hunting organizations, municipalities, the Los Angeles County Sanitation Districts and even California's game wardens have requested a 90-day comment period on the DEIR. C31-2

The adoption of the South Coast marine protected areas will be the most far-reaching regulation ever promulgated by the Commission and to allow a 90-day comment period on the DEIR is both reasonable and necessary so that you will have the information you need with which to make an informed decision.

We ask you to direct your staff to allow for a 90-day comment period on the South Coast MLPA DEIR.

Sincerely,

Bob Huff

Roy Abernathy

Tom Harman

Tony Strickland

Bill Emmerson

Mark Wyland

Responses to Comment Letter C31

Response to Comment C31-1: Detailed information was considered by the Commission during the development of the proposed Project and alternatives. The Commission believes that these options achieve the goals and objectives of the Marine Life Protection Act which specifically directs the Commission to consider economic impacts of creating marine protected areas along the California Coastline. The purpose of the CEQA process is to identify direct and indirect physical environmental impacts of implementing the proposed Project IPA. The information generated during the CEQA process will be considered alongside of the socioeconomic issues identified during the development of the proposed Project IPA during the current promulgation of MPA regulations.

Response to Comment C31-2: See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. Also many areas of the South Coast Study Area already contain marine protected areas. The current project attempts to incorporate most of these existing MPAs into a network of MPAs designed to work in concert to enhance and restore marine ecosystems. The Commission expects that many of the fishermen who have resisted the creation of this network will be the ultimate beneficiaries of increased fish numbers and sizes expected to result from the creation of this networks ecosystem based approach to conservation.

R2.2.4 Comments from Regional and Local Agencies

The following group of comment letters is those received from regional and local agencies. Table R2-4 lists the comment letters received from regional and local agencies, along with the unique number assigned to each comment letter, the name of the commenter, and the page number of the comment letter. Responses to each letter immediately follow the letter.

TABLE R2-4
REGIONAL AND LOCAL AGENCY COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A05_i	Philip	Friess	LA County Sanitation District	Regional and Local	133
A05_ii	Philip	Friess	LA County Sanitation District	Regional and Local	137
A15_i	Philip	Friess	LA County Sanitation District	Regional and Local	141
A15_ii	Philip	Friess	LA County Sanitation District	Regional and Local	145
A19_i	Tom	Rosales	South OC Wastewater Authority	Regional and Local	149
A19_ii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	153
A31_i	Tom	Rosales	South OC Wastewater Authority	Regional and Local	157
A31_ii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	161
A31_iii	Tom	Rosales	South OC Wastewater Authority	Regional and Local	185
A31_iv	Tom	Rosales	South OC Wastewater Authority	Regional and Local	195
A32_i	Richard	Drury	Ocean Conservancy, NRDC, Heal the Bay, SB Channelkeeper, OC Coastkeeper, SD Coastkeeper, CA Sea Grant, WiLDCOAST	Regional and Local	199
A32_ii	Richard	Drury	Ocean Conservancy, NRDC, Heal the Bay, SB Channelkeeper, OC Coastkeeper, SD Coastkeeper, CA Sea Grant, WiLDCOAST	Regional and Local	203
A41_i	Richard	Bell	Municipal Water District of Orange County	Regional and Local	255
A41_ii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	259
A41_iii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	269
A41_iv	Richard	Bell	Municipal Water District of Orange County	Regional and Local	291
A41_v	Richard	Bell	Municipal Water District of Orange County	Regional and Local	299

TABLE R2-4 (CONTINUED)
REGIONAL AND LOCAL AGENCY COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A41_vi	Richard	Bell	Municipal Water District of Orange County	Regional and Local	303
A41_vii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	307
A41_viii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	311
A41_ix	Richard	Bell	Municipal Water District of Orange County	Regional and Local	437
A41_x	Richard	Bell	Municipal Water District of Orange County	Regional and Local	441
A41_xi	Richard	Bell	Municipal Water District of Orange County	Regional and Local	445
A41_xii	Richard	Bell	Municipal Water District of Orange County	Regional and Local	451
A67	Phil	Friess	Los Angeles County Sanitation District	Regional and Local	465
A67_i	Phil	Friess	Los Angeles County Sanitation District	Regional and Local	469
A71_i	Philip	Friess	Los Angeles County Sanitation District	Regional and Local	473
A71_ii	Philip	Friess	Los Angeles County Sanitation District	Regional and Local	477
A77	Ron	Saenz	SANDAG	Regional and Local	491
A92_i	Phillip	Friess	LA County Sanitation Districts	Regional and Local	495
A92_ii	Phillip	Friess	LA County Sanitation Districts	Regional and Local	525
A92_iii	Phillip	Friess	LA County Sanitation Districts	Regional and Local	529
A92_iv	Phillip	Friess	LA County Sanitation Districts	Regional and Local	581
A92_v	Phillip	Friess	LA County Sanitation Districts	Regional and Local	597
A92_vi	Phillip	Friess	LA County Sanitation Districts	Regional and Local	647
B01_i	Leroy	Baca	LA County Sheriff's Dept.	Regional and Local	673
B01_ii	Leroy	Baca	LA County Sheriff's Dept. - Avalon Station	Regional and Local	677
B01_iii	Leroy	Baca	LA County Sheriff's Dept. - Marine Del Rey Station	Regional and Local	681
B01_iv	Leroy	Baca	LA County Sheriff's Dept. - Malibu/Lost Hill Station	Regional and Local	685

TABLE R2-4 (CONTINUED)
REGIONAL AND LOCAL AGENCY COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
B01_v	Leroy	Baca	LA County Sheriff's Dept. - Lomita Station	Regional and Local	689
B02	Susan	Baldwin	SANDAG	Regional and Local	693
B04	Richard	Bell	Municipal Water District of OC	Regional and Local	697
B06	John	Hemler	Unified Port of San Diego	Regional and Local	701
B07	Richard	Earnest	San Dieguito River Park Joint Powers Authority	Regional and Local	705
C01_i	Colleen	Clementson	SANDAG	Regional and Local	711
C01_ii	Colleen	Clementson	SANDAG	Regional and Local	715
C09	Charles	Boehmke	LA County Sanitation Districts	Regional and Local	721

Letter A05_i

Subject: Fwd: Comments re: DEIR MLPA
From: Susan Ashcraft
Date: Thu, 09 Sep 2010 10:14:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

****NOTE NEW CONTACT INFORMATION*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
sashcraft@dfg.ca.gov | www.dfg.ca.gov

"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of each month

>>> "Guerrero, Denice" < DGuerrero@lacsd.org > Tue, 24 Aug 10, 11:49 AM >>>
Sent on behalf of:

Philip Friess
Technical Services Department Head
County Sanitation Districts of Los Angeles County
(562) 908-4288, Ext. 2501

Attachment: Request_for_Extension_of_Review_Period_of_DEIR_-_California_MLPA_Initiate_SCSR.pdf

Responses to Comment Letter A05_i

Response to Comment A05_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A05_ii

WATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

August 24, 2010

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Mr. Thomas Napoli
Marine Life Protection Act / South Coast Study Region
Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

Request for Extension of Review Period of Draft Environmental Impact Report –
California Marine Life Protection Act Initiative South Coast Study Region (SCH# 2010071012)

The Sanitation Districts are a confederation of 23 independent special districts servicing the wastewater and solid waste management needs for over 5.7 million people in Los Angeles County. The Sanitation Districts have actively participated in the Marine Life Protection Act (MLPA) process in the California South Coast Study Region (SCSR), not only because of our duty to protect the essential public health infrastructure that the Sanitation Districts operate off shore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Sanitation Districts have conducted to ensure the protection of the marine environment. A05_ii-1

The public comment period for the DEIR is scheduled to end October 4, 2010. The Sanitation Districts request a 45-day extension to a new end date of November 15, 2010. A05_ii-2 The original 45-day comment period is highly constraining for a review and evaluation of such a significant and lengthy document (over 500 pages with numerous appendices). The extended period of time is necessary to fully review and understand the analysis and findings in the DEIR and to prepare appropriate comments commensurate with the potentially significant impacts to the vital wastewater services provided by the Sanitation Districts. A05_ii-3

Very truly yours,

Stephen R. Maguin

Philip L. Friess

Philip L. Friess
Department Head
Technical Services

PLF:ddg

cc: Fish and Game Commissioners

DOC# 1662320

Recycled Paper

Responses to Comment Letter A05_ii

Response to Comment A05_ii-1: No response required.

Response to Comment A05_ii-2: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Response to Comment A05_ii-3: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Subject: Request to Post Comment Letters
From: Gully, Joe
Date: Fri, 10 Sep 2010 15:23:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
cc: "Friess, Phil" <PFriess@lacsd.org>
cc: "McCloud, Tracey" <TMcCloud@lacsd.org>

Mr. Napoli,

Please find attached an electronic version of a letter sent today to the Commission and you requesting that all letters and scoping comments related to the Notice of Preparation for the South Coast Study Region Draft EIR be immediately made available to the public. Thank you. A15_i-1

<<TNapoli910.pdf>>

Joseph R. Gully
Supervising Environmental Scientist
Ocean Monitoring and Research
Los Angeles County Sanitation Districts
1955 Workman Mill Rd.
Whittier, CA 90601
T: 562-908-4288 Ext. 2818
C: 951-265-9125
F: 562-908-9572
E: jgully@lacsd.org

Attachment: TEXT7.htm
Attachment: TNapoli910.pdf
Attachment: Mime7.822

Responses to Comment Letter A15_i

Response to Comment A15_i-1: See response to comment A09-1.

Letter A15_ii

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

September 10, 2010

Mr. Thomas Napoli
Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

Request for Comments Letters Submitted in Response to Notice of Preparation

The Sanitation Districts request that the Department immediately post on its website, or otherwise make available, all letters and scoping comments it received in response to the June 29, 2010 Notice of Preparation of a Draft EIR for the California South Coast Study Area. This information is important for the Sanitation Districts and other stakeholders to consider when preparing its comments on the Department's Draft EIR within the specified time frame. A15_ii A15_ii

The Draft EIRs for the Central Coast and North Central Coast Study Areas did contain the letters and scoping comments submitted in response to the Notice of Preparation. It is unclear why the Department would not follow a similar procedure for the South Coast Study Area. A15_i

Very truly yours,

Stephen R. Maguin

Philip L. Friess
Department Head
Technical Services

PLF:TJL:ddg

cc: Fish and Game Commissioners

Responses to Comment Letter A15_ii

Response to Comment A15_ii-: See response to comment A09-1.

Angie Im - South Orange County Wastewater Authority.pdf

From: Carol Horn
To: Shea, Adrianna
Date: 9/8/2010 3:01 PM
Subject: South Orange County Wastewater Authority.pdf
CC: Fonbuena, Sherrie; Miles, Sandy
Attachments: South Orange County Wastewater Authority.pdf

Letter from South Orange County Wastewater Authority requesting extension of the review period of the DEIR - MLPA Initiative South Coast Study Region.

Carol

Responses to Comment Letter A19_i

Response to Comment A19_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A19_ii

SOCWA

South Orange County Wastewater Authority

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COMMISSION

2010 SEP -3 PM 1:51

September 1, 2010

Mr. Thomas Napoli
Marine Life Protection Act/South Coast Study Region
Department of Fish & Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

Request for Extension of the Review Period of Draft Environmental Impact Report – Marine Life Protection Act Initiative, South Coast Study Region

The South Orange County Wastewater Authority (SOCWA) is a Joint Powers Authority providing wastewater treatment, water recycling, and wastewater disposal needs for over 550,000 people in South Orange County. Our agency has actively participated in the Marine Life Protection Act (MLPA) process in the California South Coast Study Region (SCSR), not only because of our duty to protect the two essential public health ocean outfall infrastructures SOCWA operates off shore at both Aliso Creek and Doheny beaches in south Orange County, but also because of the decades of outstanding treatment performance and comprehensive monitoring SOCWA has conducted to ensure protection of public health and the marine environment. A19_ii-1 A19_ii-2

The public comment period for the South Coast Study Region MLPA Draft Environmental Impact Report (DEIR) is scheduled to end October 4, 2010. SOCWA respectfully requests a 45-day extension to a new end date of November 15, 2010. The original 45-day comment period is not an adequate amount of time to review and evaluate such a significant and lengthy document (over 500 pages plus appendices). The extended period of time is necessary to fully review and understand the analysis and findings in the DEIR and to prepare appropriate comments commensurate with the potentially significant impacts to the vital wastewater services provided by our agency. A19_ii-3 A19_ii-4

Sincerely,

South Orange County Wastewater Authority

Tom Rosales
General Manager

TR/bf

cc: Fish & Game Commissioners
File

34156 Del Obispo Street • Dana Point, CA 92629 • Phone: (949) 234-5400 • Fax: (949) 489-0130 • Website: www.socwa.com

A public agency created by: CITY OF LAGUNA BEACH • CITY OF SAN CLEMENTE • CITY OF SAN JUAN CAPISTRANO • EL TORO WATER DISTRICT • EMERALD BAY SERVICE DISTRICT
IRVINE RANCH WATER DISTRICT • MOULTON NIGUEL WATER DISTRICT • SANTA MARGARITA WATER DISTRICT • SOUTH COAST WATER DISTRICT • TRABUCO CANYON WATER DISTRICT

Responses to Comment Letter A19_ii

Response to Comment A19_ii-1: No response required.

Response to Comment A19_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A19_ii-3: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Response to Comment A19_ii-4: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Letter A31_i

Thomas Napoli - SOCWA - Draft Environmental Impact Regarding marine Protected Areas in the SCSR Pursuant to the MLPA State Clearinghouse #2010071012

From: Teri Noson <tnoson@socwa.com>
To: <mlpacomments@dfg.ca.gov>
Date: 10/4/2010 3:28 PM
Subject: SOCWA - Draft Environmental Impact Regarding marine Protected Areas in the SCSR Pursuant to the MLPA State Clearinghouse #2010071012
CC: "Brennon Flahive" <bflahive@socwa.com>, "Tom Rosales" <trosales@socwa.com>
Attachments: SKMBT_75010100414310.pdf

To whom it may concern:

Please accept the attached letter and attachments on behalf of Tom Rosales, General Manager, of South Orange County Wastewater Authority regarding the above referenced subject matter.

Should you be unable to open the attachment, please contact me directly, thank you.

Best regards,

Teri Noson
Executive Assistant
SOCWA

Responses to Comment Letter A31_i

Response to Comment A31_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

SOCWA
South Orange County Wastewater Authority

October 4, 2010

VIA Federal Express and Electronic Mail (MLPAComments@dfg.ca.gov)

Mr. Thomas Napoli
MLPA South Coast CEQA
California Department of Fish & Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

RE: Draft Environmental Impact Report Regarding Marine Protected Areas in the California South Coast Study Region (SCSR) Pursuant to the Marine Life Protection Act (MLPA)
State Clearinghouse # 2010071012

Comments by South Orange County Wastewater Agency

Dear Mr. Napoli:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the California Marine Life Protection Act (MLPA) Initiative, South Coast Study Region (SCSR). The DEIR was prepared under the California Environmental Quality Act (CEQA) for the Integrated Preferred Alternative (IPA) to redesign the system of Marine Protection Areas (MPAs). We appreciate the fact that the DEIR specifically discusses the need to assess the impacts that MPAs will have on existing public services, such as Publicly Owned Treatment Works (POTW) and ocean outfalls.

The South Orange County Wastewater Authority (SOCWA)[1] operates several wastewater facilities, including POTWs, as well as the Aliso Creek Ocean Outfall (Outfall) which extends off Aliso Beach in the southern portion of Laguna Beach. SOCWA provides vital services for over 500,000 residents and large numbers of businesses that are located in the seventeen cities and communities served by SOCWA and its member agencies.[2] The Outfall is used for treated wastewater disposal and for water recycling efforts that provide an alternative source of potable water for the area. A31_ii-1

SOCWA has expressed publicly and in previous correspondences[3] its interest in adoption of a Laguna Beach MPA that meets the SCSR goal to increase coherence and effectiveness in protecting the state's marine life, habitats and marine ecosystems and that is simultaneously compatible with the operation of public facilities like the Outfall. SOCWA has actively participated in the MLPA process to facilitate approval of a Laguna Beach MPA by repeatedly suggesting feasible alternatives and modifications that would address concerns. However, the IPA and several other options and sub-options under consideration as MPA alternatives in the south coast region would place a State Marine Reserve (SMR) over a large portion of the Outfall pipeline and within close proximity to the diffuser end of the Outfall. The overlap and close proximity could require SOCWA to restrict or prohibit discharge from the Outfall to ensure compliance with the SMR restrictions, and potentially could require SOCWA and its member agencies to upgrade the water treatment systems or to relocate the Outfall, at great expense. A31_ii-2

[1] SOCWA was created on July 1, 2001 as a Joint Powers Authority with no taxing authority. SOCWA is the legal successor to the Aliso Water Management Agency, South East Regional Reclamation Authority and South Orange County Reclamation Authority.
[2] Aliso Viejo, Ladera , Laguna Beach, Lake Forest, Coto de Caza, Laguna Woods, Las Flores, San Juan Capistrano, Laguna Niguel, Rancho Santa Margarita, San Clemente, Mission Viejo, Trabuco Canyon, Emerald Bay, Talega, Dana Point, Laguna Hills.
[3] SOCWA submitted a July 29, 2010 comment letter, with exhibits, on the Notice of Preparation circulated for this DEIR, included as Attachment 1.

34156 Del Obispo Street • Dana Point, CA 92629 • Phone: (949) 234-5400 • Fax: (949) 489-0130 • Website: www.socwa.com

A public agency created by: CITY OF LAGUNA BEACH • CITY OF SAN CLEMENTE • CITY OF SAN JUAN CAPISTRANO • EL TORO WATER DISTRICT • EMERALD BAY SERVICE DISTRICT
IRVINE RANCH WATER DISTRICT • MOULTON NIGUEL WATER DISTRICT • SANTA MARGARITA WATER DISTRICT • SOUTH COAST WATER DISTRICT • TRABUCO CANYON WATER DISTRICT

1. Factual Information

(a) SOCWA's Mission Statement

The mission of SOCWA is to collect, treat, beneficially reuse and dispose of wastewater in a manner that respects the environment, maintains the public's health and manages to meet the myriad of local, state and federal regulations. To do so, SOCWA plans for, acquires, constructs, maintains, repairs, manages, operates and controls facilities for the collection, transmission, treatment and disposal of wastewater, the reclamation and use of wastewater for beneficial purposes, and the production, transmission, storage and distribution of non-domestic water.

SOCWA provides, at a minimum, full secondary treatment at all of its regional wastewater facilities, and also has active water recycling, industrial waste (pretreatment), biosolids management and ocean/shoreline monitoring programs to meet the needs of its members and the requirements of the applicable National Pollutant Discharge Elimination System (NPDES) permits. A31_ii-3

(b) Aliso Creek Ocean Outfall

The Outfall is permitted under National Pollution Discharge Elimination System Permit #CA0107611. (NPDES Permit). Its design capacity is 50 mgd and has an average flow rate of 14 mgd. The Outfall was constructed in 1978 and extends 7,900 feet offshore in a southwesterly direction from the mouth of Aliso Creek. The inshore end of the diffuser is located approximately 6,700 feet offshore at a depth of approximately 170 feet. The diffuser, which is collinear with the rest of the Outfall, is approximately 1,200 feet long and extends to a maximum depth of 195 feet.

The Outfall requires regular maintenance and occasionally requires more significant repair. For example, a portion of the near shore section of the Outfall was cracked in five places during the winter storms of 1992. The cracks were repaired with five internal seals in 1993 and the seals were replaced in 2004. The Outfall undergoes an external inspection conducted by an independent diving contractor every two years. The external inspection evaluates the overall condition of the Outfall including the location of the ballast (rock) and blockage of the diffuser ports. If the external inspection identifies any problems an independent contractor is hired to reset the ballast and clear any blocked diffuser ports. A separate internal inspection of the near shore section of the outfall is also performed every two years by an independent diving contractor. The diver checks for any significant movement of the Outfall by measuring the gaps in the Outfall pipe joints, And the diver also checks the position and the condition of the gaskets on the five repair seals. Although the current seals are expected to last 15 to 20 years, eventually the seals will need to be replaced based on the observations from the internal inspection.

The length of the diffuser portion is an important consideration as the Outfall is not simply an open ended pipe 6,700 feet offshore, where the discharge occurs. The Outfall is designed to evenly dilute and disperse the discharge over the entire length of the diffuser. As described below, the diffuser requires continuous maintenance and inspection. And the 6,700 feet length of the offshore pipe itself has to be inspected because it is not buried. It merely lays on the sea floor and is covered by ballast. The ballast does move and shift with the tides and currents and therefore needs to be adjusted and even possibly replaced over time.

The terminus of the diffuser is located at Latitude 33.29.766 N and Longitude -117.46.352 W. There are numerous monitoring stations near the diffuser, north and south of the diffuser and along the surf line.

The Outfall receives treated effluent from the municipal wastewater treatment plants outlined in SOCWA's July 29, 2010 letter, all of whom are meeting the effluent requirements set forth in different Orders of the Regional Water Quality Control Board San Diego or Santa Ana Region (Regional Board).

Each of the plants meet all applicable discharge requirements under both State and Federal guidance and regulations (National Pollution Discharge Elimination Program – NPDES permit) and the *Water*

Quality Control Plan for Ocean Waters of California (Ocean Plan) for protection of the beneficial uses of the State ocean waters. The NPDES permit requires strict adherence to various requirements to assure maximum protection to the marine environment that is compatible with the operation of the Outfall.

Further, the NPDES permit places an affirmative duty on SOCWA to maintain the Outfall:

A31_ii-3

> The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

2. Critical Issues Regarding the DEIR

(a) The DEIR Should Analyze an Option that Creates a Significant Barrier Between the Outfall and any MPA

The DEIR should analyze an option for a Laguna Beach SMCA or SMR that creates a significant barrier between the Outfall and any MPA. SOCWA's July 29th letter emphasized the potential negative impacts that were likely if an MPA is located over or in closed proximity to the Outfall. Regardless, the DEIR fails to analyze an option that places the MPA sufficiently far enough from the Outfall to avoid these impacts.

The DEIR discuss five (5) options for the boundaries of an SMCA or SMR at Laguna Beach near the Outfall. DEIR, Section 3.5.29, pp. 3-31 through 3-33. Though the DEIR states its intent "to avoid conflicts with the existing Aliso Creek treatment facility outfall pipe that lies near the southern border of the SMR" (p. 3-32), each of the options places a protected area over the Outfall pipeline and/or near the Outfall diffuser.

(i) The DEIR Should Consider an Option that Avoids a Conflict With Inspection and Maintenance of the Outfall Pipeline

A31_ii-4

The DEIR should consider an option that avoids a conflict between marine protection and inspection and maintenance of the Outfall pipeline. The overlap of an SMCA or SMR over the Outfall pipeline also creates a conflict between the existing infrastructure and protection of the marine environment to the extent that the SMCA or SMR would prohibit the taking, injury or damage of marine resources and habitat. Regular inspection and maintenance is required along the Outfall pipeline as well as occasional extensive repair. Though required under SOCWA's permits, these activities could disrupt the marine environment and potentially violate prohibitions against taking, injuring or damaging in the protected area. This conflict would leave SOCWA in the position of either curtailing its maintenance activities and disrupt the function of the Outfall, or require SOCWA to violate the protections of the SMCA or SMR. To avoid this conflict, the EIR should consider an option that allows for these maintenance and repair activities, either by creating a substantial buffer between the SMCA or SMR and the pipeline, or by specifying that such activities do not violate their protections, or by specifying that unintentional taking, injury or damage when performed in accordance with the subject permits is allowable.

(ii) The DEIR Should Consider an Option that Creates a Significant Buffer Between the Outfall Diffuser and any MPA for Normal Operation of the Outfall

The Ocean Plan and SOCWA's NPDES permit take into account the marine environment and set forth effluent criteria consistent with such protections. However, the MLPA is written in such a way as it can not preclude the possibility that SOCWA, even though fully compliant with the Ocean Plan and its permits, would be deemed to have taken, injured or damaged the marine environment for some untoward or currently unknown reason. The DEIR must consider an option that creates a significant buffer between the Outfall diffuser and the SMCA or SMR. The distances between the Outfall diffuser and the MPAs as

set forth in the various option description maps included in the DEIR range from as little as 100 feet to a maximum of about 1000 feet for all but one of the options for the Laguna Beach SMCA or SMR proposals. This places all but one protected area within a 1/4 mile or closer to the Outfall against Science Advisory Team guidance. The Science Advisory Team took pains to look at the situation in detail and came to the conclusion that it was in the best interest of all involved to have a greater buffer. There is no stated justification in the DEIR to dispense with that carefully considered position given the nature of the tides and currents in the area.

Though the DEIR states that

> "MPAs have been located in areas some distance from regulated discharges to ensure that water quality within the MPAs is suitable for beneficial uses to the degree feasible" (DEIR, p. 6.3-30)

A31_ii-4

the DEIR does not provide the basis for the decision to place MPAs less than 1/4 mile away. The EIR must discuss the evidence that supports the suggestion that the contemplated buffer zone areas are sufficient to avoid a conflict between the MPAs and the Outfall at the very least.

(b) The DEIR Should Analyze the Likelihood that a State Water Quality Protection Area Will be Designated Near the Outfall

The DEIR fails to address the likelihood that if the proposed IPA or alternatives places an MPA over or near the Outfall, the State Water Resources Control Board (State Board) is likely to designate state water quality protection areas (SWQPA) near the Outfall to protect the water quality in the MPAs. *See* Attachment 2 (Email correspondence from Dominic Gregorio, State Board, re. intention to recommend SWQPAs to protect MPAs); *see also* Pub. Res. Code § 36725(d)[4] In a SWQPA, "waste discharges *shall* be prohibited or limited by the imposition of special conditions" in accordance with applicable water quality laws and plans. Pub. Res. Code § 36710(f) (emph. added).

On Septemeber 29, 2010, the State Board's Chief Deputy Director Jonathan Bishop commented to the Commission that is reasonably foreseeable that the State Board will establish water quality requirements associated with the placement of Marine Protection Areas. Mr. Bishop stated that the State Board will not simply blanket all MPAs with Areas of Special Biological Significance thus prohibiting discharges outright, and he also said the State Board would not establish State Water Quality Protection Areas that intersect existing outfalls. However, he clearly stated that the State Board would be looking at the Reserves and determining on an individual basis if the MPAs needed additional water quality requirements.

Therefore, the question is not if greater water quality requirements will result from the placement of MPAs, it becomes a question of when the restrictions will be imposed. This brings into question how close is too close, at what distance is it reasonable likely that a discharger will be subject to greater water quality restrictions due to the placement of a MPA. The further the distance, the more likelihood the lessening of the impact. Since all but one of the available options and sub-option for the Laguna area are within 100 to 1000 feet from the Outfall it is logical then to assume that the outfall could receive additional water quality requirements based on the outfall discharge plume reaching the proposed MPA.

Since it is reasonable to assume that the MLPA process placement of an MPA near the Outfall is likely to lead to greater water quality restrictions there would be a significant impact on SOCWA and its member agencies' ability to provide wastewater treatment services and a significant socioeconoimic impact stemming therefrom. The DEIR should analyze and thoroughly assess the potential impacts that a SWQPA would have on the Outfalls given the intent on the subject plans provide insufficient buffer zone areas.

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[4] Pub. Res. Code § 36725 (d) The State Water Resources Control Board may designate, delete, or modify state water quality protection areas.

(c) The DEIR Should Analyze the Potential Impacts of the Proposed IPA and Alternatives on Population and Housing

The DEIR should analyze the potential impacts of the proposed IPA and alternatives on population and housing in the South Orange County area. The DEIR states that the proposed IPA and alternatives "are not likely to induce substantial population growth in the project area or cause a substantial change to the availability of housing in the project area and elsewhere." DEIR, p. 4-3. On this basis, the DEIR dismisses any analysis of potential adverse impacts to population and housing.

A31_ii-5

However, as discussed herein and in SOCWA's July 29th letter, the proposed IPA and alternatives could negatively impact the operation and maintenance of the Outfall, and may create a situation whether SOCWA must curtail use of the Outfall. This would have a negative effect on the ability of SOCWA and its member agencies to provide wastewater treatment service to the South Orange County population they serve. Maintenance of adequate sewer, treatment and disposal infrastructure, sufficient to not only deal with current base loads, but future predicted loads is imperative and is a center piece of preserving human health and welfare. Impacts on the ability to use the Outfall will therefore have a definite upstream housing and population impact and therefore the DEIR must analyze these impacts. *See* CEQA Guidelines §15064(d).[5]

(d) The DEIR's Project Description Should Clarify the Definition of "Take"

The DEIR's should clarify the meaning of "take" as used in the project description. The DEIR includes "Proposed Modification of Take" sections for the various options for MPAs, including proposing modification of take regulations for the Laguna Beach SMCA and Laguna Beach SMR/SMCA. (DEIR, pp. 3-31 through 33). However, the DEIR fails to define "take" or to cite to a definition of "take" and the MLPA does not include such a definition. Though definitions of "take" exist in the context of other statutes (*see Chaparral Greens v. City of Chula Vista, 50 Cal.App.4th 1134* (Cal.App. 4th Dist. 1996), citing Endangered Species Act,16 U.S.C. § 1532), it is not clear what "take" means in the context of the DEIR's proposed modifications to "take" for the MPAs.

A31_ii-6

For example, under the federal Endangered Species Act, "take" includes to "harm," "wound," and "kill" wildlife. 15 U.S.C. § 1532. But under the MLPA "injure," "damage," and "take" are all separate activities that are prohibited in a SMCA. Pub. Res. Code § 36710. Therefore, when the DEIR states that "take of all living marine resources would become prohibited" in the Laguna Beach SMCA and Laguna Beach SMR/SMCA, it is not clear whether this would prohibit all *harm* or *injury* to marine resources or only prohibit the *killing* of marine resources. This makes it unclear whether only Outfall activities that *kill* marine resources would be prohibited, or if Outfall activities that potentially *harm* or *injure* marine resources would be prohibited. Because the latter could significantly increase the likelihood that routine Outfall activities would result in prohibited "take" of marine resources, the EIR should clarify the term. *See CEQA Guidelines* §15124 (Project description should contain detail necessary for evaluation and review of environmental impacts). To adequately evaluate the potential impacts of the proposed IPA and alternatives on the Outfall, the DEIR must make clear whether it would prohibit activities that harm or injure marine resources, or only activities that actually kill those resources.

(e) The EIR Should Analyze the Economic Impacts of the Proposed IPA and Alternatives

Though not required by CEQA, the DEIR analyzes the economic and social impacts of the proposed IPA and alternatives. One of its stated objectives is to "Minimize negative socio-economic impacts and optimize positive socio-economic impacts for all users including coastal dependent entities, communities

A31_ii-7

[5] "In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider ... reasonably foreseeable indirect physical changes in the environment which may be caused by the project"); §15064(f)(1) ("[I]f a lead agency is presented with a fair argument that a project may have a significant effect" it should be evaluated in an EIR.

and interests, and to the extent possible, and if consistent with the Marine Life Protection Act and its goal and guidelines." DEIR, Section 3.2 (Project Objectives), p. 3-6. Though the DEIR considers some potential economic impacts, it fails to adequately analyze the potential impacts of the proposed IPA and alternatives on the users of the Outfall. For example, if an insufficient buffer zone area between the Outfall diffuser and an MPA results in significant recurring fines to SOCWA for violation of the MLPA while operating within the levels permitted by is permits, SOCWA may be required to limit the Outfall effluent in some way or ever move the Outfall to another location. Either result would cause significant economic impacts to SOCWA and a disruption of service. It may, as stated above, impact on the ongoing inspection and maintenance notwithstanding the suggestion it is not intended to do so. A31_ii-7

3. Modification of the Master Plan as Mitigation for the Proposed IPA and Alternatives

SOCWA requests that the Department of Fish & Game (DF&G) include as a mitigation measure an agreement to amend the Master Plan for Marine Protected Areas (Master Plan) which was approved in February 2008 at the earliest possible time. As a living document, DF&G states that regional updates to the Master Plan will occur after the completion of each study region. Now is such a time. Such regional updates provide more extensive information including, but not limited to newly adopted MPAs, regional management plans, lessons learned and an outline of scientific methodology for monitoring and evaluation.[6] A31_ii-8

Specifically, SOCWA requests that amendments be made that clarify that a state marine conservation area (SMCA), such as the SMCA that the DEIR proposes to locate near the Outfall, will not restrict ongoing operation and maintenance of the Outfall. The following are examples of potential amendments to the Master Plan.

Master Plan, ¶ 3.7.3, p. 51: Amend this section as it relates to the Laguna region under consideration here, to include the statement that:[7]

> Marine conservation areas also differ from SMRs in their purpose as well as the type of restrictions. ... *In locations within an SMCA where intakes or outfalls from various facilities subject to federal, state and/or local permits are situated, it is not the intent of the Master Plan to restrict or impair the ongoing operations and maintenance of such intakes and outtakes in any way. Therefore, the Master Plan provides for and permits incidental takes, or incidental injury or damage to the marine environment that may occur as a result of the operation and maintenance of those intakes and outfalls so long as they are not in violation of said permits.*

Master Plan, ¶ 3.8.1, pp. 52-54: Amend this section as it relates to the Laguna region under consideration here, to include the statement that:

> State marine conservation areas potentially have the most variable levels of protection and conservation of the three MPA designations because they allow any combination of commercial and recreational fishing, as well as other extractive activities (e.g., kelp harvest). ...*It is not the intent of this Master Plan to in any way restrict or impair the ongoing operation and maintenance of intakes or outfalls from facilities that are subject to federal, state and/or local permits, including those intakes and outfalls that are located near a marine conservation area. Therefore, the Master Plan provided for and permits incidental takes, or incidental injury or damage to the marine environment that may occur as a result of the*

[6] http://www.dfg.ca.gov/mlpa/masterplan.asp
[7] Italics text are the suggested additions to the Master Plan.

> *operation and maintenance of those intakes and outfalls so long as they are not in violation of their permits.*

Master Plan, ¶ 3.11, p. 59: Amend this section as it relates to the Laguna region under consideration here, to include the statement that:

> Baseline data needs for MPAs should be drafted for inclusions in the regional profile and MPA management plan described elsewhere in this document. Examples of such needs are: *Existing artificial structures and/or facilities permitted through a federal, state or local law, rule or regulation.*

Master Plan, ¶ 6.2.2, p. 78: Amend this section as it relates to the Laguna region under consideration here, to include the statement that:

> "Examples of possible socioeconomic indicators consistent with MLPA goals include: ... effects of allow human uses on MPA resources, *including the existence, operation and maintenance of artificial structures permitted under federal, state and/or local law, rule or regulation.*"

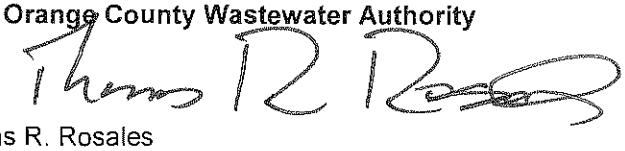
4. Conclusion

The DEIR does not provide sufficient analysis of the issues raised above. It places the MPA too close to the Outfall and does so without explaining why the Scientific Advisory Team's determinations where not heeded. Further, it opens up the Outfall for likely further regulatory action which would not have been necessary should the MPA be placed properly so as to avoid any reasonable chance of impact from the normal operation and maintenance of the Outfall. It is noted that the DEIR notes that there is no intent to interfere with the normal operation and maintenance of the Outfall, but merely stating that such interference should be avoided while creating a situation where there is interference does not comport with good public environmental policy which is one of the key purposes CEQA was meant to address. The Outfall serves a very important public service to hundreds of thousands of people and the socioeconomic impact of the decisions set forth in the DEIR create an impact that must be dealt, but is not within the text of the subject document.

If you have any questions or need additional assistance please feel free to contact me at (949) 234-5421 or via email at trosales@socwa.com.

Sincerely,

South Orange County Wastewater Authority



Thomas R. Rosales
General Manager

attachments

1: SOCWA's July 29, 2010 comment letter on the Notice of Preparation, including exhibits
2: Email correspondence from Dominic Gregorio, State Board, re. intention to recommend SWQPAs to protect MPAs

LA 26284 v3:013454.0002

Responses to Comment Letter A31_ii

Response to Comment A31_ii: Comment noted.

Response to Comment A31_ii-1 through A31_ii-8: The comment expresses concern that the proposed SMR designation for MPAs that overlay or are adjacent to the existing outfall pipe at Aliso Creek could require SOCWA to restrict or prohibit discharge from the outfall. The proposed Project IPA does not propose to designate any SMRs near this outfall; the two MPAs nearest to this location are proposed as SMCAs. The proposed designations would allow for ongoing operation and maintenance of existing facilities, such as outfall pipes, jetties, aquaculture operations, beach replenishment and dredging activities, and other operations authorized by the Commission, as described in Section 3.0 of the Draft EIR.

Although some of the alternatives considered in the Draft EIR proposed SMR designations near the Aliso Creek outfall, these proposals have not been fine-tuned and refined to the extent that the proposed Project IPA has. As described in Section 10.0 of the Draft EIR, should the Commission decide to adopt one of the proposals considered as an alternative in the Draft EIR, refinements to the proposed designations would be made to ensure consistency with existing uses permitted by other agencies. The proposed SMRs would likely be re-proposed as SMCAs instead, and provisions would be added for operation and maintenance of permitted facilities. For more information concerning the likelihood of more stringent discharge requirements being imposed near MPAs, please refer to Response A31_ii-2.

Response to Comment A31_ii-2: Many commenters suggest that selection of the proposed Project IPA would result in greater water quality restriction placed on facilities owned or operated by the commenter. The State Water Resources Control Board has been involved in the design and development of the proposed Project IPA in part to help the Commission avoid conflict with existing discharges and areas of poor water quality. Where existing faculties have been identified within an MPA being proposed by the Commission, language specifically exempting the operation and maintenance of these faculties has been added to the regulatory proposal being considered for the proposed Project IPA. Any future facility planning or development within an MPA being proposed under the proposed Project IPA will need to avoid take during construction or operation or will need to work with the Department and Commission to try and address possible avoidance measures, obtain the required authorization for such take or craft possible changes to the MPA regulation in existence at that time to avoid these conflicts. The current regulations are not expected to result in impacts to existing facilities.

The following attachments to this response help address commenters' concerns regarding water quality discharge restrictions in MPAs: the SWRCB November 16, 2010 meeting agenda; the SWRCB resolution No. 2010 (Marine Protected Areas and State Water Quality

Protection Areas); and the September 29, 2010 Fish and Game Commission meeting transcript excerpt. The reader is advised that the signed copy of the SWRCB resolution has some slight modifications, but the signed copy was not available for inclusion here as of the preparation of this document.

STATE WATER BOARD
BOARD MEETING
Tuesday, November 16, 2010– 9:00 a.m.
Coastal Hearing Room – Second Floor
Joe Serna Jr./Cal/EPA Building
1001 I Street, Sacramento

DECLARATION OF A QUORUM
Charles R. Hoppin, Chairman; Frances Spivy-Weber, Vice Chair; Arthur G. Baggett, Jr., Member; Tam M. Doduc, Member

BOARD MEETING
Public comments on agenda items will be limited to 3 minutes or otherwise at the discretion of the Board Chair

PUBLIC FORUM

Any member of the public may address and ask questions of the Board relating to any matter within the State Water Board's jurisdiction provided the matter is not on the agenda, or pending before the State Water Resources Control Board or any California Regional Water Quality Control Board.

BOARD BUSINESS

1. The Board will consider adoption of the November 2, 2010 Board Meeting minutes.

2. Board Member Report.

DIVISION OF WATER QUALITY

3. Consideration of a proposed Resolution approving an amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a Total Maximum Daily Load for Organochlorine Pesticides, Polychlorinated Biphenyls, Sediment Toxicity, Polycyclic Aromatic Hydrocarbons, and Metals for Colorado Lagoon. *(Written comments were due on October 20, 2010 by 12 noon.)*

4. Consideration of a proposed Resolution to provide staff with direction regarding Marine Protected Areas and State Water Quality Protection Areas.

5. Consideration of proposed amendments to State Water Board Order No. 2009-009-DWQ (the Construction General Permit, or CGP) for the limited purpose of modifying the definitions of "Legally Responsible Person" and "Approved Signatory." *(Written comments are due on November 5, 2010 by 12 noon.)*

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DIVISION OF WATER RIGHTS

6. Consideration of a proposed Order denying reconsideration of Division Order denying petitions for extension of time and change under a permit held by Langtry Farms LLC and Guenoc Winery, Inc. on Butcherknife Creek and Bucksnort Creek in Lake County.

OFFICE OF CHIEF COUNSEL

7. Consideration of the adoption of amendments to California Code of Regulations, title 23, division 3, chapter 27 (commencing with section 3720) relating to the implementation of the California Environmental Quality Act of 1970. (*Written comments were due on February 17, 2010 and September 8, 2010 by 12 noon. The written comment period is now closed.*)

INFORMATIONAL ITEM

8. Executive Director's Report.

BOARD WORKSHOP
No final action will be taken at the Workshop on Items 9 & 10

DIVISION OF WATER QUALITY

9. The State Water Board will hold a Workshop on the Draft Policy for Toxicity Assessment and Control for the State Implementation Plan. *(Written comments are due on November 22, 2010 by 12 noon.)*

DIVISION OF WATER RIGHTS

10. The State Water Board will hold a Workshop to receive public comments on a staff report containing a prioritized list and estimate of costs for instream flow studies on California rivers and streams developed pursuant to the Delta Reform Act. *(Written comments are due on November 10, 2010 by 12 noon.)*

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CLOSED SESSION
Closed Sessions are not open to the Public

DIVISION OF WATER RIGHTS
(These are authorized under Government Code section 11126, subdivision (c)(3).)

- The Board will meet in closed session to deliberate on a decision to be reached pertaining to Woods Irrigation Company. A draft cease and desist order, issued to Woods Irrigation Company on December 28, 2009, is the subject of an evidentiary hearing before hearing officers of the Board.
- The Board will meet in closed session to deliberate on a decision to be reached pertaining to Yong Pak and Sun Young. A proposed cease and desist order, issued to Yong Pak and Sun Young on December 14, 2009, is the subject of an evidentiary hearing before hearing officers of the Board.
- The Board will meet in closed session to deliberate on a decision to be reached pertaining to Mark and Valla Dunkel. A proposed cease and desist order, issued to Mark and Valla Dunkel on December 14, 2009, is the subject of an evidentiary hearing before hearing officers of the Board.
- The Board will meet in closed session to deliberate on a decision to be reached pertaining to Rudy Mussi, Toni Mussi and Lori C. Mussi Investment LP (Mussi et al.). A proposed cease and desist order, issued to Mussi et al. on December 14, 2009, is the subject of an evidentiary hearing before hearing officers of the Board.

IMPORTANT INFORMATION!!

Unless otherwise specified, submittal of written comments **must be received by 12:00 p.m., November 10, 2010, and will not be accepted after that time.**

Submittal of **electronic Powerpoint presentations** **must be received by 12:00 p.m., November 10, 2010, and will not be accepted after that time.**

Submittals are to be sent via e-mail to the Clerk to the Board at commentletters@waterboards.ca.gov. Please indicate in the subject line, **"11/16/2010 BOARD MEETING (fill in bolded subject from appropriate item)."** If you have questions about the agenda, contact the Clerk to the Board at (916) 341-5600.

Agenda and items will be available electronically at: http://www.waterboards.ca.gov/board_info/calendar/index.shtml

* Items on the uncontested items calendar may be removed at the request of any Board member or person. If an item is removed from the uncontested items calendar, it will only be voted on at this meeting if the Board accepts the staff recommendation for the agenda item. Otherwise, the item will be continued to a subsequent board meeting to allow input by interested persons.

Video broadcast of meetings will be available at: http://www.calepa.ca.gov/Broadcast/.

For a map to our building, visit: http://www.calepa.ca.gov/EPABldg/location.htm. For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process. Individuals who require special accommodations are requested to contact the Office of Employee Assistance, at (916) 341-5881.

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STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
NOVEMBER 16, 2010

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION TO PROVIDE STAFF WITH DIRECTION REGARDING MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS.

DISCUSSION

The Marine Life Protection Act (MLPA, added by Stats. 1999, Chapter 1015) requires the redesign of California's system of marine protected areas (MPAs) to function as a network for reasons that include improving the protection of marine life, habitats, and marine ecosystems. According to the Marine Managed Areas Improvement Act (MMAIA, added by Stats. 2000, Chapter 395) a "marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses. Three types of MMAs are MPAs, including marine reserves, marine parks and marine conservation areas.

The MLPA is codified in the California Fish and Game Code (Cal. Fish & G. Code § 2850 et. seq.), while the MMAIA is in the Public Resources Code (Cal. Pub. Resources Code § 36600 et. seq.). The MMAIA states that one classification of MMA is a State Water Quality Protection Area (SWQPA), which is "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board…" (Cal. Pub. Resources Code §36700, subd. (f)). The statute further provides that in a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions.(Cal. Pub. Resources Code § 36710, subd. (f)).

The California Ocean Plan requires protection of species or biological communities in areas of special biological significance (ASBS), also requiring that waste discharges are prohibited in ASBS. Discharges near an ASBS shall be at a sufficient distance to assure natural water quality. The California Ocean Plan further states that all ASBS are a subset of SWQPAs, but contains no specific requirements for other SWQPAs that are not ASBS.

In August 2004, the California Resources Agency, the Department of Fish and Game, and the Resources Legacy Fund Foundation launched an effort initiated by a Memorandum of Understanding, to implement the MLPA. This MLPA initiative established an MLPA Blue Ribbon Task Force ("BRTF"). The BRTF, together with a Master Plan Science Advisory Team and stakeholder advisory groups, was charged with overseeing the preparation of proposed statewide designations for ultimate adoption by the California Fish & Game Commission.

Informal advice from the California Office of the Attorney General, dated September 25, 2009, has been provided regarding establishment, use, and enforcement of MPAs and MMAs. Based upon the Attorney General's advice, the MLPA staff concluded that the designation of MPAs

cannot restrict non-fishing uses and activities that have already received approved regulatory permits. The Fish and Game Commission has released a Draft Environmental Impact Report analyzing the environmental impacts of implementing MPAs in southern California, and on September 7, 2010, published for public comment a Notice of Proposed Changes to Section 632, Title 14, CCR, Re: South Coast Marine Protected Areas, (known as the Initial Statement of Reasons or "ISOR"). The ISOR states that pre-existing activities, including but not limited to wastewater outfalls, occur throughout the MLPA south coast study region and that these activities may result in incidental take. However, these wastewater outfalls are regulated by the water boards under NPDES permits. The proposed MPA regulations would allow wastewater outfalls, which may cause incidental take in an MPA, to continue under NPDES permits.

Mandated water quality monitoring activities are required under the federal Clean Water Act, the California Water Code, the Ocean Plan, and NPDES permits, and may include monitoring stations within the MPAs. The MLPA specifically states that monitoring and research are permissible in all MPA designations. (Cal. Fish & G. Code § 2853, subd. (c)(3)). Monitoring may be authorized pursuant to a scientific collecting permit issued by the Department of Fish and Game, and the proposed regulation adds a general provision to Section 632(a), Title 14, CCR, to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit.

Staff of the State Water Board has participated as part of the MLPA Master Plan Science Advisory Team (SAT), along with other scientists from academia and other state and federal agencies. The SAT has provided guidance with regard to water quality and MPAs: the siting of MPAs should consider avoiding areas of poor or threatened water quality, such as at intake sites for power plants, storm runoff from developed watersheds, and municipal sewage or industrial wastewater outfalls. The SAT has also stated that of these three water quality threats, wastewater effluents are of the least concern, but still may pose a risk. The SAT has further recommended that marine water quality will play a role in the success of MPAs, and suggested that the regional water boards may recommend to the State Water Board the designation of additional SWQPAs over MPAs, or work on priority total maximum daily loads that could restore water quality in MPAs.

All existing municipal wastewater outfalls are currently regulated under NPDES permits issued by the regional boards and based on the water quality standards and other regulatory requirements of the Ocean Plan. Existing wastewater outfalls represent an important public service and substantial infrastructure, and when discharges comply with NPDES permits, should not harm water quality. Compliance with Ocean Plan standards assures protection of marine water quality in the State's near coastal waters everywhere outside of the zone of initial dilution (ZID) of those outfalls.

POLICY ISSUE

Should the State Water Board adopt the Resolution that provides guidance and direction to staff regarding the implementation of the California Ocean Plan relative to Marine Protected Areas?

FISCAL IMPACT

Staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

No immediate impact on Regional Water Boards, but may involve Regional Water Board staff resources during the designation process of any additional SWQPAs.

2

STAFF RECOMMENDATION

That the State Water Board adopt the Resolution that provides guidance and direction to staff regarding the implementation of the California Ocean Plan relative to Marine Protected Areas.

State Water Board action on this item will assist the Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012 to increase the transparency of the Board's actions and to enhance consistency. In particular, approval of this item will assist in fulfilling Objective 5.1 to improve the current Water Board systems, programs, functions, and core business processes to enhance effective and consistent implementation of Water Board Plans and policies, and State and federal laws and regulations, and to reduce processing time and costs.

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STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2010-

MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS

WHEREAS:

1. The Marine Life Protection Act (MLPA; Fish & Game Code §§ 2850 et seq.) directs the state to redesign California's system of marine protected areas (MPAs) to function as a network in order to: increase coherence and effectiveness in protecting the state's marine life and habitats, marine ecosystems, and marine natural heritage, as well as to improve recreational, educational and study opportunities provided by marine ecosystems subject to minimal human disturbance.

2. According to the Marine Managed Areas Improvement Act (MMAIA; Cal. Pub. Resources Code §§ 36600 et. seq.) a "marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses.

3. The Public Resources Code states that one classification of MMA is a State Water Quality Protection Area (SWQPA), which is "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board ..." The statute further states: "In a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions."

4. The California Ocean Plan requires protection of species or biological communities in areas of special biological significance, and requires that waste discharges are prohibited in ASBS. In addition, discharges shall be at a sufficient distance from an ASBS to assure natural water quality. The California Ocean Plan states that all ASBS are a subset of SWQPAs, but does not have specific requirements for other SWQPAs that are not ASBS.

5. In August 2004, the California Resources Agency, the Department of Fish and Game, and the Resources Legacy Fund Foundation launched an effort, initiated by a Memorandum of Understanding, to implement the MLPA. This MLPA initiative established an MLPA Blue Ribbon Task Force together with a Master Plan Science Advisory Team and stakeholder advisory groups, to oversee the preparation of proposed statewide designations for ultimate adoption by the California Fish & Game Commission.

6. The California Office of the Attorney General has provided informal advice, dated September 25, 2009, regarding establishment, use, and enforcement of MPAs and MMAs. As a result of the Attorney General's advice, the MLPA staff concluded that the designation of MPAs cannot restrict non-fishing uses and activities that have already received approved regulatory permits.

7. The Fish and Game Commission released for public comment a Draft Environmental Impact Report on August 18, 2010, analyzing the environmental impacts of implementing MPAs in southern California.

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8. On September 17, 2010, the Fish and Game Commission published for public comment a Notice of Proposed Changes to Section 632, Title 14, California Code of Regulations regarding South Coast Marine Protected Areas (known as the Initial Statement of Reasons or "ISOR"). The ISOR states that pre-existing activities including, but not limited to, wastewater outfalls occur throughout the south coast study region and that these are activities that may result in incidental take. However, these activities are regulated by the water boards under National Pollution Discharge Elimination System (NPDES) permits. The proposed MPA regulations state that wastewater outfalls are allowed to continue pursuant to NPDES permits.

9. Mandated water quality monitoring activities are required under the federal Clean Water Act and California Water Code, and may include monitoring stations within the MPAs. The MLPA specifically states that monitoring and research are permissible in all MPA designations. Monitoring may be authorized pursuant to a scientific collecting permit issued by the Department of Fish and Game, and the proposed regulation adds a general provision to Title 14, California Code of Regulations, Section 632, subdivision (a), to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit.

10. The MLPA Master Plan Science Advisory Team has provided guidance with regard to water quality and MPAs. The siting of MPAs should consider avoiding areas of poor or threatened water quality, such as at intake sites for power plants, storm runoff from developed watersheds, and municipal sewage or industrial wastewater outfalls. The Science Advisory Team has also stated that of these three water quality threats, wastewater effluents are of the least concern, but still may pose a risk.

11. The Science Advisory Team has further recommended that marine water quality will play a role in the success of MPAs, and the regional water boards may recommend to the State Water Resources Control Board the designation of additional SWQPAs, or work on priority total maximum daily loads that could restore water quality in MPAs.

12. Regulatory requirements applicable to discharges from existing treated municipal wastewater outfalls, including discharges within or in the vicinity of MPAs, are derived from the water quality standards in the California Ocean Plan.

13. Because of limited staff resources, it is desirable and necessary for the Board to set priorities and provide direction on tasks and goals.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Directs staff to prioritize ongoing work related to exceptions for current discharges to ASBS ahead of new work related to designation of new ASBS and SWQPA until all of the current ASBS discharge issues are resolved through the exception process, and all of the MPAs are designated and implemented statewide.

2. Upon completion of all work associated with ASBS discharges, and once all MPAs are implemented by the Department of Fish and Game and the Department of Parks and Recreation, directs staff to work with the Regional Water Boards to develop recommendations for new SWQPAs to protect water quality in MPAs.

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3. For SWQPAs, that are not ASBS, the Board directs staff to consider the following approach in developing new SWQPAs. The Board further directs staff to propose amendments to the Ocean Plan consistent with this approach, as appropriate:

   a) SWQPAs should not be established over existing outfalls or the zone of initial dilution (ZID) of such existing outfalls;

   b) where new SWQPAs are established in the vicinity of existing municipal wastewater outfalls, there shall be no new or modified limiting conditions or prohibitions for the SWQPAs relative to those wastewater outfalls;

   c) regulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan;

   d) no new wastewater outfalls may be established within SWQPAs,

   e) conditions to protect water quality in SWQPAs would be required to address storm water and nonpoint sources; and

   f) assure that the designation of any new SWQPA would not include a condition to move existing wastewater outfalls, which represent an important public service and substantial infrastructure.

4. Directs staff to propose an amendment to the Ocean Plan clarifying that no new or modified limitations, substantive conditions, or prohibitions will be imposed upon existing municipal wastewater discharge outfalls based on the designation of MPAs other than State Marine Reserves.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 16, 2010.

Jeanine Townsend
Clerk to the Board

3

Fish and Game Commission Meeting
September 29, 2010
Public Comment Period Summaries

Jonathan Bishop
Chief Deputy Director
State Water Resources Control Board

… "I'm here primarily to give you some information concerning concerns that we've heard from the LA County Sanitation District about *their* worry that marine life protected areas for the southern area would potentially lead to increased requirements on their outfall. They have an outfall off of the Palos Verdes Peninsula. We have heard those concerns and in response, my board has directed me to prepare a resolution to clarify how the State Water Board would address those issues, and I'm here to give you a summary of what those are. What staff is proposing, is to clarify that we would not be… our task would be to designate state water quality protected areas, and then water quality requirements associated with those. It is not our intent to designate state water quality protected areas that intersect with existing ocean outfalls. So we would not be proposing to add new water quality requirements for their outfall, either at the outfall or near in the initial zone of dilution, which is part of our requirements. It would be also clarifying that under our regulations, we would be proposing that the existing outfalls would need to meet water quality objectives at the edge of the initial zone of dilution and that we would not be imposing different requirements for those outfalls based on whatever decision you make on protected areas. That is not to say that the Ocean Plan might not change at some future date and change their requirements – I think they understand that, but we wouldn't be doing it based on your designations. We do plan, at some future date, to be looking at each of the marine life protected areas and determining which ones would be eligible for water quality protected areas and looking at requirements within those areas, but that would be a separate issue.".

Commissioner Sutton: Let me make sure I understand what you're saying: The State Water Board does *not* intend to piggy back regulatory action on the MLPA. The State Water Board does not intend to piggyback regulatory action on the MLPA, and therefore the fears that have been articulated by the various sanitation districts are unfounded as far as you're concerned – is that correct?.

Bishop: Let me be a little bit more nuanced than that. We are not proposing to blanketly impose ASBSs on top of MLPAs in general. We will be looking at individual areas – reserves – and determining if there are special discharge requirements that are needed. But we are not proposing to do that intersect an existing outfall.

Commissioner Sutton: But you would do that anyway, is that correct?.

Bishop: That's correct.

Commissioner: You're job is to look along the coast for areas that need protection from water pollution.

Bishop: That's correct.

Commissioner Richards: Have you been in dialogue with the sanitation districts on your resolution passed, and does that satisfy their concerns?.

Bishop: Well, we haven't passed the resolution yet. We are proposing that resolution to come to board first meeting in November due to the State Water Board's noticing requirements. I have been in contact. I actually met as late as Monday with the sanitation district to talk about the language, and you can ask them, but my impression was that they were satisfied that that would take care of their concerns.

Commissioner Richards: Assuming it passes November 3rd?.

Bishop: That's correct.

Phil Friess
Department Head of Technical Services
L.A. County Sanitation District

……. "The Commissioners are aware that the sanitation districts have long opposed designation of the Abalone Cove and Point Vicente marine protected areas due to our assessment of very large potential socioeconomic impacts on the Sanitation District's ratepayers associated with State Water Board regulations that could be triggered by the MLPA process. As Mr. Bishop just noted, the sanitation districts are working productively with the State Water Board towards an identified solution to address our concerns regarding water quality requirements for MPAs and attendant regulation of our discharge. If these efforts prove successful, subject to agreement from our boards, the sanitation districts will withdraw our opposition to designation of the Abalone Cove and Point Vicente marine protected areas." ….

Response to Comment A31_ii-3: Comment noted.

Response to Comment A31_ii-4: See comment A31_ii-2 above. Also the MPA options being consider on and adjacent to the outfall have specifically include a provision that would exempt take that results from the operation and Maintenance of the outfall. Further the MLPA specifically allows take from permitted monitoring activities and this would include monitoring that would be expected to occur under the outfall NPDES permit. The Commission finds that the SOCWA assertion that increased water restriction will occur to be unsubstantiated by the evidence provided by SOCWA and the facts in the record.

Response to Comment A31_ii-5: See comment A31_ii-4. Also this comment presupposes that the assertions made by the district are "expected" but the evidence on the record indicates that the implementation of the proposed Project IPA is not even reasonably likely to result in the SWRCB increasing water quality treatment requirements for the operators of the Outfall.

Response to Comment A31_ii-6: The comment inquires about the meaning of the term "Take," as it applies to the MLPA, points out that the MLPA does not define this term, and requests that the project description in the EIR be revised to define this term. The term "Take" is defined in Section 86 of the California Fish and Game Code, and means "To hunt, pursue, trap, capture, or kill, or attempt to hunt, pursue catch, capture, or kill. A footnote has been added to project description text in Section 3.4.1 of the Draft EIR to clarify the meaning of the term.

Response to Comment A31_ii-7: Take is defined in Fish and Game Code section 86. The question of whether "take" occurs in a given situation depends on the totality of circumstances.

Response to Comment A31_ii-8: The comment does not address the adequacy of the Draft EIR and no comment is required. However this request will be forwarded to the commission for possible future action.

SOCWA
South Orange County Wastewater Authority

July 29, 2010

Via Email: Mr. Thomas Napoli at tnapoli@dfg.ca.gov
And U.S. Postal Service

Ms. Marija Vojkovich
Regional Manager
Marine Region
Department of Fish and Game
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109

RE: Notice of Preparation of Draft Environmental Impact Report (DEIR) Regarding Marine Protected Areas in the California South Coast Study Region (SCSR) Pursuant to the Marine Life Protection Act (MLPA)

Comments by South Orange County Wastewater Authority

Dear Ms. Vojkovich:

Thank you for the opportunity to make comments on the Notice of Preparation (NOP) for the South Coast Study Region's (SCSR) Draft Environmental Impact Report (DEIR) prepared under the California Environmental Quality Act (CEQA) for the Integrated Preferred Alternative (IPA) to redesign the system of Marine Protection Areas (MPAs). We further appreciate the fact that the NOP specifically discusses the need to assess the impacts that MPAs will have on existing public services, such as Publicly Owned Treatment Works (POTW) and ocean outfalls.

The South Orange County Wastewater Authority (SOCWA) operates several wastewater facilities, including POTWs, as well as the Aliso Creek Ocean Outfall (Outfall) which extends off Aliso Beach in the southern portion of Laguna Beach. SOCWA provides a vital service for the several hundred thousand residents and businesses that are located in the seventeen cities and communities served by SOCWA and its member agencies. The Outfall is used for treated wastewater disposal and for water recycling efforts that provide an alternative source of potable water for the area.

SOCWA has expressed publicly and in numerous previous correspondences its interest in adoption of a Laguna Beach MPA that meets the SCSR goal to increase coherence and effectiveness in protecting the state's marine life, habitats and marine ecosystems and that is simultaneously compatible with the operation of public facilities like SOCWA's Outfall. SOCWA has actively participated in the MLPA process to facilitate approval of a Laguna Beach MPA that is compatible with SOCWA's wastewater treatment and water recycling operations, including repeatedly suggesting feasible alternatives and modifications that would address concerns. However, the IPA and several other options and sub-options under consideration as possible MPA alternatives in the south coast region would place a State Marine Reserve (SMR) over a large portion of the Outfall pipeline and within close proximity to the diffuser end of the Outfall. The overlap and close proximity could require SOCWA to restrict or prohibit discharge from the

34156 Del Obispo Street • Dana Point, CA 92629 • Phone: (949) 234-5400 • Fax: (949) 489-0130 • Website: www.socwa.com

A public agency created by: CITY OF LAGUNA BEACH • CITY OF SAN CLEMENTE • CITY OF SAN JUAN CAPISTRANO • EL TORO WATER DISTRICT • EMERALD BAY SERVICE DISTRICT
IRVINE RANCH WATER DISTRICT • MOULTON NIGUEL WATER DISTRICT • SANTA MARGARITA WATER DISTRICT • SOUTH COAST WATER DISTRICT • TRABUCO CANYON WATER DISTRICT

Outfall to ensure compliance with the SMR restrictions, and potentially could require SOCWA and its member agencies to upgrade the water treatment systems or to relocate the Outfall, at great expense.

1. Executive Summary

SOCWA supports adoption of the SCSR to create MPAs in the south coast region in a situation where the impacts of those MPAs on SOCWA's Outfall are mitigated. We respectfully request that the environmental review by the Department of Fish & Game (DFG) include all of the appropriate economic, environmental and social impacts in its analysis as it relates to the public service infrastructure that will be co-located with an MPA. To avoid conflict SOCWA has clearly voiced its opposition to the IPA or any Option or Sub-Option that would place a SMR too close to the Aliso Creek Outfall and we respectfully request DFG to consider the approaches that we have previously supported as potential resolutions being considered for the Laguna Beach MPA:

There needs to be a finding that identifies the discharge of wastewater and the associated maintenance requirements and required monitoring as allowable uses within the Laguna MPAs. Also, there needs to be a finding that establishes that no take or injury occurs as a result of wastewater discharge if the wastewater discharge meets the state and federal wastewater discharge requirements generally applied to ocean discharge from POTWs.

2. Factual Information

(a) SOCWA

SOCWA was created on July 1, 2001 as a Joint Powers Authority with no taxing authority. SOCWA is the legal successor to the Aliso Water Management Agency, South East Regional Reclamation Authority and South Orange County Reclamation Authority.

The mission of SOCWA is to collect, treat, beneficially reuse and dispose of wastewater in a manner that respects the environment, maintains the public's health and manages to meet the myriad of local, state and federal regulations. To do so, SOCWA plans for, acquires, constructs, maintains, repairs, manages, operates and controls facilities for the collection, transmission, treatment and disposal of wastewater, the reclamation and use of wastewater for beneficial purposes, and the production, transmission, storage and distribution of non-domestic water.

(b) Aliso Creek Ocean Outfall

The Outfall is permitted under National Pollution Discharge Elimination System Permit #CA0107611. (NPDES Permit) (See Attachment 3 [NPDES Permit]). Its design capacity is 50 mgd and has an average flow rate of 14 mgd. The Outfall was constructed in 1978 and extends 7,900 feet offshore in a southwesterly direction from the mouth of Aliso Creek. The inshore end of the diffuser is located approximately 6,700 feet offshore at a depth of approximately 170 feet. The diffuser, which is collinear with the rest of the Outfall, is approximately 1,200 feet long and extends to a maximum depth of 195 feet.

The Outfall requires regular maintenance and occasionally requires more significant repair. For example, a portion of the near shore section of the Outfall was cracked in five places during the winter storms of 1992. The cracks were repaired with five internal seals in 1993 and the seals were replaced in 2004. The Outfall undergoes an external inspection conducted by an

independent diving contractor every two years. The external inspection evaluates the overall condition of the Outfall including the location of the ballast (rock) and blockage of the diffuser ports. If the external inspection identifies any problems an independent contractor is hired to reset the ballast and clear any blocked diffuser ports. An internal inspection of the near shore section of the outfall is also performed every two years by an independent diving contractor. The diver checks for any significant movement of the Outfall by measuring the gaps in the Outfall pipe joints. The diver also checks the position and the condition of the gaskets on the five repair seals. The current seals are expected to last 15 to 20 years. The seals will need to be replaced based on the observations from the internal inspection.

The length of the diffuser portion is an important consideration as the Outfall is not simply an open ended pipe 6,700 feet offshore, where the discharge occurs. The Outfall is designed to evenly dilute and disperse the discharge over the entire length of the diffuser. As described below, the diffuser requires continuous maintenance and inspection. Further, the 6,700 feet length of the offshore pipe itself has to be inspected because it is not buried. It merely lays on the sea floor and is covered by ballast. The ballast does move and shift with the tides and currents and therefore need to be adjusted and even possibly replaced over time.

The terminus of the diffuser is located at Latitude 33.29.766 N and Longitude -117.46.352 W. There are numerous monitoring stations near the diffuser, north and south of the diffuser and along the surf line. See Attachment 4 [Map of Diffuser and Monitoring Stations]).

The Outfall receives treated effluent from the following municipal wastewater treatment plants all of whom are meeting the effluent requirements set forth in different Orders of the Regional Water Quality Control Board San Diego or Santa Ana Region (Regional Board):

Facility	Regional Board Order	Description
SOCWA Regional Treatment Plant	R9-2006-0055	Establishes wastewater treatment and discharge standards to Pacific Ocean
	R9-97-52	Establishes reclamation requirements for the reuse of effluent from RTP
SOCWA Coastal Treatment Plant	R9-2006-0055	Establishes wastewater treatment and discharge standards to Pacific Ocean
	R9-97-52	Establishes reclamation requirements for the reuse of effluent from CTP
IRWD Los Alisos Water Reclamation Plant	R9-2006-0055	Establishes wastewater treatment and discharge standards to Pacific Ocean
	R8-94-03	Establishes reclamation requirements for the reuse of

		effluent from IRWD-LAWRP
ETWD Water Reclamation Plant	R9-2006-0055 R8-94-03	Establishes wastewater treatment and discharge standards to Pacific Ocean Establishes reclamation requirements for the reuse of effluent from IRWD-LAWRP
IRWD Desalter Project	R9-2006-0055	Authorizes the discharge of treated groundwater from the Department of the Navy's shallow groundwater unit

Each of the plants referenced above meet all applicable discharge requirements under both State and Federal guidance and regulations (National Pollution Discharge Elimination Program – NPDES permit) and the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan) for protection of the beneficial uses of the State ocean waters. The NPDES permit requires strict adherence to various requirements to assure maximum protection to the marine environment that is compatible with the operation of the Outfall.

Further, the NPDES permit places an affirmative duty on SOCWA to maintain the Outfall:

> The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. (Permit Attachment D, Paragraph D).

3. Critical Issues

(a) The DEIR Should Consider All Potential Impacts Relating to POTWs and the Outfall

Although the DEIR, as outlined in the NOP, will analyze the water quality impacts of POTW discharges on proposed MPAs, SOCWA believes the proposed scope for the DEIR falls short by failing to adequately analyze how vital public service infrastructure, such as wastewater outfalls, will be able to continue functioning in the same manner and in the same location when an MPA is being contemplated in such close proximity.

The current IPA options call for the placement of an SMR over the Outfall pipeline and or in relative close proximity to the diffuser. Given the tides and currents, there is really no absolutely consistent speed and direction of flow of the Outfall effluent. As such, there is a real possibility that the effluent leaving the Outfall may violate SMR restrictions, despite that the Outfall is consistent with all requirements as set forth by the State and Federal governments in the NPDES Permit, the Ocean Plan and otherwise. To avoid this incompatibility and potentially hefty penalties resulting from violation of a SMR, SOCWA may be required to make physical

changes to its POTW systems (i.e., upgrade the systems, or potentially relocate the Outfall). Alternatively, it may be required to forgo normal maintenance or repairs which would impact the SMR, resulting in degradation of the Outfall system.

As noted in the NOP's Attachment A, one of the key issues to be addressed in the EIR is going to be:

> **Public Services and Utilities.** An analysis of the direct or indirect impacts to public services and utilities from the proposed project IPA and alternatives will be contained within this section of the DEIR. This analysis will include a review of whether the proposed project IPA and alternatives will result in the need for new governmental facilities or services. The proposed project IPA and alternatives propose to add new MPAs and place greater fishing and use restrictions on existing MPAs. Possible impacts to public services due to the increased need for enforcement of these restrictions will be reviewed in the DEIR. Issues related to impacts to Publicly Owned Treatment Works will be discussed in the water quality section of the DEIR.

Therefore, the NOP states that the DEIR will include analysis of the direct and indirect impacts to public services and utilities resulting from the IPA, including that [i]ssues related to impacts to POTW will be discussed in the water quality section of the DEIR. However, because the IPA may have the indirect impact of requiring physical changes at POTWs (e.g., requiring upgrades to the wastewater treatment systems, or relocation of the Outfall pipeline), the DEIR's analysis of impacts to POTWs should not be limited to the water quality section. Instead, the DEIR should consider those resulting impacts, which may include impacts to certain categories dismissed from consideration in the DEIR. See NOP at 2-1 thru 2-3 (dismissing consideration of aesthetics, agricultural resources, geology and soils, noise, and population and housing). For example if the Project requires relocation of the Outfall pipeline the resulting construction may create significant noise impacts and impacts to geology and soils.

(b) Analysis of Environmental Effects Caused by Economic Impacts

As mentioned above, the IPA may cause economic impacts to SOCWA and its members agencies that would result in physical impacts to the environment. If SOCWA's Outfall violates SMR restrictions and results in fines, SOCWA may be required to undertake physical solutions to avoid the violations (e.g., upgrading its systems to meet water quality levels beyond current permit requirements). If violation penalties are sufficiently severe or if the physical solutions are technically or economically infeasible, SOCWA may be required to either relocate or develop an alternative to the Outfall.

Though CEQA does not require analysis of purely social or economic impacts of a project, evidence of social or economic impacts that contribute to or are caused by physical impacts on the environment may be substantial evidence of a significant effect on the environment. See Pub. Res. Code §§21080(e), 21082.2(c); 14 Cal. Code Regs. (CEQA Guidleines) §15064(f)(6). CEQA requires a lead agency to consider the reasonably foreseeable indirect environmental consequences of a project's economic or social changes. See CEQA Guidelines §§15065(d) (Requiring lead agency to consider reasonably foreseeable indirect physical changes in the environment which may be caused by a project), 15064(e)("Where a physical change is caused

by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project"). CEQA defines an indirect physical change as "a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project." CEQA Guidelines §15064(d)(2). It further explains that "[i]f a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution." CEQA Guidelines §15064(d)(2); see also *Citizens Assn. for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 169 (EIR should have been required where development of a new shopping center and the loss of patronage for existing businesses might result in physical deterioration of the downtown area); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446 (EIR should consider whether potential economic problems caused by project could result in business closures and physical deterioration of downtown area).

Because the IPA may cause economic impacts to SOCWA that would result in physical changes, the DEIR should analyze these potential indirect impacts. See CEQA Guidelines §15131(a) ("An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes").

(c) The DEIR Should Consider Feasible Mitigation Measures to Reduce Impacts to the Outfall System

As explained in prior communications, SOCWA supports adoption of the SCSR to create MPAs in the south coast region in a situation where the impacts of those MPAs on SOCWA's Outfall are mitigated. The DEIR must describe mitigation measures for each potentially significant environmental impact identified for a project and the lead agency must adopt feasible mitigation measures for those impacts. Pub. Res. Code §§21002, 21002.1(a), 2100(b)(3), 21081(a); CEQA Guidelines §15126.4. A mitigation measure is an action that is designed to minimize, reduce, or avoid a significant environmental impact or rectify or compensate for the impact. CEQA Guidelines §15126(a)(1), 15370. "Formulation of mitigation measures may not be deferred until some future time." CEQA Guidelines §15126.4(a)(1)(B). A change in a proposed project to avoid an identified significant impact can function as a mitigation measure. CEQA Guidelines §15370(a). Therefore, we respectfully request that the DEIR consider mitigation measures to reduce or eliminate the IPA's significant impacts on the Outfall, including the following:

- Identify the discharge of wastewater and the associated maintenance requirements and required monitoring as allowable uses within the Laguna MPAs;

- Include a finding that establishes that no take or injury occurs as a result of wastewater discharge if the wastewater discharge meets the state and federal wastewater discharge requirements generally applied to ocean discharge from POTWs

4. Conclusion

SOCWA is very concerned with this issue and has previously raised specific issues via prior written and oral comments throughout the south coast region MLPA process. We believe that the MLPA process has overlooked, and/or provided no real evaluation of the consequences to

vital infrastructure associated with MPA placement. The economic and environmental factors considered thus far in the MLPA have not adequately considered the impacts associated with the restricted use of or the increased treatment requirements to wastewater outfalls located in and around the proposed MPAs.

SOCWA has repeatedly stated that the MLPA process needs to recognize the importance of the Outfall and the public service that it provides. Similarly, we respectfully restate our request that the environmental review by the DFG include all of the appropriate alternatives and mitigation measures in its analysis as it relates to the public service infrastructure that will be co-located with the MPA. We would certainly be willing to discuss with you the specific documentation that we are seeking to accomplish this.

We do wish to thank the Department staff who has provided valuable help throughout the stakeholder process. We would be available to meet or discuss these matters with you at any time.

Sincerely,

South Orange County Wastewater Authority

Thomas R. Rosales
General Manager

cc: SOCWA Board Members

attachments: 1. NPDES Permit
2. Map of Diffuser and Monitoring Stations

LA 24522 v6:013454.0002

Responses to Comment Letter A31_iii

Response to Comment A31_iii: This letter comments on the NOP, and the Draft EIR has incorporated NOP comments.

Brennon Flahive

From: Gully, Joe [JGully@lacsd.org]
Sent: Monday, July 12, 2010 11:01 AM
To: Brennon Flahive
Subject: FW: Palos Verdes MPA

Brennon,

per our conversation.

Joe.

Joseph R. Gully
Supervising Environmental Scientist
Ocean Monitoring and Research
Los Angeles County Sanitation Districts
1955 Workman Mill Rd.
Whittier, CA 90601
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C: 951-265-9125
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-----Original Message-----
From: Friess, Phil
Sent: Monday, June 28, 2010 10:41 AM
To: Maguin, Steve; Chan, Grace; Green, Sharon; Louie, Brian; Gully, Joe; Walther, Shelly; 'hyde@lbbslaw.com'; 'Nicole Granquist (E-mail)'
Subject: FW: Palos Verdes MPA

Here is the SWRCB's long-awaited response to our concerns about PV MPAs

Philip L. Friess
Department Head
Technical Services
Sanitation Districts of Los Angeles County
1955 Workman Mill Rd.
Whittier, CA 90601
Phone (562)908-4288 ext. 2501
FAX (562)692-5103
pfriess@lacsd.org

-----Original Message-----
From: Dominic Gregorio [mailto:dgregorio@waterboards.ca.gov]
Sent: Monday, June 28, 2010 10:03 AM
To: Friess, Phil
Cc: Jonathan Bishop
Subject: Palos Verdes MPA

Phil
Sorry it took so long to get back to you. On March 22 you sent an email message to Jon Bishop and me, describing our meeting earlier in March and asking further questions about the water quality implications of MPA designation in southern California, particularly at the Palos Verdes Peninsula. Hopefully the following will help in answering your questions:

1. As mentioned in the meeting State Board staff is not contemplating recommending (to our Board) an Area of Special Biological Significance (ASBS) at Palos Verdes. Staff will definitely not propose designation of any new ASBS or SWQPAs until all of the current ASBS discharge issues are resolved through our exception process, and also all of the MPAs are designated and implemented statewide. After that (likely at least a couple years) staff will then consider recommendations for new SWQPAs to protect water quality in MPAs.
2. The MLPA Master Plan Science Advisory Team, of which I am a member, has stated the following: "Marine water quality will undoubtedly play a role in the success of MPAs. It is generally accepted that degraded water and sediment quality results in impacts to marine life, including undesirable changes to community structure and function...Since the State Water Resources Control Board and the regional water quality control boards have primary responsibility for regulating water quality, the water boards should be informed of potential water quality concerns for MPAs. For example, the regional water boards may recommend to the State Water Resources Control Board the designation of additional state water quality protection areas (SWQPAs), or work on priority total maximum daily loads that could restore water quality in MPAs." Note that the recommendation would be for an SWQPA and not necessarily an ASBS.
3. The Public Resources Code (PRC) states that an SWQPA is "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process..." The PRC further states "In a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions."
4. The Ocean Plan requires protection of species or biological communities in ASBS, and that waste discharges are prohibited in ASBS; discharges shall be at a sufficient distance to assure natural water quality. The Ocean Plan does not have specific requirements for non-ASBS SWQPAs, so we would fall back on the PRC requirements stated above.
5. It is likely that SWQPAs would be recommended to protect water quality in MPAs. However I would recommend for such SWQPAs involving existing waste water point source outfalls: a) SWQPAs would not be established over existing outfalls or the zone of initial dilution (ZID) of such existing outfalls (thereby preventing the need to prohibit existing ocean wastewater outfalls); and b) the "special conditions" would state that discharges from existing wastewater outfalls must not violate water quality objectives within an SWQPA. In no way is State Board staff considering any action that would involve moving existing wastewater outfalls, which represent an important public service and substantial infrastutcture. Of course there would be other special conditions relating to storm water and nonpoint sources, but that is not relevant to existing NPDES permitted wastewater.

It should be noted that meeting the Ocean Plan objectives (something already required for any ocean discharge outside of the ZID) is very different than meeting "natural water quality" for all constituents. However, keep in mind that there are narrative objectives in the Ocean Plan that involve protecting ocean water quality relative to "that which occurs naturally" such as for pH and dissolved oxygen. Again, these are existing requirements for all ocean discharges.

Sincerely,

Dominic Gregorio, Senior Environmental Scientist
Ocean Unit, Division of Water Quality
State Water Resources Control Board
office 916-341-5488
cell 916-956-9580
DGregorio@waterboards.ca.gov

Responses to Comment Letter A31_iv

Response to Comment A31_iv: This file does not address the adequacy of the Draft EIR. No response required.

Thomas Napoli - MLPA CEQA Comments - South Coast Study Region

From: Jenn Feinberg Eckerle <jennfeinberg.nrdc@gmail.com>
To: <mlpacomments@dfg.ca.gov>
Date: 10/4/2010 5:43 PM
Subject: MLPA CEQA Comments - South Coast Study Region
Attachments: SC_DEIRComments_FINAL.pdf

Please accept these comments on the South Coast MLPA CEQA document on behalf of the Natural Resources Defense Council, Ocean Conservancy, Heal the Bay, Santa Barbara Coastkeeper, Orange County Coastkeeper, San Diego Coastkeeper, California Sea Grant, and WiLDCOAST.

Let me know if you have any questions.

Thanks,

Jenn

--
Jenn Feinberg Eckerle
Ocean Policy Consultant
Natural Resources Defense Council
P.O. Box 1394
Santa Barbara, CA 93102
415.350.0976

Responses to Comment Letter A32_i

Response to Comment A32_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A32_ii

Delivered by electronic mail to: mlpacomments@dfg.ca.gov

October 4, 2010

MLPA South Coast CEQA
California Department of Fish & Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Re: Comments on Draft Environmental Impact Report for South Coast MPAs

Dear Department of Fish and Game:

Please accept the following comments on behalf of the undersigned organizations. As you know, our organizations have been deeply involved in the implementation of the Marine Life Protection Act (MLPA) throughout its history. We are writing today to comment on the Draft Environmental Impact Report (DEIR) for the proposed South Coast marine protected area (MPA) network alternatives. Given that the MLPA is designed to achieve conservation goals and advance environmental protection, we do not expect any of the proposed MPA networks to result in potential significant adverse environmental impacts under the California Environmental Quality Act (CEQA). The CEQA analysis confirms this expectation. A32_ii-1

The CEQA analysis also concludes that the No-Project Alternative (failure to move ahead with implementing the MLPA) is likely to have adverse environmental impacts as marine ecosystems continue to decline.[1] Based on this analysis and other sources of information, the Proposed Project will provide substantial benefits to the state of California by protecting marine life and underwater habitats, while also having the advantage of balancing the interests of a wide variety of stakeholders. A32_ii-2

In our view, the DEIR provides a legally sufficient and fundamentally sound foundation for the state's decision and fulfills the purposes of CEQA to "prevent the elimination of fish or wildlife species due to man's activities [and] ensure that fish and wildlife populations do not drop below self-perpetuating levels,"[2] as well as to "inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities."[3] We have suggestions for improving the accuracy, completeness, and logical consistency of some portions of the document, and have organized our specific comments by chapter. A32_ii-3

Executive Summary

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[1] DEIR ES-4.2

[2] Public Resources Code §21001(c).

[3] CEQA Guidelines §15002(a)1.

Overall, the Executive Summary provides a useful overview of the contents of the DEIR and the Proposed Project and alternatives. However, in the section entitled, "Comparison of Proposed IPA and Alternatives," we recommend further clarification in the Final Environmental Impact Report (FEIR). A32_ii-4

The DEIR's analysis concludes that impacts associated with the Proposed Project and all three alternatives are similar and that "no significant or unavoidable impacts were identified."[4] Further, it qualitatively identifies minor differences in impacts (see Table ES-1) and attributes these differences primarily to variations in the amount of area protected in the MPA networks. This qualitative comparison, which is based solely on the amount of area protected, over-generalizes the differences between proposals and fails to recognize the significant relevance of MPA siting and level of protection designations to overall network performance and ecological benefits. A32_ii-5

The comparison of the Proposed Project and its alternatives in the FEIR should include an evaluation of how each proposal meets the Science Advisory Team (SAT) guidelines, which are described in Section 2.4.3. The SAT guidelines were developed to inform decision-making at the stakeholder and policy levels and to provide a framework for meeting the ecological goals of the MLPA. Proposals that fail to provide adequate protection or network connectivity due to the size, spacing, location, and level of protection of individual MPAs will not confer equal benefits to marine life and habitats as proposals that meet the science guidelines. In order to evaluate the relative biological benefits expected from the Proposed Project and its alternatives, we recommend that the FEIR include a comparison of how each network does or does not meet the SAT guidelines. Information on how each proposal meets the science guidelines can be found on the Department of Fish and Game's website under the link entitled "Evaluations and Supplementary Information for SCRSG Round 3 Proposals for the MLPA South Coast Study Region."[5] A32_ii-6

As part of this comparison, the FEIR should explicitly identify Alternative 3 as the "Environmentally Superior Alternative." In both the Central Coast and the North Central Coast MLPA CEQA processes, an environmentally superior alternative was identified; it is unclear why the South Coast DEIR fails to do so. Alternative 3 should be identified as the environmentally superior alternative as it is the only proposal that meets *all* of the SAT guidelines. It meets size and spacing guidelines efficiently and provides greater habitat representation and more replication in high protection areas and state marine reserves (SMRs) than any of the other proposals. Therefore, Alternative 3 will provide greater biological benefits to populations of marine life and the habitats they depend on. Although the Proposed Project and the other two alternatives would result in improvements to marine ecosystems, Alternative 3 provides the best opportunity for marine life to recover and thrive and should therefore be recognized as the environmentally superior alternative. A32_ii-7

Finally, Table ES-1 (page ES-6) identifies impacts to global climate change and greenhouse gas emissions as "LTS to B." However, it is unclear what "B" represents as it has not been defined in the table footnotes. The FEIR should clarify this. A32_ii-8

Section 2.0 – Project Background

As mentioned in our letter to the California Department of Fish and Game (DFG) dated August 3, 2010, the final EIR should include a background discussion of ecological trends in the South Coast Study Region (SCSR) in the absence of significant protected areas. This should include a discussion of the declines in total commercial fish landings and catch of recreationally targeted species over the past few decades. For example, with only a small portion of the coast A32_ii-9

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[4] DEIR ES-5

[5] MPA Proposals and Evaluations (South Coast Study Region). Department of Fish and Game Website: http://www.dfg.ca.gov/mlpa/scrsg-r3-evaluations.asp

in fully-protected state marine reserves (SMRs), total commercial fish landings in southern California declined from 425 million pounds to 240 million pounds between 2000 and 2007.[6] Additionally, while few species in the south coast have been fully assessed, catches of recreationally targeted species including California sheephead, barred sand bass, and kelp bass, have steadily declined over the past two to three decades, with sheephead populations being depleted to levels well below the overfished threshold.[7] Furthermore, a recent study documents a 45% decline in the average size of a wide variety of fish species along the Pacific coast over the past 21 years.[8] This contextual information helps underscore the vulnerability of these resources to human impact and the need for protected areas. A32_ii-9 (cont.)

As in the North Central Coast (NCC) DEIR, this background discussion should also identify overfished species in the SCSR. For example, five species of abalone (red, pink, green, white and black) were serially depleted in the South Coast after commercial landings peaked in 1957.[9] This depletion was caused by cumulative impacts, including inadequate stock assessments, inadequate regulation of commercial harvest, and sport fishery expansion, and resulted in the complete closure of the commercial and recreational abalone fisheries in southern California in 1997. Additionally, populations of three species of rockfish found in southern California (canary, cowcod, bocaccio) have reached such low levels that they were designated as overfished by the Pacific Fisheries Management Council between 1999 and 2002[10]. The decline in these species is mainly due to a lack of accurate life history data and insufficient precautionary management. Further information on depleted, depressed and overfished species in the South Coast can be found in Section 3.2.2 of the Regional Profile. A32_ii-10

In the FEIR, Section 2.0 should include an additional discussion of the shift in California resource protection policy towards an ecosystem-based approach to address persistent concerns over declining marine resources, altered ecosystem structure (e.g. trophic shifts stemming from declining populations of predators versus prey species), and associated impacts of the undue focus of fishery management on single species of commercial and recreational importance. A32_ii-11

This section should discuss not only the shift to MPAs to address ecosystem and non-consumptive values and uses, but also the shift towards these considerations in fishery management as well via the passage and partial implementation of the Marine Life Management Act (MLMA). As described in the first paragraph of the Notice of Proposed Regulatory Action for the South Coast MPA regulatory project dated September 16, 2010, by the California Fish and Game Commission, "The Marine Life Management Act (MLMA, Stats. 1998, ch 1052) created a broad framework for managing fisheries through a variety of conservation measures, *including Marine Protected Areas (MPAs)*. (Emphasis added). This same paragraph concludes with a statement acknowledging the integrated goals and intended coordination of the MLPA and MLMA: "Unlike previous laws, which focused on individual species, the acts focus on maintaining the health of marine ecosystems and biodiversity in order to sustain resources. A32_ii-12

Section 2.1.1 should be expanded to acknowledge the link and beneficial role of MPAs and ecosystem considerations, as well as their incorporation of non-consumptive values and uses, within the fishery management process under MLMA as background to the discussion of the MLPA project. The specific role of MPAs in fishery management, including their role as insurance against management failure, their role in providing unique reference A32_ii-13

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[6] Figure 5.4.7. *Regional Profile of the MLPA South Coast Study Region (Point Conception to the Mexican Border*). June 25, 2009, pp 94.

[7] Alonzo, Suzanne H. et al. 2004. Status of California Sheephead Stock for 2004, CA DFG. Pacific States Marine Recreational Fisheries Monitoring: http://recfin.org.

[8] Levin, Phillip et al, Shifts in a Pacific Ocean Fish Assemblage: the Potential Influence of Exploitation, Conservation Biology, 2006.

[9] California's Living Marine Resources: A Status Report. Abalone. CA DFG. 2001.

[10] Pacific Coast Groundfish Fishery Management Plan for the California, Oregon and Washington Groundfish Fishery, Amended through Amendment 19. July 2008.

sites to improve essential fishery information, in assisting in shifting fisheries towards higher levels of data confidence should be discussed. Later, in section 7.1.1.2.2, the specific call in the Nearshore Fishery Management Plan (NFMP)for significant marine protected areas including nearshore fishery habitat should be discussed. A network of marine protected areas was a critical component of the Nearshore Fishery Management Plan, which relied on the MLPA process to establish MPAs in order to improve essential fishery data, and in this function to help determine allowable catch afforded to this fishery. A32_ii-13 (cont.) A32_ii-14

Finally, this chapter should also include a discussion on the science of marine reserves and MPA network design, including their potential benefits in terms of restoring and maintaining a more natural size range of depleted species; increasing productivity, species diversity and biomass relative to fished areas; protecting habitats and natural heritage; and providing insurance in the face of uncertainty. Language on the science of MPAs and their ecological benefits can be found in Section 1.4 of the Master Plan for Marine Protected Areas.[11] A32_ii-15

Section 3.0 – Project Description

In Section 3.1 (page 3-2), the description of Los Angeles County does not include a discussion of Point Dume or its submarine canyon. We recommend that the final EIR correct this omission and include a description of Point Dume and its associated marine habitats. Sample language is as follows: *"Point Dume is a prominent headland that brackets the northern portion of Santa Monica Bay. Significant upwelling occurs at this location as the Dume submarine canyon funnels cold, nutrient-rich water towards the surface. Dense kelp forest and rocky reef habitats provide feeding and breeding habitat for a variety of marine life and productivity from this region sustains populations throughout Santa Monica Bay."* Additionally, there is a typo on page 3-2: "One of the southernmost active steelhead streams, San Mateo Creek, is located along the broader between Orange County and San Diego County." This sentence should be corrected to read "…is located along the border between…." A32_ii-16 A32_ii-17

Section 3.4 includes a discussion on the types of MPAs. While this discussion includes details on the definitions, restrictions and allowable uses of the three types of MPAs (Marine Reserves, Conservation Areas, and Marine Parks), we recommend that the final EIR provide a comparison on how these three designations generate different levels of ecological benefits based on their allowed uses. See pages 53-54 in Section 3.8.1 of the Master Plan for sample language.[12] Additionally, pages 19-20 of the SAT's Evaluation Methods document provides language on the biological implications of the various levels of protection within MPAs.[13] A32_ii-18

In Section 3.5.4, regulation for the Naples SMCA include the take of Pacific bonito by spearfishing; however, this allowed use was not specified in the regulations for the BRTF's IPA. The FEIR should remove this allowed use. A32_ii-19

Due to the presence of oil infrastructure within its boundaries, the Campus Point SMR, referenced in Section 3.5.5 and Table 3-3, will need to be re-designated as a "no take SMCA" in the FEIR. A32_ii-20

In Section 3.5.29, new regulations for the Laguna Beach SMR/SMCA state that "[b]oats may be launched and retrieved only in designated areas and may be anchored within the conservation area only during daylight hours." This regulation was not included in the IPA from the Blue Ribbon Task Force (BRTF) or the Fish and Game Commission and should be deleted in the FEIR. A32_ii-21

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[11] *California Marine Life Protection Act - Master Plan for Marine Protected Areas.* California Department of Fish and Game. Revised January 2008.

[12] *California Marine Life Protection Act - Master Plan for Marine Protected Areas.* California Department of Fish and Game. Revised January 2008, Section 3.8.1, pp. 53-54.

[13] *Draft Methods Used to Evaluate Marine Protected Area Proposals in the MLPA South Coast Study Region.* October 6, 2009. http://www.dfg.ca.gov/mlpa/pdfs/agenda_102009b1.pdf

In Section 3.6, per our letter dated August 3, 2010, we recommend further discussion of the enforcement, monitoring, management, education and biological benefits of siting MPAs adjacent to existing onshore protected areas, marine labs, or similar institutions. Furthermore, we recommend that this section also provide a comparative analysis of how many MPAs in each alternative are sited near onshore protected areas, marine labs, or similar institutions. Much of this information can be obtained in the Goal 3 analysis conducted by the MLPA Initiative staff.[14] A32_ii-22

Section 3.6.1 discusses adaptive management and the development of a monitoring plan for the South Coast MPA network. It states that " [s]hould the performance of the MPA network (or of individual MPAs) be significantly different than expected…the Act and the Master Plan provide the process and regulatory framework for adaptive management, allowing changes in the design or restrictions of the MPAs to meet the goals of the MLPA and Master Plan guidelines." Because the "success" or "failure" of MPAs depends largely on their size, location, spacing, and level of protection, it is essential that the monitoring plan for the South Coast include realistic goals and expectations for individual MPAs and the network as whole. In other words, if MPAs are not created to maximize biological benefits, there should not be an expectation in the goals of the monitoring plan that they will produce maximum benefits. We recommend that this clarification to the adaptive management and monitoring section be included in the FEIR. A32_ii-23

Section 4.0 – Disciplines Excluded from Detailed Environmental Analysis

We appreciate that Section 4.1 recognizes that the Proposed Project and its alternatives will all result in ecosystem improvements that will benefit the aesthetics of our coastal resources. A32_ii-24

Section 4.4 mistakenly assumes that the Proposed Project and its alternatives may result in vessels having to travel farther to reach open fishing grounds. This assumption fails to recognize the guidance provided by the BRTF and significant efforts that were made by the Regional Stakeholder Group (RSG) to avoid popular fishing grounds near ports and harbors. For example, Horseshoe Kelp (near the Port of Los Angeles), Carpinteria Reef (near Santa Barbara Harbor), the kelp forests offshore from Dana Point (near Dana Point Harbor) and Point Loma (between San Diego Bay and Mission Bay) were all left open to fishing in every proposal, in part due to the proximity of these popular fishing grounds to ports and harbors. The Proposed Project, Alternative 1, and Alternative 3 all include MPAs located at Point Conception, Point Dume, Laguna Beach, and Swami's that have been located almost equidistant between proximal ports and harbors. A32_ii-25

This assumption also fails to recognize that the largest SMRs in the Proposed Project and its alternatives (at Point Conception and Begg Rock) were *purposefully* placed farthest from ports to minimize socioeconomic impacts. Furthermore, the DEIR does not acknowledge that some of the fishermen's stated favorite fishing grounds (such as Area Alpha on San Clemente Island and portions of Catalina Island) are *already* far from ports and were intentionally excluded from MPA proposals per the request of fishermen. Thus, fishermen are already making trips farther away, irrespective of adoption of the South Coast MPA network. A32_ii-26

The FEIR should state that the RSG explicitly designed MPA networks to leave open fishing opportunities close to ports and harbors and should clarify that there are a variety of factors that influence where fishermen choose to fish. The assumption that the Proposed Project and its alternatives may result in vessels having to travel farther to reach open fishing ground should be deleted. It is equally or more likely that fishermen will redirect their effort to areas closer to port. A32_ii-27

As an example, see Attachment 1 to this letter, which illustrates the MPA cluster in the Proposed Project along with A32_ii-28

[14] *Evaluation of Existing MPAs and South Coast Regional Stakeholder Group MPA Proposals Relative to MLPA Goal 3.* September 30, 2009. http://www.dfg.ca.gov/mlpa/pdfs/agenda_102009n2.pdf

data points collected thought aerial boat surveys conducted by Santa Monica Bay Restoration Commission, Lighthawk, and Santa Monica Baykeeper. This data, which has been collected along the Southern California Bight since 2008, shows the majority of recreational and commercial fishing activities occurring *closest* to ports and harbors in Palos Verdes. Additional objective, spatially discrete data showing fishing use can be accessed at http://www.smbaykeeper.org/lighthawk. A32_ii-28 (cont.)

We do agree with the conclusion in Section 4.4 that the Proposed Project and its alternatives will not generate significant noise-related impacts. A32_ii-29

Section 5.0 – Consumptive Uses of Living Marine Resource Products

In Section 5.2.1 of the DEIR, the summary in the second paragraph neglects to accurately convey information on recent trends or set the historical context of consumptive ocean use in California. Although page 5-1 acknowledges the commercial fishing data collected from 1998-2007, it fails to state that during that time, total commercial fish landings in southern California *steadily declined* from 425 million pounds to 240 million pounds.[15] Furthermore, Section Five fails to include any information about the steady declines of recreationally targeted species over the past two to three decades, including barred sand bass, kelp bass, and California sheephead (with sheephead populations being depleted to levels well below the overfished threshold.)[16] This information should be included in the FEIR, not only to clarify the information currently presented but to also provide a context for why an effective MPA network is needed in the South Coast to help provide insurance against similar economic declines in the future. A32_ii-30

Section 5.2.1.1 does not include the land-based aquaculture operation for abalone along the Gaviota coast in Santa Barbara County. The FEIR should include mention of this operation. A32_ii-31

We appreciate that Section Five recognizes that CEQA does not require the consideration of direct economic or social factors in its impact analyses. The DEIR correctly notes that "economic or social effects *shall not* be treated as significant effects on the environment"[17] and CEQA says an EIR, A32_ii-32

> may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes *need not be analyzed in any detail greater than necessary to trace the chain of cause and effect*. The focus of the analysis shall be on the physical changes.[18]

However, despite this clear guidance by CEQA, Section Five discusses speculative linkages between potential economic or social changes to commercial consumptive use and associated indirect consequences that could result from creating MPAs in the South Coast. Regretfully, this discussion inappropriately uses the Ecotrust analysis to predict economic impacts of MPAs and fails to explicitly describe the fundamental assumptions and limitations of the Ecotrust data. The FEIR should be revised to include the following methodology and assumptions associated with the Ecotrust analysis and reliance on this data as an estimate of potential "costs" of MPAs or MPA networks should be removed from the document: A32_ii-33 A32_ii-34

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[15] Regional Profile of the MLPA South Coast Study Region (Point Conception to the Mexican Border), pp 94, Figure 5.4.7.

[16] Alonzo, Suzanne H. et al. 2004. Status of California Sheephead Stock for 2004, CA DFG. Pacific States Marine Recreational Fisheries Monitoring: http://recfin.org.

[17] DEIR 4-1, emphasis added.

[18] California Environmental Quality Act Guidelines, § 15131(a), emphasis added.

Stated Importance of Fishing Grounds. The Ecotrust surveys asked commercial fishermen throughout the South Coast to express the relative importance of ocean areas to their specific fisheries. However, this data was collected based on the stated importance of fishing grounds *over a lifetime of fishing* and not based on areas currently available or valued for fishing. Therefore, the analysis inappropriately assigns a value to areas that have been closed to fishing as a result of previous management actions (such as the Halibut Trawl Grounds, the Cowcod Conservation Area, and the Northern Channel Islands MPAs) or areas that are no longer fished due to depletion. In such cases, the Ecotrust methodology overstates the cost of putting an MPA at a particular site, because the costs were actually incurred earlier by factors other than the MPA. Given continuous changes in fishing regulations from year to year, as well as the downward trends in catch, the Ecotrust estimates show the stated importance over *cumulative experience* but do not necessarily say anything about where fishing will occur over the short term and therefore cannot be used to predict responses to MPA placement. A32_ii-35

Worst-case Scenario. The Ecotrust analysis assumes that MPAs will completely eliminate fishing opportunities and that fishermen will not relocate efforts to areas outside of MPAs. This assumption creates a worst-case scenario that inflates the socioeconomic impacts and **does not reflect the reality that fishermen are opportunistic and will redirect their fishing efforts to areas outside MPAs.** Section Five of the final EIR should be revised to acknowledge this assumption, as it is not currently mentioned anywhere in this section. A32_ii-36

Additionally, Section 5.3.1 repeatedly mentions that the Ecotrust data was used to identify the "maximum potential displacement"[19] of commercial fisheries. However, Ecotrust's "worst case" assumption that all displaced effort will discontinue is in *direct conflict* with the DEIR's "displacement" assumptions that fishermen will shift effort to areas outside MPAs. This discrepancy should be further clarified and corrected in the FEIR. A32_ii-37

The Ecotrust tables (Table 5-1, pages 5-5 through 5-9) are misleading, as they do not clearly explain that the percentage area and value of total commercial fishing grounds affected by the IPA also includes the areas *protected within the Northern Channel Islands MPAs (*shown as "Existing Condition" in the table.) In order to determine the area and value affected by the Proposed Project only, it is necessary to subtract the percentage in the "Existing Condition" column from the "Proposed Project" column. This table should be revised to include a footnote that explains how to calculate the percentages affected by the IPA. As mentioned above, including data from the previously established Northern Channel Islands overestimates the impacts to area and value from the currently proposed MPAs in the Proposed Project. The description of Table 5-2 correctly explains that disproportionate effects to commercial fisheries "over-estimate the socioeconomic consequences because the report does not account for the existing MPAs within the SCSR (South Coast Study Region)."[20] Any impacts associated with the Northern Channel Islands MPAs are part of the baseline project condition and are not impacts associated with the South Coast MPAs - the project currently undergoing environmental review. A32_ii-38

Additionally, the DEIR does not consider the socioeconomic benefits of the South Coast MPA network to non-consumptive and consumptive users, local businesses and the tourism industry. The FEIR should undertake a substantive discussion of potential positive socioeconomic impacts of MPAs along the South Coast and analyze the medium and long-term benefits of the Proposed Project and its alternatives. A32_ii-39

Section 6.0 – Physical Resources

Section 6.1 – Air Quality

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[19] DEIR 5-4

[20] DEIR 5-4

Section 6.1.3.1.1 discusses the methodology in calculating potential impacts of an MPA network on the air quality of the South Coast study region. The DEIR assumes an increase in transit times and distances due to displacement. A32_ii-40

As discussed above in our comments on Section Four, there are inherent difficulties in predicting the distance fishermen will travel once an MPA network is adopted in the South Coast. Distance of MPAs from ports is not a good indicator for speculating time on the water and distance traveled, and a broad suite of factors external to the MPA process will almost certainly impact how close or far fishermen travel. Additionally, the catch rate of fish along the borders of MPAs may increase over time, reducing speculating time and related costs. Thus, it is nearly impossible to separate these inextricably linked factors to calculate a rise or reduction in air quality to any single factor, including MPA implementation. A32_ii-41

This section correctly acknowledges that it is impossible to accurately model project-induced commercial fishing vessel emission scenarios because it is not possible to predict the entire range of responses by individual fishermen to an MPA network. It also acknowledges, as we did above, that many factors influence the decision to go to sea on a given day and that "some vessels may transit to alternate fishing grounds at comparable distances to their current situation."[21] A32_ii-42

Section 6.1.3.1.2 accurately concludes that recreational fishing activities are unlikely to be substantially different as the result of the Proposed Project or its alternatives and that "recreational fishermen will adjust their travel to destinations equally accessible versus electing to travel longer distances and travel times for a comparable fishing experience...."[22] A32_ii-43

Although Criterion AIR-2 in Section 6.1.3.3 correctly determines that the Proposed Project and its alternatives would not violate any air quality standards, it does states that "[t]he effect of the proposed Project IPA would be to increase transit distances for commercial fishing vessels, resulting in a corresponding increase in combustion emissions." As discussed above, we reject the assumption that the Proposed Project or its alternatives would result in increased travel distances due to displacement and recommend that this text be removed in the FEIR. It is at least equally likely that fishing vessels will redirect effort to fishing grounds closer to port or that some effort might be reduced. A32_ii-44

Section 6.1.3.3 accurately finds that the offshore vessel traffic patterns as a result of the Proposed Project and its alternatives would not differ substantially from the current patterns and that emissions caused by the implementation of the IPA are estimated to account for less than 1/1,000,000th of the total air district emissions. It also correctly states that the Proposed Project and its alternatives have no impact or less than significant impacts and that no mitigation is required for all of the evaluation criteria on air quality. A32_ii-45

Section 6.2 – Global Climate Change and Greenhouse Gas Emissions

Section 6.2.3.3 correctly acknowledges that impacts from the Proposed Project and its alternatives would have no impact, less than significant impacts, and potential beneficial impacts for the evaluation criteria on greenhouse gas emissions. A32_ii-46 However, Criterion GHG2 again references the potential of increased travel distances of displaced commercial and recreational fishing vessels, despite the fact that the largest SMRs in the Proposed Project and its alternatives were *purposefully* placed farthest from ports and some of the fishermen's stated favorite fishing grounds are *already* far from ports. We recommend that this assumption be removed in the FEIR. A32_ii-47

We appreciate the discussion in Section 6.2.3.4 that the Proposed Project may actually contribute to potential global climate change *benefits* by increasing the abundance and distribution of kelp forest habitat within MPAs. It is A32_ii-48

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[21] DEIR 6.1-14

[22] DEIR 6.1-16

expected that increased sequestration of carbon dioxide would occur through photosynthesis in expanded kelp forest canopies. A32_ii-48 (cont.)

Section 6.3 – Water Quality

Water quality is an important issue in southern California, but major improvements have been made in recent years, and ongoing issues are being addressed by the State and Regional Water Quality Control Boards. Californians have dedicated billions of dollars to projects designed to improve water quality in the last two decades alone. Other than Total Maximum Daily Load (TMDL) regulations, Section 6.3 of the DEIR fails to address several of the efforts in the South Coast to improve water quality, such as the Clean Beaches Initiative[23] and Proposition O[24]. Additional discussion of efforts underway to improve water quality in the South Coast study region should be discussed in the FEIR. A32_ii-49

Section 6.3.1.2 lists the State Water Resources Control Board Regulations for Clean Water Act section 316(b) in two separate sections - 6.3.1.2.3 and 6.3.1.3.3. This policy only needs to be listed once within the Water Quality State Law, Regulation and Policy section of the FEIR. A32_ii-50

Table 6.3-1 lists the major hydrological units in the South Coast study region, but fails to include Ballona Creek, which is a major waterway in Los Angeles County. The FEIR should include Ballona Creek in this table. A32_ii-51

Section 6.3.2 incorrectly states that the study region extends from Point Dume to Dana Point. This statement should be corrected in the FEIR to state that the study region extends from Point Conception in the north to the US/Mexico border in the south. A32_ii-52

Section 6.3.2.1 provides a useful description of primary water quality concerns in the region containing the southern Santa Monica Bay, Palos Verdes and adjacent areas. We believe it would be appropriate to more fully describe two key water quality concern issues that were extensively discussed, evaluated by the Science Advisory Team, and subsequently incorporated into the MPA design process by the Regional Stakeholder Group and Blue Ribbon Task Force. A32_ii-53

First, an ongoing natural erosion area – which is believed to have been reactivated by terrestrial land use activities – exists along the southwestern area of the Palos Verdes Peninsula known as Portuguese Bend. This erosion, known as the Portuguese Bend Landslide (PBL), periodically contributes quantities of sediment to the nearshore environment, affecting resource qualities within the proposed Abalone Cove SMCA-Point Vicente SMR cluster and beyond. While this geologic feature is clearly a pre-existing condition that should be handled in the EIR as an existing setting that will be unaffected by the Proposed Project, it should be described in a reasonable level of detail in this section, and perhaps in sections relevant to MPA design and/or in the project description. The PBL is well described in the attached evaluation of MPA siting issues at Palos Verdes by the Science Advisory Team entitled *Draft Recommendations for Evaluating Water and Sediment Quality Along the Palos Verdes Shelf – Supplemental Guidance to the Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region – June 18, 2008.* Description of this feature, its impacts on habitat quality and its primary impact area south of the proposed Abalone Cove SMCA should be included in a brief summary of the above-referenced document. A32_ii-54

Second, we recommend a more extensive description in Section 6.3.2.1.4 of the Palos Verdes Shelf Superfund Site will improve the DEIR and provide context for the difficult but thoroughly considered placement of MPAs along the A32_ii-55

[23] The Clean Beach Initiative is a State Water Board program that provides grant funding to local cities and counties for pollution control projects designed to eliminate or reduce bacteria loading from recreational beach waters caused by sewage or runoff.

[24] Proposition O is a $500 million bond measure passed in 2004 that aims to reduce and prevent pollution in Los Angeles County waterways.

south shores of the Palos Verdes Peninsula. An expanded discussion should draw heavily on the SAT's guidance document for the area noted above, along with its extensive citations. The site's presence on the Cortese List pursuant to Section 65962.5 of the Government Code should be noted as required by CEQA. Like the PBL, the Palos Verdes Superfund Site and operational activities and monitoring efforts related to the LA County Sanitation Districts' outfall at White's Point are appropriately treated in the DEIR as a baseline condition, rather than a potential source of impacts stemming from establishment of MPAs. We concur that no impacts of the Project are attributable to MPA designation in the area of these pre-existing, baseline conditions; however, a more thorough description of them is warranted. Additionally, the FEIR would benefit from discussion of how the MLPA design process considered each of the above features, received explicit recommendations regarding MPA design in the area from the SAT, and ultimately placed the relevant MPA cluster outside the area identified by the SAT as "less suitable for MPA placement." A32_ii-55 (cont.) A32_ii-56

Section 6.3.2.1.3 provides a very limited discussion of harmful algal blooms (HABs). It should include additional information on trends in domoic acid poisoning in South Coast waters, rather than just discussion the 2007 outbreak. More information on HABs in the region may be available through the Southern California Coastal Observing Systems. A32_ii-57

Section 6.3.2.1.4 identifies that numerous sediment samples found DDT near outfalls, but attributes this contamination to non-point source deposition. This section should clarify that at least one DDT contamination issue – the Palos Verdes Superfund Site – originated from direct discharge of DDT into the sewer system and was therefore not non-point source related. A32_ii-58

Section 6.3.2.3 of the DEIR discusses the Clean Water Act 303(d) listed waterbodies as impaired for various pollutants in the South Coast study region, as well as the associated TMDLs that have been drafted to restore these waterways. However, the DEIR does not discuss the effects of these pollutants. The SAT guidance on water quality specifically states, "Not all pollutants listed in the 303(d) list are harmful to the marine ecosystem. Bacteria and other pathogens are 303(d) listed because they may be harmful to humans during recreational activities."[25] Some statements in the DEIR are misleading without distinguishing between impacts of different pollutants. For example, the DEIR states, "Los Angeles County continues to receive the poorest water quality reports for the state with the Los Angeles River outlet having very poor water quality in 2008" (Heal the Bay 2008). In addition, seven of the ten beaches with the highest water pollution in the state are located in the SCSR, with five of those in Los Angeles County (Department 2009a)."[26] Heal the Bay's beach report card and beach ratings are based on the level of fecal indicator bacteria present at California beaches. Yet, as stated by the SAT, high concentrations of bacteria and pathogens in waterways are of concern for human health and not wildlife. This differentiation between individual pollutant impacts should be made clear in the FEIR. A32_ii-59

Furthermore, the lists of impaired waterbodies and TMDLs in section 6.3.2.3 and the sections of the DEIR that discuss water quality summaries by subregion are not comprehensive. Several additional Clean Water Act 303(d) listed waterbodies and associated TMDLs exist in the South Coast study region. For example, section 6.3.2.2.2 lists many impaired waterbodies in subregion 2 (Rincon to Point Dume), but does not include the Harbor beaches bacteria TMDL. Additionally, section 6.3.2.2.3 lists several impaired waterbodies in subregion 3 (Point Dume to Newport Beach), but there are many additional impaired waterbodies in the subregion, including Santa Monica Bay (trash), Malibu Lagoon (benthic, eutrophication, pH, shellfish advisory, viruses), and several in Los Angeles Harbor. There are also numerous TMDLs in subregion 3 that are not discussed in the water quality section of the DEIR, including Marina del Rey toxics and bacteria, Colorado Lagoon PAHs and PCBs, Santa Monica Bay Beaches bacteria, Los A32_ii-60

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[25] California MLPA Master Plan Science Advisory Team Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region, Draft revised February 9, 2009. Available at: http://www.dfg.ca.gov/mlpa/pdfs/agenda_022409b1.pdf.

[26] DEIR 6.3-14.

Angeles Harbor bacteria, and many others. We recommend the FEIR include a comprehensive list of impaired waterbodies and TMDLs in the South Coast study region, which can be found on the State Water Board and relevant Regional Quality Control Water Board websites.[27] A32_ii-60 (cont.)

Additionally, section 6.3.2.3 refers to an "Appendix X" for more information on impaired waterbodies in the South Coast study region; however the DEIR available on the MLPA website does not include an appendix X.[28] This should be corrected in the FEIR. A32_ii-61

Sections 6.3.2.2.1 and 6.3.2.2.3 discuss oil seeps as a water quality concern. Since these are naturally occurring features, they should not be listed as a potential issue, but instead should just be referenced in the background characterization of these subregions. A32_ii-62

Sections 6.3.2.2.1 and 6.3.2.2.2 should include a brief discussion of the beach nourishment activities in subregions 1 (Point Conception to Rincon) and 2. Beach nourishment activities occur at sites in both of these subregions, including Goleta Beach and Broad Beach. Since existing beach nourishment activities are mentioned for subregions 3, 4 (Newport Beach to Agua Hedionda) and 5 (Agua Hedionda to California/Mexico border) in the DEIR, the FEIR should reference beach nourishment in all relevant subregions for consistency and accuracy. A32_ii-63

Section 6.3.2.2.2, which provides a water quality summary for the subregion 2, fails to mention the Area of Special Biological Significance (ASBS) designated in that area from Laguna Point to Latigo Point. ASBSs are referenced in the water quality summary for subregion 6; therefore, the FEIR should discuss all ASBSs located in the South Coast study region. A32_ii-64

Section 6.3.2.2.3, which provides a water quality summary for the subregion 3 should include additional information to fully characterize the subregion. First, it should include reference of the ASBSs designated in the stretch of coast from Laguna Point to Latigo Point. It should also include Ballona Creek and its associated watershed in the list of major rivers and watersheds in subregion 3. Additionally, it references four of the once-through cooled power plants in subregion 3, but should include Alamitos, Harbor and Haynes Generating Stations, which are also located in this subregion. A32_ii-65

Section 6.3.2.2.5 refers to the "Chula Vista Power Plant" as an existing once-through cooled power plant in subregion 5; however the accurate name for this facility is the "South Bay Power Plant."[29] A32_ii-66

Section 6.3.2.2.7 does not include reference to the ASBSs located in subregion 7 (Southern Channel Islands). The coastal waters surrounding Santa Barbara and San Clemente Islands are entirely designated as an ASBS, and three ASBSs exist in waters around Catalina Island. These ASBSs should be included in the water quality summary for subregion 7 in the FEIR. A32_ii-67

While Criterion WQ-2 (page 6.3-30 and 6.3-31) correctly determines that non-consumptive uses will not A32_ii-68

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[27] State Water Resources Control Board Clean Water Act section 303(d) listed waterways: http://www.swrcb.ca.gov/water_issues/programs/tmdl/303d_lists2006.shtml; Los Angeles Regional Water Quality Control Board TMDL unit: http://www.swrcb.ca.gov/water_issues/programs/tmdl/303d_lists2006.shtml; Central Coast Regional Water Quality control Board TMDL unit: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/; Santa Ana Regional Water Quality control Board TMDL unit: http://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/index.shtml; San Diego Regional Water Quality control Board TMDL unit: http://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/index.shtml.

[28] DEIR 6.3-25.

[29] DEIR 6.3-22; State Water Resources Control Board and California Environmental Protection Agency, "Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, Final Substitute Environmental Document," May 4, 2010; available at: http://www.swrcb.ca.gov/water_issues/programs/npdes/docs/cwa316may2010/sed_final.pdf.

significantly degrade water quality as a result of the Proposed Project or its alternatives, we strongly disagree with the assertion in this section that potential water quality impacts could occur as a result of non-consumptive recreational users having to travel farther to reach suitable locations for their activities. There is no basis for assuming that non-consumptive activities would need to shift based on the creation of MPAs, especially since all non-consumptive use would be permitted to continue in all MPAs throughout the entire South Coast study region. As mentioned in Section Four and subsequent sections, we reject the assumptions that the Proposed Project or its alternatives would result in increased travel distances due to displacement (for non-consumptive and consumptive users) and recommend that this text be removed in the FEIR. A32_ii-68 (cont.)

Although we do not agree with the assumptions about displacement and extended travel distances and times as a result of MPA network implementation in the context of water quality, we concur with the findings of Section 6.3.4. This section finds that the Proposed Project and its alternatives have no impact or less than significant negative impact and that no mitigation is required for all of the evaluation criteria on water quality. A32_ii-69

We recommend that Section 6.3.4 of the FEIR acknowledge that the Proposed Project and its alternatives may actually have a *beneficial impact* on water quality in the South Coast study region, due to siting MPAs adjacent to, or overlapping with, existing ASBSs . The SAT's recommendations for considering water quality during the South Coast MLPA process state that co-locating MPAs with ASBSs may offer a "more complete package of protection" as ASBSs are more highly regulated, affording better and more natural water quality and associated ecological benefits.[30] A32_ii-70

On a related matter, some commentary on the Notice of Preparation for the DEIR appear to be unconvinced by the document's discussion of the relationship of MPA designation to existing permitted activities related to the Superfund Site, the operation of the White's Point Sanitary Facility, and compliance with monitoring and other requirements of this infrastructure. Further, concerns over potential actions by other agencies subsequent to MPA establishment have been raised. It may therefore be advisable to amplify the relevant facts regarding these issues in the regulatory setting section, which are: A32_ii-71

- Language is to be included in the regulations for all relevant MPAs in the Proposed Project clarifying that the Districts' pre-existing monitoring and maintenance activities will continue to be allowed;
- The project specifically allows for monitoring and research as required by regulatory agencies or conducted for scientific research; and
- The Department and the Fish & Game Commission are under no obligation to consider hypothetical impacts related to future potential activities of agencies working under different authorities; in fact, doing so is impossible.

We concur with the DEIR's identification of the Project as consistent with the beneficial uses as designated in the Ocean Plan. MPAs are in fact a beneficial project that will increase the quantity and diversity of ocean life. The FEIR may be strengthened by noting that CEQA is concerned with the impacts of a proposed project on the environment, not, as some have suggested, the impacts of the environment on the proposed project. Thus, contamination and erosion on the Palos Verdes Shelf are properly described in the environmental setting section as pre-existing physical conditions and MPAs are properly evaluated as not affecting this physical condition. Discussion of remedial efforts related to contamination at this site, and mitigations on their impacts, are properly the subject of reviews of separate projects. For more discussion of CEQA's requirements in this regard, please see "Supplemental Comments of Ocean Conservancy on CEA Notice of Preparation." A32_ii-72

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[30] California MLPA Master Plan Science Advisory Team Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region, Draft revised February 9, 2009. Available at: http://www.dfg.ca.gov/mlpa/pdfs/agenda_022409b1.pdf.

Section 6.4 – Mineral Resources

The DEIR correctly states that the Proposed Project and its alternatives will have no impact or less than significant impacts and that no mitigation is required for all of the evaluation criteria on mineral resources. A32_ii-73

Section 7.0 – Biological Resources

The brief discussion of the Marine Life Management Act in Section 7.1.1.2.2 properly recognizes the ecosystem considerations required by the MLMA, but discussion of the specific Fishery Management Plans (FMPs) lacks discussion of the important role of MLPA implementation to the Nearshore Fishery Management Plan (NFMP). The reliance on and beneficial role of marine protected areas by the NFMP is well described on pages 3-109 to 110 of Chapter 3 of the NFMP, which identifies that "The MLMA management goals of conserving entire systems, recognizing non- consumptive values, ensuring sustainable fisheries, conserving habitat, and rebuilding depressed fisheries cannot be effectively achieved solely through limits on total fishing mortality. Consequently, a combination of a network of MPAs and limits on total fishing mortality will achieve the principal management goals."[31] At section 7.1.1.2.6, a summary of these roles for MPAs in the NFMP, found in the above-cited NFMP section, should be described. A32_ii-74

Potential Impact BIO-1 correctly determines that the Proposed Project would have less than significant impacts on the displacement and concentration of fishing effort outside of MPAs. We appreciate the acknowledgement that "the positive effects of reserves on abundance appear to surmount any potential negative effects of displacement or concentration of boats around reserves,"[32] that "[n]o published data on existing MPAs have shown negative environmental impacts due to displacement and compaction of fishing effort,"[33] and that "increased reproduction within the proposed MPAs may lead to long-term fisheries benefits outside their boundaries." [34] Furthermore, we are pleased to see a discussion of the benefits produced by MPAs sited across the globe, from the Northern Channel Islands to Kenya and the Philippines. A32_ii-75

Even if MPAs resulted in displacement and concentration of effort in open fishing areas, allowable catch in fishery management under the MLMA is set on a basis that includes consideration of ecosystem and non-consumptive use factors. MPAs from a fishery management perspective simply codify these ecosystem considerations. Thus, harvest limits are already set in fisheries at a level to allow MPAs without triggering overfishing in areas open to fishing. Furthermore, MPAs are established in small areas at a sub-regional scale, far below the stock or population scale used for fisheries management. Therefore, MPAs will not result in a regional or population level impact or in an increased level of take at the population scale. The FEIR should reflect this fact. A32_ii-76

Given this recognition of net benefits and the finding that adverse impacts on the displacement or concentration of fishing effort outside of MPAs will be "less than significant", we continue to assert that assumptions of impacts associated with displacement, which are pervasive throughout this document, are unfounded and should be deleted. A32_ii-77

We appreciate the acknowledgment in Potential Impact BIO-2 that the Proposed Project and its alternatives are expected to return the natural balance to marine ecosystems and that impacts from the removal of humans as predators in protected areas would be less than significant. A32_ii-78

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[31] *Nearshore Fisheries Management Plan.* California Department of Fish and Game. August 2002: http://www.dfg.ca.gov/marine/nfmp/pdfs/section1_summary.pdf

[32] DEIR 7-68

[33] DEIR 7-69

[34] DEIR 7-69

Potential Impact BIO-3 correctly states that marine biological resources within MPAs are expected to benefit from the Proposed Project. A32_ii-78 (cont.)

Section 7.1.3.3 correctly acknowledges that the Proposed Project and its alternatives will have no impact or less than significant impacts for the evaluation criteria on biological resources.

Section 8.0 – Social Resources

Section 8.1 – Cultural Resources

Section 8.1.3.3 correctly acknowledges that the Proposed Project and its alternatives will have no impact or less than significant impacts for the evaluation criteria on cultural resources. A32_ii-79

Section 8.2 – Public Services and Utilities

Section 8.2.2.1 correctly acknowledges that enforcement problems are not limited to the MLPA and that lack of enforcement resources influences all marine management activities in California. However, this section should specifically acknowledge those federal, state, and local agencies, marine labs and parks that have offered to contribute resources to enforcement and monitoring of MPAs in the South Coast. Furthermore, the FEIR should explicitly acknowledge the enforcement, monitoring, management, education and biological benefits of siting MPAs adjacent to existing onshore protected areas, marine labs, or similar institutions. A32_ii-80

Section 8.1.3.3 correctly states that the Proposed Project and its alternatives will have less than significant impacts for the evaluation criteria on public services and utilities. A32_ii-81

Section 8.3 – Land Use and Recreational Resources

We appreciate Section 8.3.2.2.1's recognition that in 2000, recreation and coastal tourism contributed $12.4 billion to California's gross state product. Section 8.3.3.3 correctly acknowledges that the Proposed Project and its alternatives will have no impacts or less than significant impacts for the evaluation criteria on land use and recreational resources. A32_ii-82

Section 8.4 – Vessel Traffic

Section 8.4.3.3 again references the potential of increased transit times of displaced commercial and recreational fishing vessels, despite the fact that Section Seven found that adverse impacts on the displacement or concentration of fishing effort outside of MPAs will be less than significant (see previous discussions on displacement above in Sections Four through Seven). This assumption should be deleted in the FEIR. A32_ii-83

We appreciate that the DEIR recognizes that substantial vessel congestion in fishing grounds would not occur because "the area available for fishing uses greatly exceeds the area from which fishing effort would be displaced by the proposed Project IPA."[35] This section correctly acknowledges that the Proposed Project and its alternatives will have less than significant impacts and that no mitigation is required for all the evaluation criteria for vessel traffic. A32_ii-84

Section 8.5 – Hazards and Hazardous Materials

We agree with the determination in Section 8.5.3.3 that the Proposed Project and its alternatives will have no impact or less than significant impacts and that no mitigation is required for all the evaluation criteria for hazards and A32_ii-85

[35] DEIR 8-4-20

hazardous materials. However, we believe there are some factual errors in this section of DEIR that should be corrected in the FEIR. A32_ii-85 (cont.)

Criterion HAZ-4 states that the MPA designation process avoided known contaminated sediment areas. However, the Point Vicente and Abalone Cove SMCAs in both the Proposed Project and Alternative 2, have been sited directly over the Palos Verdes Shelf Superfund Site, which includes sediment contaminated with DDT. This information should be included in the FEIR. Regardless, because the designation of MPAs will not result in the disturbance of contaminated sediments, we agree with the conclusion in the DEIR that the Proposed Project and its alternatives will not create a hazard to the public or the environment. A32_ii-86

Criterion HAZ-9 again references the potential of increased transit times of displaced commercial and recreational fishing vessels despite the finding in Section Seven that the Proposed Project would have less than significant impacts on displacement or compaction of fishing effort outside of MPAs. As discussed in previous sections, we reject the assumption that the Proposed Project or its alternatives would result in increased travel distances due to displacement and recommend that this text be removed in the FEIR. A32_ii-87

Furthermore, we disagree with the assumption that the Proposed Project and its alternatives have the potential to displace fishing activities from areas of acceptable water quality to areas of lower water quality. When developing MPA network alternatives, the stakeholders had to balance a range of factors including socioeconomics, traditional uses, ecology, feasibility, and enforcement, among others. As a result, the Proposed Project and its alternatives include MPAs in some areas of high water quality (overlapping with ASBS's) as well as MPAs in areas of lower water quality (such as the Point Vicente and Abalone Cove SMCAs, which overlap with the Palos Verdes Superfund Site). Moreover, in recognition of fishing interests, some high valued fishing grounds were avoided, thus *leaving open* some areas of high water quality *and* lower water quality in the Proposed Project and its alternatives. This means that in some cases, fishermen are *choosing* to fish in areas of poor water quality, irrespective of the MPA network design. Therefore, it is inappropriate to state that the Proposed Project and its alternatives would cause the displacement of fishing activities to areas of lower water quality. A32_ii-88

We agree with the conclusion that the potential impacts of displacement in open water areas will be less than significant, given that the area placed in MPAs would be small compared to the total area available for consumptive uses in the South Coast. A32_ii-89

Criterion HAZ-9 also includes a flawed analysis on the displacement of shoreline consumptive users into areas of fish consumption advisories as a result of the Proposed Project and its alternatives. This analysis calculates the amount of shoreline to be protected in the Proposed Project and whether it includes fish consumptive advisories. It then calculates the percent of shoreline in MPAs *without* fish consumption advisories and assumes that the Proposed Project could potentially displace consumptive uses from that percentage of shoreline into areas *with* fish consumption advisories. A32_ii-90

The conclusion drawn in this section is unsound in several ways: 1) simply using the shoreline extent captured in MPAs as way to predict movement is a gross overgeneralization of how the South Coast shoreline is used by fishers; 2) it fails to take into account that many MPAs created in the Proposed Project and its alternatives were set aside because they are inaccessible or less popular fishing spots; and 3) it fails to recognize the significant efforts made by the RSG and the BRTF to avoid siting MPAs at all public fishing piers and popular shore-fishing beaches. Therefore, it is inaccurate to assume that consumptive uses will be displaced from areas without fish advisories to areas with fish advisories simply because a certain percentage of shoreline is restricted from fishing activities. This section of the FEIR should be revised to explicitly state that the Proposed Project and its alternatives will not have any significant impacts to human health as a result of displacement of shore fishermen. A32_ii-91

Section 8.6 – Environmental Justice

We appreciate that Section 8.6.3.2 notes that higher consumers of fish may be subject to contaminant exposure, regardless of their income level. A32_ii-92

The second bullet on page 8.6-9 of Section 8.6.3.3 incorrectly states that the Upper Newport Bay and Crystal Cove A32_ii-93

SMCAs may displace pier fishing from these areas to nearby piers. There are no existing fishing piers within these two MPAs and this statement should be deleted in the FEIR. This section again references the potential for the Proposed Project and its alternatives to result in displacement of extractive activities and impacts associated with consumption of contaminated fish. As mentioned previously, we disagree with this assumption and recommend that it be removed in the FEIR. A32_ii-93 (cont.) A32_ii-94

We appreciate the acknowledgement in this section that the Proposed Project is not expected to affect or restrict fishing activities for minority or low-income populations in a disproportionate manner when compared to other populations. A32_ii-95

Finally, Section 8.6.3.2 includes a typographical error. The word *SMCAs* in the following sentence should be replaced by the word *MPAs*: "[t]he particular issue at hand is whether the proposed **SMCAs** would tend to displace minority or low-income anglers…." A32_ii-96

Section 9.0 – Cumulative Effects

We appreciate that Section 9.3.6.1 acknowledges the documented positive benefits of the MPAs at the Northern Channel Islands including "increased growth of kelp forests, greater density and biomass of fish and invertebrate species commonly targeted by fishing efforts, larger proportion of large individuals in lobster populations, and a greater proportion of piscivores in the fish community."[36] However, the statement regarding the slight decline of commercial fishing vessels at the islands fails to recognize that changes in commercial fisheries are linked to factors other than MPAs including environmental shifts, market forces, and changes in other fisheries management regulations. [37] This should be clarified in the FEIR. A32_ii-97

Section 9.4 again references the potential of increased travel distances of displaced commercial and recreational fishing vessels as it relates to cumulative impacts on air quality, greenhouse gases, water quality, land use and recreation, vessel traffic and hazards and hazardous materials. As mentioned in our comments above in Sections Four through Eight, we are disappointed at the repeated references to potential displacement throughout the DEIR. Given the finding in Section Seven that adverse impacts on the displacement or concentration of fishing effort outside of MPAs under the Proposed Project and its alternatives will be "less than significant," the fact that no other worldwide studies have found reduced habitat quality or a corresponding decrease in abundance or diversity of marine species from MPAs, and that no published data on existing MPAs have shown negative environmental impacts, it is illogical for the DEIR to continuously include assumptions regarding adverse impacts resulting from displacement of fishing effort. ***We again recommend that any reference to impacts associated with displacement be deleted from the FEIR as speculative and unfounded.*** A32_ii-98

Section 9.4.5 notes that the Proposed Project would have the potential to result in localized adverse biological impacts in areas where existing MPAs are removed. We appreciate the acknowledgement that any localized adverse impacts would be offset by the long-term benefits provided by the MPA network. A32_ii-99

As noted above in our comments on Criterion HAZ-4, Section 9.4.10, incorrectly states that sites containing contaminated sediments were deliberately excluded from MPA designation. The Point Vicente and Abalone Cove SCMAs in both the Proposed Project and Alternative 2 have been sited directly over the DDT-contaminated A32_ii-100

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[36] DEIR 9-12

[37] California Department of Fish and Game, Partnership for Interdisciplinary Studies of Coastal, Oceans, Channel Islands National Marine Sanctuary, and Channel Islands National Park. 2008. Channel Islands Marine Protected Areas: First 5 Years of Monitoring: 2003–2008. Airamé, S. and J. Ugoretz (Eds.). Available at http://www.dfg.ca.gov/marine/channel_islands/fiveyears.asp

sediments at the Palos Verdes Shelf Superfund Site. This section should be clarified to include this information in the FEIR. Regardless, because the designation of MPAs will not result in the disturbance of contaminated sediments, we agree that impacts from the Proposed Project and its alternatives will be less than significant and will not create a hazard to the public or the environment. A32_ii-100 (cont.)

Section 9.5 correctly states that the Proposed Project would not contribute to any cumulatively significant impacts and no mitigation is required. A32_ii-101

Section 10.0 – Alternatives

We appreciate that Section 10.1.2.1 acknowledges that the "No Project" Alternative would further ongoing declines in marine ecosystems and continue to negatively impact fisheries in the South Coast. The DEIR correctly recognizes that, in the long-term, the "No Project" Alternative would "result in negative effects on consumptive uses of the SCSR's marine environment."[38] A32_ii-102

Moreover, Section 10.1.2.6 recognizes that the "No Project" Alternative would fail to improve the shortcomings of the existing MPA system and would allow declines in marine ecosystems to continue unabated, resulting in further declines of species that have federal and state special status designations, as well as those that are economically important and commercially harvested. A32_ii-103

Overall, we are disappointed that the content of this section fails to provide a comparison of how each proposal meets the SAT guidelines outlined in Section 2.4.3 and the predicted ecological benefits or consequences of each alternative based on the level of protection, size, and spacing of MPAs. The current evaluation in the DEIR compares the alternatives *solely* on the amount of area protected within MPAs and does not take into account that MPA network proposals with similar numbers and sizes of MPAs may in fact differ markedly in the type, degree, and distribution of protection throughout the study region. The comparison of alternatives in the DEIR is over-generalized and does not address the importance of specific MPA siting (including habitat productivity, habitat quantity, and spacing) to the long-term ecological benefits produced by MPAs. A32_ii-104

The FEIR should include a comparison of how each alternative meets the SAT guidelines and the expected ecological results from each MPA network. This information can be found in the SAT evaluations of the Round 3 proposals.[39] As recommended in our comments on the Executive Summary section, it should identify Alternative 3 as the environmentally superior alternative, since it is the only proposal that meets the MLPA guidelines in virtually every category of the SAT evaluation. (see Section 10.5 – Environmentally Superior Alternative for further comments). A32_ii-105

The FEIR should compare proposals relative to how much high-quality habitat they incorporate, (characterized as well-documented to have ecological hotspots, high biodiversity, high productivity, and/or high habitat complexity) and therefore likely to produce long-term benefits through protection, such as at Naples Reef, the east side of Point Dume, Rocky Point, the south La Jolla reef complex, and various spots at Catalina Island. The FEIR should cite the SAT evaluations, specifically the deletion analysis section of the bioeconomic models, to identify the disproportionately higher potential productivity benefits associated with protecting these areas in MPAs.[40] It should A32_ii-106

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[38] DEIR 10.1-15

[39] MPA Proposals and Evaluations (South Coast Study Region). Department of Fish and Game Website: http://www.dfg.ca.gov/mlpa/scrsg-r3-evaluations.asp

[40] *Individual MPA Deletion Analysis Results.* Department of Fish and Game Website: http://www.dfg.ca.gov/mlpa/pdfs/agenda_102009h6.pdf

also discuss the environmental implications of proposals that protect these areas in less protective State Marine Conservation Areas or State Marine Parks. A32_ii-106 (cont.)

The FEIR should also identify and compare among alternatives the MPAs sited adjacent to land parks and protected areas, and identify the potential resulting benefits. Benefits may include more eyes on the water, enhanced enforcement and management resources, education and study potential, and continuity of protection from land to sea with likely water quality benefits in MPAs. The review should also recognize that marine reserves provide the easiest approach to enforcement and management, as their regulations are clear, recognizable, and easy to understand. Some of this information can be obtained from the Goal 3 analysis conducted by the MLPA Initiative staff.[41] A32_ii-107

More detailed comments on the DEIR analysis, specific to each alternative, are as follows:

Alternative 1

Section 10.2.2 makes repeated assumptions that because Alternative 1 would protect an additional 10 square miles over the Proposed Project, that an associated increase in distance traveled by displaced vessels would occur, creating greater impacts from Alternative 1 to air quality, greenhouse gases, and water quality than from the Proposed Project. As mentioned in previous sections, making assumptions about the distance that fishermen travel and basing that assumption on the amount of area protected within MPA networks is completely inappropriate and should be deleted from the FEIR. There is no evidence that protection of an additional 10 square miles of coastal water would result in increased displacement, or any displacement for that matter. A32_ii-108

Although Section Seven clearly states that "[n]o published data on existing MPAs have shown negative environmental impacts due to displacement and compaction of fishing effort,"[42] Section 10.2.2.6 states that in the short-term, Alternative 1 could result in localized impacts to biological resources at the edges of MPAs. This statement contradicts the previous finding in Section Seven and should be removed in the FEIR. A32_ii-109

Additionally, although we agree with the conclusion in Section 10.2.2.6 that long-term benefits to biological resources resulting from Alternative 1 would be slightly greater than those of the Proposed Project, we do not agree that it is because Alternative 1 protects slightly more habitat. Alternative 1 provides more protection for areas of "high quality" habitat (characterized above) and meets more of the SAT guidelines for replication, representation and spacing than the Proposed Project and it is for these reasons that it would generate more benefits to biological resources. This conclusion should be clarified in the FEIR. A32_ii-110

Alternative 2

As in Section 10.2.2, Section 10.3.3 makes assumptions about displacement. This section assumes that because Alternative 2 would protect 9 square miles less than the Proposed Project, that there would be less distance traveled by displaced vessels than the Proposed Project, created fewer impacts from Alternative 2 to air quality, greenhouse gases, and water quality than from the Proposed Project. Again, making assumptions about the distance that fishermen travel and basing that assumption on the amount of area protected within MPA networks is completely inappropriate and should be deleted from the FEIR. A32_ii-111

We recommend that Section 10.3.26 on biological resources be revised in the FEIR to include a more detailed analysis of why this network would result in fewer long-term benefits to marine ecosystems than the Proposed A32_ii-112

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[41] *Evaluation of Existing MPAs and South Coast Regional Stakeholder Group MPA Proposals Relative to MLPA Goal 3.* September 30, 2009. http://www.dfg.ca.gov/mlpa/pdfs/agenda_102009n2.pdf

[42] DEIR 7-69

Project. This should include a discussion on how Alternative 2 fails to meet certain SAT guidelines and how this will affect the potential for long-term ecological benefits in the South Coast. A32_ii-112 (cont.)

According to the SAT evaluations, Alternative 2 does not include any replicates of, the important nursery habitat of eelgrass and even more importantly it has significant spacing gaps for the most biologically productive habitats - shallow rock and kelp - in addition to gaps for soft 30-100m habitats. As noted in the SAT guidelines in Section 2.4.3, every key marine habitat should be represented in the MPA network in order "to protect the diversity of species that live in different habitats and those that move among different habitats over their lifetime."[43] Additionally, to facilitate dispersal of marine life and connectivity between MPAs, "MPAs should be placed within 31 to 62 miles (50 to 100 km) of each other."[44] Because Alternative 2 fails to meet these guidelines, it is unlikely to provide ecological benefits that would support the goals of the MLPA. The FEIR should explicitly acknowledge the shortcomings of Alternative 2. A32_ii-113

Alternative 3

As mentioned above, we recommend that the FEIR identify Alternative 3 as the "environmentally preferred alternative" because it provides the highest level of protection for the South Coast, thereby resulting in greater biological benefits over the Proposed Project and other alternatives. A32_ii-114

Section 10.4.2 again makes unsubstantiated assumptions about displacement. It assumes that because Alternative 3 would protect less than two additional miles over the Proposed Project, that an associated increase in distance traveled by displaced vessels would occur, creating greater impacts from Alternative 3 to air quality, greenhouse gases, and water quality than from the Proposed Project. We continue to assert that making assumptions about the distance that fishermen travel and basing that assumption on the amount of area protected within MPA networks is completely inappropriate and should be deleted from the FEIR. A32_ii-115

We disagree with the conclusion in Section 10.4.2.6 that the long-term benefits to biological resources from Alternative 3 would be substantially similar to those provided by the Proposed Project, based on the fact that both alternatives protect approximately the same total area. This finding fails to recognize that MPA network proposals with similar numbers and sizes of MPAs may in fact differ markedly in the type, degree, and distribution of protection throughout the study region. It also fails to take into account the quality of habitats captured within the alternatives and how this will impact ecological improvements. Alternative 3 will provide the greatest benefits to marine life populations and habitats as it provides the highest level of protection for high quality, productive areas and is the only alternative that meets all of the SAT guidelines. The FEIR should clarify that Alternative 3 would provide *greater* long-term benefits to biological resources than the Proposed Project. A32_ii-116

We reject the assumption in Section 10.4.2.9 that because the individual MPAs in Alternative 3 are larger and span greater alongshore distances than those in the Proposed Project, Alternative 3 would have a great potential to displace shore fishing. Given that the conclusion to this section states "the potential effects of implementing Alternative 3 would be generally similar to those of the proposed Project IPA,"[45] there is no basis for assuming that Alternative 3 would result in greater displacement of shore fishing. Furthermore, given that Section Seven concluded that impacts as a result of displacement would be less than significant for all alternatives, this discussion of displacement is irrelevant and should be removed. A32_ii-117

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[43] DEIR 2-11

[44] DEIR 2-11

[45] DEIR 10.4-25

We believe there are two typographical errors in Section 10.4.2.11. There are two references to "Alternative 1" that should be changed to "Alternative 3." A32_ii-118

Section 10.5 – Environmentally Superior Alternative

As explained in our earlier comments on the Executive Summary and Section 10.0, Alternative 3 should be identified as the "environmentally superior alternative." Alternative 3 meets the size and spacing guidelines efficiently, covering less acreage than the adopted networks in other regions. At 17.6% of the study region, it covers little more than the least protective Alternative 2, at 16.1% of the region. Alternative 3 has more representation of habitats and more replication in high protection areas and state marine reserves (SMRs) than any of the other proposals. Based on the bio-economic modeling conducted by the South Coast SAT, Alternative 3 has the greatest conservation benefit of all the alternatives under all scenarios for fishery management outside protected areas. Given the steady declines in landings for targeted species, such as barred sand bass and kelp bass (which suggest that current management is falling short of sustainable levels), Alternative 3 will also perform best *economically* in addition to ecologically. A32_ii-119 A32_ii-120

Additionally, the SMRs in Alternative 3 are more likely than other proposals to enhance recreation and education activities in minimally disturbed areas, such as diving, tide-pooling, snorkeling, surfing and wildlife watching. One measure of that benefit is Alternative 3's greater number of SMRs located next to access points whose users are 100% non-consumptive, relative to the other alternatives. A32_ii-121

Finally, Alternative 3 provides the highest level of protection to iconic and biologically rich places such as Naples Reef, the east side of Point Dume, Rocky Point, the south La Jolla reef complex, and various spots at Catalina Island, which will help protect marine natural heritage as well as biodiversity. Additionally, because Alternative 3 will yield the greatest biological recovery inside MPA boundaries, it provides the best opportunity for scientists to study the ecological impacts of fishing and to record spillover of marine life outside MPAs. ***For all of these reasons, the FEIR should identify Alternative 3 as the "environmentally superior alternative."*** A32_ii-122

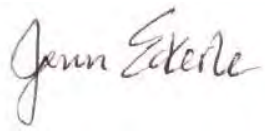
Section 11.0 – Other Considerations Required by CEQA

The DEIR correctly acknowledges that the Proposed Project and its alternatives will not result in any significant unavoidable impacts to the environment. A32_ii-123

Conclusion

We appreciate this opportunity to comment on the DEIR. We support the efforts of DFG in producing this DEIR and look forward to a FEIR with improved accuracy and clarification. We look forward to continued collaboration on the state's MLPA design and implementation. A32_ii-124

Sincerely,



Jenn Eckerle, Ocean Policy Consultant
Natural Resources Defense Council

Greg Helms, Manager, Pacific Conservation
Ocean Conservancy

Michael Sheehy, Marine Programs Director
Santa Barbara Channelkeeper

Phyllis Griffman, Associate Director
California Sea Grant, University of Southern California

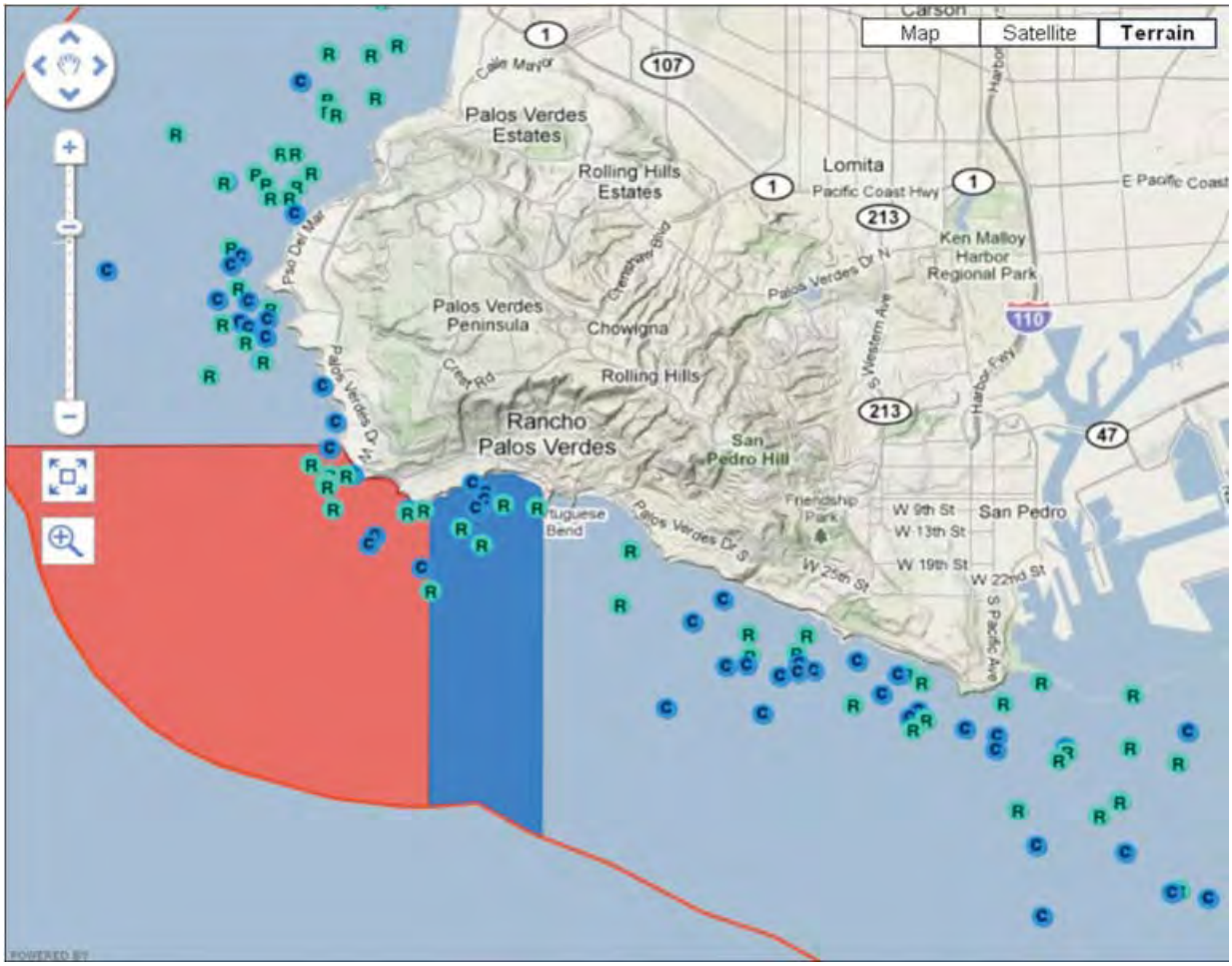
Kate Hanley, Director of Marine Conservation
San Diego Coastkeeper

Ray Hiemstra, Associate Director
Orange County Coastkeeper

Sarah Sikich, Coastal Resources Director
Heal the Bay

Marce Gutiérrez, Program Manger, Marine Conservation
WiLDCOAST

Attachment 1:



Aerial boat survey data collected from 2008 to present by Santa Monica BayKeeper, Santa Monica Bay Restoration Commission, and Lighthawk. The blue circles represent commercial fishing boats and the green circles represent recreational fishing boats. The Point Vicente SMR – Abalone Cove SMCA cluster is included in the Proposed Project.

California MLPA Master Plan Science Advisory Team Draft Recommendations for Evaluating Water and Sediment Quality Along the Palos Verdes Shelf – Supplemental Guidance to the Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region

June 18, 2009

The purpose of this document is to address requests to provide more information and supplemental guidance on the environmental conditions at the Palos Verdes shelf. The Palos Verdes (PV) shelf, located offshore of the PV Peninsula, is up to 4 kilometers (km) wide and 25 km long. There are two specific sites on the PV shelf that have environmental concerns that may affect marine protected area (MPA) performance. These are: the shelf in the vicinity of the Portuguese Bend Landslide and the PV Shelf Superfund Site near White Point (Figure 1 and Figure 2). This document addresses only the impacts that these two sites have on the ecosystem and whether or not the placement of MPAs near or adjacent to these areas would contribute to the goals of the Marine Life Protection Act (MLPA). Health impacts to humans through the consumption of contaminated fish are not addressed in this document since the MLPA focuses on ecosystem structure and function.

Background

During the April 29, 2009 MLPA South Coast Regional Stakeholder Group (SCRSG) meeting, several requests by both SCRSG members and the public were made to the SAT to further evaluate the shelf environment adjacent to Portuguese Bend and containing the Superfund site near White Point. The MLPA Master Plan Science Advisory Team (SAT) Water Quality Work Group has stated in previous guidance that finer-scale water quality evaluations would be performed on these or any other areas, if requested. The two areas requested for further evaluation, the PV Shelf Superfund Site and the Portuguese Bend Landslide, are located on the southwest portion of the PV Peninsula. Conflicting public input regarding the effectiveness of these areas as suitable sites for MPA placement was provided during public comment forming the impetus for this supplemental evaluation.

Sites along the PV Peninsula are currently being considered as candidates for MPA placement in all draft MPA proposals in an effort to meet SAT guidelines such as size, spacing and habitat replication. Previous water quality guidance from the SAT has indicated potential concerns with placing MPAs in areas with major wastewater and stormwater discharges, thus favoring MPA locations northwest of the White Point municipal wastewater outfalls. User groups also appear to concentrate their efforts on the north end of the peninsula. This evaluation will review and examine the Portuguese Bend Landslide and the PV Shelf Superfund Site just north of the White Point municipal wastewater outfalls to more fully inform understanding of the current environmental status of these areas.

Palos Verdes Shelf Superfund Site

Beginning in 1947, the Montrose Chemical Corporation of California operated a chemical production plant that produced large quantities of the synthetic pesticide dichlorodipehnyltrichlorethane (DDT). This chemical and its metabolites (collectively referred to as DDT hereafter), along with other industrial waste products such as polychlorinated

biphenyls[2] (PCBs), heavy metals and other contaminants from different industrial discharges, were released into the marine environment through the Los Angeles County Sanitation District (LACSD) sewer lines. The LACSD wastewater facility only used primary treatment, which did not remove the contaminants from the water prior to its discharge through the White Point outfalls located on the PV Shelf. In some instances, sewer lines would clog, and pollutants would get discharged through nearby stormwater drainage sites[3]. By 1971 the LACSD revoked Montrose's discharge permit and the DDT concentration in the LACSD's wastewater discharge dropped dramatically[3]. Although the U.S. Environmental Protection Agency (EPA) banned DDT in 1972, residual DDT waste contained in the wastewater system continued to discharge for many years afterward. By 2002, there were no detectable levels of DDTs being discharged through the County's wastewater outfall[3].

It has been estimated that nearly 726,000 metric tons of DDT was produced by the Montrose Chemical Company during its 35 years of operation, with a small percentage of this being discharged into the ocean[4]. Currently there is an estimated 110 metric tons of DDT contained within the PV Shelf sediment, with the bulk of that contamination occurring near the White Point outfall[4] (Figure 1). The DDT contamination is mostly contained within a layer of sediment just below the surface. The contaminated sediment can be found between 5- 60 centimeters (cm) from the sediment's surface with the highest concentration located between 30- 40 cm, extending from an area just off White Point to an area off San Vicente Point[5]. Years of outfall effluent, natural sedimentation, and erosion material from the nearby Portuguese Landslide Complex aided in burying the contamination layer, however the upgrade to full secondary treatment in 2002 by the wastewater facility eliminated sedimentation created by the outfall effluent. Sherwood et al. (2002) modeled the fate of the DDT in the sediment and determined that most of the buried layer along the 60 meter contour (the location of the discharge) would remain buried and that the concentrations at the surface would slowly decrease over time[6]. However, erosion of the primary deposit layer near the southeast outfall is occurring and could re-suspend buried DDT and reintroduce it into the water column[6].

In 1992, a study[7] to measure the toxicity of the sediment to infauna and epibenthic organisms living on PV Shelf was performed. Sediment toxicity is an important indicator of the quality of sediment. These tests indicate the cumulative effects the chemical compound mixtures have

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[2] PCBs also contribute to the contaminated superfund site (estimated 10 tons in the sediment) and the contamination on the PV shelf. This document will focus on DDT and its affects as a surrogate of the two major contaminants in the area.

[3] Los Angeles County Sanitation Districts (LACSD). 2007. Joint Water Pollution Control Plant Biennial Reciving Monitoring Report 2006-2007. Submitted to the Los Angeles Regional Water Quality Control Board, Whittier, California.

[4] CH2M Hill. 2007. Final Palos Verdes shelf superfund site remedial investigation report. Prepared for U.S. Environmental Protection Agency. Region 9. San Francisco, California 94105.

[5] Lee, H.J., C.R. Sherwood, D.E. Drake, B.D. Edwards, F. Wong, M. Hammer. 2002. Spatial and temporal distribution of contaminated effluent-affected sediment on the Palos Verdes margin, southern California. *Continental Shelf Research*. Vol. 22. Pgs 859-890.

[6] Sherwood, C.R., D.E. Drake, P.L. Wiberg, R.A. Wheatcroft. 2002. Prediction of the fate of *p,p*'-DDE in sediment on the Palos Verdes shelf, California, USA. *Continental Shelf Research*. Vol 22. pgs 1025-1058.

[7] Bay, S., D. Greenstein, J. Brown, and A. Jirik. 1994. Investigation of Toxicity in Palos Verdes Sediments. Final report to Santa Monica Bay Restoration Project. Southern California Coastal Water Research Project, Westminster. 103 pp.

on the benthic biota. Toxicity tests were performed off site on amphipods using a ten day survival test. Sea urchins are also exposed to the contaminated sediments and tested for survivability using a 35 day test. Sea urchin fertilization and growth rates were also measured. Key results from this study indicate that chronic toxicity to sea urchin growth and fertilization (through growth reductions) was detected at sites nearest the larger Y-shape outfall along the 60 m contour line[7]. However, acute toxicity (amphipod mortality) was not detected in any of the stations sampled[7]. In a similar study that measured sediment toxicity in the Southern California Bight, the Southern California Coastal Water Research Project Bight '03 study surveyed 208 sites with one sample occurring near the White Point outfall along the 200 meter contour line, outside of but nearest to the most contaminated DDT zone. Samples collected and tested showed no signs of toxicity to the amphipods[8].

The Joint Water Pollution Control Plant has been monitoring the PV Shelf area since the 1970s, with the purpose of examining the biotic and abiotic conditions surrounding the outfalls along the PV shelf. Benthic infauna condition may be analyzed using the benthic response index (BRI), which is a measure of the infaunal community response to any sediment contamination[9]. The BRI near the outfalls, centered around the most heavily contaminated sediment, has drastically improved over the years[3]. For example, most sites sampled on the PV shelf in 1972 had a high magnitude of stress, with community function loss exhibited throughout the shelf; the highest loss (the most degraded or stressed of the four BRI index categories) occurred near the outfalls. Recovery of PV Shelf, for the most part, is evident by the 2006-2007 monitoring report. The recent surveys found that no sites studied had shown any benthic community loss or defaunation to be occurring along the PV Shelf[3]. However, some sites sampled along the shelf exhibited marginal deviation from reference conditions[10] and a strip along the mid slope just outside the outfall area still had a loss of biodiversity. These two categories are the least degraded of the four BRI index categories. The recovery of the benthos throughout the PV shelf is likely attributed to a few factors which include burial of the legacy contaminants (DDTs, PCBs, etc.) over time and improvements to the quality of effluent after switching to full secondary treatment at the wastewater facility in 2002. Legacy contaminants still remain a problem for the immediate area near the outfalls as the infauna community continues to be slightly impacted[3], although not as severely impacted as historical data indicates.

Benthic trawl surveys are performed on a quarterly basis along the PV Shelf by the Los Angeles County Sanitation District which sample epibenthic invertebrate and demersal fish communities[3]. These surveys extend back to the 1970s where poor sediment and water quality led to an unhealthy epibenthic and demersal fish population. During this time it was common to find stressed populations and diseased fish on the PV Shelf, with a higher rate of disease fishes found near the outfall. Results from fish sampled in the 2006-2007 trawl survey indicate

[8] Bay, S.M., T. Mikel, K. Schiff, S. Mathison, B. Hester, D. Young and D. Greenstein. 2005. Southern California Bight 2003 Regional Monitoring Program: I. Sediment toxicity. Southern California Coastal Water Research Project. Westminster, CA.
[9] Smith, R.W., M. Bergen, S.B. Weisberg, D.B. Cadien, A. Dalkey, D.E. Montagne, J.K. Stull and R.G. Velarde. 2001. Benthic response index for assessing infaunal communities on the southern California mainland shelf. *Ecological Applications* 11:1073-1087.
[10] Reference sites are those that are used as controls in the experiment which are located in the same area and do not have any contamination or negative impacts associated with them.

that the occurrence of disease had declined, with some forms of physical deterioration disappearing altogether. The county also used a biointegrity metric developed by Allen et al 2001, known as the fish response index (FRI), which gages the pollution tolerance of all species at a particular site[11]. The FRI is a similar approach used to the BRI used to access infaunal conditions previously mentioned. Results from the FRI indicated that fish communities inhabiting the PV Shelf area are considered to be in reference condition and those inhabiting the area nearest the outfall to have been in reference condition since the early 1980s[3].

The EPA performed an ecological risk assessment (ERA) in 2003 with a follow-up revision to the food web exposure model in 2006. The ERA describes the risk associated with the exposure of DDT, and other pollutants, to marine biota which include benthic invertebrates, benthic and pelagic finfish, brown pelicans, double- crested cormorants, bald eagles, peregrine falcons, and pinnipeds and their pups[4]. Exposure from contaminated sediment to benthic invertebrates and fish primarily occurs through ingestion or through dermal permeation or gill exposure. Bioaccumulation, or the increase in the concentration of these chemicals in the fatty tissue of these animals, delivers the contaminated load up through the food chain to higher trophic predators such as birds, marine mammals and large fishes. The ERA results showed the highest biological risk[12] to fish[13] and invertebrates occurring near the immediate vicinity of the outfalls. Intermediate risk occur south to southwest of the outfalls as well as northwest of Point Vicente, while the lowest risk area is around the northern areas of the PV shelf near Redondo Beach. Birds and sea lions continue to be exposed to DDT, with the highest risk for birds that nest near White Point. Risks to sea lions do exist, mostly in the form of impacting the pups by weakening their immune system and potentially leaving them susceptible to disease and other stressful events. However, there is no evidence yet that the sea lion population itself has been negatively impacted by contaminants from the PV Shelf[4].

The Clean Water Act requires the EPA to set ambient water quality criteria (AWQC) to serve as national water quality standards to protect aquatic life. Although the waters overlaying PV Shelf have met the AWQC for PCBs, they do not meet the AWQC for DDTs. The AWQC for protection of aquatic life (including fish) is 1 nanogram/liter DDT. The no observable effects concentration (NOEC) for fish is 1,900 microgram/kilogram whole body tissue for DDTs. White croaker, sandabs, and kelp bass on the PV Shelf generally exceed the DDT NOEC, according to the EPAs standards[14]. For example, for white croaker, the sediment concentration correlated with the DDT NOEC level is 14 milligram/kilogram of sediment. The only sediment that is below this threshold, and is unlikely impacting white croaker is inshore of the 30 m isobath[14,15]. Based on the EPA standards for protecting wildlife, the EPA has determined that

[11] Allen, MJ, RW Smith, V. Raco-Rands. 2001Development of biointegrity indices for marine demersal fish and megabenthic invertebrate assemblages of southern California. Wesminster, CA: Southern California Coastal Water Research Project.
[12] A biological risk is defined as the contaminant level in a species that exceed toxicity benchmarks set by the Environmental Protection Agency.
[13] The fish used in the ERA study were white croaker, sand dabs and kelp bass.
[14] U.S.E.P.A. 2009. Palos Verdes Shelf Superfund Site operable unit 5 of the Montrose Chemical Corp. Superfund Site. Final Feasibility Study.

contaminants found in the water, sediment and in the fish do not meet the protective requirements of aquatic life[14,15].

The EPA has been monitoring and studying the PV Shelf area, with ongoing activities since the designation of the superfund site in 1997. Along with the designation of superfund site, the lawsuit that was won on behalf of the California Attorney General and the U.S. Department of Justice ensured that funds would be available to pay for the clean up cost. Since the EPA will continually be working in this area through the next several years, if not longer, the SAT determines that it is important to include and consider the current process by the EPA of selecting an interim remedial action for the PV Shelf.

In June of this year, EPA released a proposed plan describing three remedial alternatives plus one no action alternative for the PV Shelf[14]. Because of uncertainties associated with the site, EPA has decided that this will be an interim action, to be followed by a final decision by the EPA after completing additional studies and after public review of the final feasibility report. The alternatives expected to be considered include two alternatives that add a cover of clean, silty sand over part of the deposit between 45 or 50 m depth to 70 m depth[14]. The preferred alternative (Alternative 3 in the Final Feasibility Study[14]) would cap the area in grid 8C (Figure 3). The other alternative (Alternative 4) would produce a larger cap covering areas in grid 6C, 7C, and 8C (Figure 3). EPA will begin pre-design work on its selected remedy this fall which includes additional investigations and pilot studies that will contribute to the design of a Superfund remedy for PV Shelf Superfund site. If either of the two capping alternatives are chosen, it could lead to re-suspension events of the contaminated layer and cause some temporary increase in bioavailability of the toxins and a temporary increase in fish exposure to legacy contaminants[15] (i.e. DDT, PCB). Capping activities are expected to take one to two years to complete and if approved would begin in 2011.

Portuguese Bend Landslide Complex

Historic sedimentation on the PV shelf has been influenced by landslide activity occurring on the PV Peninsula; also know as the Portuguese Bend Landslide. The Portuguese Bend Landslide is located in between Klondike Canyon to the east, and Portuguese Point to the west (Figure 1). Although this landslide is an ancient feature, it was anthropogenically reactivated in 1956 when road construction destabilized the landslide mass by increasing the down shear stress[16]. Another factor contributing to the reactivation and instability of the area was the increase in groundwater created by residential landscaping practices[16]. Over the years, impacts by the landslide include the destruction of the Portuguese Bend Clubhouse and pier, major erosion of the shoreline leading to sedimentation and the burial of once pristine intertidal and nearshore rocky reefs[17]. Subsequent mitigation techniques in the 1980s to control the landslide movement were undertaken and have achieved very short term modest success.

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[15] Carmen White, U.S. Environmetal Protection Agency, San Francisco. Personal Communication to Brian Owens, Department of Fish and Game.
[16] Kayen, R.E., H.J Lee, J.R.Hein. 2002. Influence of the Portugues Bend Landslide on the character of the effluent-affected sediment deposit, Palos Verdes margin, southern California. *Continental Shelf Research*. 22 pgs 911-922.
[17] U.S Corps of Engineers, Los Angeles District. 2000. Draft feasibility report: Ranchos Palos Verdes, Los Angeles County. Volume 1, Environmental Impact Statement.

These efforts include installation of dewatering wells, adding protective wire mesh gabions to prevent wave erosion, adding metal pipe drainage systems and remedial grading[18]. Due to the complexity of the factors involved in contributing to the movement of the landslide, it may be unlikely that mitigation efforts will permanently stabilize the landslide[16].

The Portuguese Bend Landslide occupies a1.06 km^2 portion of the PV Peninsula. It is estimated that from 1956 to 1999 the landslide has contributed between 5.7 to 9.4 million metric tons of sediment to the inner shelf.[16] A sediment plume has been visible in the waters off Portuguese Bend since the reactivation of the landslide in 1956 (Figure 4). The direction of the sediment plume is usually towards the southeast and during heavy erosion events may extend out to 1.5 km[16]. The sedimentation from the landslide reaches as far south as White Point, where it is known to mix with the wastewater effluent, and thus enlarging the sediment deposit on the highly contaminated solids that were discharged from the outfalls[16]. This sedimentation continues to bury rocky reefs in this region (Figure 5). In addition, the longshore current does shift causing the sediment plume sometimes to extend upcoast to Long Point. The Portuguese Bend landslide is a major source of sediments to the rocky subtidal and intertidal environment[19].

The biggest concern from the landslide is the increase in turbidity and sedimentation to the nearshore environment. Communities living on rocky habitat depend on hard substrate and the availability of light, among other needs. Sediment plumes can restrict light penetration and excessive turbidity can reduce growth and reproductive rates for marine plants[20]. Sedimentation can also scour and cover hard surfaces. Over time, as is evident in the Portuguese Bend area, this action can transform the community structure from a hard bottom kelp forest community to a soft bottom community. Vibrant giant kelp forests are indictors of healthy nearshore ecosystems that are characterized by greater biodiversity and overall greater productivity[20]. However in the vicinity of the Portuguese Bend Landslide the sedimentation denudes the reef fauna even when kelp is present. There are vast expanses of bare rock that are not observed on other parts of the peninsula indicating that sedimentation continues to be a significant problem.

Even though turbidity has increased in the waters between Portuguese Point and White Points, LACSD found the eutrophic zone in this area still reaches up to 18 meters, which indicates that enough light is reaching depths that can sustain kelp growth. In fact, the California Department of Fish and Game aerial surveys show kelp forest existing upshore and downshore from Portuguese Bend, although turbidity may be limiting the potential for maximum kelp growth and recruitment in this area. However, the area just off of Portuguese Bend contains little to no kelp, which historically had supported a rich and diverse kelp forest community. Another study showed that the Portuguese Bend area had the lowest habitat value (the value based on fish

[18] City of Rancho Palos Verdes. More information at http://www.palosverdes.com/rpv
[19] Los Angeles County Sanitation District (LACSD). 2002. Annual Report, 2001 Palos Verdes Ocean Monitoring. July.
[20] Foster, M. S., and D. R. Scheil. 1985. The Ecology of Giant Kelp forest in California: A community Profile. Pages 1-152. U.S. Fish and Wildlife Services Biological Report.

assemblages at each habitat) when compared to the reference site at Palos Verdes Point[21]. In this same study, the coastal marine community from Abalone Cove to Point Fermin had deflated habitat values when compared to the reference site[21]. In addition, recent resurveys of rocky intertidal transects performed originally during the 1956-59 revealed large scale changes in macrophyte composition on the downcoast side of Portuguese Point[22]. This shoreline is now populated mostly by disturbance-resistant crustose and small filamentous and turf-forming seaweeds; larger, habitat-forming macrophytes are no longer abundant at this site. In all, the largest impact to the area from the landslide occurs off Portuguese Bend, with dramatic impacts from Bunker Point to White Point and lesser turbiditiy/sedimentation impacts in the Abalone Cove region (Portuguese Point to Long Point). What is left of this rocky habitat is of the poorest quality on the Palos Verdes Shelf.

Guidance for MPA Placement along the Palos Verdes Shelf

Given the history of anthropogenic impacts to the PV Shelf stemming from the alteration of the land and the improper disposal of toxic chemicals and heavy metals, the SAT has performed a careful review of the literature published to date. As indicated above, there are known locations of increased turbidity downstream of Portuguese Bend and increased toxins along the PV Shelf near the White Point outfalls that negatively impact marine life by decreasing growth reproduction and community composition.

An additional consideration is the ongoing research and proposed clean up activities by the EPA. The EPA has identified areas (Figure 3: Grids 6C, 7C and 8C) that are part of their remedial action plan to remediate the toxins near the White Point outfalls. These areas include sites where extensive field studies have been, and will continue to be, conducted and are potential mitigation locations for capping in the near future. As outlined above, capping will result in disturbance to the benthic environment and the potential re-suspension and availability of legacy contaminants would deleteriously affect organisms and potentially community composition in the area. If capping at the first proposed site is successful (Grid 8C in Figure 3), then additional sites in the area would be considered for treatment which would occur approximately 5 to 7 years after initial treatment. This prolonged disturbance could reduce the effectiveness of MPAs that are placed near the mitigation site, and therefore MPA placement in the area should be avoided.

Previous water quality guidance included ½ mile buffer zones around major wastewater outfalls[22]. Based on the detailed information gathered above, the SAT is now providing additional guidance, as requested, that expands the areas of concern along the PV Shelf, including the area near the White Point wastewater outfall. Therefore, the guidance is: (1) Areas northwest of Portuguese Bend have better water quality conditions due to the distance from the superfund site and the lack of a consistent plume transporting sediment to that area

[21] Stephens, J.S., Jr., D. Pondella II., P. Morris. 1996. Habitat value determination of the coastal zone off the city of Rancho Palos Verdes based on habitat-specific assemblage data. Prepared for the U.S. Army Corps of Engineers.

[22] Gerrard AL (2005) Changes in the rocky intertidal floras along the Palos Verdes peninsula (Los Angeles County) since E.Y. Dawson's surveys in the late 1950s. M.S. Thesis, California State University, Fullerton, 86 pp

from the Portuguese Bend Landslide, (2) areas nearest the outfalls are less favorable for MPA placement due to legacy contaminants and the current effluent flow[23], (3) areas of ongoing and planned EPA fieldwork and mitigation activities at White Point are more vulnerable to perturbation and therefore less favorable in the short term for proposed MPA placement, and (4) the area from Portuguese Bend Cove to White Point would be subjected to turbidity and sedimentation at levels that affect organisms and biological communities as addressed above, and would also be less favorable for MPA placement..

In conclusion, the mitigation sites identified by the EPA and the areas with the highest known levels of toxicity and turbidity/sedimentation constitute the least suitable locations for proposed MPAs and are indicated spatially by the shaded areas shown in Figure 6. Caution should be taken and careful consideration given to the potential ecological benefits when considering these areas for MPA placement as they are not recommended by the SAT.

[23] See previous water quality guidance document to RSG titled "California MLPA Master Plan Science Advisory Team Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region" revised May 12, 2009.

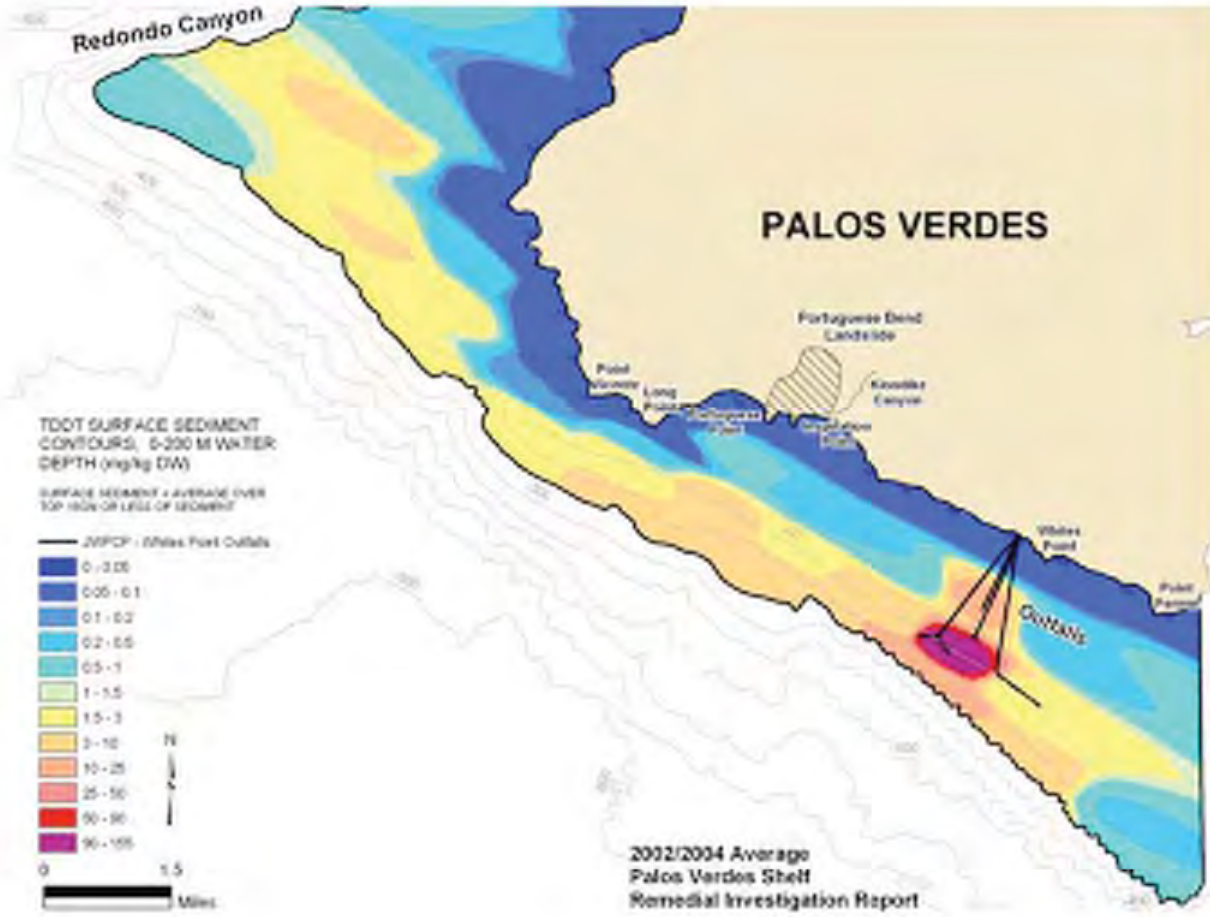

Figure 1. (DDT deposit map): The effluent-affected deposit at the outfalls and along the Palos Verdes shelf, 2002/2004 average. Source: Palos Verdes Shelf Remdial Investigation Report. 2007.

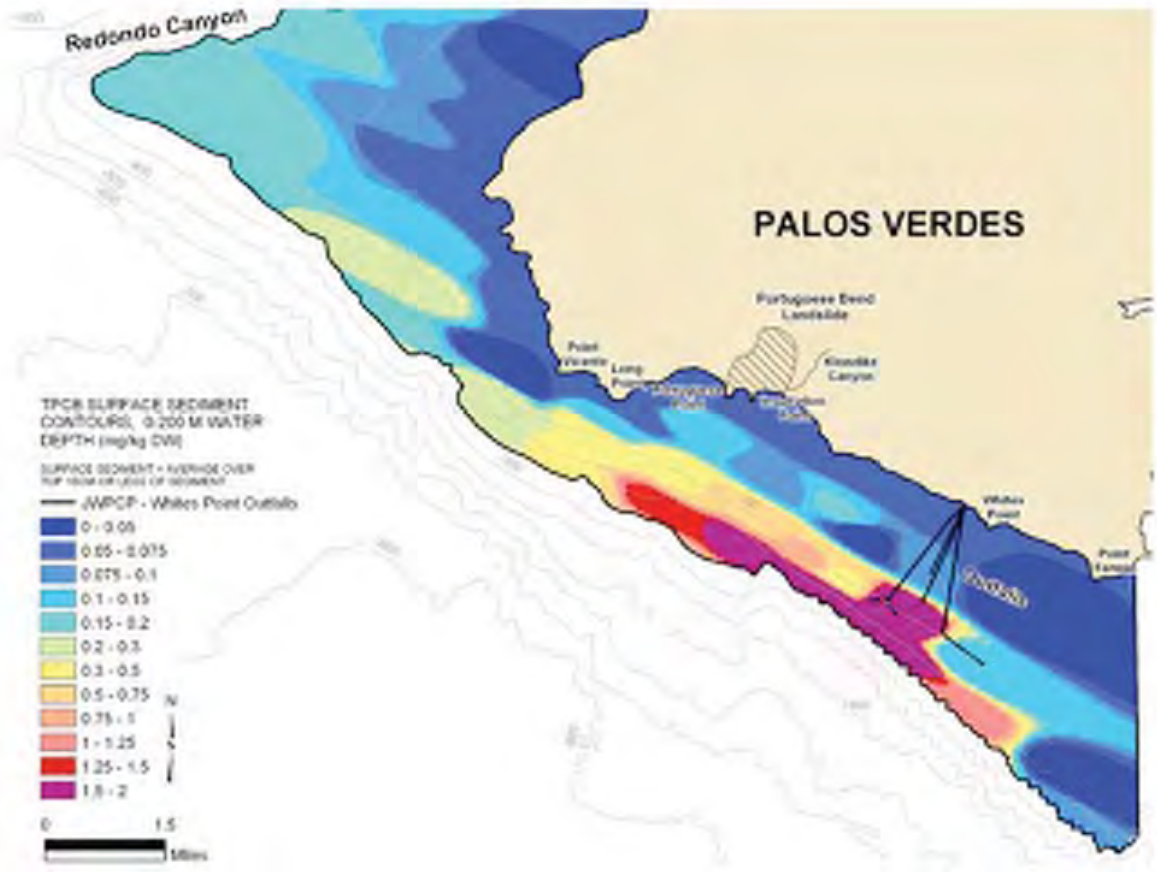

Figure 2. (PCB deposit map): The effluent-affected deposit at the outfalls and along the Palos Verdes shelf, 2002/2004 average. Source: Palos Verdes Shelf Remdial Investigation Report. 2007

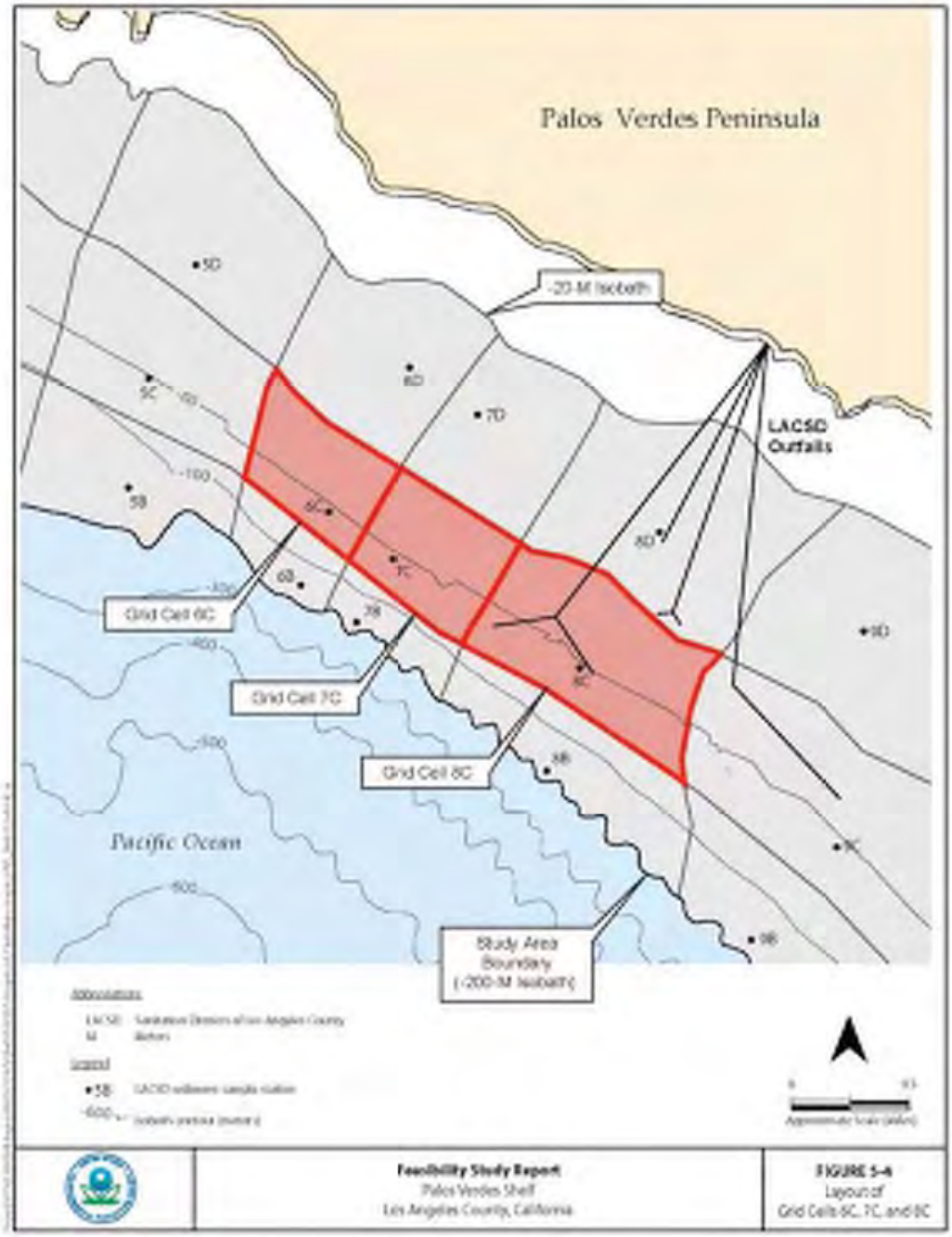

Figure 3. Location of Environmental Protection Agency's remedial action area (in red). Cell 8C is has been designated as the preferred alternative (which includes capping) by their feasiblity study.

Source: U.S.E.P.A. 2009. Palos Verdes Shelf Superfund Site operable unit 5 of the Montrose Chemical Corp. Superfund Site. Final Feasability Study.

Figure 4. Example of turbidity plume from the Portuguese Bend Landslide. Photograph taking sometime in the 1980s, although similar plumes can still be observed today.

Figure 5. Examples of buried reef at Bunker Point (above), October 22, 2008 and White Point (below), June 3, 2009.

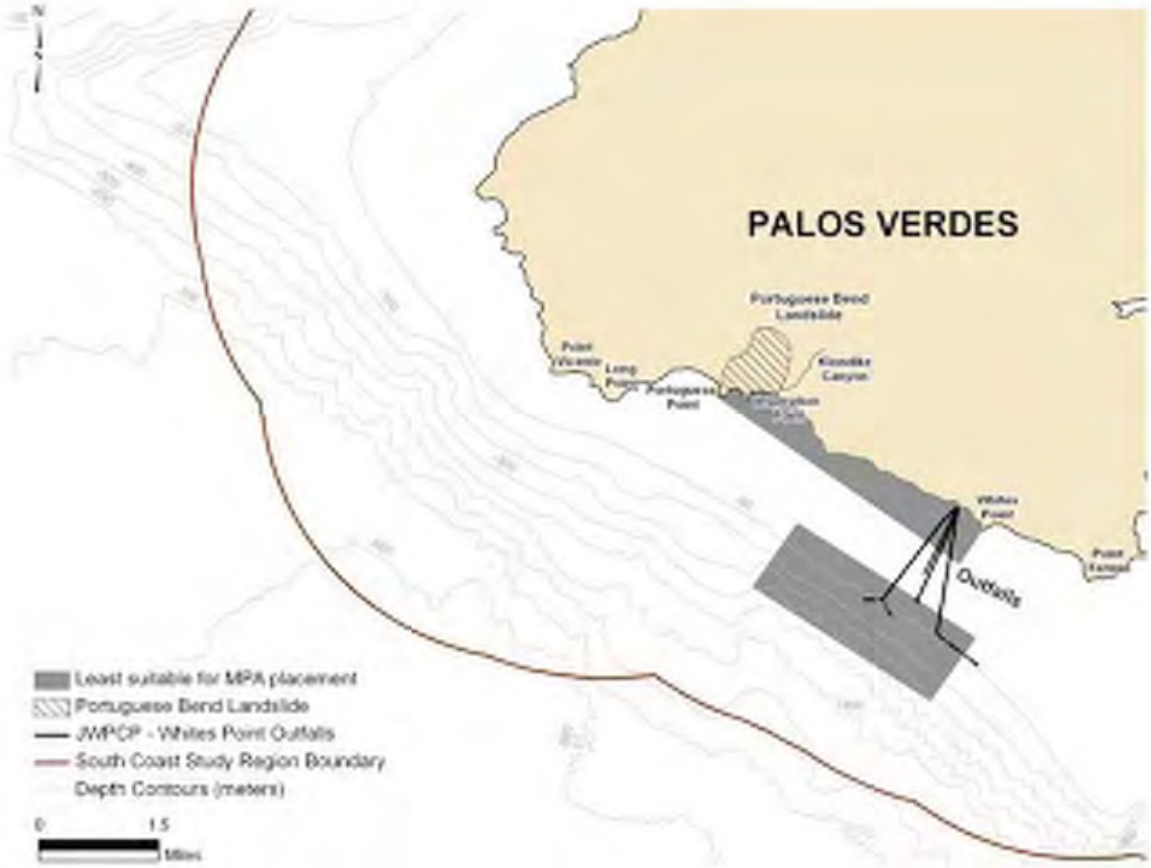

Figure 6. This map shows the areas (shaded gray) the SAT believes are less favorable for MPA placement based on water and sediment quality concerns.

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October 4, 2010

Mr. Thomas Napoli
Marine Life Protection Act/South Coast Study Region
Draft Environmental Impact Report
Department of Fish & Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720
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RE: MLPA CEQA Comments -- Response to Comments of Los Angeles County Sanitation Districts on June 29, 2010 Notice of Preparation of Draft Environmental Impact Report Regarding Marine Protected Areas in the California South Coast Study Region Pursuant to the Marine Life Protection Act

Dear Mr. Napoli:

I am writing on behalf of Ocean Conservancy to respond to the comment letter submitted by the County Sanitation Districts of Los Angeles County dated August 3, 2010 ("Sanitation Districts Letter"). The Sanitation Districts misconstrue the California Environmental Quality Act ("CEQA") in several significant respects, as will be discussed below. The Sanitation Districts present no legally valid CEQA concerns and their comments address policy concerns that are outside the scope of the environmental review process.

A. Increasing the Quantity and Diversity of Aquatic Life is a Beneficial Effect, Not an Adverse Environmental Impact. CEQA is Concerned with the Impacts of the Proposed Project on the Environment, not with the Impacts of the Environment on the Proposed Project.

The primary argument raised by the Sanitation Districts is that the Department of Fish and Game ("DFG") should not assume that increasing the quantity and diversity of aquatic life in the South Coast Study Region ("SCSR") is a "beneficial effect." The

Sanitation Districts contend that the opposite is true – that while the MPA may increase the quantity and diversity of aquatic life in the SCSR, the result will be even more fish that may come into contact with contaminated sediment at the Palos Verdes Shelf Superfund Site, ("Superfund Site"), and that those fish may become contaminated and possibly consumed.

Taken to its logical conclusion, the environmentally preferable alternative under the Sanitation Districts' rationale would be to eliminate all aquatic life in the SCSR so that no life forms would come in contact with the Superfund Site. In other words, it would be necessary to "destroy the village to save it."[1] Obviously, CEQA does not require such absurd results.

CEQA requires the lead agency to analyze the impact of a proposed project on the environment, not the impact of the environment on a proposed project. *Baird v. County of Contra Costa* (1995) 32 Cal. App. 4th 1464. In the *Baird* case, a project applicant sought to expand a drug rehabilitation facility. Neighbors objected to the facility, raising specious CEQA claims that the facility would be located near soil contaminated with toxic chemicals, and that it was possible the future residents of the facility may come into contact with the contaminated soil. The Court rejected these arguments, concluding that such concerns were outside of the scope of CEQA, since the proposed project would not exacerbate existing contamination. As the Court explained:

> "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068, italics added.) This means "an adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Cal. Code Regs., tit. 14, § 15382; see Pub. Resources Code, § 21060.5, 21100, 21151.)
>
> Baird's complaint is not that the proposed facility will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, ***Baird's point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed facility and its residents. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment.*** CEQA is implicated only by adverse changes in the environment. (Pub. Resources Code, § 21068.) "The evaluation process contemplated by CEQA relates to the effect of proposed

[1] "Major Describes Move". New York Times. February 8, 1968.

> changes in the physical world which a public agency is about to either make, authorize or fund . . . ." (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal. App. 3d 648, 666.) Adverse environmental changes are not contemplated here. The purported contaminations are preexisting (or do not exist at all).

Baird v. County of Contra Costa, 32 Cal. App. 4th 1464, 1468 (emphasis added).

To paraphrase the *Baird* case, the Sanitation Districts' "complaint is not that the proposed [MPA] will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, [Sanitation Districts'] point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed [MPA] and its [fish]. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment."

The MPAs will *not* increase, exacerbate, or disturb existing contamination at the Superfund Site. The MPAs will merely have the beneficial impact of increasing the diversity and quantity of marine life adjacent to the area and reducing habitat disturbance. Even if some of those fish may come in contact with contamination (which is questionable at best), this issue is entirely outside the scope of CEQA. By focusing not on the impacts of the proposed project on the environment, but rather on the impacts of the environment on the proposed project, the Sanitation Districts turn CEQA law on its head.

B. A New Notice of Preparation is Not Required.

The Sanitation Districts next seek to rewind the CEQA process back to "square one" by arguing that the CEQA Notice of Preparation ("NOP") is inadequate due to an alleged failure to identify the Superfund Site, which is on the Cortese List. The Sanitation Districts contend that under CEQA section 21092.6, a new NOP is required.

The Sanitation Districts refer to CEQA section 21092.6 subsection (a). However, they fail to discuss CEQA section 21092.6 subsection (b). While subsection (a) states that the NOP should identify any sites contained on the Cortese list, subsection (b) states that if the NOP fails to mention a Cortese List site, then the remedy is to ensure that the site is mentioned in the Draft Environmental Impact Report ("DEIR"). CEQA section 21092.6 subsection (b) provides as follows:

> "If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code [Cortese List] and the lead agency did not accurately specify or did not specify any list

> pursuant to subdivision (a), [NOP] the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision."

Thus, contrary to the assertion made by the Sanitation Districts, it is not necessary to restart the CEQA process with a new NOP. Rather, it is appropriate for the agency simply to disclose this administrative detail in the document. No delay in the CEQA process is required or even appropriate.

C. The Sanitation Districts Misconstrue the Recent *CBE v. SCAQMD* Case Concerning the CEQA Baseline. The Contamination is Categorically Exempt from CEQA Review as a Pre-Existing Condition.

The Sanitation Districts rely extensively on the recent case of *Communities for a Better Environment v. South Coast Air Quality Management District (ConocoPhillips)* (2010) 48 Cal.4th 310 for the assertion that the EIR must analyze and mitigate existing contamination at the Superfund Site and the Portugese Bend Landslide ("PBL"). The undersigned was the lead counsel representing the successful party, Communities for a Better Environment, in that case. As such, the undersigned can assert unequivocally that the Sanitation Districts misconstrue the Supreme Court's holding in that case.

There is no dispute that the DEIR should identify the existing environmental setting for the MPAs. That setting includes both the Superfund Site and the PBL. However, it does not follow that DFG must mitigate the existing contamination at the site. DFG had no part in creating the pre-existing contamination, and the proposed MPAs will not exacerbate or impact the pre-existing contamination in any way.

Indeed, CEQA's first and most important exemption is for "pre-existing" conditions. CEQA's Class 1 categorical exemption excludes entirely from CEQA review projects and "topographical features" that are already in existence at the time of CEQA review. (CEQA Guidelines, § 15301.) As the Court explained in *Bloom v. McGurk* (1994) 26 Cal. App. 4th 1307, 1312:

> "The first category of projects exempted from CEQA under the CEQA Guidelines are those 'consist[ing] of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.' (CEQA Guidelines, § 15301.)"

The pre-existing contamination at the Superfund Site and the PBL falls squarely within CEQA's Class 1 Categorical Exemption. This contamination existed long before the proposed MPAs were proposed, and the MPAs will not exacerbate or contribute to the contamination in any manner. As such, while the contamination must be disclosed as part of the environmental setting of the project, there is no requirement for DFG to remediate the contamination.

D. The MPAs will not Cause Adverse Impacts Related to Consumption of Contaminated Fish.

The Sanitation Districts contend that the creation of the MPAs may cause adverse impacts related to the possible consumption of contaminated fish. The Sanitation Districts contends that fish in the area of the proposed MPAs are already contaminated, and that the MPAs will result in more contaminated fish that may be consumed.

The Sanitation Districts' argument ignores the obvious. The purpose of an MPA is to prohibit fishing (and therefore fish consumption) within the State Marine Reserve and limit fishing with the State Marine Conservation Area. Thus, the project will in essence be self-mitigating in this respect. While some commercial and recreational anglers may currently fish in the area proposed for the MPAs, once the MPAs are established, such fishing will be prohibited or limited. Thus, to the extent that fish consumption issue is a concern at all, the MPA project itself mitigates this impact directly.

E. CEQA Does Not Require Analysis of Purely Hypothetical Future Impacts.

The Sanitation Districts contend that "a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system." The Districts contend that this may in turn require the construction of new or expanded sewage treatment plants, which would in turn create impacts related to the construction of those new plants. The Districts contend that the DEIR must therefore analyze the impacts of the construction of any potential new or expanded sewage treatment plants, including related construction emissions, land use and zoning conflicts, noise issues and all other impacts.

The Sanitation Districts' position is preposterous. CEQA does not require an agency to gaze into a crystal ball and divine all future events. First, there is no evidence to support speculation that MPAs will affect discharges in any way let alone lead to new restrictions being imposed on the Sanitation Districts' outfall system. Second, even if new restrictions are imposed, it is not at all clear that this will require construction of any new or expanded facilities. Third, even if new or expanded facilities are required at

some distant point in the future, there is absolutely no way to know at this point where those facilities will be located, and what the impacts of construction and noise might be on nearby residents. CEQA simply does not require the lead agency to predict the future.

As the Court explained in the case of *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist*. (1992) 9 Cal. App. 4th 464, 474-475, CEQA only requires analysis of an impact if there is a "causal link" between the governmental action and the alleged environmental impact. The Court explained that the action is only subject to CEQA review if it is "an essential step culminating in action which may affect the environment." In that case, a petitioner alleged that CEQA review was required prior to the creation of a community facilities district ("CFD") because it was possible that at some time in the future, the CFD could be used to finance the construction of a school at some indeterminate location. The Court rejected this argument because the impact alleged was far too hypothetical and there was no clear "causal connection" between the CFD and the alleged construction project.

As in the Kaufman and Broad case, the analysis urged by the Sanitation Districts would be premature at this time since potential proposals for any new sewage plants are not "sufficiently developed to provide meaningful information for technical review." In short, CEQA does not require agencies to predict the future. There is simply no way that the DFG or any other agency can conduct the analysis urged by the Sanitation Districts, and there is no proximate causal connection between the proposed MPAs and any new sewage treatment plants that might be considered at some future date.

F. The NOP Proposes a Reasonable Range of Alternatives.

The Sanitation Districts contend that the three alternatives proposed in the NOP are inadequate, and that DFG should consider an alternative that does not include Abalone Cove and Point Vicente.

The Sanitation Districts misunderstand the purpose of CEQA's alternative analysis, which is to avoid significant adverse impacts of a proposed project. "CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, also consider and analyze project alternatives that would reduce adverse environmental impacts. (Pub. Resources Code, § 21061; see also id., §§ 21001, subd. (g), 21002, 21002.1, subd. (a), 21003, subd. (c)) The CEQA Guidelines state that an EIR must 'describe a range of reasonable alternatives to the project … which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project … .' ([Guidelines], § 15126.6, subd. (a).)" *Jones v. Regents of University of California* (2010) 183 Cal. App. 4th 818, 825.

CEQA's alternative analysis requires consideration of alternatives that would avoid significant adverse impacts of a proposed project. As discussed above, the proximity of the Superfund Site, the PBL and the JOS are not adverse impacts of the MPAs. Rather, they are merely pre-existing elements of the environmental setting of the project. As such, there is no requirement for consideration of an alternative that would reduce impacts related to the Superfund Site, the PBL or the JOS, since these are not project impacts. The range of alternatives proposed in the NOP is perfectly adequate to meet CEQA's requirements.

G. DFG Need Not Consider Mitigation Measures that are Outside of its Jurisdiction and Unrelated to the Impacts of the MPAs.

The Sanitation Districts argue that the DEIR must analyze and mitigate impacts related to the Superfund Site, the PBL and the JOS. All of these issues are outside of the jurisdiction of the DFG, are unrelated to any impacts caused by the MPAs, and are being addressed by other agencies, such as the United States Environmental Protection Agency and the State and Regional Water Quality Control Board. Thus, DFG is not required to impose mitigation measures related to these issues.

First, CEQA requires only that an agency must impose measures to mitigate impacts reasonably related to the adverse impacts ***created by the project***. (14 Cal.Code Regs. §15370.) There must be a "nexus" or "reasonable relationship" between the project's impacts and the mitigation imposed. (*Dolan v. City of Tigard* (1994) 512, US 374; 14 Cal.Code Regs. §§15041(a), 15126.4(a)(4).) For example, in *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, the Court held that an agency could not impose a mitigation measure requiring the project proponent to pay for road widening because the proposed project would not cause any increase in traffic.

As discussed above, the MPAs do not cause or contribute to the contamination at the Superfund Site, PBL, or JOS. Thus, DFG is not obligated to mitigate this contamination or even to analyze measures to mitigate this contamination.

Second, the impacts alleged by the Sanitation Districts are not within the jurisdiction of DFG. Any mitigation measures must be within the jurisdiction of the agency submitting them. (Pub.Res. Code §21081.6(c).) Under CEQA Section 21004 and CEQA Guidelines Section 15040, mitigation measures that go beyond the powers conferred by law on lead and responsible agencies are legally infeasible. (*Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291) Agencies are not required to proposed or analyze a mitigation measure that cannot be legally imposed. (14 Cal.Code Regs. §15126.4(a)(5).) Since DFG has no jurisdiction to impose measures to clean-up the Superfund Site or the JOS, or reduce discharges from the JOS, these measures do not need to be analyzed in the DEIR.

CONCLUSION

For the foregoing reasons, Ocean Conservancy urges the Department of Fish and Game to move forward with the environmental review process without further delay. The Sanitation Districts raise no valid CEQA concern. The California Supreme Court has cautioned that the "Legislature did not intend to promote endless rounds of revision and recirculation of EIR's. . . Rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1132. We urge the DFG to move forward with the SCSR MPA process without further delay. Thank you for considering our comments.

Sincerely,

Richard Toshiyuki Drury
LOZEAU|DRURY LLP
Attorney for Ocean Conservancy

cc: Lester Snow, California Secretary for Natural Resources
John McCammon, Director, California Dept. of Fish and Game
Sonke Mastrup, Asst. Director, California Dept. of Fish and Game

Responses to Comment Letter A32_ii

Response to Comment A32_ii-1: Comment noted.

Response to Comment A32_ii-2: The Commission agrees.

Response to Comment A32_ii-3: The Commission agrees.

Response to Comment A32_ii-4: Comment noted.

Response to Comment A32_ii-5: Comment noted.

Response to Comment A32_ii-6: This comment does not address the adequacy of the Draft EIR. Discussion of the SAT analysis to compare the adverse environmental impacts of the proposed Project and various alternatives does not comply with the requirements of CEQA. For the most part, the purpose of the SAT guidelines is to enable preparation of an MPA network that meets the goals and objectives of the MLPA, not that meets the requirements of CEQA. The SAT guidelines are not intended to guide the identification of direct and indirect adverse physical environmental impacts from the implementation of the Commission proposed Project, the proposed Project IPA. This SAT guidance is best viewed under CEQA as a feasibility analysis to identify alternatives that meet the requirements of the MLPA and thus meet the requirements of the proposed Project with is designed to implement the MLPA.

Response to Comment A32_ii-7: The comment asserts that Alternative 3 should have been identified as the Environmentally Superior Alternative in the Draft EIR. As described in Section 10.5 of the Draft EIR, an EIR is only required to identify an environmentally superior alternative when the No Project alternative is environmentally superior to the other alternatives considered. As the No Project alternative (existing MPA network) would have greater impacts than the other alternatives in this instance, identification of an Environmentally Superior Alternative is not required.

Response to Comment A32_ii-8: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to define the term.

Response to Comment A32_ii-9: Comment note. The comment discusses existing ecological trends in the SCSR, including downward trends for some harvested species, and suggests that the Final EIR should include a background discussion on this topic. While the Commission agrees that continuing reductions in fish landings are an important concern, discussions of marine populations within the SCSR that are depleted, overfished, or otherwise imperiled were provided in Section 7.0 (Biological Resources) of the Draft EIR. *No changes to the Draft EIR are required.*

Response to Comment A32_ii-10: The comment suggests that Section 2.0 (Project Background) of the Draft EIR should identify depleted or overfished species within the SCSR. The Commission concurs that these species are central to the goals and objectives of the MLPA, and that discussion of these species in the Draft EIR is appropriate. However, Section 2.0 of the Draft EIR was intended to convey relevant background information related to the stakeholder-driven process through which the proposed IPA was developed. Because a detailed discussion of depleted or overfished species would not have contributed substantially to this objective, depleted species were not discussed in Section 2.0. These species are described in detail in Section 7.1.2.6.1 of the Draft EIR, which describes those biological resources within the SCSR that are expected to benefit from the proposed regulatory changes. *No changes to the Draft EIR are required.*

Response to Comment A32_ii-11: Comment noted.

Response to Comment A32_ii-12: Comment noted.

Response to Comment A32_ii-13: Comment noted.

Response to Comment A32_ii-14: Comment noted.

Response to Comment A32_ii-15: Comment noted.

Response to Comment A32_ii-16: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. Text in section 6.3.2.2 has been revised to reflect this commenter suggestion.

Response to Comment A32_ii-17: The commenter suggests a correction that would not affect the meaning or adequacy of the Draft EIR. The text in question has been corrected.

Response to Comment A32_ii-18: Generally the Commission is not analyzing the environmental benefits of implementing the proposed Project IPA. CEQA requires analysis of the direct and indirect adverse physical environmental impacts of implementing the proposed Project IPA. Where benefits of the project offset adverse impacts, these are included in the analysis of the net adverse environmental impacts of implementing the proposed Project IPA. That is, the impacts produced by the project would be the net impacts from the whole of the action. As stated in other responses to comments the Commission is tasked with modifying the current set of Marine Life Protected Areas to create a network whose total benefits exceed the sum of each MPA's individual benefits.

Response to Comment A32_ii-19: See response to comment A32_ii-18.

Response to Comment A32_ii-20: The Commission has made minor modification of the proposed Project IPA. The requested changes are included in these revisions and reflected in the Final EIR.

Response to Comment A32_ii-21: The Commission has included minor options to the proposed Project IPA regulatory process and the commenters remarks have been addressed in the Final EIR revisions. Please see section 3.5.29 of the Final EIR.

Response to Comment A32_ii-22: Comment noted.

Response to Comment A32_ii-23: Comment noted.

Response to Comments A32_ii-24 – A32_ii-29: Comment noted.

Response to Comment A32_ii-30 – A32_ii-39: Section 5.0 has been revised to clarify the information being presented for CEQA analysis purposes and that information being presented for background information. Some commenters have noted that the proposed Project IPA is likely to result in economic effects that will result in eventual adverse environmental impacts. This comment notes that any economic impacts are not likely to result in adverse environmental impact. Neither the proponent or the opponents of the this theory have offered any substantial evinces regarding the specific environmental consequences of any potential adverse economic impacts that are asserted to be likely to result from the implementation of the proposed Project IPA.

In addition, edits to Chapter 5 have been made in the Final EIR which include a clarification that the Ecotrust data represents a "worst case" scenario and the removal of reference to economic impacts to commercial fisheries. Chapter 5 has been revised to focus on the potential impacts to commercial fishing grounds and reference to value has been removed. See revised text in chapter 5 of the Final EIR.

Response to Comments A32_ii-40 – A32_ii-45: The Draft EIR observed a conservative approach by assuming that all fishers would choose travel beyond the MPA areas to fish rather than travel to closer areas. Though these choices are not known for certain, the air emission model would represent a reasonable worst case scenario.

Response to Comments A32_ii-46 — A32_ii-48: Comment noted. See also response to Comment A32_ii-40.

Response to Comment A32_ii-49: Comment noted.

Response to Comment A32_ii-50: Comment noted.

Response to Comment A32_ii-51: Ballona Creek is part of the Los Angeles-San Gabriel Hydrologic Unit which is included in Table 6.3-1. *No changes to the Draft EIR are required.*

Response to Comment A32_ii-52: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to correctly reflect the project's northern and southern boundaries, Point Conception and the U.S.-Mexico border, respectively.

Response to Comments A32_ii-53 and 54: The Commenter requests that additional information included in Section 6.3.2.1 of the EIR. Commenter requests that an existing nearby geologic feature referred to as the Portuguese Bend Landslide (PBL) be included in Section 6.3.2.1.

Commenter is correct that this feature is a pre-existing condition that has influenced the near shore environment. However, since this existing geologic feature will not be impacted by the Proposed IPA, a detailed discussion was not included in this section of the Draft EIR. The environmental setting in the Draft EIR provides a general level of detail, and does not include detailed descriptions of the geologic features of the coastal areas within the 1,046 miles of California coastline included in the MLPA SCSR. Though not required, additional information has been include to increase readability of the Final EIR.

Response to Comment A32_ii-55: The Comment requests that additional information be included on the Palos Verdes Shelf Superfund Site beyond what is discussed in Section 6.3.2.2.3 of the Draft EIR. The commenter suggests a change that would not affect the meaning or adequacy of the Draft EIR. However, the text in question has been revised to reflect this commenter suggestion.

Response to Comment A32_ii-56: The Comment requests additional language on the design process associated with the Portuguese Bend Landslide and Palos Verdes Shelf Superfund site. The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. However, the text in question has been revised to reflect this commenter suggestion.

Response to Comment A32_ii-57: Commenter requests additional information be included in Section 6.3.2.1.4 on harmful algal blooms.

There is currently ongoing harmful algal blooms research being supported by the Center for Sponsored Coastal Ocean Research. Improvements to state-wide harmful algal blooms alert systems are just one key component of this research. However, for CEQA purposes, discussion of harmful algal blooms is limited to acknowledgement of the potential for existence. Additional information concerning ongoing research is not a CEQA requirement.

Response to Comment A32-ii-58: The comment requests clarification on DDT contamination issue associated with the Palos Verdes Shelf Superfund site. Additional information on the Palos Verdes Shelf Superfund site is included in Section 6.3.2.2.3. The commenter suggests information that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to reflect this commenter suggestion.

Response to Comment A32-ii-59: The comment cites information from the Science Advisory Team (SAT) pointing out that not all pollutants identified on the Clean Water Act Section 303(d) list are harmful to aquatic ecosystems, and requests that the EIR specify this. Because the Section 303(d) list is voluminous, and because the SAT did not specifically identify whether each pollutant would harm aquatic ecosystems, including a complete list of these criteria in the EIR is not practical. However, Section 6.3.2.3 of the Draft EIR has been clarified to indicate the general classes of pollutants that are more and less likely to harm the aquatic ecosystem.

Response to Comment A32-ii-60: The comment requests a comprehensive list of impaired waterbodies and TMDLs in the South Coast Study Region. Appendix D contains a list of impaired water bodies in RWQCB Region 3. This list includes the TMDL status for each entry.

Response to Comment A32_ii-61: The comment suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to reflect the correct appendix.

Response to Comment A32_ii-62: The comment disagrees with the Draft EIR's statement that oil seeps are a water quality concern. Despite the natural occurrence of oil seeps, the oil is considered a water quality concern. The text was not revised in response to this comment.

Response to Comment A32_ii-63: The comment notes that beach nourishment activities are described in Section 6.3.2.2 of the Draft EIR for the three southernmost subregions (south of Point Dume), but not for subregions 1 (Point Conception to Rincon Point) and 2 (Rincon Point to Point Dume), and requests that beach nourishment discussions be included for these subregions for consistency. Although existing beach nourishment and dredging activities in these areas are not within the proposed MPAs and would not be affected by the Project, the Commission acknowledges that these activities do occur in the region and are part of the environmental baseline. Sections 6.3.2.2.1 and 6.3.2.2.2 of the Draft EIR have been modified to include these activities.

Response to Comment A32_ii-64: Commenter requests that the Area of Special Biological Significance (ASBS) for Region 2 be included. Section 6.3.2.2.2 has been revised to include the described ASBS: "An ASBS is designated from Laguna Point to Latigo Point."

Response to Comment A32_ii-65: See response to comment A32_ii_64 for EIR revisions concerning the Laguna Point to Latigo Point ASBS. See Response to Comment A32_ii-51 regarding Ballona Creek. Alamitos Generating Station, Harbor Generating Station, and Haynes Generating Station have been added to Section 6.3.2.2.3 as suggested.

Response to Comment A32_ii-66: The commenter suggests a correction in text that would not affect the meaning or adequacy of the Draft EIR. The text in question has been revised to accurately reflect the facility name.

Response to Comment A32_ii-67: The comment asserts that existing Areas of Special Biological Significance (ASBS) for subregion 7 (Southern Channel Islands) were not identified in the Draft EIR, and requests that these features be included. The comment is not accurate, as Section 6.3.2.2.7 of the Draft EIR identified four ASBSs (Santa Barbara Island, San Nicolas Island and Begg Rock, San Clemente Island, and Santa Catalina Island within subregion 7. No change to the Draft EIR is required.

Response to Comment A32_ii-68: Comment noted.

Response to Comment A32_ii-69: Comment noted.

Response to Comment A32_ii-70: Comment noted. See response A32_ii-18.

Response to Comment A32_ii-71: Comment noted. All MPAs will allow for scientific research. See also response A31_ii-2.

Response to Comment A32_ii-72: Comment noted.

Response to Comment A32_ii-73: Comment noted.

Response to Comments A32_ii-74 – A32_ii-78: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. In general the Commission agrees with the assertions made, but does not believe these require revisions of the Draft EIR.

Response to Comment A32_ii-79: Comment noted.

Response to Comment A32_ii-80: Comment noted.

Response to Comment A32_ii-81: Comment noted.

Response to Comment A32_ii-82: Comment noted.

Response to Comment A32_ii-83: Comment noted.

Response to Comment A32_ii-84: Comment noted.

Response to Comments A32_ii-85 – A32_ii-91: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. In general the Commission agrees with the assertions made, but does not believe these require revisions of the Draft EIR.

Response to Comment A32_ii-92 – A32_ii-96: See Master Response 6 on Environmental Justice and ADA.

Response to Comments A32_ii-97 – A32_ii-99: The commenter suggests an editorial change that would not affect the meaning or adequacy of the Draft EIR. In general the Commission agrees with the assertions made, but does not believe these require revisions of the Draft EIR. The commenter's suggestion acknowledging displacement is too speculative and is not correct. The MPA regulations themselves preclude certain activities which are presently occurring within the proposed MPA boundaries. The Commission believes that the public will continue to participate in these activities and will do so in alternative areas, thus the MPAs will in fact displace a certain fraction of the public to adjacent or equivalent areas. Where these displacement actions can reasonably be modeled it has been done, and impacts from this displacement have been included within the Final EIR.

Response to Comment A32_ii-100: It is acknowledged that the Point Vicente and Abalone Cove MPAs are located over the Palos Verdes Shelf Superfund Site, and also that no significant impacts would occur as a result. The text of Section 9.4.10.1 has been modified accordingly to provide clarification.

Response to Comment A32_ii-101: The Commission agrees.

Response to Comment A32_ii-102 – A32_ii-117: The Draft EIR does not evaluate the relative benefits and costs associated with proposed Project IPA and alternatives under consideration. That evaluation was conducted during the design phase of the proposed Project IPA and information on these deliberations can be located at http://www.dfg.ca.gov/mlpa/meetings_sc.asp. Regarding comments about enforcement, see response to Comment A13-31 and Master Response 9.

Response to Comment A32_ii-118: The commenter suggests an editorial change to correct a typographical error in the Draft EIR. The text in question has been revised to reflect the correct alternative under consideration in the Draft EIR.

Response to Comment A32_ii-119 – A32_ii-122: The commenter mischaracterizes the requirements of CEQA to identify the environmentally superior alternative. See Section 10.5 of the Draft EIR.

Response to Comment A32_ii-123: Comment noted.

Response to Comment A32_ii-124 : Comment noted.

Response to Comment A32_ii-125: The comment contains a map of aerial boat survey data in the Palos Verdes area. This comment serves to inform other material in the commenter's letter but does not in itself address the content or adequacy of the Draft EIR. No response is required.

Response to Comment A32_ii-126: The comment is a copy of the MLPA SAT recommendations for evaluating water quality and sediment along the Palos Verdes Shelf. This document was considered during preparation of the Draft EIR, however the comment does not address the adequacy of the Draft EIR. No response is required.

Response to Comment A32_ii-127: The comment duplicates comment letter A30_ii. Responses to this letter can be found in Section R2.2.4.

Subject: MLPA CEQA Comments (SCSR DEIR)
From: Richard Bell
Date: Mon, 18 Oct 2010 17:13:00
cc: "MJFConsulting" <mjfconsulting@cox.net>
cc: "Mastrup, Sonke" <SMastrup@dfg.ca.gov>
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cc: "Chamberlin, Jay" <jchamberlin@parks.ca.gov>
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cc: "Flahive, Brennon" <bflahive@socwa.com>
cc: "Rosales, Tom" <trosales@socwa.com>

Attached are Part 1 of the Municipal Water District of Orange County's comments on the MLPA SCSR DEIR and attachments. Due to the size of the attachments we are submitting these comments in two parts - Part 1: the basic comment package and Part 2: previous CEQA documents from our Phase 2 and 3 projects. (We first submitted both parts and received returned emails that some exceeded the some recipients email capacity, so we are re-sending in two parts). A paper copy will be placed in the mail tomorrow.

Richard B. Bell, PE
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Attachment: TEXT5.htm

Attachment: image001.jpg
Attachment: MLPA SCSR DEIR Comment Letter - Final Oct 18, 2010.pdf
Attachment: Evaluation of Potential Impacts to Marine Life by Slant Wells - MLPA DEIR Comment 2010-10-13.pdf
Attachment: Legal Analysis Memorandum 10-18-10.PDF
Attachment: Title 14 Suggested Changes - Oct 62010 DFG Submittal (Final).pdf
Attachment: 632ntc(w).docx
Attachment: Mime10.822

Responses to Comment Letter A41_i

Response to Comment A41_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

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South Coast Water District
Trabuco Canyon Water District
City of Tustin
City of Westminster
Yorba Linda Water District

Transmitted by mail and via email to MLPAComments@dfg.ca.gov

October 18, 2010

MLPA South Coast CEQA.
Attn.: Mr. Tom Napoli
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Subject: Comments on Draft Environmental Impact Report,
California Marine Life Protection Act Initiative, South Coast Study Region,
State Clearinghouse #2010071012, August 2010

Dear Mr. Napoli

Thank you for the opportunity to comment on the subject Draft Environmental Impact Report (DEIR) for the California Marine Life Protection Act Initiative (MLPA), South Coast Study Region (SCSR).

Summary

On August 4, 2010, the Municipal Water District of Orange County (MWDOC) submitted comments on the Notice of Preparation (NOP) scoping document for the MLPA, SCSR DEIR. In that letter we provided information of the following:

- Critical need for a new, drought–proof ocean desalination potable water supply project in the South Orange Coastal area.
- General information on the existing South Orange Coastal Ocean Desalination Project (SOC Ocean Desalination Project) slant wellfield, its planned expansion and ongoing activities.
- General information on the existing South Orange County Wastewater Authority (SOCWA) San Juan Creek Ocean Outfall.
- Comments on the scoping document regarding the omission of these projects and the need for their allowance in the "Proposed Integrated Preferred Alternative 3.5.35 Doheny Beach SMCA".

Subsequently, the undersigned, representing MWDOC, presented a statement at the September 29, 2010 Fish & Game Commission meeting regarding failure of the Commission to recognize our projects in the Doheny Beach SMCA. The Commission supported DFG Deputy Director Mastrup's proposal to implement the Commission's intent to hold our projects (and their expansion) harmless by providing clean-up language modifying the Doheny Beach SMCA to explicitly allow these projects.

These are both essential and critical public service/utility facilities that are fully buried and underlie the "Proposed IPA 3.5.35 Doheny Beach SMCA" and would have no impact on the SMCA.

Detailed Comments

The DEIR Fails to Provide Adequate Background and Project Necessity for the South Orange Coastal Ocean Desalination Project and San Juan Creek Ocean Outfall. A41_ii-1

The Municipal Water District of Orange County (MWDOC), a public agency, is a member agency of Metropolitan Water District of Southern California, and provides wholesale delivery of imported water to 28 member agencies in Orange County. MWDOC also helps local agencies in regional planning and facilitates development of water use efficiency, emergency preparedness and response, reliability planning, and development of water supply projects with our member agencies.

In 2003, MWDOC with member agency participation adopted its South Orange County Water Reliability Plan, which included several facilities to improve system and supply reliability to south Orange County. The SOC Ocean Desalination Project was approved as part of this plan. It was subsequently incorporated into MWDOC's 2005 Urban Water Management Plan and it was made part of Metropolitan Water District of Southern California Integrated Resources Plan and its Seawater Desalination Program. And, it is being included in the current update of these plans.

For the SOC Ocean Desalination Project, MWDOC serves as project manager working with five local project participating agencies (South Coast Water District, Laguna Beach, San Clemente, San Juan Capistrano and Moulton Niguel Water District) in its development and implementation. The project is located in Dana Point.

The SOC Ocean Desalination Project has been under development for the past seven years. The project will derive its ocean feedwater by use of innovative slant beach intake wells which are fully buried under the beach and extend out under the ocean within the 2,500 feet wide San Juan Creek paleo-channel alluvium that underlies the continental shelf offshore of Doheny State Beach. This approach avoids impacts to marine life.

MWDOC has received support for the use of slant beach wells from the California Coastal Commission, State Lands Commission, DWR, EPA, U.S. Bureau of Reclamation, and other agencies as well as by several environmental organizations – Surfrider Foundation, CoastKeeper, Trout Unlimited, Save Our Surf, and others.

MWDOC and its participating agencies constructed and are now operating a fully permitted 3 mgd slant well and testing facility at Doheny State Beach. This phase of the project is to develop process treatment specifications for the desalination unit and environmental data and analysis. This well is the first of the project's slant wellfield and will be expanded to nine wells. To date, over $5 million has been invested and over the

next year another $4 million will be invested. Expansion of the wellfield and full scale desalination project is scheduled in 2015/2016. This $150 million project will require 9 slant wells and produce 15 mgd of drought proof, critically needed local potable water supply to bolster supply reliability in the local area and region. The area now obtains 95% of its potable supply from imported water, which is vulnerable to earthquake caused outages of the regional imported water treatment and delivery system. Due to Delta export restrictions for fishery protection, Metropolitan Water District has imposed a 15 percent shortage condition on its member agencies. This situation is likely to continue into the future.

The DEIR Fails to Recognize that Slant Well Technology Avoids Impacts to Marine Organisms and the Proposed Doheny Beach SMCA A41_ii-2

The use of slant beach intake wells drilled into the San Juan Creek paleo-channel alluvium that underlies the continental shelf situated offshore of Doheny State Beach avoids impacts to marine organisms. This approach allows the safe withdrawal of ocean water from well screens situated at depths from 50 to 140 below the ocean floor in the sand and gravel deposits. This method avoids entrainment and impingement impacts to marine organisms. Attachment 1 to this letter is a Technical Memorandum prepared by Chambers Group (Dr. Noel Davis), Dr. Scott Jenkins (Scripps), and Geoscience (Dr. Dennis Williams and Dr. Johnson Yeh) that provides a quantitative evaluation that demonstrates that the operation of slant beach wells will have no impacts on marine life due to ocean water being diffusely pulled down into the underlying marine aquifer.

The DEIR Fails to Recognize the Existing Slant Wellfield and Wastewater Outfall Facilities Located within the Proposed Doheny Beach SMCA A41_ii-3

The DEIR refers to our project as only a pilot plant testing feasibility effort. This mischaracterizes the project. The $9 million Slant Well and Extended Pumping and Pilot Plant Test Facilities at Doheny Beach State Park were constructed in 2005/06 and in 2009/10 and were started-up on June 3, 2010. The 3 mgd slant well and testing facilities are an existing, fully permitted project and an ongoing activity. It is far more than a pilot plant. The existing slant well is part of the project wellfield and is currently in the development process for expansion to nine wells. The $150 million full scale project would expand the existing permitted slant wellfield to nine wells. The completed project will include three fully buried wellhead structures, each containing three slant wells for a total of nine wells.

The DEIR also did not recognize the existing and fully permitted SOCWA San Juan Creek Wastewater Outfall which underlies and crosses this SMCA. The SOC Ocean Desalination Project will rely on this outfall for co-disposal of desalination concentrate brine, an environmentally preferred approach for brine disposal.

These water and wastewater facilities provide critical and essential public services and ocean-dependent public utilities can only be situated in this location to serve the South

Orange Coastal area; the south coastal area is heavily urbanized and lacks available land and infrastructure suitable for siting an ocean desalination project.

The DEIR shows the "Proposed IPA 3.5.35 Doheny Beach SMCA" with a classification of "Proposed Removal with Option to Retain"and for the "Proposed Modification of Other Regulated Activities" it shows "None". It is stated as an existing SMCA, which includes the 1969 Marine Life Refuge language. The DEIR fails to include the permitted SOC Ocean Desalination Project slant well and its expansion and necessary offshore scientific investigations, and the SOCWA San Juan Creek Ocean Outfall as existing facilities, since it relies only on the old 1969 language which pre-dates the existing and permitted projects. Subsequent regulatory actions and permits have acknowledged that the SOC Ocean Desalination Project and SOCWA San Juan Creek Outfall are allowed in this SMCA, and those projects need to be reflected in the DEIR (and in Title 14 Proposed Regulation Changes).

Since the DEIR IPA also shows removal as one option for this SMCA, it is clearly within the authority of DFG and the Fish & Game Commission to modify (See Attachment 2 – Legal Opinion Regarding Modified Option 2) the "Proposed IPA 3.5.35 Doheny Beach SMCA" to include under "Proposed Modification of Other Regulated Activities" the SOC Ocean Desalination Project slant well and its wellfield expansion and the SOCWA San Juan Creek Ocean Outfall, as well as scientific investigations, including offshore sediment coring, monitoring well installation and data acquisition, etc. The Fish & Game Commission provided this direction at their September 29, 2010 meeting.

The DEIR fails to Recognize the Critical and Essential Public Service/Utility Need for Ocean Desalination in the South Orange Coastal Area. A41_ii-4

Ocean desalination is considered a critical component to meet Orange County's need for water. Currently south Orange County relies on imported water to meet about 95% of its potable water demands. The growing threat to imported water supplies and higher demands that would occur from climate change poses a considerable challenge to the water industry to assure a sustainable long-term, safe and reliable water supply. The SOC Ocean Desalination Project is a major new public water supply source that is being developed in Dana Point. This project is needed to bolster water supply reliability in the south coastal area of Orange County. The project is being developed to be both cost-effective and environmentally "friendly". The project would utilize slant beach wells that avoid entrainment and impingement impacts to marine organisms.

Even if the SOC Ocean Desalination Project is Identified as an Allowable Use if the Doheny Beach SMCA is Retained, the Final EIR Must Analyze the Impacts of Potential Future Water Quality Regulations in MPAs on Existing and Planned Facilities A41_ii-5

The designation of MPAs may cause the State Water Resources Control Board to designate State Water Quality Protected Areas to each MPA which would mandate the Regional Water Quality Control Boards to impose stricter water quality regulations on

discharges in MPAs. The Final EIR must analyze the impacts to dischargers of stricter water quality requirements. These impacts may include the costs to upgrade discharge facilities to comply with stricter regulations, sediment coring, installation of offshore monitoring wells, etc. The Final EIR must also identify what the impacts would be if the proposed brine discharge from the SOC Ocean Desalination Project through the South Orange County Wastewater Authority San Juan Creek Ocean outfall were not allowed by the State Water Resources Control Board. MWDOC requests that the Final EIR fully discuss and analyze the impacts of stricter water quality controls within MPAs.

The DEIR Fails to Address Comments Provided to the California Department of Fish and Game by MWDOC during the Public Notice of Preparation Comment Period A41_ii-6

MWDOC's August 4, 2010 comment later requested that the IPA Table 3 be modified for the Doheny Beach SMCA to read "Remove with Option to Retain with Allowance for Public Services for Wastewater Disposal, Brine Disposal and Subsurface Ocean Desalination Intakes." The DEIR did not respond to this request or analyze the impacts if the existing SOC Ocean Desalination Project was not allowed to expand to full development in the Doheny Beach SMCA. Furthermore, the SOC Ocean Desalination Project was not adequately discussed in the DEIR in spite of the information provided to the California Department of Fish and Game by MWDOC. The very quick release of the DEIR following the close of the comment period and the failure of the DEIR to address our comments suggests that the EIR process may have been inappropriately rushed, leading to a misunderstanding, oversight and omission in the DEIR of our existing projects. Therefore, MWDOC requests that the Final EIR specifically incorporate the SOC Ocean Desalination Project and SOCWA San Juan Creek Outfall facilities and their expansion, operation, maintenance and replacement and attendant scientific investigations and monitoring programs under "Proposed Modifications of Other Regulated Activities".

The proposed regulations and the Final EIR must clearly state that MWDOCs existing project at Doheny State Beach will be allowed to expand under all alternatives. If there are any alternatives under consideration that would preclude the continued operation and expansion of the SOC Ocean Desalination Project, the Final EIR must fully analyze the potential environmental impacts that would result. Merely indicating the project is speculative and thus no impact analysis can be made is without merit – substantial evidence and information is available to address these types of adverse water supply reliability impacts.

The DEIR Should Reflect the Fact that Wastewater Disposal, Brine Disposal and Subsurface Ocean Desalination Intakes Will Be Operated Maintained and Developed In the Doheny Beach SMCA A41_ii-7

MWDOC is concerned that if the proposed regulations and DEIR regarding the Doheny Beach SMCA is not modified to clearly state that existing and planned expansion of public water and wastewater utilities will be allowed, there could be unnecessary

confusion in permitting proceedings for future phases of the SOC Ocean Desalination Project. Therefore in our August 4, 2010 letter, MWDOC requested that the Doheny Beach SMCA designation in the IPA Table 3 be modified from "Remove with Option to Retain" to "Remove with Option to Retain with Allowance for Public Services for Wastewater Disposal, Brine Disposal and Subsurface Ocean Desalination Intakes." The discussion of the "Proposed IPA 3.5.35 Doheny Beach SMCA" in the DEIR does not include this requested language and does not mention the SOC Ocean Desalination Project. Therefore, MWDOC requests the Final EIR be revised for the Doheny Beach SMCA to read "Retain with Allowance for Public Services for Wastewater Disposal, Brine Disposal and Subsurface Ocean Desalination Intakes" with appropriate hold harmless and clean-up language that is consistent with my memorandum to Becky Ota, DFG dated October 6, 2010 (Attachment 3) that was prepared pursuant to the Fish & Game Commission and Deputy Director Sonke Mastrup direction given at their September 29, 2010 meeting.

If Expansion of the Existing SOC Ocean Desalination Project is not an Allowable Use under the MLPA, the Impacts of Not Allowing this Project Must be Fully Analyzed in the EIR A41_ii-8

The Draft EIR failed to adequately disclose, evaluate and mitigate the significant impacts to regional water supply for south Orange County if the existing SOC Ocean Desalination Project slant wellfield and its expansion and project development are not shown as a "Proposed Modification of Other Regulated Activities". The Final EIR must analyze the impacts to water supply reliability in the South Orange Coastal area if the "Proposed IPA 3.5.35 Doheny Beach SMCA" is retained without modification.

The Final EIR must also analyze the resulting future socioeconomic impacts of not allowing the South Orange Coastal Ocean Desalination Project and San Juan Creek Ocean Outfall. Without a reliable future water supply and wastewater disposal system, significant economic and environmental impacts would occur during periods of water shortages. Businesses will be limited by the loss of the local project supply, communities will experience increasing water shortages and attendant impacts (e.g., landscape losses, increased fire risks, natural communities' losses, etc) and reliability, public health and safety will be impaired in the event of a disruption to the imported delivery system. The effect on the cost of housing and business are significant. The costs to the local water agencies of water shortages are significant. Loss of a drought-proof potable water supply will cause similar public health and safety, environmental and economic impacts. The DEIR is deficient since it needs to provide an analysis of the impacts due to exclusion of the existing and planned expansion of the South Orange Coastal Ocean Desalination Project if Title 14 regulations remain as now written.

The degree of impact increases by the scope and magnitude of shortages. Since the South Orange Coastal Ocean Desalination Project will provide approximately 25% of the water needs, about 15 mgd or16,000 acre-feet per year, to the five participating agencies, the project will reduce the level of potential shortages by this yield. This new local water supply will greatly improve the reliability to the project participant's service area by

providing a minimum amount of water for meeting essential indoor water supply needs due to earthquake or other emergency caused outage of the Metropolitan Water District's Diemer Filtration Plant and or its distribution feeders. The outage period could be for as long as 30 days. The impact of emergency outages, drought and/or regulatory reductions to the imported supply from State Water Project and/or Colorado River Aqueduct also will cause economic and environmental impact. The economic value of water supply reliability under various shortage scenarios is enumerated in the South Orange County Water Reliability Plan and supporting documents.

Therefore MWDOC requests that the DEIR disclose and mitigate these significant impacts in the Final EIR if the existing, permitted facilities and their expansion are not included as other proposed regulated activities. Without recognition of these permitted, existing and developing projects, there is a great risk that the projects would not be approved by the other regulatory agencies (State Lands Commission, California Coastal Commission, et al) as they would not be shown in the MLPA regulations as an "Other Regulated Activity".

The DEIR Fails to Include the South Orange Coastal Ocean Desalination Project in the Analysis of Cumulative Impacts A41_ii-9

Section 9.3.4.2. of the DEIR states that not enough detail is known about the South Orange Coastal Ocean Desalination Project to include the project in the cumulative impacts analysis. However, MWDOC has supplied the California Department of Fish and Game with considerable detail about this project. The project is not speculative: the first full scale slant well is operating at 3 mgd and the project is the development phase for its expansion to nine wells. The South Orange Coastal Ocean Desalination Project needs to be analyzed in Section 9 for Cumulative Impacts. MWDOC requests that the Final EIR include the South Orange Coastal Ocean Desalination Project in the cumulative impacts analysis.

Conclusion and Requested Clarification for the "Proposed IPA 3.5.35 Doheny Beach SMCA" "Proposed Modification of Other Regulated Activities" A41_ii-10

We believe DFG staff was given adequate direction by the Fish & Game Commission at their September 29, 2010 meeting on this matter so as to hold harmless and to provide clean up language that allows these two major water and wastewater facilities, including scientific investigations and their expansion, operation, maintenance and their eventual replacements. My memorandum dated October 6, 2010 that was prepared at the request of Deputy Director Sonke Mastrup following the direction given at the Fish & Game Commission meeting of September 29, 2010 was submitted to Becky Ota, DFG and provided our suggested clean-up language (Attachment 3). It is our considered opinion that this request and the above information can be accommodated by a simple modification to the existing 1969 Doheny Beach SMCA as requested in Attachment 3.

If you should have any questions or need additional information, please do not hesitate to contact me at (714) 593-5003 and/or by email at rbell@mwdoc.com.

Sincerely,

Richard B. Bell, PE
Manager, Water Resources and Facility Planning

Attachments: (1) Technical Memorandum – Evaluation of Potential Impacts to Marine Life Due to Operation of Slant Beach Wells, Chambers Group, October 13, 2010
(2) Legal Opinion on Modification of Doheny Beach SMCA Option 2, October 14, 2010, MeyersNave
(3) Memorandum, October 6, 2010 From Richard Bell, MWDOC to Becky Ota, DFG Re: Option 2 Doheny Beach SMCA – Clean Up Language (Title 14)

cc: MWDOC - K. Hunt, K. Seckel
SOCWA - T. Rosales, B. Flahive
CDPR - R. Coleman, J. Chamberlin, K. Fleming, K. Kramer, D. Pryor
CDFG - S. Mastrup, M. Vojkovich, B. Ota, S. Ashcraft

Responses to Comment Letter A41_ii

Response to Comment A41_ii-1: Additional information regarding the South Orange County Desalination project and the San Juan Creek Ocean outfall have been added to the description of the Project's environmental setting in Section 8.2.2 of the Final EIR. In addition, minor changes to the proposed Project IPA have been made by the Commission to address the existing potential conflicts between the existing Latham facility and the proposed full-scaled Desalination plant and the existing Doheny SMCA. The District's concerns regarding impacts of the exiting regulations and their existing facilities should be resolved by the modified proposed Project IPA currently being proposed by the Commission.

Response to Comment A41_ii-2: The Commission concurs that the slant beach intake wells as described in the comment letter provided to the Commission will not result in take of marine resources subject to the Commissions jurisdiction. Also the Latham Facility outfall pipes discharge at a location outside of the existing MPA. The proposed Project IPA will be removing the existing MPA and thus would not result in impacts to either the operation or maintenance of the Latham Facility of the proposed desalination plant. As such no impact is expected and further discussion of the need for this facility or other impacts related to this facility are not required in the Final EIR. Also see comment 1.

Response to Comment A41_ii-3: See Comment 1 and 2. Again the Draft EIR and Final EIR primarily discuss existing facilities which may be impacted by the proposed Project.

Response to Comment A41_ii-4: Comment noted. See above.

Response to Comment A41_ii-5: See response to comment A31_ii-2.

Response to Comment A41_ii-6: CEQA does not require a formal response to NOP comments, but it does require a formal response to comments on the Draft EIR. Comments received during public scoping were reviewed and changes were made to the Draft EIR in response to comments made. The commission has endeavored to streamline the CEQA process where possible by preparing the Draft EIR using environmental issues identified during the extensive MPA development process. Most of the potential issues brought up during the scoping public comment period had also been identified or discussed during the development of the proposed Project IPA. The MLPA itself requires that environmental impacts of the various alternatives be reviewed during the design process, and efforts were made during that process to mitigate impacts that were identified. (California Fish and Game Code §2855(c)(2)). The design process included extensive public participation, scientific review and scientific evaluation of the various MPAs under consideration and this information has been incorporated into this EIR where appropriate. Again the proposed regulation includes a deletion of the MPA regulation at Doheny Beach SMCA. Only the option to retain the existing regulation implicates the existing and planned facilities.

However, for the purpose of this analysis, the no action alternative produces no greater impacts than are currently being experienced and as such do not require extensive comment or mitigation. Also see responses to comments A41_ii-1, A09-1 and A35_ii-4.

Response to Comment A41_ii-7: See above comments.

Response to Comment A41_ii-8: This comment is inaccurate in its depiction of the proposed Project and its potential impacts. The proposed Project IPA intends to remove MPA protection along the Doheny Beach, which will result in no impacts to existing or planned future facilities. As noted in response A41_ii-1, the current proposed Project IPA language mitigates the concerns of the District and retaining the Doheny SMCA with the amendments to the existing language would allow the continued operation and maintenance of existing faculties. The planned desalination plant is not expected to result in the take of marine resources and as such the continued operation of the slant wells will not be affected by any of the alternatives currently being considered by the Commission. Further incidental take from the operation and maintenance of the existing Latham facility discharge pipes are exempted under all MPA proposal currently being Considered at Doheny Beach. Since no conflicts between the exiting desalination or water facilities and the proposed Project IPA or alternatives being considered would occur, further discussion of indirect impacts that may occur should such an impact exist is not required in the Draft EIR.

Response to Comment A41_ii-9: Comment noted. See revised text in the Final EIR.

Response to Comment A41_ii-10: The Department of Fish and Game is assisting the Commission in the preparation of the regulations and CEQA documents required as part of the rulemaking process. This comment will be forwarded to the Commission for consideration.

Chambers Group®
Solving Environmental Challenges

MEMORANDUM

TO:
Richard Bell, P.E
Principal Engineer
Municipal Water District of Orange County
10500 Ellis Avenue
Fountain Valley, CA 92728

FROM:
Noel Davis, Ph.D.
Chambers Group, Inc.
5 Hutton Centre Drive, Suite 750
Santa Ana, CA 92707

SUBJECT: Evaluation of Potential Impacts to Marine Life Due to Operation of Slant Beach Wells

Because of the critical need to bolster the reliability of water supply to south Orange County, the Municipal Water District of Orange County (MWDOC) prepared and adopted the South Orange County Water Reliability Plan in 2002/2003 (Plan). That Plan recommended development of an ocean desalination water supply for the south Orange Coastal area. As part of this planning process, MWDOC conducted a scoping study to identify environmental compliance and permitting issues associated with the construction and operation of a desalination facility (Chambers Group 2002).

During the scoping study, MWDOC held three in-person meetings with permitting and consulting agencies including the Regional Water Quality Control Board San Diego Region (RWQCB), U.S. Army Corps of Engineers (USACE), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), the California Coastal Commission (CCC) and the City of Dana Point. During those meetings the resource and permitting agencies expressed concerns about the impacts of conventional ocean intakes on marine life. These impacts include impingement of marine organisms against the intake screen and the entrainment of planktonic organisms small enough to pass through the screen. Based on this input, MWDOC made the decision to determine if wells could be used to withdraw ocean water for the desalination facility. Hydrogeologic borings, construction of a test slant well in spring 2006, and subsequent groundwater modeling showed that slant wells were feasible. Slant beach wells avoid impingement and entrainment of marine organisms, provide filtered water, and were found to be cost-effective for the Dana Point site.

The first slant well is now operating and producing 3 mgd. This well is being used to gather process treatment design information over an extended period of pumping and includes use of mobile test facility located at Doheny State Beach. Ongoing activities include hydrogeologic data collection, groundwater and environmental monitoring, groundwater modeling, water quality sampling/analyses, material corrosion testing, and engineering work. The project is in the process of expansion to nine slant wells, with three wells each in three well clusters. The slant wellfield would be constructed and buried along Doheny State Beach. The slant wells are to be drilled approximately 500 feet out under the ocean

floor, with the screened intake interval located 50 to 140 feet below the ocean floor. The average distance from the ocean floor to the middle of the screened intake area of the wells is approximately 100 feet.

Benthic organisms live in the top 2 feet of the sediment (most of them in the top 2 inches). Therefore, the distance between the marine life in the sea floor sediments and the intake of the slant wells will be on the average greater than 100 feet. The vertical infiltration rate of ocean water migrating downward through the seafloor during slant wellfield operation is estimated to be quite low, at approximately 0.000051 feet per second (ft/sec) in the immediate vicinity overlying the wellfield and 0.00000078 ft/sec at the outer limits of the ocean water source area (Williams 2010). This intake velocity is four orders of magnitude less than the 0.5 ft/sec through-screen velocity that has been found to be gentle enough to avoid impingement on the screens of conventional ocean intakes (SWRCB 2010). This slow rate of infiltration would be imperceptible to benthic organisms, which routinely experience much greater currents and wave surge in the active wave climate offshore Doheny Beach. This area is subject to significant sand transport and movement from San Juan Creek discharges, wave and tidal forces, and littoral currents. For example, during a March, 1983, storm, there were 20 foot high breakers off Dana Point and 7 to 13 foot high wave runup on Doheny Beach (Jenkins 2010). Such major storms cause as much as 7 foot loss in the thickness of beach sediment cover. Although the March, 1983, storm event is extreme, waves of 4 to 6 feet are common off Doheny Beach and the associated bottom surge from these waves at the shallow water depths of the wellfield produce forces on the sediment and the sediment-dwelling organisms that are much, much greater than the very slight drawdown from the wells.

Dr. Scott Jenkins, an expert in physical oceanography at Scripps InstitutIon of Oceanography analyzed the potential for the ocean water infiltration to affect benthic organisms by inducing scour and erosion of the ocean floor and to affect planktonic organisms by suction induced forces that might pull plankton and floating eggs towards the bottom and thus potentially impinge them on the sea floor (Jenkins 2010). To quantify the potential for ocean floor erosion, the infiltration rates over the wellfield calculated by Williams (2010) were compared to the threshold velocity for transport of the bottom sediments, which have a median grain size of 0.22 millimeters. The maximum increase in wave induced bottom stress was calculated to be 1% directly over the well field and 0.02% at the outer limit of the recharge zone. This value is insignificant because it is nine times smaller than the error implicit in the net shear stress increases to move sand-sized sediment determined under controlled laboratory conditions. Therefore, the net increase in bottom stress calculated for the well field would be negligible and, thus, the slant wellfield will have no discernible effect on the ocean floor. A 1 percent or less increase in bottom stress attributable to the slant well infiltration is trivial compared to the thousands of percent increases in wave induced stresses that occur naturally during major storms and which cause dramatic erosion and seasonal variation in beach profiles (Jenkins 2010).

The very low infiltration rate along the ocean floor that would be caused by the slant wellfield operation may have a very slight potential to trap freely drifting eggs and plankton against the seabed if the suction forces of the slant well are greater than the movement of water that can break the organisms free of the suction and transport them off the seafloor (Jenkins 2010). Organisms potentially impinged would only be those organisms occurring within a few centimeters of the ocean floor that might be

affected by these very low infiltration suction forces. Jenkins determined that only minute oscillatory wave velocities are required to prevent these small organisms from becoming trapped or impinged by the seabed. The wave climate off Doheny Beach always produces water movement that exceeds these minimal oscillatory velocities at the depths of the well field and recharge zone. The force balance calculations done by Jenkins show that the ocean would have to become completely quiescent for neutrally buoyant, freely drifting small organisms to become impinged or trapped on the seabed by the vertical pressure gradient induced by the slant well field. Such a quiescent wave climate has never been observed in the vicinity of Doheny Beach.

Based on the analyses performed by Williams and Jenkins, it can be concluded that the intake of ocean water through slant beach wells will have no impact on marine life. This environmentally friendly approach has received wide support from the public, environmental organizations, elected officials, and local, State and Federal resource and regulatory agencies including the California Coastal Commission.

Literature Cited

Chambers Group, Inc.
2002 Scoping of CEQA Compliance and Permitting Issues for an Ocean Desalination Facility in Southern Orange County. Prepared for Municipal Water District of Orange County

Jenkins, S.A.
2010 Potential Impacts on Wave and Current Transport Processes Due to infiltration Rates Induced by the South Orange Coastal Desalination Project. Submitted to R. Bell, P.E., Municipal Water District of Orange County.

State Water Resources Control Board. (SWRCB)
2010 Statewide Water Quality Control Policy for the Use of Coastal and Estuarine Waters for Power Plant Cooling.

Williams, D.E.
2010 South Orange Coastal Ocean Desalination Project – Vertical Infiltration Rate of Ocean Water Migrating through the Seafloor in the Vicinity of the Slant Well Intake System. Technical Memorandum to R. Bell, P.E. Municipal Water District of Orange County.

12 October 2010

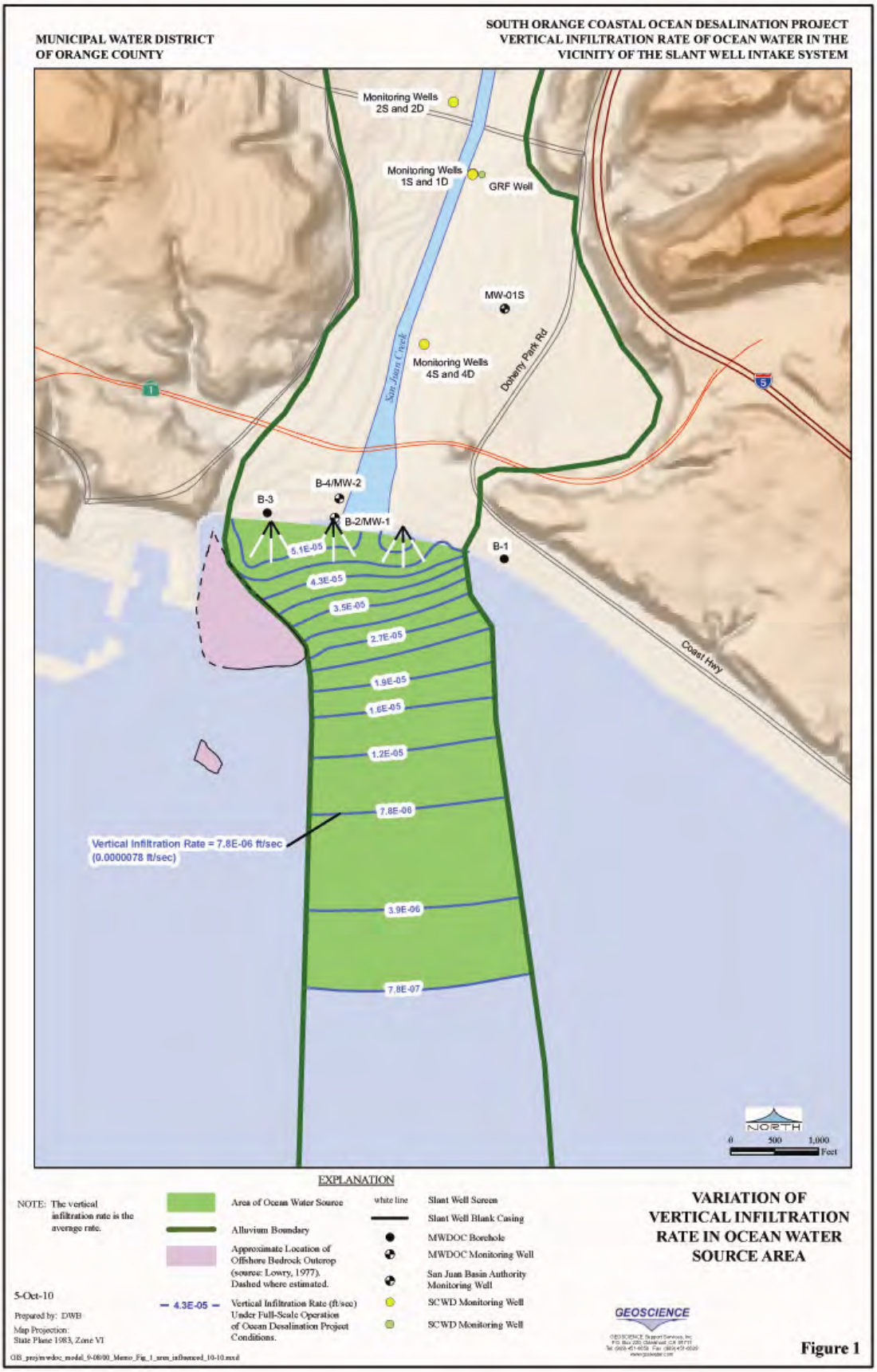
Potential Impacts on Wave and Current Transport Processes Due to Infiltration Rates Induced by the South Orange Coastal Ocean Desalination Project

Submitted by:
Dr Scott A. Jenkins Consulting
14765 Kalapana St
Poway CA 92064

Submitted to:
Richard Bell, PE
Principal Engineer & Project Manager
Municipal Water District of Orange County
18700 Ward Street
Fountain Valley, CA 92708

Statement of the Issues: There are two potential marine biology impacts that may arise as a consequence of the infiltration of ocean water through the seafloor in the vicinity of the slant well field of the South Orange Coastal Ocean Desalination Project. **1)** In a technical memorandum by Geoscience dated 1 October 2010, vertical infiltration rates in the immediate vicinity of the slant well field were estimated to be 5.1 X 10^{-5} ft/sec, decaying to 7.8 X 10^{-7} ft/sec at the outer limits of the ocean water source area (see Figure 1). It is well known that vertical suction flows through a sedimentary seabed (also known as ventilated boundary layers) increase the bed shear stresses arising from waves and currents (Conely and Inman, 1994). The decisive determination in assessing this potential impact is whether or not infiltration rates of this magnitude when combined with ambient waves and currents are sufficient to induce scour or erosion of the seabed and thereby disturb resident benthic organisms. **2)** There might be an additional impact on neutrally buoyant, freely drifting micro-organisms (eggs and plankton) if they become impinged on the seabed by the suction forces produced by the vertical pressure gradients of the slant wells that cause the infiltration of ocean water through the seafloor.

Background: Laboratory measurements by Conely and Inman, 1994, show that even very small infiltration rates through a porous seabed result in remarkably large increases in the wave induced shear stress, τ , acting on that bed. The wave induced shear stress in turn causes scour and erosion of the seabed when it exceeds the critical or threshold shear stress, τ_{crit}, that induces sediment motion, or when $\tau \geq \tau_{crit}$. They refer to infiltration rates, w_m , as "ventilation" and quantify it relative to the wave velocity amplitude, u_m , in terms of a ventilation parameter, $\widetilde{V} = w_m / u_m$. Figure 2 plots the time variation of the wave induced shear stress on a porous bed for one half cycle of motion, as under a wave crest. The solid curve in Figure 2 plots the bottom stress for no infiltration or ventilation, when $\widetilde{V} = 0$. The shear stress curves are normalized by the maximum shear stress with no ventilation, τ_{m0}, and


MUNICIPAL WATER DISTRICT
OF ORANGE COUNTY
SOUTH ORANGE COASTAL OCEAN DESALINATION PROJECT
VERTICAL INFILTRATION RATE OF OCEAN WATER IN THE
VICINITY OF THE SLANT WELL INTAKE SYSTEM
Monitoring Wells
2S and 2D
Monitoring Wells
1S and 1D
GRF Well
MW-01S
Monitoring Wells
4S and 4D
San Juan Creek
Doheny Park Rd
Coast Hwy
B-4/MW-2
B-3
B-2/MW-1
B-1
5.1E-05
4.3E-05
3.5E-05
2.7E-05
1.9E-05
1.6E-05
1.2E-05
7.8E-06
3.9E-06
7.8E-07
Vertical Infiltration Rate = 7.8E-06 ft/sec
(0.0000078 ft/sec)
NORTH
0
500
1,000
Feet
EXPLANATION
NOTE: The vertical infiltration rate is the average rate.
Area of Ocean Water Source
Alluvium Boundary
Approximate Location of Offshore Bedrock Outcrop (source: Lowry, 1977). Dashed where estimated.
4.3E-05
Vertical Infiltration Rate (ft/sec) Under Full-Scale Operation of Ocean Desalination Project Conditions.
white line
Slant Well Screen
Slant Well Blank Casing
MWDOC Borehole
MWDOC Monitoring Well
San Juan Basin Authority Monitoring Well
SCWD Monitoring Well
SCWD Monitoring Well
5-Oct-10
Prepared by: DWB
Map Projection:
State Plane 1983, Zone VI
VARIATION OF
VERTICAL INFILTRATION
RATE IN OCEAN WATER
SOURCE AREA
GEOSCIENCE
Figure 1

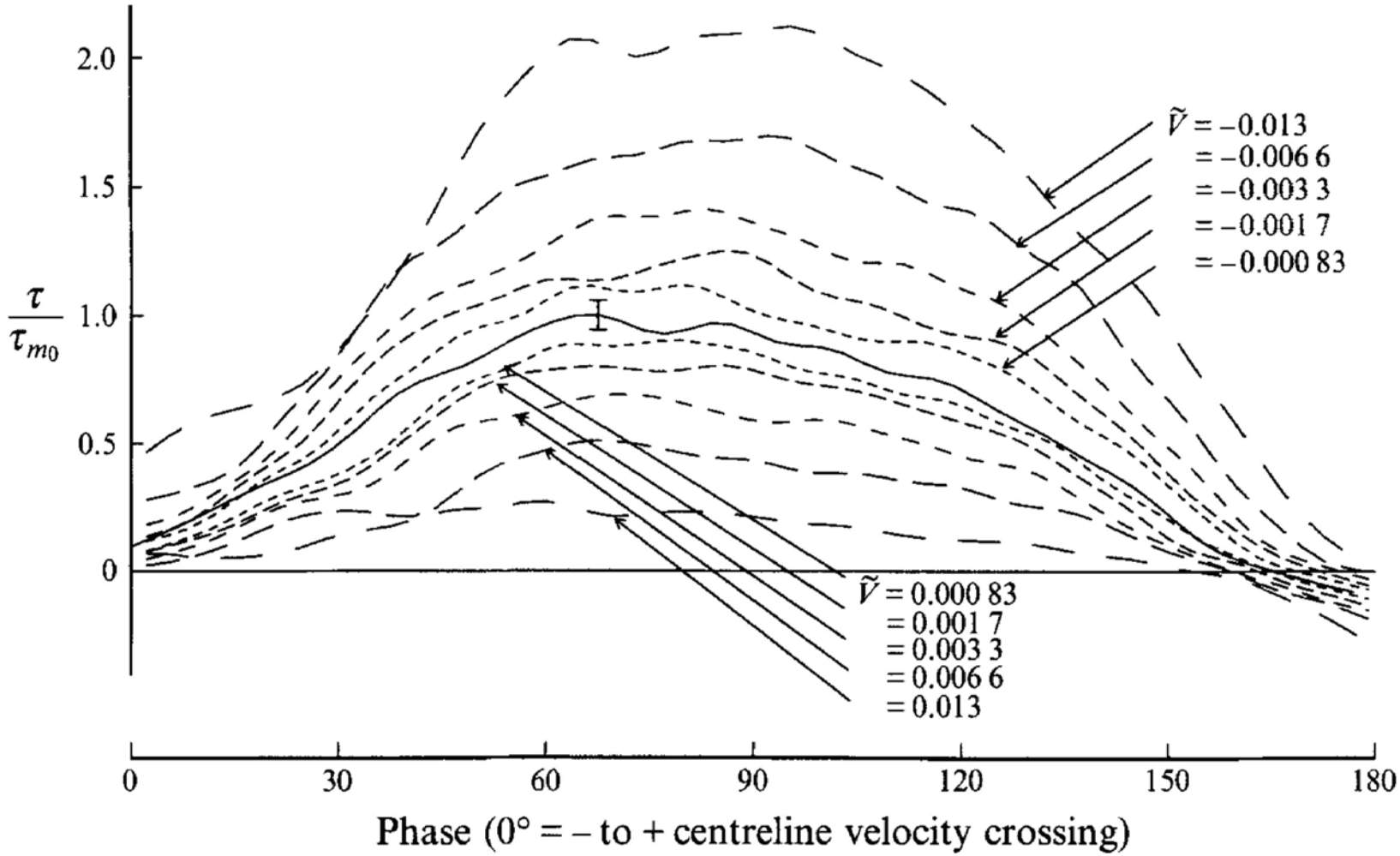


FIGURE 2. Ensemble-averaged bed stress for various values of $\tilde{V}$. Values are normalized by the maximum unventilated bed stress. Solid line is bed stress for unventilated case. The error bar represents 95% confidence level of peak stress [from Conley and Inman, 1994].

we find that the curve for no ventilation reaches a maximum of $\tau / \tau_{m0} = 1.0$. Above this curve are other bottom shear stress curves for negative ventilation, $\widetilde{V} < 0$, when water is being drawn or sucked into the bed, as would occur with infiltration into the seabed above buried slant wells. Figure 2 shows that the maximum bottom stress doubles when the infiltration rate or ventilation is only 1.3% as large as the wave velocity amplitude, when $\widetilde{V} = -0.013$. On the other hand, the wave induced bottom stress is diminished when water is forced out of the bed, a condition referred to as injection, when $\widetilde{V} > 0$. The injection examples in Figure 2 (when $\widetilde{V} > 0$) show that $\tau / \tau_{m0} < 1.0$

The wave induced bottom stress in Figure 2 can be integrated over time to give the average bottom stress over a wave length with no ventilation, $\langle |\tau_0| \rangle$, and with ventilation, $\langle \tau_v \rangle$. The ratio of these two time-averaged shear stresses give the percentage increase in bottom stress due to ventilation, as plotted in Figure 3. Conely and Inman, 1994, show that this ratio follows a simple linear relationship,

$$\frac{\langle \tau_v \rangle}{\langle |\tau_0| \rangle} = \frac{b\widetilde{V}}{2 f_w} \qquad (1)$$

Where $b = 0.9$ for ideal granular sedimentary seabeds and $f_w = 2\tau_{m0} / \rho u_m^2$ is the wave friction factor after Jonsson, 1963, and ρ is the density of the ocean water.

Analysis of Potential for Seabed Erosion: Figure 3 and equation (1) indicate that the percentage increase in wave induced bottom stress grows linearly with the ventilation parameter, $\widetilde{V} = w_m / u_m$. To quantify the potential for seabed erosion we calculate this parameter in terms of the size of the reported infiltration rates w_m over the slant well field relative to the threshold velocity for transport, $u_m = u_{crit}$, of the native beach sediment. Figure 4 plots the grain size distribution of the native beach sand taken from the surf zone at Doheney Beach by Reed, et al, 1975. The median grain size is shown to be 0.22 mm (220 microns). Figure 5 gives the threshold velocity for transport (black curve) as a function of median grain size. Inspection of Figure 5 indicates that the threshold velocity for transport for 0.22 mm sized sand is $u_m = u_{crit}$ = 0.6 ft/sec. Therefore the ventilation parameter directly over the well field when the wave oscillatory velocity is at the threshold of beach scour is:

$$\widetilde{V} = w_m / u_m = \frac{5.1 \times 10^{-5}}{6 \times 10^{-1}} = 8.5 \times 10^{-5} \qquad (2)$$

With this value of ventilation parameter inserted into equation (1) or plotted in Figure 3, the infiltration rate over the well field will cause a net increase in wave induced bottom stress of $\langle \tau_v \rangle / \langle |\tau_0| \rangle = 1\%$. Figure 6 gives contours of net bottom stress increases over a near shore region from the slant well field extending offshore to the outer limits of the recharge zone based on the infiltration rates calculated by Geoscience, 2010, in Figure 1. While the

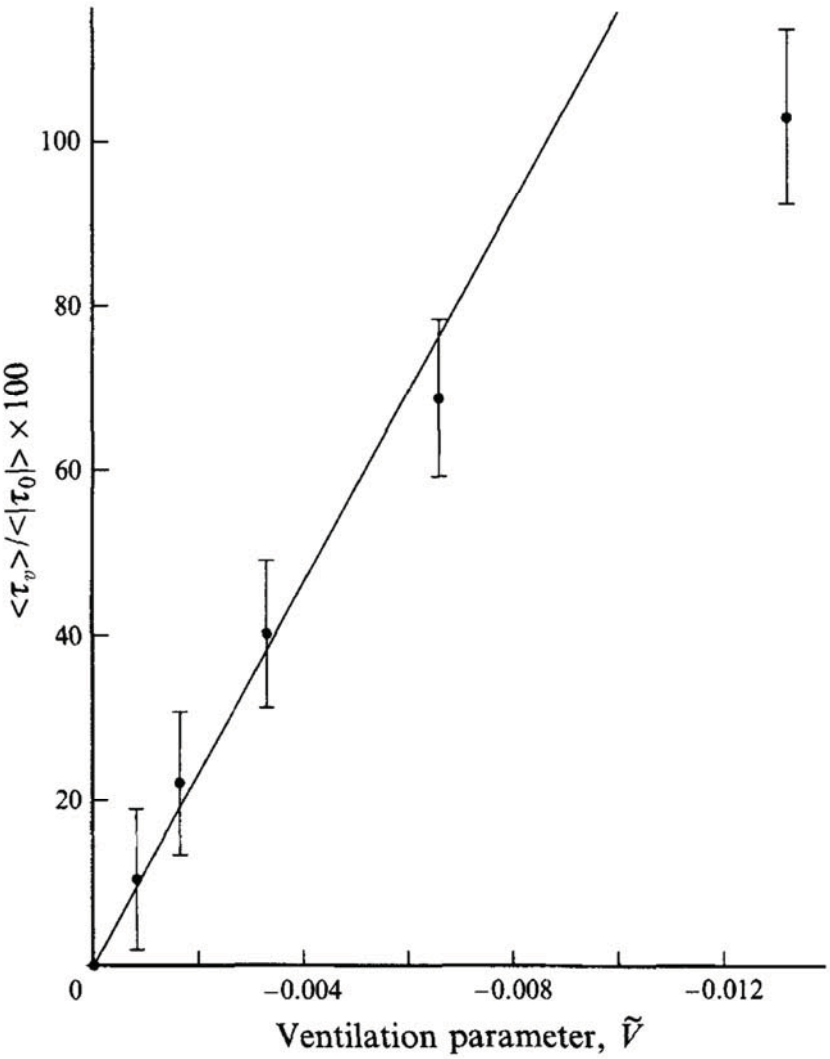


FIGURE 3. Average net ventilated bed stress as a percentage of average gross unventilated bed stress *vs.* $\tilde{V}$. Solid line is computed from (1) with $b = 0.9$. Error bars are 95% confidence interval [from Conley and Inman, 1994].

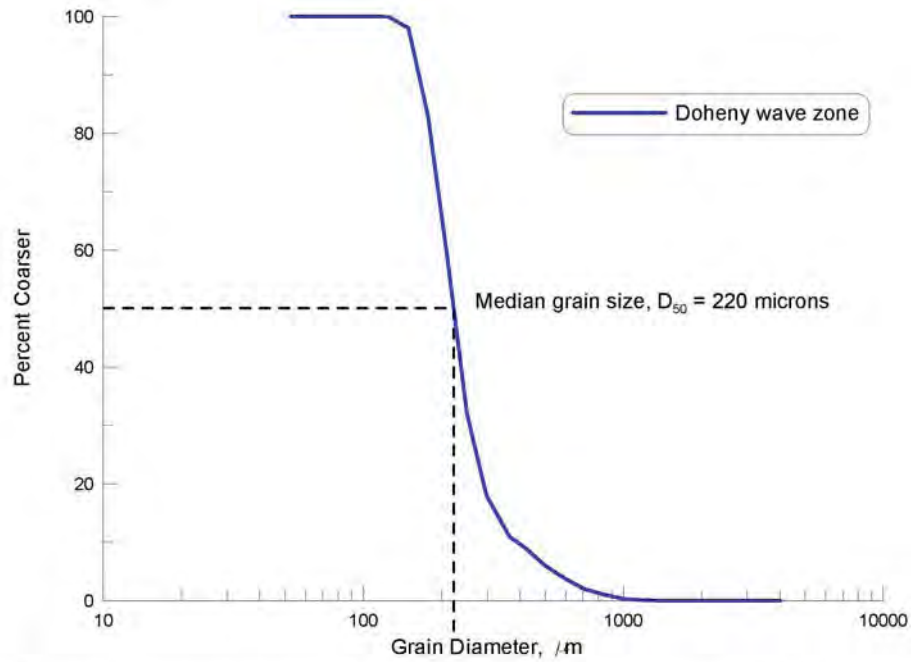


Figure 4 . Grain size distribution at Doheny Beach, from surfzone measurements after Reed et al., 1975.

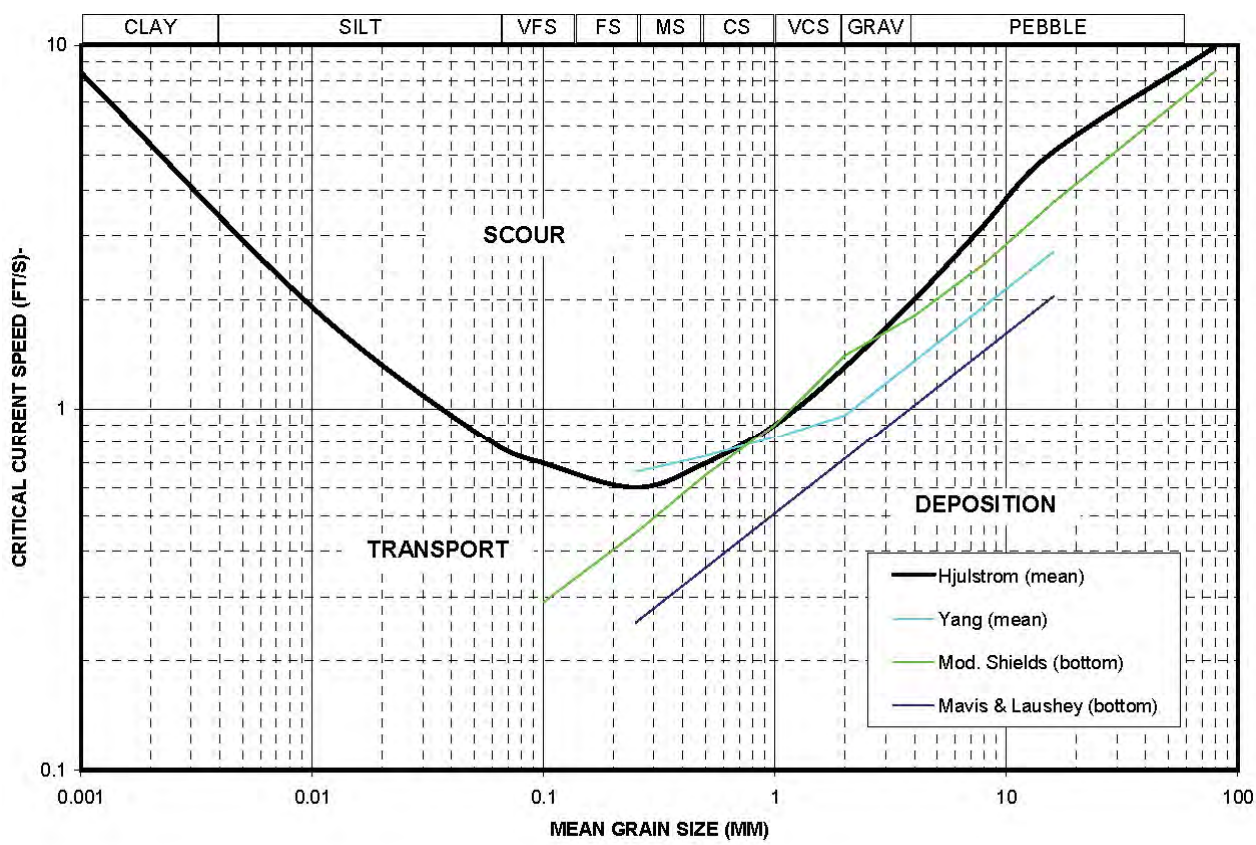


Figure 5: Threshold velocity of transport for quartz sediment as a function of mean grain size, (from Everest, 2007).

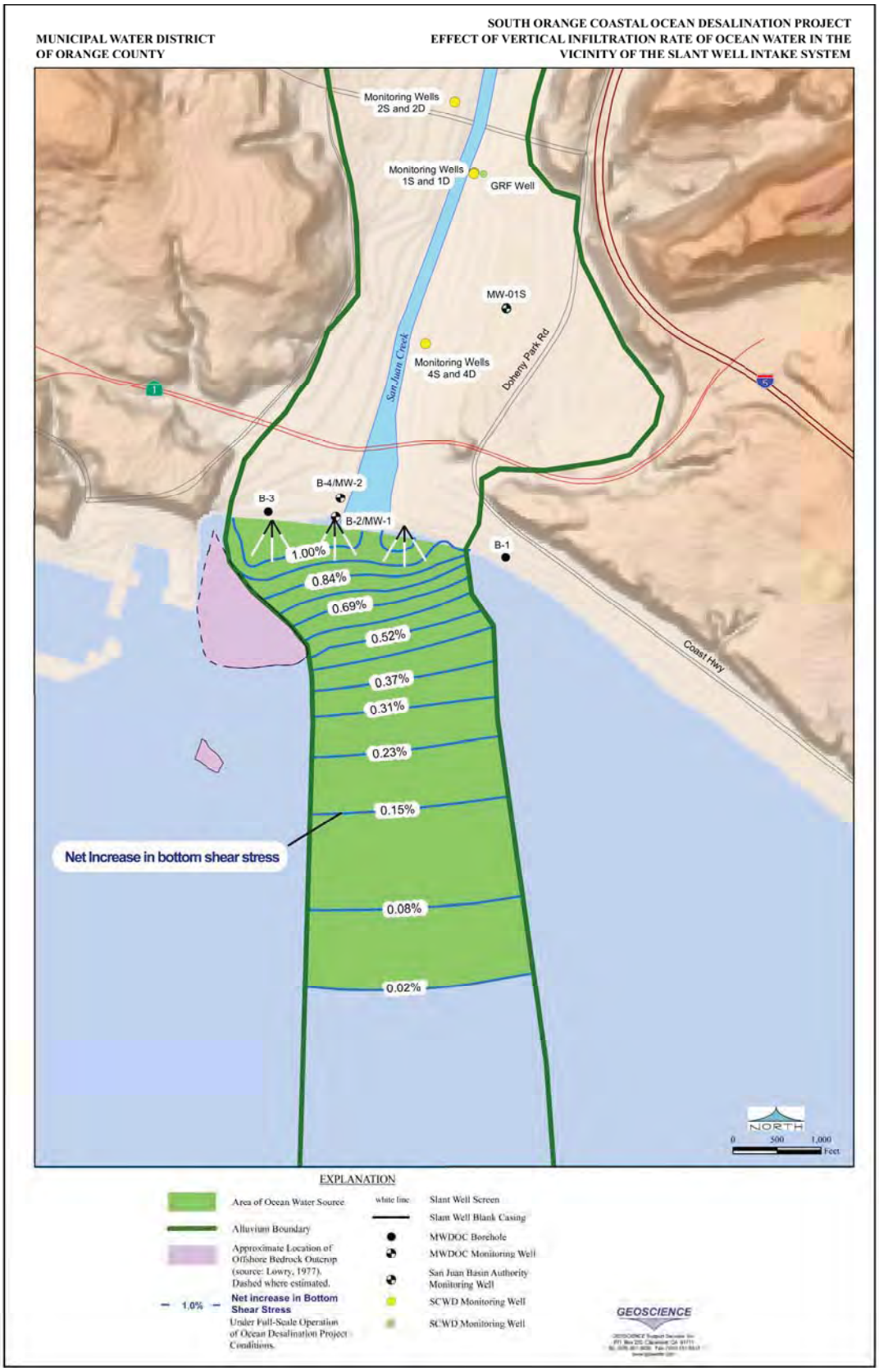


Figure 6. Net increase in wave-induced bottom stress at scour onset due to infiltration rates plotted in Figure 1 [after GEOSCIENCE, 2010].

maximum net increase in bottom stress is 1% directly over the well field, the net stress increase drops to only 0.02% at the outer limit of the recharge zone where infiltration rates are only $w_m = 7.8 \text{ X } 10^{-7}$ ft/sec. Regardless, the net increase in bottom stress calculated for the well field at the onset of scour from equation (1) is every where substantially smaller than the error bars of the net shear stress increase in Figure 3, even under carefully controlled laboratory conditions. At these very small values of ventilation parameter, the error in the net shear stress increase calculated from equation (1) is about +/- 9%, nine times greater than the theoretical maximum effect of the slant wells. Therefore the net increase in bottom stress calculated for the well field may be regarded as negligible in a statistical sense. In a physical sense, it is equally negligible in comparison to naturally occurring broad-scale seasonal beach profile variation and erosion at Doheny Beach and the surrounding Dana Point headland. Figure 7 gives a refraction/diffraction plot for the 1 March 1983 storm, indicating 6m high breakers off Dana Point and 2m – 4m high wave runup at Doheny Beach. Such storms can cause as much as 2m loss in the thickness of the beach sediment cover, as evidenced by the envelope of variability in beach profiles shown in Figure 8. A 1% increase in bottom stress as attributable to the maximum effect of the slant well infiltration rates is trivial by comparison to the thousands of percent increases in wave induced stresses that occur naturally during such storms and which cause such dramatic erosion and seasonal variation in beach profiles shown in Figure 8.

Analysis of Potential for Seabed Impingement of Micro-organisms: The vertical pressure gradients in the seabed sediments produced by of the slant wells have the potential to trap or cause neutrally buoyant, freely drifting micro-organisms (eggs and plankton) to impact on the seabed by the action of suction forces, F_s. Figure 9 gives a force and moment balance of a micro-organism that has hypothetically been impacted on the seabed by the action of these suction forces forming an impact crater on a seabed sloping at angle β. The vertical pressure gradients causing such an impact are assumed to be isotropic through the seabed sediments and arise from the hydraulic head difference, Δh, acting across the average vertical distance, Δx between the seafloor and the middle of the intake well screen sections. If we assume these pressure gradients act on small spherical micro organisms whose equivalent diameter is D, then the suction force holding these organisms against the seabed is

$$F_s = \frac{1}{8} \rho g \pi D^3 \frac{\Delta h}{\Delta x} \qquad (3)$$

Here g is the acceleration of gravity and from Geoscience (2010) the vertical gradient of hydraulic head through the seabed is $\Delta h / \Delta x$ = 65 ft/120 ft = 0.54. Nanoplankton have an equivalent spherical diameter of 5 microns, and net plankton have an equivalent spherical diameter of 20 -30 microns (Langdon, 1988). The impacted or impinged plankton will remain trapped on the sea bed until the suction moment restraining its motion $F_s \times r_1$ is exceeded by the sum of hydrodynamic moments acting to move it out of its impact crater, as shown by the moment balance in Figure 9. This moment balance reduces to:

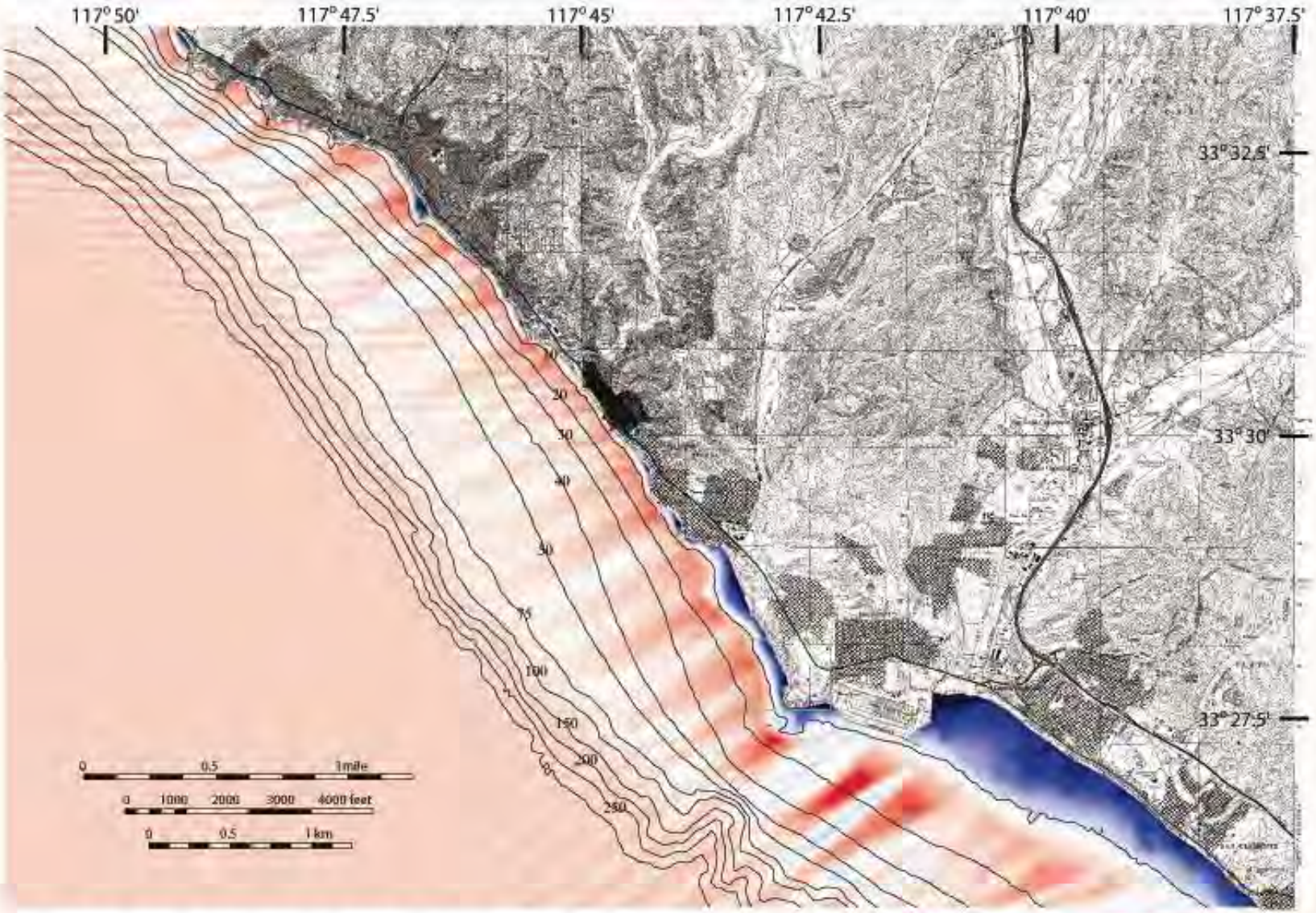


Figure 7. Dana Point wave refraction for the 1 March 1983 storm
Wave height at offshore control point = 6.5 m, T=15.5 sec, from 223.5°
from Jenkins and Wasyl, (2002), Headland Reserve Project Certified EIR.

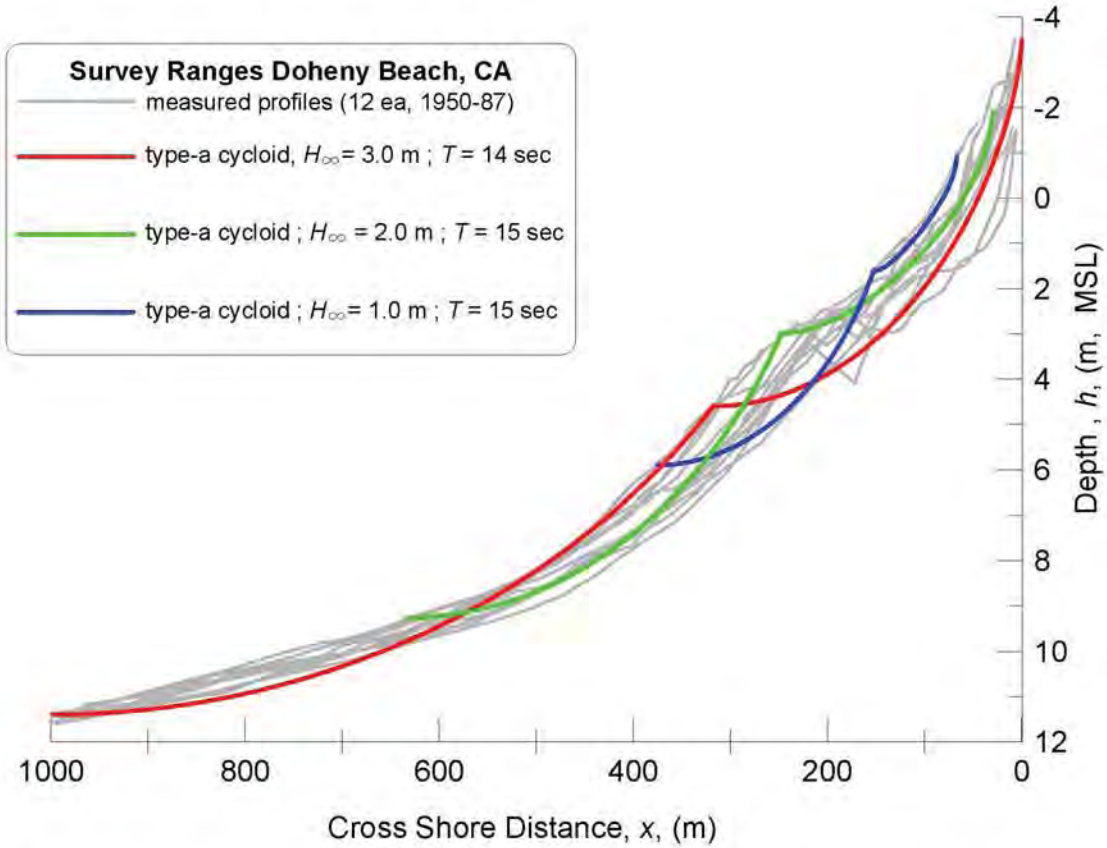


Figure 8. Envelope of variability of measured beach profiles (1950-87) at Doheny Beach, CA (grey) compared to the ensemble of elliptic cycloid solutions (colored) for selected incident wave heights and periods with D = 220 μm, N = 10, γ = 0.8, and Λ = 0.81. (after Jenkins and Inman, 2006).

$$F_s \sin(\phi - \beta) = \rho C_d A_0 u_m^2 (1 + \cos\phi) + \rho c_m V_0 \frac{du}{dt}(1 + \cos\phi) \qquad (4)$$

where ϕ is the angle of repose; the first term on the right hand side of equation (4) is due to hydrodynamic drag; and the second term is due to the wave pressure (virtual mass force) acting on the impinged organism. Since the organism is very small in relation to the wave height or oscillatory amplitude, the virtual mass force is negligible compared to the drag force (Jenkins and Inman, 1985, Batchelor, 1970). The hydrodynamic drag due to the wave oscillations acting to scrub these tiny organisms free of the suction forces can be represented as

$$F_d = \frac{1}{4} \rho\, C_d \pi D^2 u_m^2 \qquad (5)$$

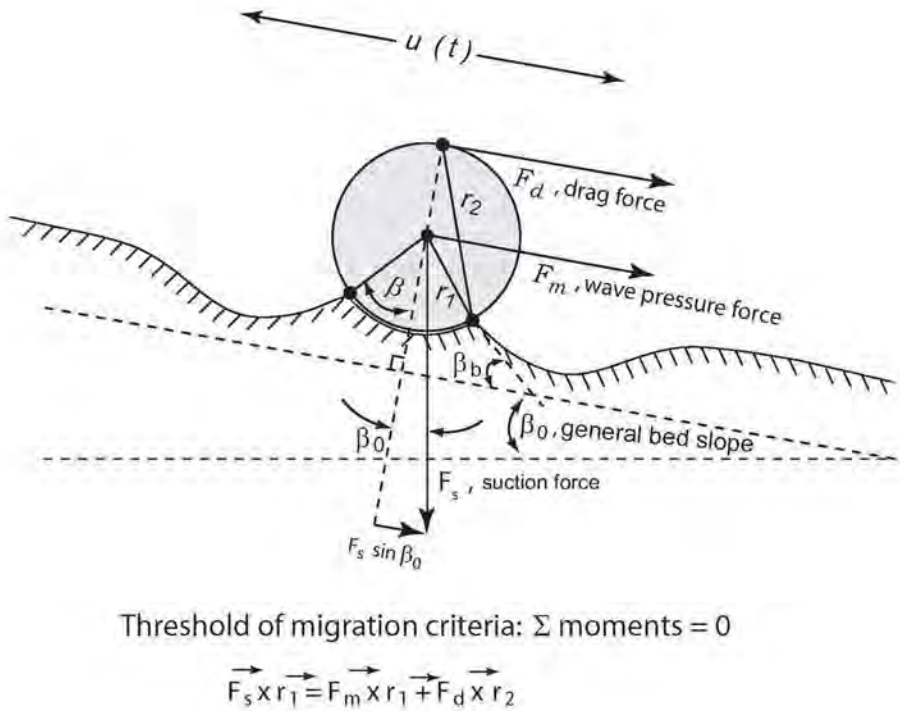


Figure 9. Criteria for incipient motion of neutrally buoyant micro-organism impacted on the seabed by well infiltration rates. Organism moves when the sum of moments due to hydrodynamic forces (right side of equation) exceed the moment due to suction forces arising from vertical pressure gradient induced by the buried slant wells (left side of equation).

Where $C_d = 24/R_e$ is the drag coefficient on a tiny sphere (Stokes approximation); $R_e = u_m D/\upsilon$ is the Reynolds number and $\upsilon = 10^{-2}$ cm^2/sec is the kinematic viscosity (Batchelor, 1970, Jenkins and Inman, 1985). In a worst case scenario, we take $\sin(\phi - \beta) \cong 1$ and $(1 + \cos\phi) \cong 1$, whence the organism will break free of the pressure gradient holding it on the sea bed when the oscillatory wave velocity exceeds the following:

$$u_m \geq \frac{gD^2}{48\upsilon}\frac{\Delta h}{\Delta x} \cong 0.01 \text{ cm/sec} \qquad \text{(netplankton)}$$
$$\cong 0.003 \text{ cm/sec} \qquad \text{(nanoplankton)} \tag{6}$$

In either case, only minute oscillatory wave velocities are required to prevent these micro-organisms from becoming trapped or impinged by the seabed. The wave climate at Doheny Beach and the Dana Point region *always* produces waves that exceed these minimal oscillatory velocities in the depth regime of the well field and recharge zone shown in Figure 1, (USACOE, 1987, 1991).

Conclusions: Analytic calculations were made to determine the potential for seabed erosion and micro-organism impingement on the seabed due to infiltration rates and pressure gradients induced by the slant well field of the South Orange Coastal Ocean Desalination Project. The calculations were based on infiltration rates and seabed pressure gradients modeled by Geoscience, (2010). While the modeled infiltration rates were found to increase net bottom shear stress by no more than 1% at the onset of erosion, this value is considered statistically insignificant as it is nine times smaller than the error implicit in the net shear stress increases determined under controlled laboratory conditions. Even then, whatever sediment transport is attributable to this 1% increase in bottom stress is both limited to the immediate vicinity of the slant well intake and is insignificant in comparison to naturally occurring seasonal beach profile variation and storm induced erosion. Force balance calculations show that the ocean would have to become perfectly quiescent in order for nano- and netplankton and other neutrally buoyant, freely drifting micro-organisms to become impinged or trapped on the seabed by the vertical pressure gradient induced by the slant well field. Such a quiescent wave climate has never been measured or observed at this site.

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GEOSCIENCE

Technical Memorandum

To:	Mr. Richard Bell, P.E. Principal Engineer Municipal Water District of Orange County 10500 Ellis Avenue Fountain Valley, California 92728
From:	Dennis E. Williams, Ph.D. President GEOSCIENCE Support Services, Inc.
Date:	October 5, 2010
Subject:	**South Orange Coastal Ocean Desalination Project – Vertical Infiltration Rate of Ocean Water Migrating Through the Seafloor in the Vicinity of the Slant Well Intake System**

Background

The South Orange Coastal Ocean Desalination Project will be located near the mouth of San Juan Creek in Dana Point, Southern California. The 15 mgd desalination plant will include a subsurface feedwater supply system consisting of seven slant wells[1] producing a total of 30 mgd. Based on results from ground water modeling, 95% of the recharge to the 30 mgd slant well supply is derived from ocean water sources migrating through the alluvium beneath the ocean. Figure 1 shows the area of the ocean water source for the slant well feedwater supply system along with the alluvial boundary in the vicinity of the wellfield. The area of the ocean water source was delineated based on groundwater model drawdowns greater than one foot in the alluvial aquifer beneath the ocean. This area is the area of recharge to the main aquifer tapped by the well screens. The purpose of this technical memorandum is to quantify the vertical

[1] A total of nine slant wells will be constructed, with seven wells operating continuously at any given time to produce the 30 mgd feedwater supply. Operation of the wellfield will include periodic rotation of slant well pumping in order to provide for routine maintenance.

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infiltration rate of ocean water migrating through the seafloor in the vicinity of the slant well intake system under full-scale project conditions (i.e., 30 mgd).

Calculation of Vertical Infiltration Rate of Ocean Water Migrating Through the Seafloor

The vertical infiltration rate of ocean water migrating through the seafloor in the vicinity of the slant well intake system under full-scale project conditions (30 mgd) can be calculated using the following equation:

$$w = \frac{Kv}{\theta} \bullet \frac{\Delta h}{\Delta x}$$

Where:

w = Vertical infiltration rate of ocean water migrating through the seafloor (ft/sec),

Kv = Vertical hydraulic conductivity of seafloor sediments (0.000014 ft/sec),

θ = Effective porosity of seafloor sediments (0.15),

Δh = Hydraulic head difference between the ocean surface and ground water levels in the vicinity of feedwater supply wellfield (65 ft),

Δx = Average vertical distance from the seafloor to the middle of the intake well screen[2] sections (120 ft)

The vertical hydraulic conductivity value of 0.000014 ft/sec and the effective porosity value of 0.15 were based on field data (on-shore and test slant well lithologic logging and lab permeameter measurements) and verified by the calibrated ground water model. The maximum hydraulic head difference between the ocean surface and the slant well pumping levels was estimated to be 65 ft under the full-scale project conditions.[3] The average distance from the seafloor to the middle of the screened portions of the slant well feedwater supply is

[2] Assuming 1,000 ft slant wells drilled at 9 degrees below horizontal with 500 ft of screen in the lower portion of the wells

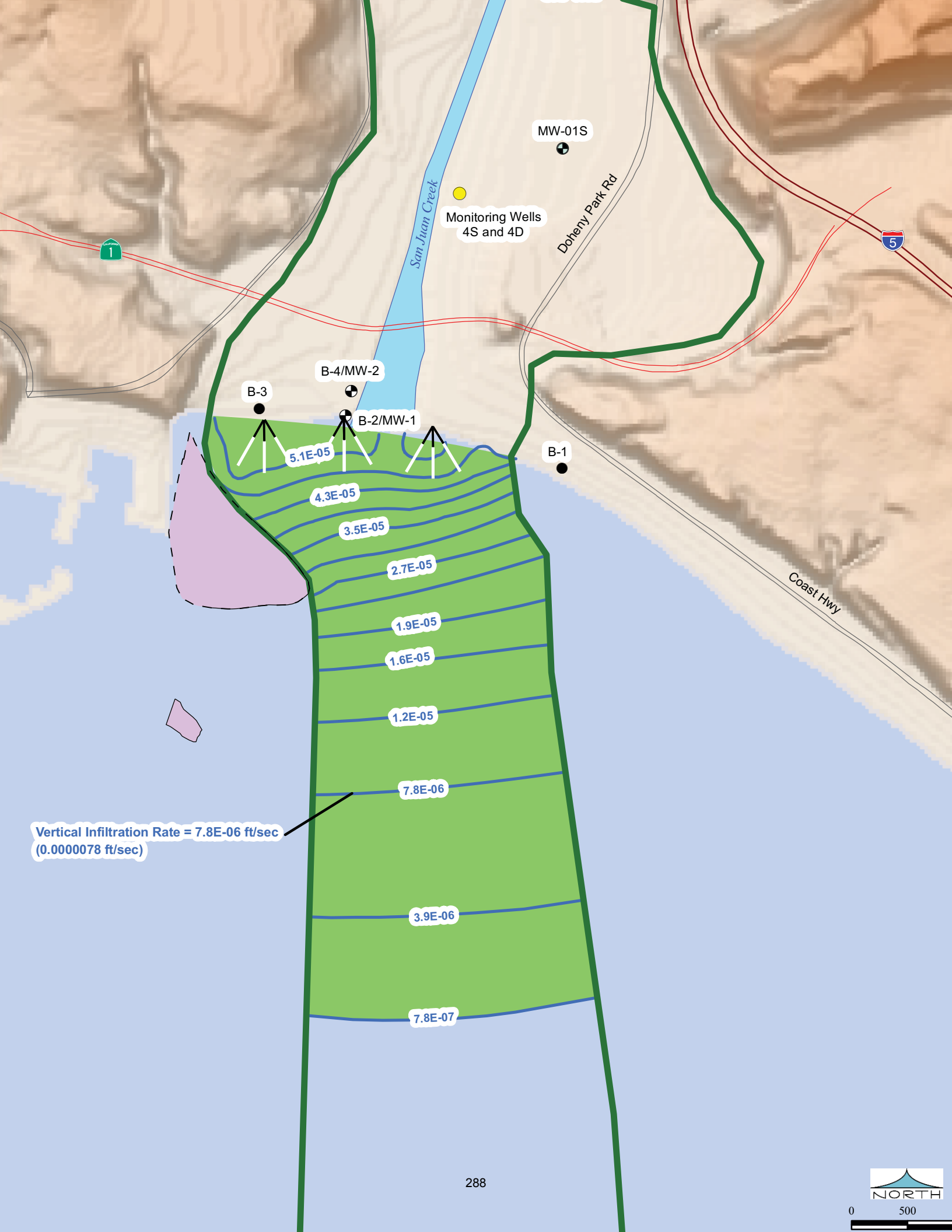
[3] GEOSCIENCE Support Services, Inc., 2007. Subsurface System Intake Feasibility Assessment. Task 4 Report. Prepared for the Municipal Water District of Orange County.

approximately 120 ft. Therefore, the maximum vertical infiltration rate of ocean water migrating vertically downward through the seafloor to the slant well intake screens is estimated to be 0.000051 ft/sec. That is the maximum vertical infiltration rate of ocean water migrating through the seafloor over the zone of ocean water recharge is in the vicinity of the maximum drawdowns (i.e., near the slant well intakes).

Variation of Vertical Infiltration Rate within the Ocean Water Source Area

The variation of vertical infiltration rate of ocean water migrating through the seafloor for the area within the ocean water source area (to the wellfiled) was calculated using the same equation as used above. However, the hydraulic head difference was varied over the area of the ocean water source area, specifically 65 ft in the immediate vicinity of the wellfield to one foot at the boundary of the ocean water source area. The same vertical hydraulic conductivity value of 0.000014 ft/sec and effective porosity value of 0.15 were used. It was also assumed that infiltration from the ocean travels vertically downward to a depth representing the middle point of the slant well intake screens (i.e., 120 ft). In other words, in areas away from the slant well intakes, vertically migrating ocean water was assumed to travel vertically 120 ft under a varying hydraulic head difference before turning horizontal and migrating to the wellfield area.

Based on these assumptions, the vertical infiltration rate varies (under full-scale operating conditions) from 0.00000078 ft/sec at the outer limits of the ocean water source area to 0.000051 ft/sec in the immediate vicinity of the wellfield (see Figure 1).


MW-01S
Monitoring Wells
4S and 4D
San Juan Creek
Doheny Park Rd
1
5
B-4/MW-2
B-3
B-2/MW-1
B-1
5.1E-05
4.3E-05
3.5E-05
2.7E-05
1.9E-05
1.6E-05
1.2E-05
7.8E-06
3.9E-06
7.8E-07
Coast Hwy
Vertical Infiltration Rate = 7.8E-06 ft/sec
(0.0000078 ft/sec)
NORTH
0
500

Responses to Comment Letter A41_iii

Response to Comment A41_iii: This document provides scientific information indicating that no take will result from the operation of the subsurface slant well system for water intake to the South Orange Coastal Ocean Desalination project (SOC Ocean Desalination Project). The purpose of this document is to provide background information, and contains no comment specific to the Draft EIR, therefore no response is required.

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MEMORANDUM

DATE: October 18, 2010

TO: Richard Bell, P.E.
Manager, Water Resources and Facility Planning
Municipal Water District of Orange County
18700 Ward Street
Fountain Valley, California 97208

FROM: Gregory J. Newmark, Esq.
Tim D. Cremin, Esq.

RE: **Legal Analysis of Draft Environmental Impact Report for the California Marine Life Protection Act Initiative South Coast Study Region – Doheny Beach Beach SMCA**

This memorandum supplements the comment letter submitted by the Municipal Water District of Orange County (MWDOC) on the (Draft EIR) prepared by the Department of Fish and Game (DFG). It sets forth the legal authority to support MWDOC's request for the Fish and Game Commission to adopt a modification to the proposed Option to Retain the Doheny Beach State Marine Conservation Area designation (SMCA) (Option 2) as part of the Integrated Preferred Alternative (IPA). MWDOC's requested modification is to clarify that the existing and planned expansion of the South Orange Coastal Ocean Desalination Project (Desalination Project) and the SOCWA San Juan Creek Ocean Outfall (Ocean Outfall) would continue to be permitted under the Doheny Beach SMCA as "other proposed regulatory activities." The specific change to the Section 632, Title 14 Notice of Proposed Changes in Regulations is set forth in MWDOC's memorandum to Becky Ota, Department of Fish & Game (DFG), dated October 6, 2010.

The requested modification is necessary to correct an oversight and make it clear that the essential public services provided by the existing and planned expansion of the Desalination Project and Ocean Outfall would continue to be permitted under the Doheny Beach SMCA. This clarification would assure that the proposed SMCA is consistent with applicable law, including the Marine Life Protection Act (MLPA), Administrative Procedure Act (APA), and the California Environmental Quality Act (CEQA).

A. The MLPA Clearly Authorizes DFG to Modify Existing Marine Protected Area Designations

The modification of the existing Doheny Beach SMCA as requested by MWDOC is specifically allowed under the MLPA. The statutory provisions of the MLPA authorize the "modification" of existing Marine Protected Areas (MPAs) as part of DFG's regulatory process. Fish & Game Code §§ 2853(c)(5), 2855(a), and 2861(b) specifically refer to the authority to "modify existing MPAs." This authority to modify existing designations is reflected in the proposed modifications to boundaries, take regulations and other regulated activities under the SMCAs included in the IPA. So, the inclusion of modifications to address "other regulated activities" for the Doheny Beach SMCA as proposed by MWDOC would be consistent with the way DFG has treated other SMCAs in the IPA. A41_iv-1

B. The MLPA and APA Require Existing and Planned Desalination Project to be Included as Permitted Regulatory Activity

Under the APA, an administrative regulation must be within the scope of authority conferred by statute and cannot be inconsistent with State legislation. (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 872-73.) The Commission's authority to restrict existing or planned uses is limited by statute. Existing and planned activities that are permitted by federal or state agencies are not prohibited by proposed regulations under the MLPA or APA. DFG acknowledges this legal rule in the Draft EIR. The Draft EIR states that proposed regulations would not prohibit ongoing activities with authorization from other agencies. (DEIR, p. 6.3-28 - 29 and p. 2-17 (Section 2.4.11).) A41_iv-2

"Pre-existing activities and artificial structures . . . occur throughout the heavily urbanized southern south coast study region. . . . However, these activities are regulated by other federal, state and local agencies, whose jurisdiction cannot be pre-empted through the designation of MPAs under MLPA. These activities are specified within the proposed MPA regulations to make explicit that these regulated activities are allowed to continue under current permits." (DEIR, p. 6.3-28 – 29.)

In addition, the Draft EIR states that areas with existing uses that are expected to continue are designated with less restrictive regulations such as SMCAs, which permit certain commercial activities. (DEIR, p. 2-17; Pub. Res. Code § 36710(c).) As stated in the Draft EIR, "[a] SMCA designation would not prohibit maintenance and operation activities associated with existing structures and facilities such as outfall pipes, jetties, aquaculture operations, dredging, sand replenishment, or other permitted operations." (DEIR, p. 3-10.) Doheny Beach is designated a SMCA which allows existing and planned permitted operations, such as a desalination plant.

Consistent with the MLPA and APA, the Desalination Project should be included as an existing and proposed activity permitted by state regulation. The Desalination Project will provide 15 million gallons a day of drinking water. Phases 1-3 of the Desalination Project have been or are operating under state permits from the California Coastal Commission and State Parks, and leases from State Lands Commission. Phase 3 began operations in June 2010 and includes a slant well constructed in 2006 and test facilities constructed in 2009/2010 that is currently pumping 3 mgd for an extended seawater pumping and pilot plant test. Future phases of this Project to implement the proposed overall Plant operations is a planned, proposed project expansion that should be considered in the development of the MPA under the MLPA. Fish & Game § 2862 specifically directs DFG to evaluate "proposed projects" and their impacts in evaluating MPAs. Certainly, the final phases of the Desalination Project, with Phase 1-3 already complete and well underway qualifies as a "proposed project" under the statute. In their comment letter of the Notice of Preparation and Draft EIR, MWDOC has provided reports and studies on the Desalination Plant which show that the Plant would have no impact on marine life and ecosystems within the Doheny Beach SMCA. A41_iv-2

The CEQA environmental review completed by MWDOC for Phases 1-3 provides information on the potential environmental impacts of the proposed Project. The environmental analysis concluded that all impacts (including impacts to marine resources) are either less than significant or would be reduced to less than significant through specified mitigation. (See Initial Study/Negative Declaration for Subsurface Intake System Feasibility Investigation Test Slant Well (Phase II) dated October 2005 and Mitigated Negative Declaration for Phase III Extended Pumping and Pilot Plant Testing dated May 2008. Copies of these documents are attached as Exhibit A and B to this memorandum.) These CEQA documents were provided to DFG and DFG submitted comment letters on the documents. Since these documents have been approved and adopted by MWDOC, they can be relied on by DFG in analyzing the potential impacts of the Project under the proposed SMCA and support a conclusion that the impacts would be less than significant with mitigation.

C. The Fish and Game Commission Lacks Jurisdiction to Regulate Activities that Do Not Affect Marine Organisms

The clarification MWDOC is requesting for the new regulations and DEIR is also appropriate because it would avoid any perception that the Commission is attempting to regulate activities and resources beyond its jurisdiction. As established by MWDOC's evidence, the slant wellfield will be located far below ground and the sea floor by the time it enters the MPA, and benthic organisms live in the top two feet of the sediment. This evidence also establishes that operation of the slant wellfield will have no adverse impact on marine life. Accordingly, it would be inappropriate for the Commission to attempt to A41_iv-3

regulate these activities because they do not affect matters within the Commission's jurisdiction. (See also, Fish & Game Code, § 201.) A41_iv-3

D. CEQA Requires the Existing and Planned Desalination Project to be Included in Draft EIR Analysis

CEQA also requires the Desalination Plant to be considered as part of the analysis of past, existing and planned projects in the Draft EIR. Under CEQA, the existing environmental setting or baseline environmental conditions include the existing physical conditions at the time the Notice of Preparation (NOP) is published. (CEQA Guidelines § 15125; *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 125-26.) The impacts of the proposed MPA designations are measured by the change to existing conditions. The Phase 2 slant well was fully permitted and constructed from the beach out under the ocean in spring 2006 and tested at that time. Phases 2 and 3 facilities of the Desalination Project is part of the existing conditions since it was in operation on June 3, 2010 which was prior to the time the NOP for the Draft EIR was published on June 29, 2010. In MWDOC's comment letter on the NOP dated August 2, 2010, information about the past, existing and expanded Desalination Project were provided to DFG. The information should be included in the EIR. A41_iv-4

Under CEQA, the Draft EIR is required to analyzed any change to the existing environmental conditions (baseline) caused by the proposed regulation. Our understanding is that the proposed option to retain the Doheny Beach SMCA includes continuance of the existing Desalination Project uses consistent with the APA and MLPA statutes. Our request for a clarification to the regulation is to remove any possible ambiguity. The clarification also would make it clear that the Draft EIR was not required to address the impact of the existing Desalination Project operations because they were included in the baseline existing conditions and the proposed regulation would not result in any change to the baseline.

However, if DFG does not clarify the regulation as requested by MWDOC and existing or planned pubic service uses purportedly may be restricted under the SMCA, then the Draft EIR would need to be modified to analyze the environmental impacts of this change to the existing baseline conditions. The Draft EIR would need to be revised to analyze the potentially significant environmental effects of not allowing the Desalination Plant uses and Ocean Outfall. The potential environmental impacts of these projects not continuing would include the following: decreased reliability of water supply to serve MWDOC customers; impediments to planned growth in MWDOC's service areas; inconsistency with existing plans, such as MWDOC's South Orange County Reliability Plan, MWDOC's Urban Water Management Plan, the South Orange County Integrated Regional Watershed Management Plan, Metropolitan Water District of Southern California Integrated Resource Plan, Urban Water Management Plan and Seawater Desalination Program, which all include the Desalination Project; and significant public health and safety risks, environmental impacts,

and socioeconomic impacts, such as the economic impact to the region of inadequate water supply. As currently drafted, the Draft EIR does not address these proposed impacts and would need to be significantly revised and potentially recirculated in order to support approval of any SMCA designation that would not allow the existing and expanded Desalination Project and outfall uses. In addition, any purported prohibition of the Desalination Project under MLPA regulations would raise issues of an illegal regulatory taking because it would prevent existing and planned uses for which MWDOC has invested substantial resources and obtained regulatory approvals from going forward. A41_iv-4

The impacts of the Desalination Project also should be included in the cumulative analysis for the Draft EIR. The Draft EIR uses the "list of projects" approach to analyze cumulative impacts. (DEIR, p. 9-1 and 9-2.) This methodology requires the Draft EIR to include past, present and "probable future" projects. (CEQA Guidelines § 15130(b)(1)(A).) "Probable future" projects include those for which the applicant has devoted significant time and financial resources to prepare the project for regulatory review. (Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1127-28.) The entire existing and expanded Desalination Project meets this standard and should be included in the EIR. Phases 1-3 constitute past and present projects for the reasons described above. These Phases have been completed or are occurring. MWDOC has completed CEQA environmental review for these Phases. The proposed future completion of the Desalination Project meets the standards for a "probable future" project that should be included in the cumulative analysis.

MWDOC has expended significant resources in developing the overall Desalination Plant project and has sought necessary regulatory approvals. The completed environmental review for Phase 1-3 describes the types of environmental impacts from the proposed Project operation that can be included in the Draft EIR. (see Initial Study/Negative Declaration for Subsurface Intake System Feasibility Investigation Test Slant Well (Phase II) dated October 2005 and Mitigated Negative Declaration for Phase III Extended Pumping and Pilot Plant Testing dated May 2008. Copies of these documents are attached as Exhibit A and B to this memorandum) MWDOC has submitted a technical report as part of its Draft EIR comment letter which shows that the Desalination Plant would not have adverse impacts on marine life or ecosystems. (See Attachment 1 to MWDOC Comment Letter on Draft EIR - Technical Memorandum prepared by Chambers Group (Dr. Noel Davis), Dr. Scott Jenkins (Scripps), and Geoscience (Dr. Dennis Williams and Dr. Johnson Yeh) (Technical Memorandum).)

The inclusion and analysis of the Desalination Project in the cumulative analysis would be consistent with the DEIR's treatment of other planned but not fully approved projects which are included in the cumulative impacts analysis, such as the proposed Seawater Desalination Plant at Huntington Beach. (DEIR, Section 9.3 and p. 9-10.) Similarly, the DEIR should include the Desalination Project and a discussion of its potential impacts in the Draft EIR cumulative analysis. This information can be added in the Final EIR since the

Desalination Project will not result in adverse impacts result in less than significant impacts as described shown in the certified CEQA documents for the Project and Technical Memorandum. If DFG does not clarify the regulation as requested by MWDOC, and public service uses purportedly may be restricted under the Doheny Beach SMCA, then the cumulative impacts analysis will have to be revised to address the adverse impacts of these uses not going forward. These impacts would be similar to the impacts described in the above paragraph. However, additional analysis would be required to address these impacts in the cumulative context and recirculation of the Draft EIR may be required. A41_iv-4

GJN

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Responses to Comment Letter A41_iv

Response to Comment A41_iv-1: Comment noted.

Response to Comment A41_iv-2: The issue brought forth by this commenter is moot as the intake system currently being used and planned to be used for the full-scale desalination plant is not expected to result in take of marine species (as declared the Mitigated Negative Declaration provided as an attachment to Comment Letter A41_viii), and as such, is not affected by the take prohibition being regulated under the proposed Project IPA or alternatives. See also information provided in Comment Letter A41_iii indicating no take resulting from the Desalination Project.

Response to Comment A41_iv-3: Comment noted.

Response to Comment A41_iv-4: Additional information on the South Orange Coastal Ocean Desalination Plant has been included in the Final EIR. However, the information does not fundamentally alter the analysis of impacts presented in the Draft EIR. As noted in the responses to Comment Letter A41_ii, no impacts to this or any other Municipal Water District of Orange County desalination facilities are expected from implementation of the proposed Project IPA or alternatives, hence, no impacts are available for discussion.

MEMORANDUM
October 6, 2010

To: **Becky Ota, DFG**
From: **Richard Bell, Municipal Water District of Orange County**
cc: **Greg Newmark, Mary Jane Foley, Karl Seckel**
Re: **Option 2 Doheny Beach SMCA – Clean Up Language**

In follow-up to the Sep 29 Fish & Game Commission meeting and our telephone conversation on October 5, we are asking that DFG correct the oversight that omitted important pre-existing activities. Specifically, the existing and ongoing expansion of the South Orange Coastal Ocean Desalination Project Slant Wellfield (existing permitted slant well with additional wells in process) and SOCWA San Juan Creek Wastewater Outfall need to be addressed in regulations and rulemaking documents. These are critical and essential public utilities that can only be situated in this location. These facilities were excluded from:

- April 21, 2010 ISOR Table 1, page 41,
- Sep 7, 2010 Title 14 Notice of Proposed Changes in Regulations, Table 1, page 24
- Proposed Regulatory Changes (strike out document) page 29/30.

We ask that the following or substantively equivalent language be added in Option 2 Doheny Beach SMCA to Section 632, Title 14 CCR Proposed Regulatory Language document and to the three columns on Table 1 (Page 41 ISOR and Page 24 Notice of Proposed Reg Changes). These modifications are intended to implement the Commission's stated objective to hold our projects harmless and to provide the necessary clean up language that will correct the omission of these existing water and wastewater facilities and their expansions that occurred by inclusion of only the 1969 language for the Option 2 Doheny Beach SMCA subsequent to the BRTF IPA.

Description of MPA Area Options

- Adds and modifies existing SMCA to IPA (per State Parks request)

Other Proposed Regulated Activities

- **Add two clarifying paragraphs on allowed activities as (C) and (D) on Page 30, Regulatory Changes Strike Out Document:**
- (C). Construction, operation, maintenance and replacement of existing slant wellfield and additional wells, water and wastewater outfall/tunnel and structures, and artificial groins and protective devices is allowed pursuant to any required federal, state and local permits, or as otherwise authorized by the department.
- (D). In addition to water quality monitoring allowed by subdivision (a)(9), additional scientific collecting, water quality sampling, sediment coring, and monitoring well construction, operation, maintenance and replacement is allowed as necessary to facilitate the activities authorized in sub-paragraph (C) above or pursuant to any required federal, state and local permits, or as authorized by the department

Responses to Comment Letter A41_v

Response to Comment A41_v: This document is a copy of correspondence between the Municipal Water District of Orange County and the Department. No response is required.

MPA Name & Designation	Description of MPA Options	Proposed Allowed Take	Other Proposed Regulated Activities[2]	SAT Level of Protection
	27.74' N.			
OPTIONS (1-2) EXIST TO EXCLUDE OR INCLUDE DOHENY BEACH.				
Option 1: Exclude Doheny Beach State Marine Conservation Area	1: IPA: Removes existing SMCA as reflected in IPA	N/A	N/A	N/A
Option 2: Doheny Beach State Marine Conservation Area	2: Adds to or modifies existing SMCA to IPA per State Parks request)	Take of all living marine resources is prohibited EXCEPT: Only the following species may be taken recreationally: lobster, rockfish (family Scorpaenidae), greenling, lingcod, cabezon, yellowtail, mackerel, bluefin tuna, kelp bass, spotted sand bass, barred sand bass, sargo, croaker, queenfish, California corbina, white seabass, opaleye, halfmoon, surfperch (family Embiotocidae), blacksmith, Pacific barracuda, California sheephead, Pacific bonito, California halibut, sole, turbot, and sanddab. Finfish shall be taken only by hook and line or by spearfishing gear. Only spiny lobster may be taken commercially.	C). Construction, operation, maintenance and replacement of existing slant wellfield and additional wells, water and wastewater outfall/tunnel and structures, and artificial groins and protective devices is allowed pursuant to any required federal, state and local permits, or as otherwise authorized by the department. • (D). In addition to water quality monitoring allowed by subdivision (a)(9), additional scientific collecting, water quality sampling, sediment coring, and monitoring well construction, operation, maintenance and replacement is allowed as necessary to facilitate the activities authorized in sub-paragraph (C) above or pursuant to any required federal, state and local permits, or as authorized by the department	Low
Batiquitos Lagoon State Marine Conservation Area[4]	IPA[4]	Take of all living marine resources is prohibited	Allows operation and maintenance, habitat restoration, research and education, maintenance dredging and maintenance of artificial structures pursuant to any required permits, or	Very High

Responses to Comment Letter A41_vi

Response to Comment A41_vi: The proposed regulations in the proposed Project IPA have been revised to include an option allowing operation and maintenance of artificial structures associated with the installation and operation of a desalination plant. Refer to Section 3.4.35 for further information on changes to the proposed regulations relating to these comments.

Subject: MLPA CEQA Comments (SCSR DEIR) - Part 2
From: Richard Bell
Date: Mon, 18 Oct 2010 17:26:00
cc: "MJFConsulting" <mjfconsulting@cox.net>
cc: "Mastrup, Sonke" <SMastrup@dfg.ca.gov>
cc: "Ota, Becky" <BOta@dfg.ca.gov>
To: "MLPAComments" <MLPAComments@dfg.ca.gov>
cc: "Vojkovich, Marija" <mvojkovich@dfg.ca.gov>
cc: "Ashcraft, Susan" <SAshcraft@dfg.ca.gov>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
cc: "Seckel, Karl" <kseckel@mwdoc.com>
cc: "Pryor, David" <dpryor@parks.ca.gov>
cc: "Chamberlin, Jay" <jchamberlin@parks.ca.gov>
cc: "" <kfleming@parks.ca.gov>
cc: "Kramer, Kenneth" <KKRAMER@parks.ca.gov>
cc: "Flahive, Brennon" <bflahive@socwa.com>
cc: "Rosales, Tom" <trosales@socwa.com>

Attached are Part 2 of the Municipal Water District of Orange County's comments on the MLPA SCSR DEIR and attachments.

Due to the size of the attachments we are submitting these comments in two parts - Part 1: the basic comment package and Part 2: previous CEQA documents from our Phase 2 and 3 projects. (We first submitted both parts and received returned emails that some exceeded the some recipients email capacity, so we are re-sending in two parts). A paper copy will be placed in the mail tomorrow.

Richard B. Bell, PE
Manager, Water Resources and Faciliy Planning
Rbell@mwdoc.com
714-593-5003 Direct
714-963-3058 Main

Attachment: TEXT6.htm

Attachment: image0012.jpg
Attachment: Phase 3 CEQA MND with Response to Comments FINAL.pdf
Attachment: Bd Resoultion No 1836 Approving MND MNRP June 18 2008.pdf
Attachment: State Clearinghouse Notification.pdf
Attachment: Executed NOD and DFG Filing Fee Receipt.pdf
Attachment: Final Docs CEQA - NOD et al Ph 2.pdf
Attachment: Mime11.822

Responses to Comment Letter A41_vii

Response to Comment A41_vii: Email transmittal letter. The email indicates that the attachments are being submitted as part of the Municipal Water District of Orange County's comments under A41_vii-xii. No response is required.

Draft Mitigated Negative Declaration

Phase 3 Extended Pumping and Pilot Plant Testing
Dana Point Ocean Desalination Project

June 2008

Chambers Group
Solving Environmental Challenges

17671 Cowan Avenue, Suite 100
Irvine, California 92614
949 • 261-5414 tel
949 • 261-8950 fax

May 9, 2008
(3320)

TO ALL INTERESTED AGENCIES, PUBLIC GROUPS, AND CITIZENS:

Enclosed for your review and comment is a copy of the Draft Mitigated Negative Declaration MND for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing, Orange County, California. In 2006, the Municipal Water District of Orange County (MWDOC) successfully constructed a fully buried 12-inch diameter, 350-foot long test slant well on Doheny State Beach. Although preliminary pilot well tests have been promising, long-term testing is needed to more thoroughly validate and fine-tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will require an extended period of initial pumping to pull in ocean water. This will require operating the test slant well for up to 24 months. Phase 3 testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance.

This document will be available to the public for 30 days. Any comments you may have concerning this project should be made by June 9, 2008. Correspondence may be sent to:

Chambers Group, Inc.
Attn: Noel Davis, Ph.D.
17671 Cowan Avenue, Suite 100
Irvine, CA 92614

Should you have any follow-up questions or concerns on this issue, please feel free to contact Ms. Lisa Louie or myself at (949) 261-5414 or at ndavis@chambersgroupinc.com. Thank you in advance for your attention and prompt response to this matter.

Sincerely,

Noel Davis, PhD
Project Manager

Enclosure

Dana Point Ocean Desalination Project
Phase 3 Extended Pumping and
Pilot Plant Testing

Prepared for:

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, California 92728

Prepared by:

CHAMBERS GROUP, INC.
17671 Cowan Avenue, Suite 100
Irvine, California 92614
(949) 261-5414

May 2008

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ENVIRONMENTAL CHECKLIST FORM

1. Project Title:

Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing

2. Lead Agency Name and Address:

Municipal Water District of Orange County
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, CA 92728

3. Contact Person and Telephone Number:

Richard Bell, P.E.
(714) 593-5003

4. Project Location:

Doheny State Beach, 25300 Dana Point Harbor Drive, in the City of Dana Point (City). The site is bounded on the north/northeast by Pacific Coast Highway and on the south/southwest by the Pacific Ocean.

5. Project Sponsor's Name and Address:

Municipal Water District of Orange County
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, CA 92728

6. General Plan Designation:

Recreation/Open Space (California Department of Parks and Recreation 2003)

7. Zoning:

Open Space

8. Description of Project:

PROJECT OVERVIEW AND PURPOSE

In 2006, the Municipal Water District of Orange County (MWDOC) successfully constructed a fully buried 12-inch diameter, 350-foot long test slant well on Doheny State Beach (see Figure 1). Although preliminary pilot well tests have been promising, long-term testing is needed to more thoroughly validate and fine-tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will require an extended period of initial pumping to pull in ocean water. This will require operating the test slant well for up to 24 months. Phase 3 testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance.

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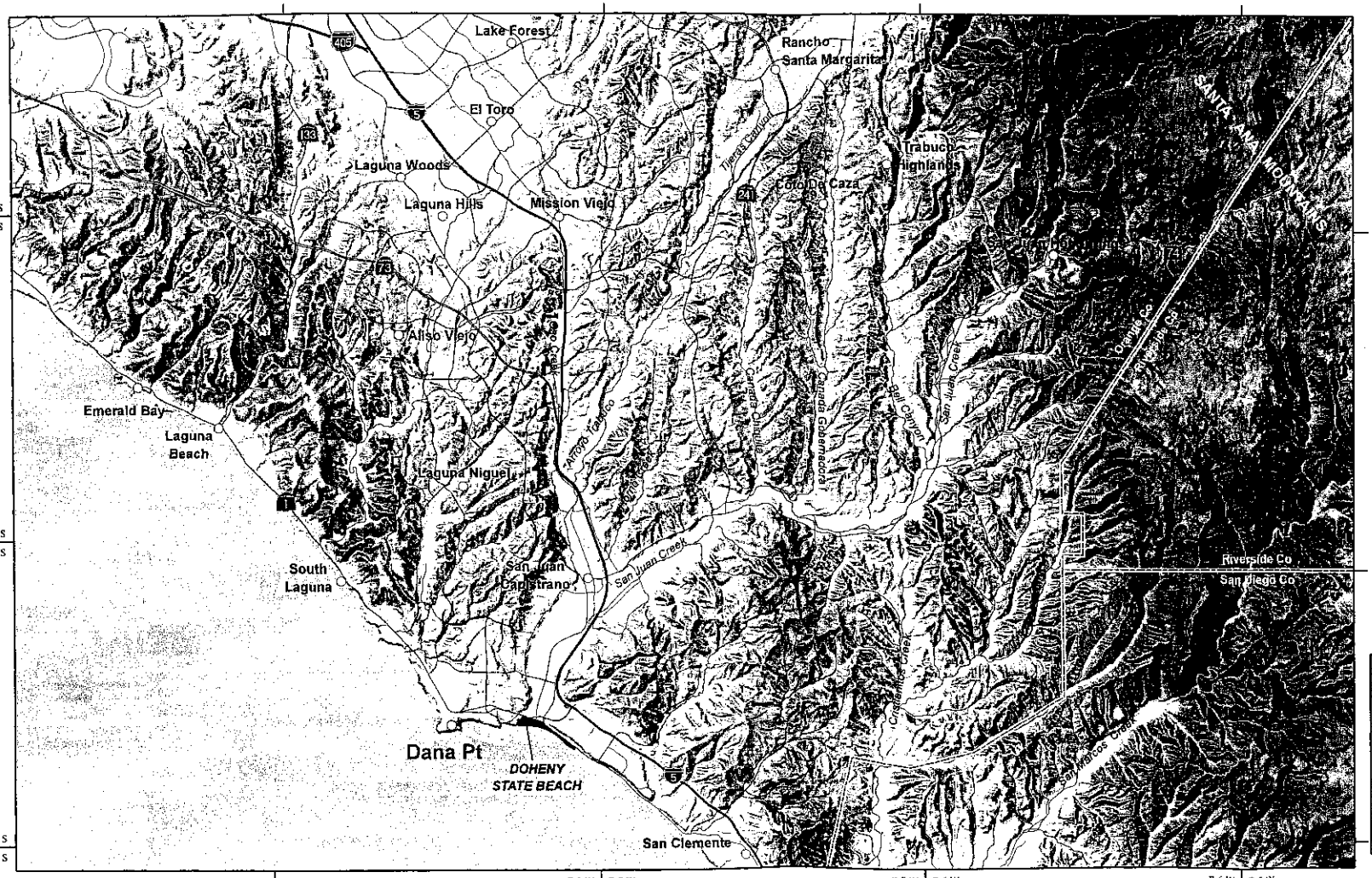
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

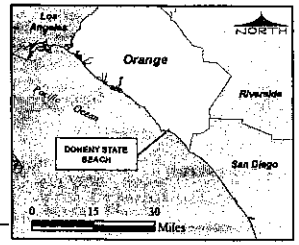
DANA POINT OCEAN DESALINATION PROJECT
PHASE 3 EXTENDED PUMPING & PILOT PLANT TESTING

GENERAL PROJECT LOCATION



EXPLANATION

- Doheny State Beach
- City
- Freeway
- State Highway
- Major Street
- County Boundary
- Surface Water
- River



21-Apr-08

Prepared by: DWB

Map Projection:
State Plane, Zone 6 (1983)

NORTH

0 2 4 Miles

GEOSCIENCE

GEOSCIENCE Support Services, Inc.
P.O. Box 220, Claremont, CA 91711
Tel: (909) 920-0707 Fax: (909) 920-0403
www.gsswater.com

Figure 1

GIS_proj/mwdoc_phase3_ceqa_4-08/0_Fig_1_CEQA_proj_loc_4-08.mxd

320

In addition to measuring water quality, Phase 3 testing will provide hydrologic and radium isotope data, which will then be used to validate and refine the existing ground water model. Finally, Phase 3 testing will evaluate RO process performance, post-treatment requirements for RO product and RO concentrate, materials corrosion, and microbial growth when operating the test slant well with a nitrogen environment to maintain anoxic conditions for both corrosion and biofouling control.

As a part of the slant well extended pumping tests and the pilot plant testing work, two exploratory boreholes are planned to be drilled on the beach south of the Doheny State Park (Park) campground. The exploratory boreholes are intended to additionally characterize the aquifer materials deposited in the alluvial channel at the mouth of San Juan Creek. Additionally, information obtained from the exploratory boreholes will assist in refining the existing groundwater model that is used to predict inflow quality to the well. Up to three additional monitoring wells and stations (e.g., gauging stations) may be installed, as necessary, to provide for supplemental information to measure groundwater and streamflow in areas where information is lacking.

OVERALL SCHEDULE

SCHEDULE FOR SLANT WELL EXTENDED PUMPING TESTING

Construction of all the facilities required to conduct the extended pumping test on the slant well will take place daily Monday through Friday from 10:00 AM to 6:00 PM with restricted working hours to avoid noise impacts to vacationers in the adjacent campground and nearby residents. The list below summarizes the general tasks and provides an approximate schedule:

Construction Tasks		
• Wellhead construction	2 weeks	January 5 – January 19, 2009
• Discharge facilities	4 weeks	January 20 – February 17, 2009
• Electrical service installation	3 weeks	February 2 – February 20, 2009
• Slant well redevelopment	2 weeks	February 18 – March 6, 2009
• Submersible pump installation	1 week	March 9 – March 13, 2009
• Mobile test facility installation	2 weeks	February 23 – March 9, 2009
• Startup and shakedown testing	2 months	March 17 – May 15, 2009
• 24-Month Pilot Test	18 months	May 15, 2009 – May 15, 2011

The construction schedule has been planned so that all construction activities will be completed by mid-March 2009. This ensures that construction is completed well before the Doheny Blues Festival (mid-May). Startup and shakedown testing and pilot test do not involve any construction activities and will be limited to activities only within the mobile test facility and at Monitoring Well 1 (MW-1). Some additional work may be required at the wellhead, vault, and discharge diffuser up until May 15, 2009.

SCHEDULE FOR EXPLORATORY BOREHOLE DRILLING

The proposed work schedule for drilling the exploratory boreholes will be daily Monday through Friday from 10:00 AM to 6:00 PM with restricted working hours to avoid noise impacts to vacationers in the adjacent campground and nearby residents.

It is estimated that approximately seven working days are required for borehole drilling and destruction. Mobilization of the sonic drilling rig and ancillary equipment, project orientation, and setting up on the first site will take one day. Drilling both vertical exploratory boreholes to a depth of approximately 200 ft, including geophysical logging and other required testing and borehole destruction, will take approximately six days, or three days per borehole. No equipment will be left on the beach over a weekend, and no work will take place on Saturdays or Sundays. During the weekend, drilling equipment will be stored within the fenced staging area in the nearby parking lot.

This work is tentatively scheduled to take place in January 2010. At this time the drilling schedule is not final, however, drilling is planned to be completed early in the calendar year to prevent potential ecological impacts on grunion runs and wintering western snowy plovers.

SCHEDULE FOR REMOVAL OF ALL TEMPORARY FACILITIES

Removal of all temporary facilities installed for the extended pumping test will take place after completion of the pumping test in May 2011. It is expected that removal of the facilities (mobile test facility, discharge piping and diffuser, signal cables, and electrical services and conduits), and reinstating grassed areas and paved surfaces will take approximately three weeks.

LOCATION AND ACCESS

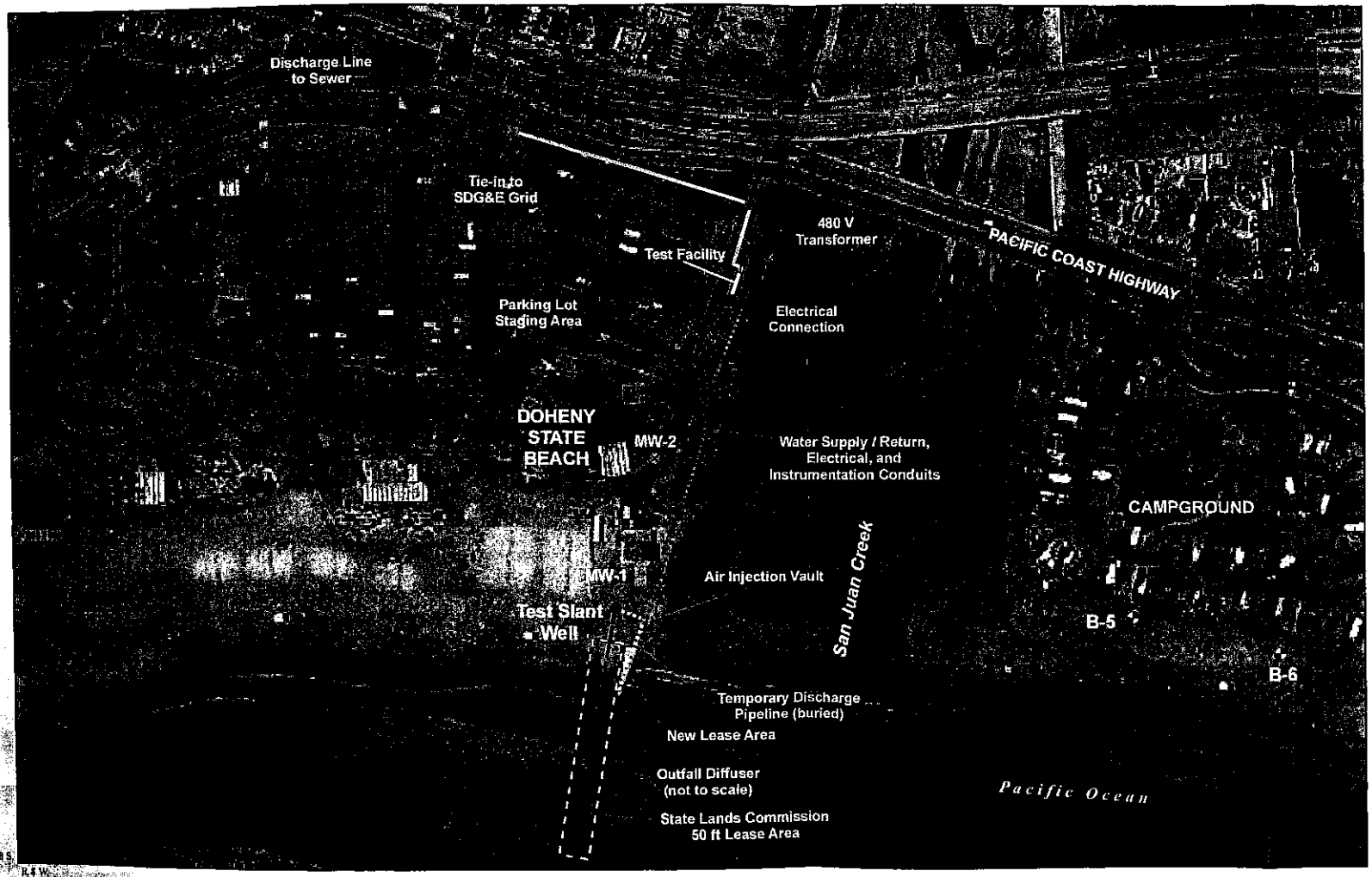
Figure 2 shows a plan view of the test slant well, discharge piping, and mobile test facility. A 2,000-gpm submersible pump will be installed in the existing test slant well, located south of the lifeguard station. Water pumped from the slant well will discharge through a buried pipeline and outfall diffuser into the surf zone adjacent to the concrete groin (see Figure 2). An approximate 150-gpm sidestream will be supplied from the wellhead to the mobile test facility where approximately 120-gpm will be used for a pump and eductor and approximately 30-gpm will be used for reverse osmosis process testing and online instrument monitoring. The air/water mixture from the pump and eductor, and from the online instruments, will then be returned to the slant well discharge to increase dissolved oxygen. RO process water may either be returned to the slant well discharge or may be pumped through a pipeline, which discharges into a nearby sanitary sewer (see Figure 2). Along with the water supply and return pipeline, three additional conduits will be supplied from the mobile test facility to the slant wellhead for instrument cables, submersible pump power, and nitrogen supply; all conduits will be run in the same trench. Signal cables from the pressure transducers installed in the test slant well and MW-1 monitoring well, and the oxygen sensor in the slant well, will be routed to the test facility and measured using a graphic data logger.

Nitrogen will be supplied to the wellhead at low pressure from a compressed nitrogen cylinder stored in the mobile test facility. To ensure that oxygen does not enter the well headspace, an oxygen sensor will be mounted in the upper portion of the well casing. Pumping levels in the test slant well will be measured using a pressure transducer; and as a backup, a redundant transducer will also be installed in the same sounding tube. A pressure relief valve and a gas-tight connection for the pump power supply cable will also be included in the well head flange assembly. Finally, the wellhead, electrical connection boxes, and appurtenant equipment will be contained in a vault located approximately 3 ft below the surface. Although the vault itself will be accessible year round, any repairs to the submersible pump will be restricted to the period between Labor Day and Memorial Day. During summer months, pump access will not be available due to restricted access to the beach.

STAGING AREA

Location

A fenced staging area approximately 80 ft wide by 140 ft long will be located within the Doheny State Beach parking lot (see Figure 2). The staging area will be needed only during the construction of the wellhead and discharge facilities (January – February 2009), and again during drilling of the two exploratory boreholes (January 2010). The fence around the staging area will be a minimum of 6 ft in height, and each panel will have its own support base or footing and will not be driven into the pavement. Privacy panels will be attached to the fencing sections to reduce the visibility of the equipment storage area.



EXTENDED PUMPING TEST FACILITIES

EXPLANATION

- Proposed Exploratory Borehole Location
- Test Slant Well (exisiting)
- Slant Well Casing (exisiting)
- Slant Well Screen (exisiting)
- MWDOC Monitoring Wells (exisiting)
- 480 Volt Transformer
- Tie-in to SDG&E Grid
- Sewer Tie-in
- Test Facility
- Outfall Diffuser
- Water Supply / Return, Electrical, and Instrumentation Conduits
- Well Discharge
- Discharge Line to Sewer
- Power Service to Test Facility
- Parking Lot Staging Area 80ft x 140ft
- State Lands Commission Lease Area
- New Lease Area

T.8 S.
R.4 W.

7-May-08
Prepared by: DWB
Map Projection: State Plane, Zone 6 (1983)
Date of Aerial Photo: May 2007 (Eagle Aerial)

NORTH
0 75 150 Feet

GEOSCIENCE
GEOSCIENCE Support Services, Inc.
P.O. Box 220, Claremont, CA 91711
Tel: (909) 920-0707 Fax: (909) 920-0403
www.gssiwater.com

Figure 2

Site Access

The staging area will be accessed from the Doheny State Beach parking lot (see Figure 3). Trips to and from the staging area will be kept to a minimum, with the majority of trips at the start and end of each work day.

TEST SLANT WELL

Location

The test slant well is located on Doheny State Beach, approximately 87 ft southwest of the new main lifeguard station and approximately 73 ft west of the rock and cement groin which comprises the western bank of San Juan Creek where it outlets to the Pacific Ocean (see Figure 2).

The test slant well wellhead is currently buried 3 ft vertically below ground surface so as not to create any nuisance on the beach. The well casing and screen extend perpendicular from the beach face offshore for 350 lineal ft at a 23° angle from horizontal. The well was located in a stable beach area above the mean high tide line in order to protect the well and the drilling operation from beach erosion. The width of Doheny State Beach west of San Juan Creek is kept relatively stable by the rock and cement groin which terminates in the cement structure known as "Thor's Hammer." The test slant well wellhead is located on the beach approximately 150 ft north of Thor's Hammer.

Site Access

The test slant well on Doheny State Beach will be accessed from the Doheny State Beach parking lot north of the slant well (see Figure 3). As the test slant well is located on the beach, track-mounted or all-wheel drive vehicles will be used to access the wellhead. Track-mounted vehicles will be equipped with rubber treads so that asphalted or paved surfaces will not be damaged. Track-mounted vehicles will produce a footprint pressure of approximately 6.2 pounds per square inch (psi). All other support vehicles provided by any contractor or geologist will be all-wheel drive to allow access to the site.

MOBILE TEST FACILITY

Location

The mobile test facility, which will be used over the entire course of the extended pumping test, will be located immediately to the east of the northeast parking lot and south of the northern park road, which exits onto the southbound lanes of Pacific Coast Highway (Figure 2). The test facility will consist of an ocean container converted into laboratory/office space and will have an approximate 30 ft x 8 ft foot print. An approximate 150-gpm sidestream will be supplied from the slant well discharge line to the mobile test facility, and another buried pipe will return a 130-gpm air/water flow from the test facility back to the slant well discharge line to raise dissolved oxygen levels in the slant well discharge. A third discharge line will be connected to a nearby sewer force main and will be used to discharge RO process water, if needed. This line may connect to the State Park sewer system or the South Coast Water District Sewer system. The mobile test facility will house:

- Online instruments used to continuously monitor slant well discharge for pH, dissolved oxygen, oxidation reduction potential, and specific conductance;
- An apparatus used for microbiological testing and corrosion testing;
- A reverse osmosis process which will be operating from a sidestream collected from the slant well;
- A sump and pump system to send water used for RO process testing, corrosion testing, biological testing, and online water quality monitoring, either to the well discharge or to a sanitary sewer connection;

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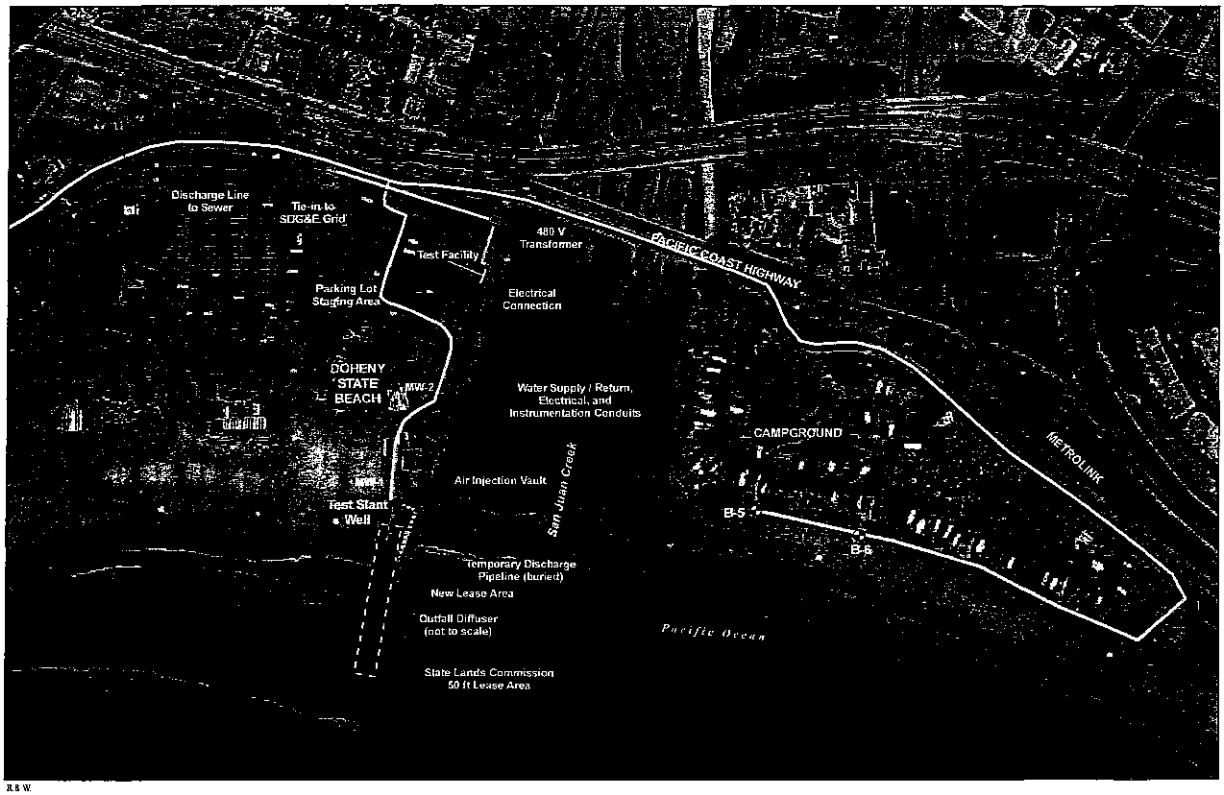
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

DANA POINT OCEAN DESALINATION PROJECT
PHASE 3 EXTENDED PUMPING & PILOT PLANT TESTING



ACCESS ROUTES TO TEST FACILITIES

EXPLANATION

- Access Routes
- Proposed Exploratory Borehole Location
- Test Slant Well (exisiting)
- Slant Well Casing (exisiting)
- Slant Well Screen (exisiting)
- MWDOC Monitoring Wells (exisiting)
- 480 Volt Transformer
- Tie-in to SDG&E Grid
- Sewer Tie-in
- Test Facility
- Outfall Diffuser
- Water Supply / Return, Electrical, and Instrumentation Conduits
- Well Discharge
- Discharge Line to Sewer
- Power Service to Test Facility
- Parking Lot Staging Area 80ft x 140ft
- State Lands Commission Lease Area
- New Lease Area

7-May-08

Prepared by: DWB
Map Projection: State Plane, Zone 6 (1983)
Date of Aerial Photo: May 2007 (Eagle Aerial)

NORTH

0 225 450 Feet

GEOSCIENCE

GEOSCIENCE Support Services, Inc.
P.O. Box 220, Claremont, CA 91711
Tel: (909) 920-9707 Fax: (909) 920-0403
www.geoscience.com

Figure 3

GIS_proj/mwdoc_phase3_maps_3030/0_Fig_3_CEQA_access_routes_4-08_FINAL_200

Equipment Type	Approx. Dimensions
20-Ton Track-Mounted Sonic Drilling Rig	25 ft x 11 ft
20-Ton Track-Mounted Support Vehicle	25 ft x 8 ft
1,300-gal Trailer-Mounted Poly Tank	10 ft x 8 ft
6,000-lb. All-Terrain Forklift	8 ft x 6 ft
1 cu. yd Bins for Cuttings / Soil Disposal	4 ft x 4 ft

Geophysical borehole logging equipment will consist of a one-ton panel van containing geophysical tools and data processing equipment. Typically, geophysical logging in the field is accomplished by one person.

The consulting geologist will have a four-wheel drive pickup truck that will be used to transport lithologic core samples from the drilling rig to an area off the beach.

Site Access

Doheny State Beach is accessed from Dana Point Harbor Drive. The exploratory borehole drilling sites will be accessed from paved roads located within the park campground east of San Juan Creek. Because the exploratory borehole sites themselves are located in areas covered by loose beach sand, a track-mounted drilling rig and track-mounted pipe carrier vehicle will be used. Both vehicles are equipped with rubber treads so that asphalted or paved surfaces will not be damaged. Each of the vehicles will produce a footprint pressure of approximately 6.2 psi. All other support vehicles provided by the drilling contractor will be all-wheel drive to allow access to the site. The routes that are to be used for access through the park are depicted on Figure 1.

ADDITIONAL MONITORING WELLS

Up to three additional monitoring wells and stations (e.g., gauging stations) may be installed, as necessary, to provide for supplemental information to measure groundwater and streamflow in areas where information is lacking. Information could include groundwater levels, groundwater quality, streamflow and streamflow quality. The location of these additional wells would most likely be in existing parking areas or undeveloped land/lots upstream of PCH (e.g., between Stonehill and PCH). This work may be required as part of baseline monitoring and permit requirements. The monitoring well construction activities would be similar to that described for the test borings and initial construction activities in Spring 2005, except the activities would not be on the beach.

SLANT WELL EXTENDED PUMPING TEST

GENERAL DESCRIPTION OF EXTENDED PUMPING TEST

In 2006, MWDOC successfully constructed a 12-inch diameter, 350-foot long test slant well on Doheny State Beach. After completion, the well was briefly pump tested at 1,670 gpm to determine well performance, aquifer properties, water quality, and other parameters pertinent to RO operation. Preliminary testing has indicated that water produced from the test slant well may not require pretreatment prior to RO desalination, which would substantially lower capital costs. Preliminary testing has also indicated that the feed water may be initially high in dissolved iron and manganese until equilibrium with the ocean is established (after pumping for approximately one to two months); dissolved iron and manganese may foul or degrade the RO membranes if not kept in a dissolved form or removed. Preliminary testing has also shown that water produced from the test slant well has very low turbidity and SDI levels, indicating the effectiveness of the slow sand filtration provided by the alluvial aquifer. In addition, preliminary testing indicates that the well will be influenced from fresh groundwater and that low salinity water may be produced for a period of one to two months before producing high-salinity ocean water; this may require modification in the design and start-up operation of the RO desalination facility.

Although preliminary pilot well tests have been promising, long-term testing is needed to more thoroughly establish water quality parameters and to establish full-scale desalting process design. Phase 3 pilot-plant testing and water quality testing will require an extended period of initial pumping to pull in ocean water. This will require operating the test slant well for approximately 18 months. Phase 3 testing will measure changes in salinity and other water quality parameters affecting RO process performance; Figure 4 shows a plot of model-predicted salinity in the test slant well discharge and timelines for associated tests, which will be conducted over the course of the 18-month study.

In addition to measuring water quality, Phase 3 testing will provide hydrologic and radium isotope data, which will then be used to validate and refine the existing groundwater model. Finally, Phase 3 testing will evaluate RO process performance, post-treatment requirements for RO product and RO concentrate, materials corrosion, and microbiological growth when operating the test slant well with a nitrogen blanket to maintain anoxic conditions.

Figure 2 shows a plan view of the test slant well, discharge piping, and mobile test facility. A 2,000-gpm submersible pump will be installed in the existing test slant well. The submersible pump will be used to supply water through a temporary pipeline approximately 700 ft to the mobile test facility where a sidestream will be oxygenated by means of a pump and eductor. After going through the eductor, a pressurized mixture of air and water will then be returned to the pump discharge pipeline; and the oxygenated well water will be discharged into San Juan Creek through an outfall diffuser. Pump discharge may be controlled from a valve located near the mobile test facility; the valve may be used to throttle discharge or to provide sufficient backpressure to supply water to the test facility. A check valve will be provided at the wellhead to prevent backflow or siphoning into the test slant well. A process flow diagram of the well discharge and mobile test facility is shown in Figure 5 below.

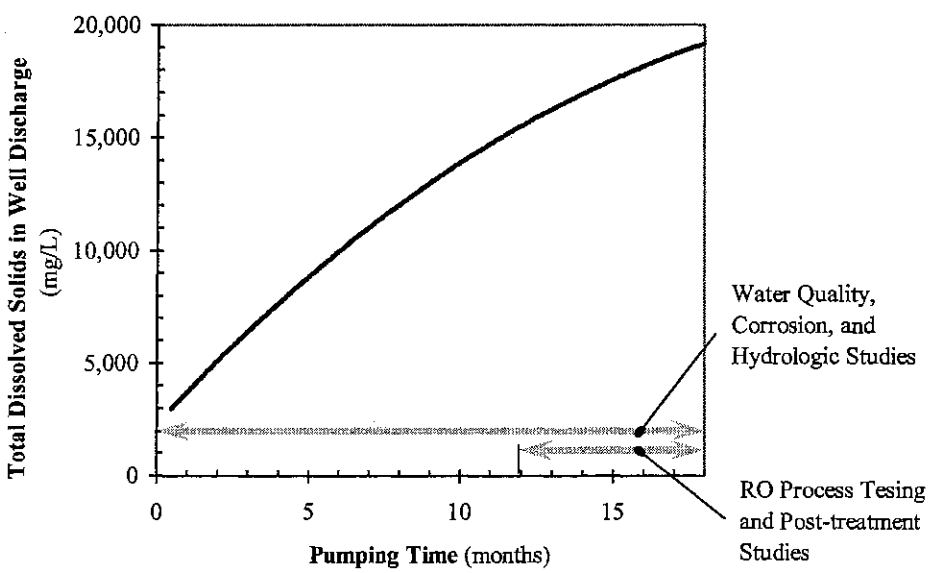


Figure 4. Model-Predicted Salinity Changes in the Test Slant Well Discharge and Associated Testing Over the 18-Month Extended Pumping Test

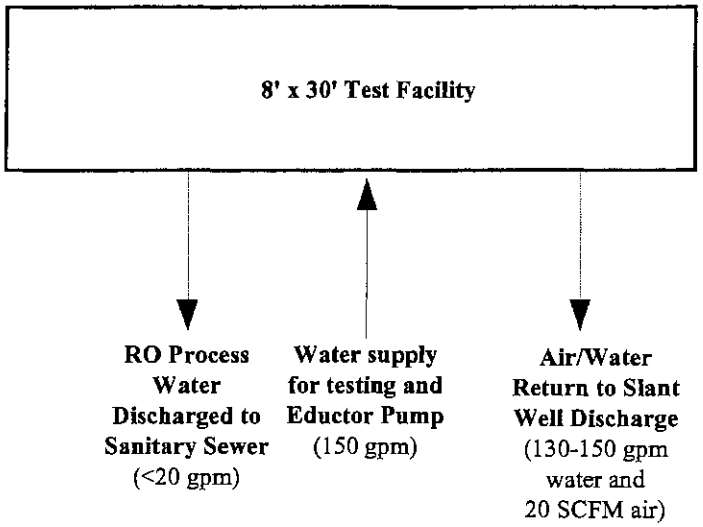


Figure 5. Process Flow Diagram for Well Water Supply to the Mobile Test Facility

Discharge piping will consist of buried pipe, which will run in an eastern alignment to the concrete groin structure and then south along the groin where water will then be discharged through an outfall diffuser located adjacent to the groin near Thor's Hammer—the structure located at the groin terminus. A 150-gpm sidestream will be supplied from the slant wellhead to the mobile test facility through a 4-inch buried pipeline. Pressure used to supply the 150-gpm flow to the test facility will be maintained by an orifice plate downstream of the sidestream supply. This will eliminate the need for a pressure control valve and minimize maintenance requirements during the 18-month pump test.

Approximately 130 gpm of water supplied to the mobile test facility, along with 20 Standard Cubic Feet per Minute (SCFM) of air, will be returned to the slant well discharge. Air added to the slant well discharge will increase dissolved oxygen levels above 5 mg/L. A 2-inch pipeline will run from the mobile test facility to a nearby sanitary sewer and will be used as a contingency for discharging RO process water. Piping will be buried a minimum 24 inches below grade. In addition to the water supply and return, three additional conduits will be supplied from the test facility to the slant well for instrument cables, submersible pump power, and for compressed nitrogen. Signal cables from the pressure transducers installed in the test slant well and monitoring well, and the oxygen sensor in the production well, will be routed to the test facility and measured using a graphic data logger.

To eliminate the possibility of air entering the test slant well and oxidizing dissolved iron and manganese and stimulating microbiological growth, nitrogen will be supplied to the wellhead at low pressure from a compressed nitrogen cylinder stored in the mobile test facility. To ensure that oxygen does not enter the well headspace, an oxygen sensor will be mounted in the upper portion of the well casing. Pumping levels in the test slant well will be measured using a pressure transducer; as a backup, a redundant transducer will also be installed in the same sounding tube. A pressure relief valve and a gas-tight connection for the pump power supply cable will also be included in the well head flange assembly. Finally, the wellhead, electrical connection boxes, and appurtenant equipment will be contained in a vault located 3 ft below the surface.

The principal objectives of the Phase 3 investigation are summarized as follows:

1. Conduct extended test slant well pumping test to:
    a. Measure water quality changes as well as water composition changes from brackish water to predominantly ocean water with particular emphasis on salinity, dissolved iron and manganese, dissolved oxygen, temperature, and microbials;

b. Measure parameters pertinent to the RO process that will determine the extent of pretreatment required for RO;

c. Measure radium isotope signatures to determine if the well is predominantly drawing water vertically from the open ocean or horizontally from ocean aquifers;

d. Measure water levels and other parameters in the two existing nested monitoring wells – MW1 and MW2; and

e. Validate and refine the existing ground water model using data (i.e., hydraulic, salinity, and radium isotope measurements) measured over the course of the 18-month test.

2. Conduct corrosion studies to determine appropriate materials for the wells, pumps, and conveyance pipelines;

3. Evaluate the effectiveness of using a nitrogen blanket in the test slant well headspace to maintain anoxic conditions in order to control microbiological growth in the well and dissolved iron and manganese oxidation;

4. Conduct studies to measure the extent of microbiological growth under anoxic conditions and determine the speciation of natural organisms, which may grow in the conveyance facilities and evaluate control approaches if necessary;

5. Test RO process performance using test slant well water—maintained under a nitrogen blanket—with high levels of dissolved divalent iron and manganese without first pre-treating the water;

6. In conjunction with researchers at the University of California, Los Angeles, Test advanced RO desalination nanocomposite membranes, which may offer higher performance, greater biofouling resistance, and/or cost savings over conventional desalination membranes;

7. Conduct preliminary evaluations to determine the likely process requirements for post-treating RO product water, prior to distribution, and RO concentrate, prior to ocean disposal; and

8. Determine if co-discharging RO concentrate with wastewater effluent will result in any permit discharge violations.

FACILITIES REQUIRED FOR EXTENDED PUMPING TEST

Wellhead Facilities

The slant wellhead will be contained within a concrete vault which will be buried approximately 3 ft below grade. The pre-cast concrete vault will provide a space for wellhead connections and will be accessible through a stainless-steel plate on top of the vault which will be secured by tamper-resistant fasteners. The vault will house the pump discharge line as it exits the well casing, connection to the 1-inch nitrogen gas supply line from the mobile test facility, a sounding tube for water level transducers, a connection to mount a gas-phase oxygen transducer, and a purge valve to release excess headspace pressure. A power supply cable for the submersible pump will be routed through a buried conduit and terminated in a water-tight junction box housed in the well-head vault. Figure 6 below illustrates the wellhead connection details.

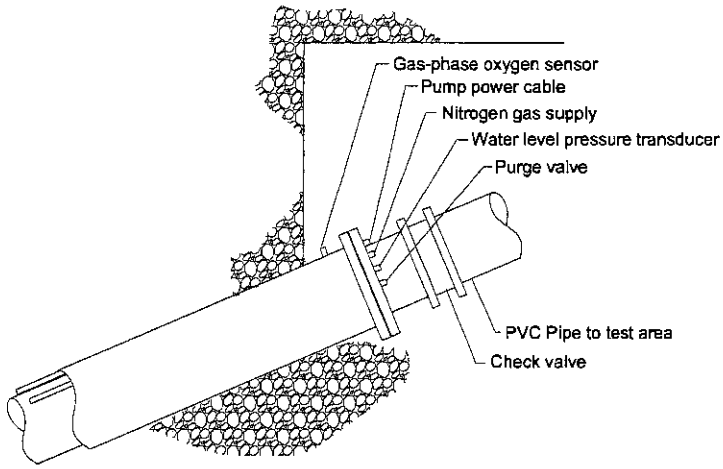


Figure 6. Wellhead Connection Details

Discharge Piping

Well discharge piping will consist of a 10-inch discharge pipe buried at least 3 ft beneath grade. The buried discharge pipeline will run in an eastern alignment to the concrete groin and then south along the groin where water will then be discharged through an outfall diffuser located adjacent to the groin near Thor's Hammer (see Figure 2). The outfall diffuser will be above grade and secured along the groin using the existing rip-rap lining. A 150-gpm sidestream will be supplied to the mobile test facility through a buried 4-inch pipeline which will run in an eastern alignment from the slant wellhead to the groin and then north along the edge of the bike path to the mobile test facility. A 6-inch water return line will then connect with the well discharge near the groin where the well discharge transitions from an east/west alignment to a north/south alignment. A second vault may be needed where the test facility return flow connects back to the slant well discharge. The vault would be large enough to house the valve and connection to the slant well discharge.

The pipeline from the mobile test facility will be constructed alongside the bike path before the Orange County Flood Control District commences with extending the bike path northwards in May 2009. This timing will limit disruptions during the bike path construction.

Air/Water Return and Gas Injection

In addition to the wellhead vault, another vault will be located along the groin to house the sidestream piping and an air/water injection diffuser, which will be installed in the discharge line to add dissolved oxygen to the well discharge before it flows into the surf zone. The air/water return will consist of a 6-inch pipeline which will carry approximately 130-150 gpm of water and approximately 20-SCFM of air. The gas and water mixture will have an approximate 10-20 psi gage pressure and return to the well discharge through a diffuser located in the 10-inch slant well discharge. A vault may be needed to house the valve where the water returns to the slant well discharge. The 20-SCFM gas phase injected into the slant well discharge will decrease by some amount, however, a substantial portion of the injected gas will remain as a separate, discontinuous phase in the slant well discharge and will ultimately vent through the downstream outfall diffuser.

Outfall Diffuser

Water pumped from the test slant well will be discharged into the surf zone through an outfall diffuser structure. The outfall diffuser will consist of an approximate 20-ft length of perforated stainless steel pipe and function as an energy dissipater and flow diffuser for the 2,000-gpm pump discharge. Due to its proximity to the surf zone and potential for filling with sand, the outfall diffuser may be constructed with a gravel pre-pack envelope to minimize sand clogging. The outfall diffuser will be situated directly adjacent to the groin near Thor's Hammer and will be secured by placing the existing rip-rap over the structure. To minimize the footprint, the diffuser may be constructed in square or rectangular section to minimize scouring.

Electrical Services

Electrical power service will be supplied from an existing San Diego Gas and Electric junction box located underneath the northern park road (see Figure 2). A buried conduit will then be installed from the junction box to a 480 VAC transformer located in the northeastern portion of the park.

Nitrogen Supply

Nitrogen will be supplied to the wellhead headspace to eliminate oxygen entrainment into the slant well discharge. Nitrogen will be stored in the mobile test facility in secured, 150-ft^3 gas cylinders. Nitrogen will be supplied to the slant well through a small-diameter, metal supply line and will be regulated at an approximate 2 to 5 psi pressure. A spare nitrogen cylinder will be stored onsite.

Monitoring Well Instrumentation

Monitoring wells MW-1 and MW-2 are to be used as observation wells during the extended pumping test (see Figure 2). The wells were completed in 2005 as part of the Phase I hydrogeology investigation. Each well contains three nested 2-inch PVC wells screened in a shallow, middle, and deep zone,[1] which were identified based on analysis of lithology and geophysical borehole logs.

Due to its location on the beach, the top of MW-1 well casing is buried 3 ft below ground surface so that there are no permanent obstructions created in the beach area. The MW-1 wellhead completion consists of a small concrete pad and 12-inch diameter, metal cover that can be located using a metal detector or other means. MW-1 can only be accessed after excavating the beach sand to expose the metal well cover that is 3 ft beneath the beach. As MW-2 is not located on the beach, its wellhead completion consists of a 12-inch diameter, metal monitoring well cover that is set within a concrete ring that is flush with the ground surface. Inside the metal well cover, each of the 2-inch casings is capped using expandable well seals that are locked.

MW-2 is currently instrumented to record continuous water level data. MW-1 previously had water level and water quality probes, but these were pulled out and the well covered when the test slant well was covered in May 2006. Before the extended pumping test takes place, MW-1 will need to be uncovered and instrumented with water level and water quality probes, and MW-2 will be instrumented with water quality probes. Signal cables from the pressure transducers and water quality probes installed in MW-1 will be routed to the test facility and measured using a graphic data logger. As MW-2 is readily accessible, data can be periodically downloaded by one person from the data logger during the 18-month test, and no trenching to lay cables to the mobile test facility is needed.

[1] Generally, the shallow aquifer zone is considered to be approximately 10-25 ft bgs, the middle aquifer zone is 40-130 ft bgs, and the deep aquifer zone is 140-165 ft bgs.

DETAILED DESCRIPTION OF EXTENDED PUMPING TEST TASKS

Install Wellhead and Discharge Facilities

Installing the test slant well discharge facilities will consist of the following tasks:

- Excavating existing slant wellhead and trenching for slant well discharge piping. This task will involve backhoe excavation around the slant wellhead, approximately 5 vertical feet below ground surface, and providing an approximate 3-4 ft trench in the beach area for the slant well discharge line (see Figure 2 for piping alignment);
- Install slant well discharge piping and outfall diffuser by setting the slant well discharge pipe in the trenches and installing the outfall diffuser along the side of the groin structure near the surf zone; existing rip-rap along the groin will be temporarily moved and then replaced once the discharge pipeline and diffuser have been installed; the outfall diffuser will not be otherwise attached to the groin, which would require Army Corp of Engineer's approval;
- Install submersible pump power supply, instrument conduit, and nitrogen supply;
- Install pre-cast vault over existing slant wellhead. This task will involve setting the pre-cast concrete vault around the wellhead and discharge piping using a 40-ton crane; after installation, the excavated portion will be re-filled and compacted, leaving the top of the vault accessible for subsequent well redevelopment and installation of the submersible pump;
- Install sidestream piping, electrical conduit, instrument signal cables, and compressed nitrogen line to the mobile test facility; connect the sidestream return line to the slant well discharge.

The submersible pump power cable and instrument cables will be run in separate conduits along the same alignment as the slant well discharge pipe and will not require separate trenching. The nitrogen supply line will consist of a 1-inch copper pipe, which will run parallel to the instrument and power conduits.

Schedule

The work schedule for construction of the wellhead and discharge facilities will be 10:00 AM to 6:00 PM, Monday through Friday, due to the proximity of the campground. The work to construct the wellhead is expected to take two weeks, with an anticipated start in January 2009.

It would take approximately four weeks to complete trenching and laying pipes for slant well discharge water, nitrogen line and signal cables. This work will start on approximately January 20, 2009, and be completed by February 25, 2009. No construction work will be conducted on the beach during the period from mid-May to Labor Day.

Number of Workers

Construction of the slant well discharge facilities will be undertaken by a four-person crew and overseen by the supervising geologist and engineer.

Install Electrical Services

Power service for testing will involve connection to San Diego Gas and Electric's (SDG&E) sub-grade junction box underneath the northern park road; a buried conduit will then be run from the SDG&E junction box to an above-ground transformer located in the northeastern portion of the Park. Figure 2 shows the approximate location of the power supply conduit and SDG&E-supplied 480 VAC transformer. A second buried conduit will then be run from the transformer to the mobile test facility. Conduit installation may involve trenching in portions of the northern parking lot and northern park road as well as trenching in landscaped areas (see Figure 2) or may involve boring/tunneling to install conduit. If boring is used, then a pit would need to be excavated in the northeastern portion of the park in the landscaped

area to accommodate the tunneling machine; the pit would be excavated by backhoe and would be approximately 4 ft wide 10 ft by 5 4 ft deep. After trenching in paved areas, the trenches will be re-compacted and re-paved following installation of power conduits. Trenches cut through landscaped areas will be re-compacted and re-landscaped if necessary. If boring is used, then the access pit would be re-filled and re-compacted after boring.

Schedule

It is estimated that installation of electrical conduits from the SDG&E tie-in to the new transformer and to the mobile test facility will require approximately three weeks to complete conduit installation and to pull wires and connect power. It is expected that the work would start in the beginning of February 2009 and be completed by February 20, 2009.

Number of Workers

It is estimated that a 4-person crew consisting of an electrician and helpers will be required for excavation, running conduit and running wiring.

Test Slant Well Redevelopment

Before the submersible pump to be used for the extended pumping test is installed in the slant well, the well will require redevelopment, as it has not been pumped since May 2006. The redevelopment process will first involve videoing the test slant well to inspect the condition of the casing and perforated intervals. A one-ton panel van with four-wheel drive capability will be used to drive up to the wellhead to conduct the video survey.

Swabbing the screened interval with a nylon brush will be the main method of redevelopment if encrustations are present. The final phase of redevelopment would involve a combination swab and airlift development using a temporary test pump to remove loose sediment and encrustation from the well. Vehicles that would be used by the redevelopment crew would include a truck-mounted pump installation unit on a one-ton truck, all-terrain forklift, flatbed / support vehicle, and trailer-mounted air compressor.

Discharge from the well during the redevelopment process will enter an onsite baffled Baker tank where suspended materials will settle out, and the resulting clear water will be discharged to San Juan Creek through a temporary tie-in to the discharge piping and diffuser. Initially, if discharge water from the Baker tank is not acceptable for meeting NPDES requirements prior to discharge, the fluid will be either filtered, discharged to the nearby sewer manhole, or removed using a vacuum truck and disposed in an acceptable manner.

A temporary chain-link fence that is 6 ft in height and has a 16-ft wide gate will enclose the work site at all times.

Schedule

The work schedule for the test slant well redevelopment will be 10:00 AM to 6:00 PM, Monday through Friday, due to the proximity of the campground. The work is expected to take two weeks, starting on approximately March 2, 2009.

Number of Workers

Slant well redevelopment will be undertaken by a three-person crew and overseen by the supervising geologist. An additional person from an outside company will provide the downhole video service.

Install Submersible Pump

The 2,000-gpm submersible pump will be installed in the test slant well, along with pipe column using a truck-mounted pump installation unit. Once the pump has been installed, it will be connected to the discharge piping and electrical supply.

The work site will be surrounded by temporary 6-ft fencing for pubic safety. Other vehicles that would be used by the pump installation crew would include all-terrain forklift, and a flatbed / support vehicle.

Schedule

It is expected that it would take approximately one week to install the submersible pump and connect it to the discharge piping and electrical supply. This task should start on March 17, 2009, and be completed by March 20, 2009.

Number of Workers

Pump installation will be undertaken by a three-person crew and overseen by a supervising engineer.

Extended Pumping Test

During the 24-month pumping test, the submersible pump will be left to run continuously. Water levels and quality within the test slant well and monitoring well MW-1 will be recorded by data loggers installed in the mobile test facility. Data from monitoring well MW-2 will be downloaded every month by one person. All other activities related to the pumping test involve the mobile test facility, and are described in greater detail in Section 0.

In the event that the pump needs to be repaired during the 24-month test period, a contractor will be called out to inspect and repair the pump. Although the vault itself will be accessible year round, any repairs to the submersible pump will be restricted to the period between Labor Day and Memorial Day. During summer months, pump access will not be available due to increased beach use.

Vehicles that would be used during the repair process would include a truck-mounted pump installation unit on a one-ton truck, all-terrain fork lift, flatbed / support vehicle, and trailer-mounted air compressor.

Schedule

It is expected that the full-time extended pumping test will commence in mid-May 2009, continuing until mid-May 2011.

Number of Workers

During the extended pumping test, no one is required to attend to the slant well or pump unless there is a problem with the pump itself or the connections within the buried vault. In the event that the pump needs to be repaired, a three-person crew will conduct the repairs with one MWDOC representative providing oversight.

MOBILE TEST FACILITY

GENERAL DESCRIPTION OF MOBILE TEST FACILITY

A mobile test facility will be constructed to house RO process equipment as well as appurtenances such as online instrumentation, eductor pump, and motor controls for the test slant well pump. The test facility will function as a stand-alone RO test platform and be housed in a 30 ft x 8 ft air-conditioned container. The site around the mobile test facility will be enclosed with a green chain link screening fence to limit

access and protect the public. The test facility will have two large access doors at the rear and contain sufficient ventilation for personnel to safely work in the structure. The facility will have separate areas for process equipment and for electronics and a test bench. Power will be supplied to a central power panel inside the container, which will then be used to power test equipment in the facility as well as power the submersible pump in the test slant well. The facility will house:

- RO test train and chemical feed;
- Online water quality instrumentation;
- Testing apparatus used for corrosion and microbiological testing;
- Eductor and pump for oxygenating well discharge water;
- Sump and pump system for returning water to either the well discharge or a nearby sanitary sewer;
- Electrical panel for power to the test facility and slant well pump;
- Electrical controls for the slant well submersible pump;
- Compressed nitrogen gas cylinders for maintaining inert gas in the well headspace;
- Visual data loggers for measuring water level transducers and online instruments; and
- A work bench for conducting onsite tests.

Figure 7 shows the location of various components and test equipment within the mobile test facility. Each of the major components housed in the test facility is described in more detail in the following sections.

The mobile test facility will be constructed offsite and delivered to the staging area and set in the location shown in Figure 2.

DETAILED DESCRIPTION OF MOBILE TEST FACILITY

Onsite Chemical Usage

Three chemicals will be used for the low flow RO process testing. Online water quality monitoring, corrosion testing, and biological testing will not require chemical addition.
Table 1 lists the chemicals and maximum anticipated chemical dose, which will be added to the 16-gpm RO feed. Each chemical is listed by the Chemical Abstract Services (CAS) registry number. The dose shown in Table 1 for each chemical is the maximum dose that would be used. Sulfuric acid may be needed to lower pH from a 7.0 ambient level down to pH 6.5, which is the lowest pH that would likely be used. Sodium bisulfite may be needed if dissolved oxygen levels increase in the slant well discharge water, however, if dissolved oxygen levels remain low, then a bisulfite dose lower than 5 mg/L would be used. Adding antiscalant to the RO feed will be needed to minimizing mineral scaling, which may occur in the reverse osmosis process. The maximum antiscalant dose would be 3 mg/L.

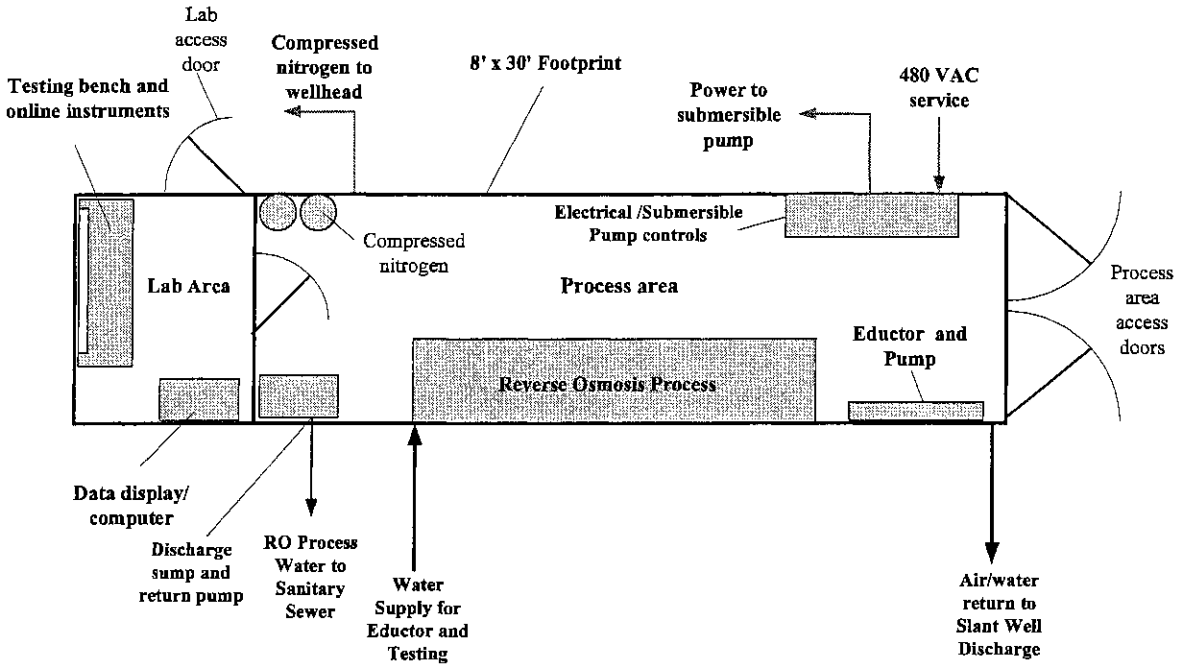


Figure 7. Plan View of the Mobile Test Facility Showing Location of Lab, Process Area, and Test Equipment

Adding sulfuric acid lowers water pH and results in sulfate ion increase. If the RO product and concentrate streams are discharged back to the slant well discharge, then adding a 50-mg/L sulfuric acid dose to the RO feed will result in an approximate 0.5-mg/L increase in sulfate concentration after the RO product and concentrate streams are returned to the slant well discharge pipeline. The sulfate level pumped from the slant well will likely vary between approximately 950 mg/L to 1,825 mg/L over the course of the Phase 3 extended pumping test. Although adding sulfuric acid will lower pH in 16 gpm RO feed, it will not lower slant well discharge pH by a measurable amount (less than 0.01 pH unit).

Adding sodium bisulfite will result in an increase of sodium ions, which are stable and non-reactive, and an increase in sulfite, which will react with dissolved oxygen. The stable end-product of sulfite is sulfate. Adding a 5-mg/L sodium bisulfite dose to the 16 gpm RO feed stream would result in a net 0.04-mg/L sulfate increase and 0.01-mg/L sodium increase after it is discharged back to the 2,000-gpm slant well discharge. Sodium concentrations in the test slant well discharge will vary between approximately 400 mg/L to approximately 6,000 mg/L over the course of the Phase 3 extended pumping test.

Antiscalant will be added to the RO feed at a maximum 3-mg/L dose to minimize the potential for sparingly soluble salt formation on RO membranes. Most of the antiscalant added will travel through the RO process and end up in the RO concentrate stream. At a 3-mg/L, neat-product[2] dose, the slant well discharge would contain approximately 0.07 mg/L antiscalant (as neat product) once the RO product and concentrate streams had been returned to the slant well discharge pipeline. Although largely proprietary, commercial RO antiscalant chemicals generally contain phosphates and/or weak organic acids (e.g., carboxylic acids) as the principal active ingredients. At the low doses used, antiscalant addition will not have a measurable effect on water quality discharged from the slant well. As a contingency, RO product and concentrate may be discharged to a nearby sanitary sewer connection. The sewer connection will be sized to accept approximately 20-gpm, which will accommodate the full RO process flow.

[2] Neat product dose refers to an undiluted product and does not consider the active ingredient concentration; because of their proprietary nature, antiscalants are dosed as a neat product and not as active product.

Table 1 Chemicals and Doses for Reverse Osmosis Pilot Testing

Chemical Name	CAS Number	Maximum Dose (mg/L)	Chemical Usage (gallons/day)	Approximate Maximum Concentration in Reverse Osmosis Concentrate (mg/L)	Approximate Maximum Concentration in Slant Well Discharge (mg/L)*	Effect on slant well discharge pH
Sulfuric Acid	7664-93-9	50	0.7	100***	0.5***	< 0.01 decrease
Sodium Bisulfite	7631-90-5	5	0.4	10***	0.05***	None
Antiscalant	**	3	0.07	6†	0.03†	None

*Assumes 2,000-gpm well discharge and an 8-gpm RO concentrate return flow and 8-gpm RO product return flow
**Antiscalants are generally proprietary mixtures of organic acids and/or phosphates
***Addition of Sulfuric Acid and Sodium Bisulfite will result in an increase in Sulfate concentration
† Concentration reflects dosage as neat product: active components (e.g., carboxylic acids and phosphate) will be lower as the product is not entirely composed of active ingredients

Onsite Chemical Storage and Chemical Spill Prevention Plan

Chemicals added to the RO process will be stored in 5-gallon, polypropylene or polyethylene containers with secondary containment to facilitate easier handling and to minimize the potential for spilling a large quantity of a given chemical. Secondary containment will consist of another polypropylene container with sufficient volume to hold contents of the primary chemical container. Chemicals will not be transferred from a storage container to a feed container; rather, to minimize the chance of spills, chemicals will be supplied in 5-gallon containers, which are able to connect directly to feed pumps. Therefore, chemicals will not need to be transferred out of their container. No more than ten gallons of each of the three chemicals will be kept onsite. Acid will be stored and handled in a different manner than sodium bisulfite, as exposing bisulfite to acid would have adverse impacts. A spray-on, corrosion-resistant liner will be applied to the process testing area in the mobile test facility to provide an additional level of spill protection. Chemical feed and supply facilities will incorporate vapor control measures on tank ventilation to ensure that gas-phase sulfur dioxide concentration in the process area does not exceed OSHA exposure guidelines. Finally, in the event of a spill, the mobile test facility will be equipped with a safety shower and eye wash station.

Power Supply

480 VAC power will be supplied to the mobile test facility from a transformer located in the northeastern portion of the park property; the transformer will be installed by SDG&E as part of this project. The transformer will tie into SDG&E's power service, which has a vault located underneath the northern park road. The approximate locations of SDG&E's tie-in structure, power supply conduits, and new transformer are shown in Figure 2.

Table 2 lists the power requirements for the mobile test facility as well as the submersible pump. The calculated submersible pump power requirements shown in Table 2 assume a 60-percent overall pump and motor efficiency, a 2000-gpm flow rate discharging through 10-in. and 12-in. pipe, and a 110-ft total dynamic head. Power requirements for the test facility include the power required for the pump and eductor system, RO process, online instruments, lights, and ventilation.

Table 2. Power Requirements for Pilot Test Facilities

Component	Power Requirement (kW)	Approximate Horsepower
Submersible Pump	70	90
Eductor Pump	9	14
RO process	3	5
Lighting, instrumentation, and ventilation	5	

Reverse Osmosis Process Testing

An RO test train will be fabricated and installed in the mobile test facility before it is installed at the test site. Feed to the RO process will be approximately 15 gpm and will be supplied directly from the test slant well discharge pipe to the RO feed pump influent. Chemicals will be added to the RO influent. The RO process will generate a low-salinity product stream and a high-salinity concentrate stream. Each stream will have an approximate 7.5-gpm flow rate. Chemicals added to RO feed will largely remain in the concentrate stream, however, they will be concentrated by an approximate factor of two as compared to their initial dose. Two options exist for discharging the RO concentrate stream:

1. Combine with the RO product stream and send back to the slant well discharge, where it will be discharged into the surf zone; and
2. Send the 15-gpm RO process stream to a nearby sanitary sewer connection and avoid discharge to the surf zone.

The option used for RO concentrate discharge will depend on allowances provided in the discharge permit as well as on decisions from other regulatory agencies involved in the permitting process.

Oxygen Addition to Well Discharge

Well discharge to the surf zone will require a minimum 5-mg/L dissolved oxygen residual. Water from the test slant well will not likely contain measurable dissolved oxygen residual; therefore, oxygen will need to be added to the 2,000-gpm well discharge to ensure levels exceed 5 mg/L. A pump and eductor system will be used to reliably add oxygen over the 18-month test. The eductor system will require drawing a 120-gpm sidestream from the well discharge, adding approximately 20 standard cubic ft per minute of air and sending the air/water mixture back into the well discharge pipeline through an inline diffuser assembly. A multi-stage centrifugal pump will be required to pressurize the 120-gpm sidestream to approximately 100 psi before sending the water through the eductor and diffuser nozzle. A standby pump will be supplied in case of pump failure. Figure 8 shows a process schematic of the pump, eductor, and injection nozzle.

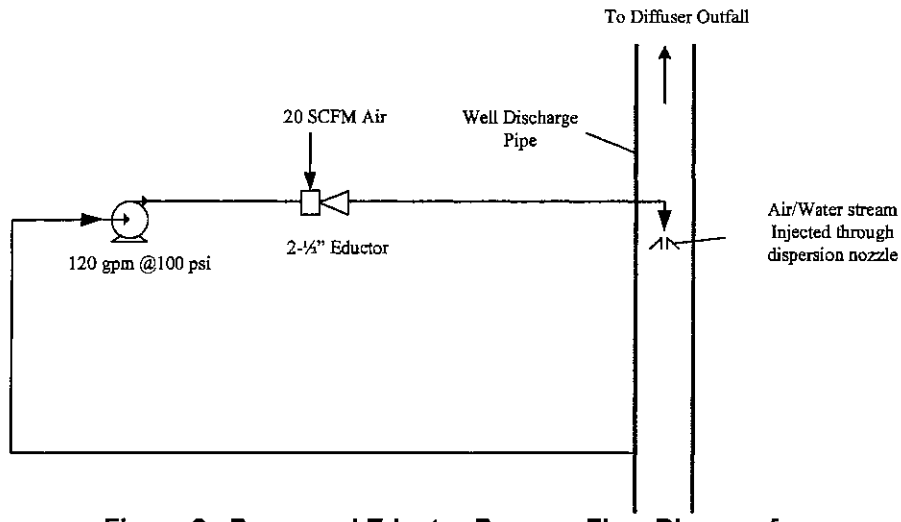


Figure 8. Pump and Eductor Process Flow Diagram for Adding Dissolved Oxygen to Discharge Water

Online Instruments for Water Quality Monitoring, Corrosion Monitoring, and Biological Monitoring

The mobile test facility will house instruments used for online testing, a corrosion testing apparatus, and an apparatus to measure biological growth. All of these tests will use an approximate 4-gpm sidestream from the slant well discharge for testing. Water from the slant well discharge will split and flow through three different manifold assemblies housing the various test setups. After water flows through the online instruments and other testing setups, it will collect in an effluent manifold and then be discharged to a sump, which will then pump back to the well discharge pipe. No chemicals will be added to this sidestream and water quality will not be altered except by the addition of oxygen.

DETAILED DESCRIPTION OF MODEL TEST FACILITY TASKS

Install Mobile Test Facility

The mobile test facility will be constructed offsite and delivered to the Doheny Beach Test site with the major components already installed. The mobile test facility will be delivered to the staging area and set in the location shown in Figure 2 using a 40-ton crane. Once the mobile test facility is in place the following connections will be required:

- Power service connection from the nearby 480 VAC transformer;
- 4-inch water supply and 5-inch return connections from the slant well discharge to the pump and eductor and online testing;
- A 2-inch discharge line connected to the sanitary sewer located in the north portion of the park;
- Instrument signal cables from the slant wellhead and monitoring well MW-1;
- Nitrogen supply line to the slant wellhead; and
- Submersible pump power supply from the mobile test facility to the slant wellhead.

Power service from the nearby transformer will require trenching landscaped areas to install a maximum 2-inch electrical conduit from the power meter and box on the above-ground transformer to an electrical junction box on the mobile test facility. Water supply and return lines from the slant well discharge will require trenching the grass area surrounding the mobile test facility and along the bike path to the slant

wellhead; all supply and return lines from the slant wellhead will be run through a single trench leading to the test facility.

A 2-inch line will be connected to the sanitary sewer, which runs along the western boundary of the park property. The buried pipeline will run in an approximate 4-6 inch wide trench at a depth below 2 ft. It may be placed in the same trench as the electric service line. The pipeline will run west from the mobile test facility to the edge of the parking lot and then north to an elbow, located in the north-eastern portion of the park property in the landscaped area, then west to a connection point across the street from Denny's. The connection to the sewer will use wet-tap methods to ensure the sewer line will not be taken out of services during the connection. Another option would be to connect to the State Parks sewer.

Schedule

Once delivered to Doheny Beach State Park, it is estimated that the mobile test facility can be placed in its final location within one day. Approximately two weeks will be required to complete mechanical and electrical connections to the test slant well discharge and for electrical service.

Number of Workers

It is estimated that a four-person crew, consisting of mechanics and electricians, and a supervisory engineer will be required for installing the mobile test facility. Another two- to three-person crew will be needed to backfill excavations required to run connecting piping and electrical service.

Water Quality Monitoring, Corrosion Testing, Biological Monitoring, and RO Process Testing

Testing conducted as part of the extended pump test will be largely confined to the mobile test facility. These activities will also involve occasionally sampling the slant well discharge in San Juan Creek and downloading data from nearby monitoring well MW-2, which is located in the parking lot to the west (see Figure 2).

Schedule

Prior to the 18-month extended pumping test, the mobile test facility and appurtenances such as down-hole instrumentation will require acceptance testing and shakedown for a period of four weeks. Once the 18-month pump test begins, water quality measurements, corrosion testing, and biological testing will continue throughout the course of testing. Reverse osmosis process testing will be conducted for approximately nine months.

Number of Workers

Prior to the start of the 18-month extended pumping test, engineers will be onsite to validate operation of all test equipment including online instrumentation, RO process equipment, and appurtenant equipment such as data collection, eductor pump, and RO process water return pumping. It is estimated that two engineers will be onsite for a period of four weeks prior to testing for mobile test facility shakedown.

Once testing begins, personnel will be onsite daily throughout the course of testing. During reverse osmosis process testing, an operator will be onsite for six to eight hours every day. Water quality sampling will be conducted by field geohydrologists or file field engineers, and will usually require only one person. During site tours, more people will likely be touring the test facility and beach area for brief periods. It is estimated that most site tours would contain fewer than 20 people.

DRILLING OPERATIONS FOR EXPLORATORY BORINGS

GENERAL DESCRIPTION OF SONIC DRILLING METHODOLOGY

The sonic drilling method is also known as Rotosonic, Sonicore, Vibratory, or Resonantsonic drilling and is most often used in the environmental drilling industry as it is a "dry" drilling method[3]. The sonic drilling method advances the borehole by using high-frequency mechanical vibrations that apply sinusoidal forces to the axis of the drill pipe. The borehole is cased with flush-threaded pipe as it is advanced through the formation materials. Advancement and casing of the borehole takes place simultaneously with collection of continuous, nearly undisturbed core samples containing both unconsolidated and consolidated formation materials.

A top head drive unit mounted on the mast of the drilling rig contains the hydraulically operated oscillator capable of generating vibrations with frequencies of 50 to 150 cycles per second. As the drill bit at the leading face of the flush-threaded sonic casing is advanced, the vibrations cause soil and rock particles to move away from the drill string, permitting fast penetration (drilling) rates. Very few drill cuttings are generated at the surface other than the core itself, and no water is produced unless it is pumped from the borehole. After approximately each 2.5 to 5-foot interval of borehole advancement, the core barrel is removed from the borehole, and the core is extruded into plastic sleeves. These plastic sleeves will protect the core from cross-contamination and loss during logging and transport. The sonic drilling system offers a very accurate method for collecting nearly undisturbed continuous formation samples, while avoiding generation of fluids.

Geophysical borehole logs will be run within temporary PVC casing that is installed in each borehole. Once logging is completed, the PVC casing will be removed.

Isolated aquifer sampling may be conducted at specific depths as the bore hole is advanced. The outer casing that is driven into place will prevent cross-contamination between aquifers and mixing of formation materials. Collection of isolated aquifer water samples will be accomplished by filter packing and sealing the zone before a small diameter pump is installed to extract water from the zone. Any water produced during zone testing will be contained in the trailer-mounted poly tank and will be transported to a nearby sewer manhole (maintained by SCWD) for disposal. Proper approval for disposal of fluids will be arranged by the contractor with SCWD prior to the start of drilling.

Noise levels generated by equipment operating at each drilling site will be a maximum of 85 to 90 dB within a distance of 25 ft from the drilling rig; diminishing to less than 75 dB at a distance of 50 ft. It should be known that normal conversation typically has a noise level of 70 dB, as do passing vehicle on a paved surface. The major source of the noise that is generated is from the rig engine and occurs on a continual basis. Additionally, noise occurs from the sonic head on an intermittent basis, particularly when hard formation materials are encountered. Baffled and insulated plywood sound barriers will be placed around the rig engine compartment to assist in reducing rig engine noise.

Once the total depth of the borehole has been reached and the core barrel has been removed, the outer sonic casing will be retracted from the borehole as temporary 4-inch PVC screen is installed[4]. Once the geophysical borehole logs have been run within the PVC screen, the PVC materials will be removed before the borehole is destroyed using a neat cement grout (i.e., Type II Portland cement and water only). The cement slurry will be pumped under pressure through a small-diameter tremie pipe that is placed near the bottom of the borehole. This ensures positive placement of the sealing materials. Any excess cuttings that are removed during the drilling process (that are not a part of the core) will be discharged into an onsite 1-cubic yard hopper. Materials in the hopper will be transferred to a larger roll-off container stored in the parking lot staging area. Proper disposal of soils in a nearby landfill will be the responsibility of the contractor.

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[3] With dry drilling methods, typically no materials (air, water, or drilling additives) are added to the borehole during the drilling process.

[4] PVC screen is installed to ensure the borehole remains open during geophysical borehole logging.

DRILLING PERMITS

The required drilling permits for the exploratory boreholes will be obtained by the contractor prior to the start of work. The permits will be obtained from the Orange County Health Care Agency Environmental Health Division and the drilling shall be carried out as per their requirements.

SPILL PREVENTION PLAN

Prior to the commencement of drilling operations, a containment area will be constructed to enclose the drill rig and other equipment to minimize the potential for releasing fuel, hydraulic fluid, or water from drilling operations to the surrounding environment. A temporary chain-link fence that is at least 6 ft in height with a locked 16-ft width gate will surround the entire drilling work site (approximately 60 ft x 40 ft). All drilling equipment will be underlain by heavy-duty (3-ply) plastic sheeting that will completely cover the area under and adjacent to the drilling rig and support equipment and will be bermed along the edges to contain potential spills. Additionally, absorbent materials will be maintained on site during work operations as part of a spill prevention plan (see Attachment A) to immediately clean up any spills that may occur. Used absorbent materials will be disposed in a proper manner at an approved offsite location.

It is estimated that drilling operations will require the use of 40 to 60 gallons of diesel fuel daily. Fuel will be delivered to the site daily using a portable tank mounted in the bed of one of the crew trucks. All fuel will be handled in accordance with the fuel containment plan. No fuel or oil products, other than that which is in equipment fuel tanks, will be stored onsite.

DRILLING WATER

Minimal water will be required for the drilling process and will be provided to the contractor from a fire hydrant that is maintained by South Coast Water District (SCWD). The fire hydrant is located in the main parking lot west of San Juan Creek and north of the new lifeguard building. The drilling contractor will be responsible for obtaining a hydrant meter from the water district and for paying the deposit or other required fees. The contractor will be responsible for transporting water from the hydrant to the drilling site. All flows will be metered with the cost of water service be paid by MWDOC. A maximum flow rate of 400 gallons per minute (gpm) is available. As the hydrant is used for fire flow, the contractor's work cannot interfere with its use by others.

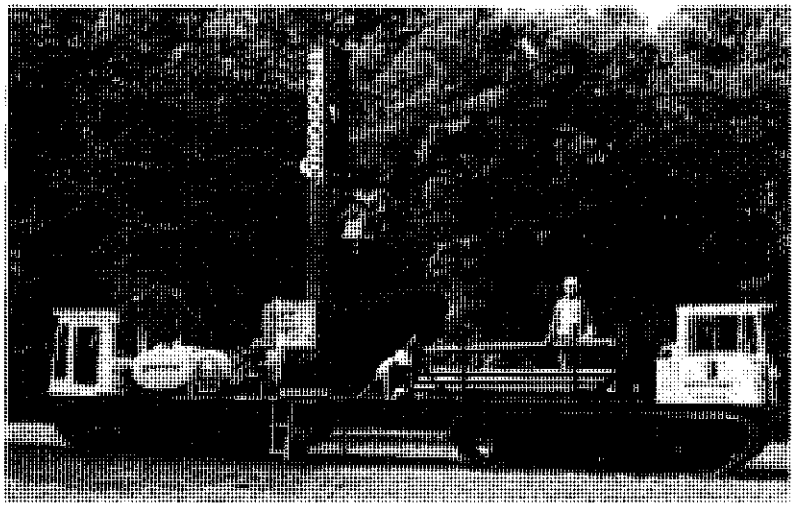
DETAILED DESCRIPTION OF DRILLING TASKS

Drilling and Support Equipment

The drilling equipment will consist of the track-mounted drilling rig (see Figure 9), the track-mounted pipe truck, a 6,000-lb. all-wheel drive forklift, a 1-cubic yard hopper, a trailer-mounted water tank, and two 4-wheel drive crew trucks. Additionally, a 20-cubic yard roll-off bin will remain in the parking lot staging area. The supervising geologist will also have a four-wheel drive pickup truck.

Each drilling site will be surrounded by temporary 6-ft fencing for pubic safety. The drilling process will produce either 3.5-in or 5-in diameter continuous cores that are each 2.5 ft in length. The continuous cores will be extruded into plastic sleeves and will be transported offsite for additional testing. Minimal cuttings will be produced aside from the formation core, and they will be contained in plastic sleeves.

Geophysical borehole logging equipment will consist of a 1-ton panel van containing geophysical tools and data processing equipment.



Used with permission from Boart Longyear Company, 2008.

Figure 9. Example of a Track-Mounted Sonic Drilling Rig and Track-Mounted Pipe Carrier

Drilling and Sampling Process

Following the kick-off orientation meeting that will be attended by all parties involved in the extended pumping tests and pilot plant testing, the first activity related to the drilling operations will be the installation of temporary chain-link fencing on the beach to surround each 60 ft x 40 ft worksite. In addition, construction fencing with privacy panels will be installed surrounding the parking lot staging area as designated by California State Parks. The staging area in the parking lot will need to be of a sufficient size to store approximately three 40-ft flatbed equipment trailers, or an area that is approximately 80 ft x 140 ft in size. The beach worksite and parking lot staging area will have informational signs prominently displayed on the fencing describing the project and providing contact information for MWDOC.

Mobilization of drilling equipment will include approximately three trailer loads of equipment transported from the contractor's yard to the Doheny State Beach parking lot staging area. A lowboy trailer for heavy equipment hauling will be needed to transport the track-mounted sonic drilling rig and drill pipe carrier to Doheny State Beach. The lowboy trailer will be returned to the contractor's yard and will not be kept at the park during drilling.

Once the temporary fencing and protective plastic sheeting is in place, the drilling rig and support equipment will be brought onto the site. Equipment to be located on the beach includes the track-mounted sonic drilling rig and track-mounted pipe carrier. Each unit is approximately 25 ft in length and will exert not more than 6.2 psi to surfaces under the rubber tracks.

All flush-threaded drill pipe will be provided in sections that are 10 ft in length. All drill string and casing sections needed for each day's drilling activities will be brought from the parking lot staging area to the drilling site on a daily basis (see Figure 2). An all-terrain forklift with rubber tires will be used to lift and place the drill casing into place as needed.

Lithologic samples will be collected at approximately 2.5-ft intervals from core barrel and will be placed in heavy duty plastic sleeves that will be properly labeled as to depth of sample and borehole name. Samples will be identified as to material type and potential as a productive aquifer by visually logging them in the field using the Unified Soil Classification System (USCS). All excess drill cuttings will be transported to the roll off bin located in the parking lot staging area. At the end of the project the excess soil materials will be disposed of at a suitable location that is acceptable to MWDOC.

Geophysical borehole logging equipment will consist of a 1-ton panel van containing geophysical tools and data processing equipment.

Upon completion of drilling and testing, each borehole will be destroyed by filling with neat cement from total depth to 10 ft below ground surface. The upper 10 ft of each borehole will be backfilled using native materials. Each site will be cleaned and the sand will be raked so that all traces of the drilling operations are removed.

Drilling Schedule

The work schedule for the drilling operations will be 10 AM to 6 PM, Monday through Friday, due to the proximity of the campground. No construction work will be conducted on the beach during the period from Memorial Day to Labor Day. However, the drilling work is tentatively scheduled for January 2010 as described above. It is estimated that drilling each borehole to 200-ft depth will take three days, not including the initial mobilization.

Number of Workers

Drilling operations will require three drilling contractor personnel, including a driller and two helpers. Additionally, the contractor will provide an onsite safety officer to interact with the public and direct traffic when equipment is being moved. On a part-time basis one supervising geologist will also be onsite, as well as MWDOC personnel and one to two other authorized personnel. The geophysical logging will be conducted by one person and will be witnessed by the supervising geologist. Destruction of the boreholes will be undertaken by the three-person drilling crew and overseen by the supervising geologist.

PUBLIC SAFETY AND DRILLING CONTRACTOR TERMS AND CONDITIONS

Temporary 6-ft high chain link fencing and a 16-ft wide gate will be installed around the drilling site during all mobilization, well drilling, construction, development, testing and demobilization activities. The work site will be underlain by a heavy-duty plastic liner which will be changed when necessary due to wear and tear from driving equipment over it. Absorbent materials will be kept on site at all times for immediate availability if needed to contain all spills, potential waste and vehicle drippings. Following are a list of terms and conditions for the proposed drilling operations that were developed in collaboration with representatives from MWDOC and California State Parks.

Pre-Construction Meeting

Prior to drilling operations, there will be a meeting between MWDOC, its consultants, California State Parks personnel, and the Drilling Contractor to review the plan of work, park rules, safety considerations, and environmental commitments. Each exploratory borehole drilling site will be visited during the pre-construction meeting.

Safety Fencing

A temporary chain-link fence that is 6 ft in height and has a 16-ft wide gate will enclose the work site at all times.

Site Safety and Security Officer

In addition to the drilling crew, there must be one person (Site Safety Officer) on site to interact with the public and answer questions from the public. This person will not be integral to actual drilling operations. In addition to answering public inquiries, it will be this individual's job to ensure that the perimeter around the drilling operations is safe and secure. The Site Safety Officer will also redirect pedestrian and bicycle traffic in the event that the drilling operations obstruct a traffic route.

Informational Signage

MWDOC will prepare signage to be posted at the site of drilling operations. The sign will explain the project and provide a MWDOC telephone number where public inquiries can be directed. MWDOC will not prepare paper fliers due to the propensity for informational fliers to become litter.

Notice to Neighboring Community

MWDOC will mail an informational notice to the residents of the bluff overlooking the Doheny State Beach campground and all other property owners located near the Park prior to commencement of the pilot plant testing and exploratory borehole drilling.

Removal of Drill Cuttings and Water

During drilling, excess cuttings will be deposited in a 20-cubic yard roll-off bin located in the parking lot staging area. However, it is not anticipated that the volume of excess cuttings will be large as the majority of the materials drilled are contained in the continuous core that will be transported to an offsite location for analysis and testing. The excess cuttings will be removed from the site and will be disposed of at a nearby landfill via agreement with SCWD and MWDOC or at an Orange County landfill.

During the drilling process water will be discharged into a trailer-mounted tank for transport and discharge at an approved offsite location.

Preserving Vegetation

Drilling operations and mobilization of drilling equipment to the exploratory borehole sites will not disturb surrounding plant life, including overhead tree limbs, landscaping, or native vegetation.

Landing Mats

Landing mats will not be necessary as track-mounted and all-wheel drive vehicles will be used.

Bike Path and Access Roads

Drilling operations will take place on the sand such that drilling equipment will not obstruct bike paths or other access roadways. Where bicycle paths and roadways may be temporarily blocked, an alternative route/detour will be clearly marked.

Noise Suppression during Drilling

Sound panels will be installed around the drilling rig's engine compartment to minimize noise. Approximately 40 percent to 50 percent of sound would be absorbed by the sound panels.

Air Emission Controls

Diesel engines on drilling equipment will be equipped with best available technologies (Particulate filters, SCR [Selective Catalytic Reduction], diesel oxidation catalyst) to minimize particulate and nitrogen oxide (NOx) emissions.

Fire Hydrant

The fire hydrant located near the new lifeguard headquarters facility is dedicated to State Parks for future fire flow service. Therefore, neither the contractor nor the pilot plant testing facilities shall interfere with the use of the hydrant for fire purposes.

REMOVAL OF TEMPORARY TESTING FACILITIES

GENERAL DESCRIPTION OF REMOVAL OF TEMPORARY TEST FACILITIES

Removal of all temporary facilities installed for the extended pumping test will take place after completion of the pumping test in December 2010. Work would generally involve excavating and removing all buried pipes and cables, removal of the mobile test facility, the diffuser and instruments in monitoring well MW-1. After removal of these items, landscaping and grass would need to be reinstated and paved surfaces repaired where necessary.

DETAILED DESCRIPTION OF REMOVAL OF TEMPORARY TEST FACILITIES TASKS

Removal of Mobile Test Facility

Prior to its removal from Doheny Park State Beach parking lot, the mobile test facility will be disconnected from its power service, water supply and return connections, instrument signal cables, nitrogen supply line, and submersible pump power supply. It will be removed from its location using a 40-ton crane.

Schedule

It will take approximately less than one week to disconnect the facility from all outside connections and remove it from the site.

Number of Workers

It is estimated that a four-person crew, consisting of mechanics and electricians, and a supervisory engineer will be required for disconnecting the mobile test facility. Another two- to three-person crew will be needed to backfill excavations required for disconnecting piping and electrical service.

Removal of Discharge Facilities

Removal of the test slant well discharge facilities will involve excavating trenches to access the discharge line, power supply conduit, instrument conduits, and nitrogen supply line from the slant well to the mobile test facility. Excavations will be made using a backhoe excavation (see Figure 2 for piping alignment). The outfall diffuser attached to the discharge piping alongside the groin will be unanchored and removed.

Schedule

Two weeks have been scheduled for complete removal of the discharge facilities. The work will take place following removal of the mobile test facility.

Number of Workers

Removal of the slant well discharge facilities will be undertaken by a four-person crew and overseen by the supervising engineer.

Removal of Electrical Service

The power service for testing will need to be disconnected and removed. Buried conduits from the SDG&E junction box to the 480V transformer, and from the 480V transformer to the mobile test facility will be removed by excavating. The above-ground 480V transformer located in the northeastern portion of the Park will also be removed (see Figure 2). The work will require excavation for portions of the northern parking lot and northern park road as well as in landscaped areas (see Figure 2) to access the buried conduits.

After excavating in paved areas, the trenches will be re-compacted and re-paved following removal of power conduits. Trenches cut through landscaped areas will be re-compacted and re-landscaped if necessary.

Schedule

It is estimated that removal of the electrical conduits from the SDG&E tie-in to the transformer and to the mobile test facility will require approximately less than one week to complete. The work will be done concurrently with the removal of the mobile test facility.

Number of Workers

It is estimated that a four-person crew consisting of an electrician and helpers will be required for excavation and for removing conduit and wiring.

Surrounding Land Uses and Setting:

The location of the project is just to the west of the mouth of San Juan Creek on the beach, parking lot, and adjacent area, and on the beach just east of the creek. Doheny Beach is located in an urbanized area of Dana Point. Just west of the creek and the project site is the North Day Use Area which includes picnic, volleyball, horseshoe, parking, snack bar and rental concession, and restrooms. Just north of the beach and east of the creek is a campground area.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- ☐ Aesthetics
- ☐ Agriculture Resources
- ☐ Air Quality
- ☐ Biological Resources
- ☐ Cultural Resources
- ☐ Geology and Soils
- ☐ Hazards/Hazardous Materials
- ☐ Hydrology/Water Quality
- ☐ Land Use and Planning
- ☐ Mineral Resources
- ☐ Noise
- ☐ Population and Housing
- ☐ Public Services
- ☐ Recreation
- ☐ Transportation/Circulation
- ☐ Utilities and Service Systems
- ☐ Mandatory Findings of Significance

Determination

On the basis of this evaluation:

It has been determined that there would be no significant adverse impacts to an environmental resource as proposed, as all impacts would be at a level of less than significant. This Environmental Checklist has been prepared to support a Negative Declaration (ND).

Signature Date

Printed Name Agency

I. AESTHETICS

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project have a substantial adverse effect on a scenic vista?	☐	☐	☑	☐

Construction equipment will be in the park only during the three-month construction period. Drilling equipment will be on the beach in front of the campground for one week during the exploratory boring in January 2010. Safety fencing and noise attenuation screening around the drilling equipment will partially shield the public from the equipment; however, equipment and activities will still be visible. The visual effect of the equipment on the beach will be adverse, but due to the short timeframe, impacts would be less than significant. With the exception of the one-week drilling operations, when construction has been completed in March 2009, the only structure that will be visible to the public is the mobile test facility. The mobile test facility will be a 30 foot by 8 foot container that will be located adjacent to the parking lot just west of San Juan Creek. The mobile test facility will not interfere with ocean views of beachgoers or creek views of cyclists and walkers on the bike path. The vegetation along the creek bank will make this structure unobtrusive to campers in the campground east of the creek, and the mobile test facility will not interfere with campers' views of the beach or the creek. The impact of the mobile test facility on scenic views will be less than significant.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☑

The program would not damage scenic resources.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
c) Would the project substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☑	☐

As described above under a), construction equipment will be in the park only during the three-month construction period. Drilling equipment will be on the beach in front of the campground for one week during the exploratory boring in January 2010. The visual effect of the equipment on the beach will be adverse, but due to the short timeframe, impacts would be less than significant. With the exception of the one-week drilling operations, when construction has been completed in March 2009, the only structure that will be visible to the public is the mobile test facility. The mobile test facility will be a 30 foot by 8 foot container that will be located adjacent to the parking lot just west of San Juan Creek. The mobile test facility will not interfere with ocean views or creek views of persons using the Park. The impact of the mobile test facility on the existing visual character of the site will be less than significant.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
d) Would the project create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	☐	☐	☐	☑

No lighting will be used, as such no impacts will result.

II. AGRICULTURE RESOURCES

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☑

The project does not involve any conversion of land use, thus, no impacts to any areas designated as Prime Farmland, Unique Farmland or Farmland of Statewide Importance would occur.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☑

According to the Williamson Act contract, there is no existing zoning for agricultural usage. No impacts would result in the proposed project.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
c) Would the project involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☑

No other changes in the existing environment could possibly result in the conversion of Farmland to non-agricultural use. No impacts would result in the proposed project.

III. AIR QUALITY

The project site is located within the South Coast Air Basin (SCAB or Basin), which includes Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino counties. Air quality conditions in the SCAB are under the jurisdiction of the South Coast Air Quality Management District (SCAQMD). Both the state and federal governments have established health-based Ambient Air Quality Standards (AAQS) for six air pollutants, which include: carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), lead (Pb), and suspended particulate matter less than 10 microns in diameter (PM_{10}). The SCAB does not attain California and federal AAQS for four of the six criteria air pollutants. The air basin is in compliance with federal SO_2 and Pb standards, but ambient CO, O_3, and PM_{10} reach twice the standards. SCAB is currently in the process of requesting re-designation on attainment of the federal NO_2 standard.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project conflict with or obstruct implementation of the applicable air quality plan?	☐	☑	☐	☐

The SCAQMD and the Southern California Association of Governments (SCAG) are the agencies responsible for preparing the Air Quality Management Plan (AQMP) for the Basin. Since 1979, a number of AQMPs have been prepared. The 1997 AQMP, updated in 1999 and replaced in 2003, was based on the 1994 AQMP and ultimately the 1991 AQMP, and was designed to comply with state and federal

requirements, reduce the high level of pollutant emissions in the Basin, and ensure clean air for the region through various control measures. To accomplish its task, the 1991 AQMP relied on a multilevel partnership of governmental agencies at the federal, state, regional, and local level. These agencies (i.e., the USEPA, CARB, local governments, SCAG, and SCAQMD) are the cornerstones that implement the AQMP programs.

The 2003 AQMP, adopted in August 2003, updated the attainment demonstration for the federal standards for ozone and PM_{10}; replaced the 1997 attainment demonstration for the federal CO standard and provided a basis for a maintenance plan for CO for the future; and updated the maintenance plan for the federal NO_2 standard that the Basin has met since 1992.

The most recent comprehensive plan is the 2007 AQMP adopted on July 13, 2007. The 2007 AQMP is designed to meet the State and Federal Clean Air Act planning requirements and focuses on ozone and $PM_{2.5}$. The 2007 AQMP incorporates significant new emissions inventories, ambient measurements, scientific data, control strategies, and air quality modeling.

The project would not involve growth-inducing impacts or cause an exceedance of established population or growth projections. The project would not create either short- or long-term significant quantities of criteria pollutants. With mitigation proposed in III(d) below, the project would not result in significant localized air quality impacts and would be consistent with the goals of the Air Quality Management Plan (AQMP) for the project area. A less than significant impact would occur.

b) Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The project includes the construction and testing of a test well. Air pollutant emissions associated with the project could occur over the short-term from construction activities to support the proposed project. Once installed and tested, the well would be abandoned in-place. As such, no long-term emissions are associated with the completed project.

Standards of Significance

Regional Emissions Thresholds for Construction

The following significance thresholds for construction emissions have been established by the SCAQMD. Projects in the SCAB with construction-related emissions that exceed any of these emission thresholds should be considered to be significant:

- 75 pounds per day of ROG
- 100 pounds per day of NOx
- 550 pounds per day of CO
- 150 pounds per day of PM_{10}
- 150 pounds per day of Sox

Local Emission Standards

- California State 1-hour CO standard of 20.0 ppm
- California State 8-hour CO standard of 9.0 ppm
- California State 1-hour NO_2 standard of 0.25 ppm

- SCAQMD 24-hour construction PM_{10} standard of 10.4 $\mu g/m^3$
- SCAQMD 24-hour operations PM_{10} standard of 2.5 $\mu g/m^3$

Short-term Air Quality Impacts

Regional Impacts

Less than Significant: Construction activities would result in the generation of air pollutants. These emissions would primarily be exhaust emissions from powered construction equipment and motor vehicle emissions associated with worker and materials haul trips.

The project includes the construction and testing of a test well. Construction activities will consume diesel fuel and thus produce combustion by-products. These emissions were estimated using SCAQMD emissions factors. The work crews, equipment and truck assemblage, horsepower utilization rating (i.e., load factor), hours, and days of use, are as presented by GEOSCIENCE Support Services, Inc. Emissions factors are based on factors included in the USEPA 2008 Offroad Emissions factors for the South Coast Air Basin. The results of this analysis for each phase of the project are included in Table AQ-1.

Peak daily emissions for CO, NO_X, SO_X, PM_{10}, and $PM_{2.5}$ were modeled to determine their concentration and contribution to the ambient concentrations within the Project vicinity and as shown in Table III-1. As shown in Table III-1, a less than significant impact would occur under SCAQMD Regional Thresholds for all criteria pollutants without mitigation. The construction emissions spreadsheet calculations are included in Appendix A.

Table III-1
Peak Daily Emission Concentrations

Source	CO lb/day	ROG lb/day	NO_X lb/day	SO_X lb/day	Total PM_{10} lb/day	Total $PM_{2.5}$ lb/day
Well Head Construction Phase	17.07	4.24	32.86	0.11	13.32	9.69
Discharge facilities	17.07	4.24	32.86	0.11	13.32	9.69
Discharge Facilities and Electrical Service Install	35.86	9.54	90.93	0.26	24.53	19.24
Electrical Service Install & Slant well redevelopment	35.29	9.72	74.91	0.18	19.13	12.50
Slant well Redevelopment & Mobile Test facility Install	26.71	5.14	21.19	0.02	8.17	3.18
Submersible pump installation	16.18	4.56	28.04	0.03	5.55	2.57
startup and shakedown testing	3.86	0.70	0.23	0.00	2.77	0.74
18-month pilot test	20.04	5.26	28.27	0.03	7.28	3.10
Exploratory borings	26.21	6.65	54.09	0.08	8.85	3.81
Removal of Mobile testing facility and Electrical service	19.78	2.54	5.60	0.01	7.27	2.32
Removal of Discharge Facilities	10.79	2.27	5.47	0.01	6.80	2.13
Maximum Daily Project Emissions	***35.86***	***9.72***	***90.93***	***0.26***	***24.53***	***19.24***
SCAQMD Thresholds (lbs/day)	550	75	100	150	150	55
Significant Impact?	**No**	**No**	**No**	**No**	**No**	**No**

c) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state AAQS (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The project area is designated as a non-attainment area for ozone and PM_{10}. The project-specific evaluation of emissions supports a conclusion that with mitigation the air quality impacts for the proposed project are less than significant on an individual project basis. CEQA Section 21100 (e) addresses evaluation of cumulative effects allowing the use of approved land use documents in a cumulative impact analysis. CEQA Guidelines Section 15064 (i)(3) further stipulates that for an impact involving a resource that is addressed by an approved plan or mitigation program, the lead agency may determine that a project's incremental contribution is not cumulatively considerable if the project complies with the adopted plan or program. In addressing cumulative effects for air quality, the AQMP is the most appropriate document to use because the AQMP sets forth a comprehensive program that will lead the SCAB, including the project area, into compliance with all federal and state air quality standards and utilizes control measures and related emission reduction estimates based upon emissions projections for a future development scenario derived from land use, population, and employment characteristics defined in consultation with local governments. Since the proposed project is in conformance with the AQMP and the project is not significant on an individual basis, it is appropriate to conclude that the project's incremental contribution to criteria pollutant emissions is not cumulatively considerable, and therefore less than significant.

d) Would the project expose sensitive receptors to substantial pollutant concentrations?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☑	Less than Significant Impact ☐	No Impact ☐

Localized Impacts

Less than Significant With Mitigation. In addition to the mass daily threshold standards, project construction has the potential to raise localized ambient concentrations. This could present a significant impact if these concentrations were to exceed the ambient air quality standards at receptor locations.

The potential for this impact is demonstrated through dispersion modeling. In accordance with the SCAQMD criteria, peak daily emissions for CO, NO_X, PM_{10} and $PM_{2.5}$ were modeled to determine their concentration and contribution to the ambient concentrations within the project vicinity. The analysis makes use of methodology included in the SCAQMD *Final Localized Significance Threshold Methodology* (*Methodology*) (SCAQMD June 2003). In accordance with the *Methodology*, dispersion modeling only includes those pieces of equipment that actually operate onsite and omits vehicle trips that are distributed over a large area.

In the *Methodology*, the SCAQMD notes receptor locations as "off-site locations where persons may be exposed to the emissions from project activities. Receptor locations include residential, commercial and industrial land use areas; and any other areas where persons can be situated for an hour or longer at a time." For this analysis, the campsites immediately north of the drilling operations are considered the closest sensitive receptors to the construction activities.

In accordance with the *Methodology*, receptor locations are to consider the actual location of the receptors. If these locations are unknown, or varied, they may be assumed to be located at distances of 25, 50, 100, 200, and 500 meters. In cases where proximate receptors may be closer than 25 meters, as per the *Methodology*, a value of 25 meters is to be used in the analysis.

In the cases of CO and NO_2, the projected concentration is then added to an assumed ambient concentration. This ambient concentration is source-area dependant and is based on the peak value observed over the last three years of accumulated data. Because PM_{10} is a non-attainment pollutant, no ambient concentration is added. Instead, construction is held to a concentration of 10.4 $\mu g/m^3$ as measured at the nearest sensitive receptor location.

The *Methodology* notes that PM_{10} impacts are significant only if they impact sensitive land uses that are occupied on a 24-hour basis, such as residential uses. This is because the standards are written based on continual 24-hour exposure. Commercial, industrial, and public use areas are not occupied on a 24-hour basis and as such, the standard is not applied to these uses. (These areas are, however, subject to the 1- and 8-hour standards.) The most proximate residential area is the camp grounds just north of the exploratory boring locations. The nearest of these residents are located within 25 meters from the bore site and project-generated PM_{10} levels could be on the order of 40.38 μ/m^3 at the campsites (sensitive receptors) for unmitigated emissions. The value exceeds the 10.4 $\mu g/m^3$ standard and the impact is potentially significant. (Modeling output in Appendix AQ-2)

Mitigation Measures

The following mitigation is recommended to reduce PM_{10} to a level that will reduce localized emission concentrations to less than significant levels:

- Reduce speeds on unpaved roads to 15 mph;
- Water unpaved areas 4x per day;
- All diesel-fueled equipment that is ten years or older shall have particulate traps with a minimum of 85 percent efficiency installed within the exhaust system.

Residual Impact for PM_{10}

Table III-2 presents the mitigated, peak daily projected construction emissions for CO, NO_X, SO_X, PM_{10}, and $PM_{2.5}$ for the project. Table III-3 shows the projected concentrations at the various distances referenced in the *Methodology*. All projected concentrations are below the Localized Significance Thresholds with mitigation and, therefore, the project would be less than significant with mitigation.

Table III-2
Mitigated, Peak Daily Projected Construction Emissions

Source	CO lb/day	ROG lb/day	NO_X lb/day	SO_X lb/day	Total PM_{10} lb/day	Total $PM_{2.5}$ lb/day
Well Head Construction Phase	17.07	4.24	32.86	0.11	3.31	3.05
Discharge facilities	17.07	4.24	32.86	0.11	2.28	2.10
Discharge Facilities and Electrical Service Install	35.86	9.54	90.93	0.26	4.18	3.84
Electrical Service Install & Slant well redevelopment	35.29	9.72	74.91	0.18	3.24	2.98
Slant well Redevelopment & Mobile Test facility Install	26.71	5.14	21.19	0.02	1.38	1.27
Submersible pump installation	16.18	4.56	28.04	0.03	0.92	0.85
startup and shakedown testing	3.86	0.70	0.23	0.00	0.48	0.44
18-month pilot test	20.04	5.26	28.27	0.03	1.22	1.13
Exploratory borings	26.21	6.65	54.09	0.08	1.49	1.37
Removal of Mobil testing facility and Electrical service	19.78	2.54	5.60	0.01	1.25	1.15
Removal of Discharge Facilities	10.79	2.27	5.47	0.01	1.17	1.08
Maximum Daily Project Emissions	35.86	9.72	90.93	0.26	4.18	3.84
SCAQMD Thresholds (lbs/day)	550	75	100	150	150	55
Significant Impact?	No	No	No	No	No	No

Table III-3
Projected Construction Emissions at Various Distances

	1-hour CO Total Concen-tration, ppm	8-hour CO Total Concen-tration, ppm	1-hour NO2 Total Concen-tration, ppm	24-hour PM10 Concen-tration, ug/m3	24-hour PM2.5 Concen-tration, ug/m3
Maximum Project Emissions	35.86	35.86	90.93	4.18	24.53
Concentration at 25 meters	2.1019	3.2713	0.0883	7.12	3.33
Concentration at 50 meters	2.1137	3.2796	0.0903	2.24	1.05
Concentration at 100 meters	2.1338	3.2937	0.0953	0.22	0.10
Concentration at 200 meters	2.1412	3.2988	0.1048	0.00	0.00
Concentration at 500 meters	2.0514	3.236	0.1004	0.00	0.00
Concentration at 800 meters	2.0293	3.2205	0.0976	0.00	0.00
Concentration at 1000 meters	2.0221	3.2155	0.0959	0.00	0.00
LST Thresholds	20	9	0.25	10.4	10.4
Significant Impact?	No	No	No	No	No

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e) Would the project create objectionable odors affecting a substantial number of people?	☐	☐	☑	☐

Project construction will involve the use of heavy equipment creating exhaust pollutants from construction activities and from trucks bringing materials to the site. With regards to nuisance odors, any air quality impacts will be confined to the immediate vicinity of the equipment itself. By the time such emissions reach any sensitive receptor sites away from the project site, they will be diluted to well below any level of air quality concern. An occasional "whiff" of diesel exhaust from trucks accessing the site from public roadways may result. Such brief exhaust odors are an adverse, but not significant, air quality impact.

IV. BIOLOGICAL RESOURCES

Fauna

The upper beach of Doheny State Beach and the adjacent parking lot are heavily used by beachgoers. Characteristic species in these areas include urban-adapted birds such as American crow (*Corvus brachyrhynchos*), northern mockingbird (*Mimus polyglottus*), Brewers blackbird (*Euphagus cyanaocephalus*), rock dove (*Columba livia*), European starling (*Sturnus vulgaris*), and house sparrow (*Passer domesticus*) (Chambers Group 2005, N.Davis, personal observations). The eucalyptus trees at the western edge of the parking lot are used for nesting by black-crowned night herons (*Nycticorax nycticorax*). Monarch butterflies (*Danaus plexippus*) sometimes use eucalyptus trees in the park for roosting (CNDDB 2008).

A variety of shorebird species forage in the intertidal and may, at times, forage on the upper beach. Shorebirds commonly observed at Doheny Beach near the San Juan Creek mouth include willet (*Catoptrophus semipalmatus*), marbled godwit (*Limosa fedoa*), black bellied plover (*Pluvialis squatarola*), and sanderling (*Calidris alba*).

Gulls and terns roost within the San Juan Creek lagoon and on the sand bar at the lagoon mouth. They forage in the lagoon and in nearshore ocean waters. Gull and tern species observed by Chambers Group personnel in visits to the area include herring gull (*Larus argentatus*), California gull (*L. californicus*), ring-

billed gull (*L. delawarensis*), glaucous-winged gull (*L. glaucescens*), Heermann's gull (*L. heermanni*), western gull (*L. occidentalis*), Bonapartes gull (*L. erodias hia*), mew gull (*L.canus*), Caspian tern (*Sterna caspia*), elegant tern (*Sterna elegans),*and Forsters tern (*S.forsteri*) (Chambers Group 2005, 2006, N.Davis, personal observations). Some of the gull species, particularly western gull, California gull, and ring-billed gull, are known to forage on debris and garbage and would be likely to occur within the project sites. Other bird species that occur both within San Juan Creek lagoon and in nearshore ocean waters include brown pelican (*Pelecanus occidentalis*), double-crested cormorant (*Phalacrocorax auritis*) and western grebe (*Aechmophorus occidentalis*).

Bird species that typically occur within the lagoon but not offshore include mallard (*Anas platyrhynchos*), American coot *(Fulica Americana*), snowy egret (*Egretta thula*), great blue heron (*Ardea erodias*), and great egret (*Casmerodius albus*). The wetlands and riparian vegetation at the upper end of the lagoon supports such species such as red-winged blackbird (*Agelaius phoeniceus*), common yellowthroat (*Geothlypis trichas*), and song sparrow (*Melospiza melodia*).

San Juan Creek lagoon supports fish species such as topsmelt (*Atherinops affinis*), California killifish (*Fundulus parvipinnis*), and staghorn sculpin (*Leptocottus armatus),* which are typical of southern California estuarine environments. Tidewater goby surveys in August and September 2006 at the mouth of San Juan Creek collected top smelt, California killifish, deep bodied anchovy (*Anchoa compressa*), mosquito fish (*Gambusia affinis*), yellowfin goby (*Acanthogobius flavimanus*) red fin shiner (*Lythrurus umbratilis*), and fathead minnow (*Pimephalus promelas*) but no tidewater gobies (Baskin and Haglund 2006). Common surf zone fishes in southern California include barred surfperch (*Amphisticus argenteus*), California corbina (*Menticrrhus undulates*), jacksmelt (*Atheinopsis californiensis*), and California grunion (*Leuresthes tenuis*). Grunion spawn on sandy beaches annually between March and September.

After a thorough literature review and an assessment of the various habitat types within the project vicinity, it was determined that eight wildlife species listed as threatened or endangered have the potential to occur within the general project area. Each of the sensitive wildlife species was evaluated for their potential occurrence on the project site. Of these eight species, five were considered to have a moderate to high potential to occur on or adjacent to the project site. Those species with potential to occur in the project area include southern steelhead (*Oncorhynchus mykiss irdeus*), California brown pelican, western snowy plover (*Charadrius alexandrinus nivosus*), least Bell's vireo (*Vireo bellii pusillus*), and California least tern (*Sterna antillarum browni*). Table IV-1 provides a list of the federal- and state-listed endangered, threatened, and sensitive wildlife species that have the potential to occur within the project site. A brief description of the sensitive wildlife species follows.

Tidewater goby is federal-listed as endangered and occurs in shallow lagoons and lower stream reaches. This fish requires fairly still water but not stagnant water with high oxygen levels. This species was recorded in 1968 in San Juan Creek, from the mouth to 2.5 miles upstream (CNDDB 2005). No tidewater gobies were found in 1994 or 2006 (USFWS 2004, Baskin and Haglund 2006). Tidewater gobies are considered extirpated from San Juan Creek (USFWS 2004).

Southern steelhead is federal-listed as endangered and is a California special concern species. This species occurs in the ocean and in rivers and streams. Steelhead are born in freshwater and spend a portion of their lives in the ocean before returning to freshwater to spawn. Adults require cool, well-oxygenated streams for spawning. This species recently has been recorded in San Juan Creek (Hogarth 2005, Brennan 2008). San Juan Creek recently was designated Critical Habitat for the Southern California Steelhead Evolutionarily Significant Unit (Hogarth 2005). Southern steelhead may pass through the mouth, when open, of San Juan Creek and may use the creek for foraging. Therefore, this species has a moderate potential to occur near the site. The San Juan and Trabuco Creeks Watershed Recovery Plan has the goal of restoring the watershed to support steelhead populations in a sustainable manner (CDM 2007).

Table IV-1
Sensitive Wildlife Species Potential for Occurrence (PFO) Within the Project Site

Scientific Name	Common Name	Status Listing	PFO	Habitat	Comments
CLASS OSTEICTHYES	**BONY FISH**				
Eucyclogobius newberryi	tidewater goby	FE, CSC	**Low**	Occurs in shallow lagoons and lower stream reaches. Requires fairly still water with high oxygen levels, but not stagnant water.	Historically tidewater gobies occurred in San Juan Creek. They were last collected there in 1968 and were not found during a 1994 survey (USFWS 2004) 0r a 2006 survey (Baskin and Haglund 2006).
Oncorhynchus mykiss irdeus	Southern steelhead	FE, CSC	**Moderate**	Occur in the ocean and in rivers, but return to rivers to spawn. Preferred spawning habitat is high elevation headwaters near the ocean with cool, well-oxygenated water.	Southern steelhead may use San Juan Creek lagoon for passage and for foraging. Steelhead recently were collected in San Juan Creek and San Juan Creek has been designated as Critical Habitat for the southern steelhead (Hogarth 2005).
CLASS AVES	**BIRDS**				
PELECANIIDAE	**PELICANS**				
Pelecanus occidentalis californicus	California brown pelican (nesting colony and communal roosts)	FE, SE	**Present**	Occurs in bays, coastal ponds and sloughs, and on piers and jetties. Builds nests of sticks on the ground on islands or offshore rocks.	Common in San Juan Creek lagoon and nearshore waters off Doheny State Beach.

Table IV-1 (continued)
Sensitive Wildlife Species Potential for Occurrence (PFO) Within the Project Site

Scientific Name	Common Name	Status Listing	PFO	Habitat	Comments
CHARADRIIDAE	**PLOVERS**				
Charadrius alexandrinus nivosus	western snowy plover (nesting)	FT, CSC	**High**	Occurs on sandy beaches, salt pond levees, and shores of large alkali lakes. It needs sandy, gravelly, or friable soils for nesting.	Does not breed at Doheny State Beach, but occurs at times, particularly during the winter. It was not observed during snowy plover monitoring in February-March, 2005 (Chambers Group 2005) was observed between February and April 2006 (McEntee 2006).
LARIDAE	**SKUAS, GULLS, TERNS, SKIMMERS**				
Sterna antillarum browni	California least tern (nesting colony)	FE, SE	**High**	Nests along the coast from San Francisco to northern Baja California. It is a colonial breeder on bare or sparsely vegetated, flat substrates, such as sand beaches and alkali flats.	Does not breed at Doheny State Beach but sometimes forages in the area. Large numbers were observed off the mouth of San Juan Creek in July 2005 (Willick 2005).
SYLVIIDAE	**OLD WORLD WARBLERS, GNATCATCHERS**				
Polioptila californica californica	Coastal California gnatcatcher	FT, CSC	**Low**	Occurs in coastal sage scrub vegetation on mesas, arid hillsides, and in washes and nests almost exclusively in California sagebrush.	There is not any suitable nesting habitat for this species on the project site. Additionally, the site does not provide likely foraging opportunities for this species.

Table IV-1 (continued)
Sensitive Wildlife Species Potential for Occurrence (PFO) Within the Project Site

Scientific Name	Common Name	Status Listing	PFO	Habitat	Comments
CUCULIDAE	**CUCKOOS AND RELATIVES**				
Vireo bellii pusillus	least Bell's vireo	FE, SE	**Low**	Occurs in moist thickets and riparian areas that are predominantly composed of willow and mule fat.	There is not any suitable nesting habitat for this species on the project site. Additionally, the site does not provide likely foraging opportunities for this species.
CLASS MAMMALIA	**MAMMALS**				
HETEROMYIDAE	**POCKET MICE & KANGAROO RATS**				
Perognathus longimembris pacificus	Pacific pocket mouse	FE, CSC	**Low**	Inhabits narrow coastal plains and prefers soils of fine alluvial sands near the ocean.	Suitable habitat does not occur on the project site.

Status Codes

Federal

FE = Federally listed; Endangered
FT = Federally listed, Threatened

State

SE = State listed; Endangered
CSC = California Species of Special Concern

* – Taxa that are biologically rare, very restricted in distribution, declining throughout their range, or at a critical stage in their life cycle when residing in California.
– Population(s) in California that may be peripheral to the major portion of a taxon's range, but which are threatened with extirpation within California.
– Taxa closely associated with a habitat that is declining in California (e.g., wetland, riparian, old growth forest).

Definitions of Occurrence Probability:

- Absent from Site – Focused survey failed to detect the species or the site is completely absent of suitable habitat.
- Low Potential for Occurrence – Species is restricted to habitats that do not occur within the project site or no historical records exits of the species occurring within the project site or its immediate vicinity, and/or the habitats needed to support the species on the site are of poor quality.
- Moderate Potential for Occurrence – Either a historical record exists of the species within the immediate vicinity of the project site and/or the habitat requirements associated with the species occur within the project site.
- High Potential for Occurrence – There is either a recent historical record of the species occurring within the project site or its immediate vicinity and/or the diagnostic habitat requirements strongly associated with the species occur within the project site or its' immediate vicinity.
- Species Present – The species was observed within the project site at the time of the survey.

Source: 2005 California Natural Diversity Data Base (CNDDB), Dana Point USGS quad.

California brown pelican is federal- and state-listed as endangered and occurs in bays, coastal ponds and sloughs, and on piers and jetties. This species nests on the California Channel Islands and off Baja California. This species is commonly observed in San Juan Creek lagoon and in the nearshore ocean waters off Doheny State Beach (Chambers Group 2005, N. Davis, personal observations). Because it was observed by Chambers Group personnel during all visits to the site, it is considered present in the nearby area.

Western snowy plover is federal-listed as threatened and is found on sandy beaches, salt pond levees, and shored of large alkali lakes. This species needs sandy, gravelly, or friable soils for nesting. The nearest snowy plover nesting areas to Doheny State Beach are in the Bolsa Chica Wetlands to the north and on Camp Pendleton to the south. Wintering snowy plovers would be expected to forage at times in the project area. Few snowy plovers have been observed at Doheny State Beach (D. Pryor, Resource Ecologist, California Department of Parks and Recreation, pers. comm., 2004). None were recorded during monitoring of MWDOC's reconnaissance hydrogeology investigation on Doheny State Beach between February 15 and March 3, 2005 (Chambers Group 2005). However during monitoring of the test slant well program from January 30 through April 24, 2006, up to 11 snowy plovers were observed foraging and roosting adjacent to the jetty at the east end of the beach between February 22 and February 24 (McEntee 2006). In addition, snowy plovers were observed 0.5 miles downcoast of San Juan Creek on an almost daily basis during the monitoring. Snowy plovers are considered to have a high potential to occur in the project area.

California least tern is federal- and state-listed as endangered and nests along the coast from San Francisco Bay south to northern Baja California. This species is a colonial breeder on bare or sparsely vegetated, flat substrates, sand beaches, alkali flats, land fills, or paved areas. California least terns are only present in California during their breeding season of April to September. The nearest least tern breeding colonies to Doheny State Beach are in Upper Newport Bay to the north and Camp Pendleton to the south. Although least terns do not breed in the project area, they may at times forage in San Juan Creek lagoon or in the nearshore waters off Doheny State Beach. In July of 2005, as many as 175 least terns were observed near the mouth of San Juan Creek (Willick 2005). Therefore, least terns are considered to have a high potential to occur in the project area.

California gnatcatcher is federal-listed as threatened, is a California Species of Special Concern, and is an obligate resident of southern California coastal sage scrub communities. This species is found near arid hillsides, mesas, and washes. Coastal California gnatcatchers have been recorded in the coastal bluff north of Doheny State Beach (1980) and at the Dana Point Headlands (2001) (CNDDB 2008). There is limited foraging and nesting habitat within the project site; therefore, this species has a low potential to occur.

Least Bell's vireo is federal- and state-listed as endangered and occurs in moist thickets and riparian areas that are predominantly composed of willow and mule fat. Although one CNDDB record of this species is reported for the Dana Point quadrangle, it is not within five miles of the site (CNDDB 2008). The site does not support robust willow or mule fat habitat and is thus void of suitable nesting habitat. Riparian habitat along the banks of San Juan Creek in the project area is too sparse to support vireo breeding. Least Bell's vireos potentially could pass through the area in migration. The site also offers limited foraging opportunities for this species; therefore, it has a low potential to occur.

Pacific pocket mouse is federal-listed as endangered and inhabits the narrow coastal plains from the Mexican border north to El Segundo, Los Angeles County. This species seems to prefer soils of fine alluvial sands near the ocean. This species was recorded in the Dana Point Headlands (1999) along the south side of Scenic Drive (CNDDB 2008). Suitable habitat for this species does not occur within the project area. Therefore, this species has a low potential for occurrence.

Flora

The vegetation found along the banks of the channel at the mouth of San Juan Creek in Dana Point can be classified into three categories:

- Native riparian species sensitive to water fluctuation;
- Native riparian species unaffected by water fluctuation; and
- Undesirable non-native weed species.

The first category includes those native plant species that are typically found in wetland or riparian habitats and would be sensitive to a groundwater drawdown (Table 1). These Obligate Wetland species almost always occur (estimated probability 99 percent) under natural conditions in wetlands. Wetland vegetation is typically very shallowly-rooted. On average, 95 percent of the root mass of wetland plants is found within the first 23 inches below ground (Rogers et al. 2003). Typically, species within this category require standing water or fully saturated soil. If the groundwater level is lowered and surface runoff is not sufficient to replace the amount of water lost, these plants will typically not survive. The species in the Obligate Wetland category which require a permanent source of water have a high tolerance for salinity. This suggests that they have acclimated to living within the estuary and are most likely receiving their water from the San Juan Creek.

Table IV-2
Obligate Wetland Plants Observed on the San Juan Creek Project Site

Scientific Name	Common Name	Side of Channel
ANGIOSPERMS (DICOTYLEDONS)		
ASTERACEAE	**SUNFLOWER FAMILY**	
Jaumea carnosa	fleshy Jaumea	E
ANGIOSPERMS (MONOCOTYLEDONS)		
CYPERACEAE	**SEDGE FAMILY**	
Scirpus americanus	winged three-square	W
Scirpus californicus	California bulrush	W
Scirpus maritimus	river bulrush	W
Typha domingensis	slender cattail	W

The second category of plants includes all other native species (Facultative Wetland and Upland species) that do not require a permanent water supply to survive. Facultative Wetland species usually occur in wetlands (estimated probability 67 to 99 percent), but occasionally are found in non-wetlands. Species found within this category onsite include Fremont cottonwood (*Populus fremontii*), western sycamore (*Platanus racemosa*), and willow species (Salix spp.). Facultative Upland species may be Facultative or Obligate Upland species and usually occur in non-wetlands, but occasionally are found in wetlands (estimated probability 1 to 33 percent for Facultative Upland species). These plant species would most likely not be affected by a groundwater drawdown (Table IV-3).

The third category includes invasive exotic species that should be monitored to prevent widespread invasion into other habitats or within the current project site (Table IV-4Many of these weeds are found on the California Invasive Pest Plant Council List of Invasive Non-Native Plants that Threaten Wildlands in California (Cal-IPC 2006).

The vegetation was mapped onto an aerial photograph. Acreages of each type of vegetation series was calculated using Geographic Information Systems (GIS) technology (Table IV-5) and are shown on the vegetation map (Figure 10).

Figure 10
Dana Point, Mouth of San Juan Creek
Vegetation Map

Legend

- Bulrush-Cattail Series
- Giant Reed Series
- Big Saltbush Series
- California Buckwheat Series
- Fremont Cottonwood-California Sycamore Series
- Mexican Elderberry Series
- Mixed Willow Series
- Tamarisk Series
- Mule Fat Series
- Toyon-Lemonade Berry Series
- Fleshy Jaumea Series
- Ornamental Landscaping
- Disturbed/Ruderal
- Developed

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N
W E
S

0 25 50 100 150 200 Feet

Image Source: Eagle Aerial 2007

Table IV-4
Non-Native Plants Observed On the San Juan Creek Project Site

Scientific Name	Common Name	Side of Channel
ANGIOSPERMS (DICOTYLEDONS)		
APIACEAE	**CARROT FAMILY**	
Apium graveolens	celery	E
ASTERACEAE	**SUNFLOWER FAMILY**	
Carduus pycnocephalus	Italian thistle	W
Centaurea melitensis	tocalote	W,E
Cotula coronopifolia	brass-buttons	W
Cynara cardunculus	cardoon	W
Gnaphalium luteo-album	white cudweed	W,E
Sonchus oleraceus	common sow thistle	W
BRASSICACEAE	**MUSTARD FAMILY**	
Brassica nigra	black mustard	E
Cakile maritima	sea rocket	W,E
Hirshfeldia incana	short-podded mustard	W,E
Lepidium latifolium	peppergrass	W,E
Raphanus sativus	radish	W,E
CARYOPHYLLACEAE	**PINK FAMILY**	
Spergularia sp.	Boccone's sandspurrey	E
CHENOPODIACEAE	**GOOSEFOOT FAMILY**	
Chenopodium album	lamb's quarters	W,E
EUPHORBIACEAE	**SPURGE FAMILY**	
Ricinus communis	castor-bean	W
FABACEAE	**LEGUME FAMILY**	
Acacia sp.	acacia	E
Lathyrus odoratus	sweet pea	E
Melilotus indica	sourclover	W,E
GERANIACEAE	**GERANIUM FAMILY**	
Erodium cicutarium	red-stemmed filaree	W,E
MALVACEAE	**MALLOW FAMILY**	
Malva parviflora	cheeseweed	W
MYOPORACEAE	**MYOPORUM FAMILY**	
Myoporum laetum	myoporum	W,E
POLYGONACEAE	**BUCKWHEAT FAMILY**	
Emex spinosa	devil's thorn	W
Polygonum arenastrum	common knotweed	W
Rumex crispus	curly dock	W,E
Rumex sp.	dock	W
PRIMULACEAE	**PRIMROSE FAMILY**	
Anagallis arvensis	scarlet pimpernel	W,E
Solanum sp.	nightshade	W,E
TAMARICACEAE	**TAMARISK FAMILY**	
Tamarix ramosissima	Mediterranean tamarisk	E
ANGIOSPERMS (MONOCOTYLEDONS)		
ARECACEAE	**PALM FAMILY**	
Washingtonia robusta	Mexican fan palm	W

Table IV-4 (continued)
Non-Native Plants Observed On the San Juan Creek Project Site

IRIDACEAE	**IRIS FAMILY**	
Iris sp.	Iris	W
POACEAE	**GRASS FAMILY**	
Arundo donax	giant reed	W,E
Bromus diandrus	ripgut grass	W,E
Bromus madritensis ssp. *rubens*	foxtail chess	W
Cynodon dactylon	Bermuda grass	W,E
Hordeum murinum	glaucous foxtail barley	W
Polypogon monspeliensis	annual beard grass	W

Table IV-5
Vegetation Series Occurring on the San Juan Creek Project Site

Vegetation Series	Size (Acres)
Big Saltbush Series	0.0367
Bulrush-Cattail Series	0.0425
California Buckwheat Series	0.0131
Developed	0.1093
Disturbed/Ruderal	0.5063
Fleshy Jaumea Series	0.0056
Fremont Cottonwood-California Sycamore Series	0.2496
Giant Reed Series	0.0089
Mexican Elderberry Series	0.0253
Mixed Willow Series	0.0963
Mule Fat Series	0.1249
Ornamental Landscaping	0.1745
Tamarisk Series	0.0019
Toyon-Lemonade Berry Series	0.0568

a) Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and game or U.S. Fish and Wildlife Service?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The Federal and State Endangered California brown pelican rests and forages in the lagoon and nearshore coastal waters adjacent to the project. The State and California Endangered California least tern also visits these areas at times. San Juan Creek has been designated as Critical Habitat for the Southern California Steelhead Evolutionarily Significant Unit (Hogarth 2005). Steelhead may be present in the lagoon or in nearshore ocean waters.

The proposed project will have no direct affect on the lagoon or on nearshore ocean waters. Water produced from the slant well extended pumping test would be discharged to the surf zone. All discharges would meet applicable water quality criteria, which are protective of aquatic life. Therefore, this temporary

discharge would have no impact on any of these special status species. A Spill Contingency Plan has been prepared and would be implemented to insure that no fuel or other substances from project equipment would enter tidal waters (Layne Christensen 1999). With adherence to measures specified in the Spill Contingency Plan, the proposed project would have a less than significant impact on special status species.

Based on groundwater modeling, the maximum decline in groundwater levels (i.e. lowering of shallow groundwater levels) in the vicinity of riparian vegetation adjacent to the mouth of San Juan Creek after three years of pumping would be approximately 1.8 ft. (Table IV-6). Hydrographs showing the model-predicted groundwater elevations near the mouth of San Juan Creek under project conditions (i.e. Test Slant Well pumping of 2.88 MGD) were plotted (Figure 11). As shown, the streambed elevation is approximately 4 ft NAVD88[5]) in the mouth of San Juan Creek area. The groundwater elevation after three years of pumping would range from 5 ft to 7 ft (NAVD88) and is higher than the streambed elevation. As such, rising water is still expected in the area during the three-year pumping test cycle.

Streamflows would be minimally impacted from the pumping, if at all. During the recent dry period from 1999 through 2003, the average summer streamflow measured just upstream of the lagoon area ranged from 2.5 cfs to 5 cfs. Groundwater modeling indicates a reduction in the rising groundwater at 0.3 cfs, which is less than 10 percent of the dry period inflow rate.

Because rising water conditions within the lagoon are predicted to continue over the entire test period underlying and adjacent soils will remain saturated due to vertical percolation from the lagoon to the underlying groundwater, or from rising water (flow from the aquifer into the lagoon) depending on different hydrologic conditions. In addition, base streamflows will also supply the lagoon and will irrigate the riparian vegetation over the test period. Because soils will remain saturated, the extended pumping test will have no effect on wetland and riparian vegetation and, thus, will not decrease shading along the creek bank for steelhead.

Table IV-6
Maximum Predicted Changes in Ground Water Levels over 3 Year Pumping Test

	Point A*	Point B*	Point C*	Point D*
Initial Ground Water Elevation, ft NAVD88	7.67	7.40	7.21	7.08
Lowest Ground Water Elevation During Three Years, ft NAVD88	6.72	6.15	5.40	5.21
Maximum Decline in Ground Water Level, ft	0.95	1.25	1.80	1.87

*locations of points are shown on Figure 11

Results from the ground water level model were also used to estimate the decline in water level and resultant maximum effect on the depth of water in the lagoon due to the project. Assuming Point B in Table IV-2 is representative of lagoon levels, the minimum depth of water in the lagoon over the three year period, excluding base streamflows entering the lagoon, would be 2.15 ft (calculated by subtracting the lagoon streambed elevation from the lowest ground water elevation during the three-year period: 6.15 – 4 = 2.15 ft). However, because streamflows into the lagoon are expected to continue over the summer months at minimum levels of 5 to 10 acre-feet per day during the test period, and the lagoon volume is approximately 90 acre-feet (assumes 10-foot depth to the top of a fully-formed sand berm), the impact from the test pumping on lagoon water levels would be too small to be measured.

Natural changes in the lagoon water level can be significant and rapid. When the lagoon is breached, water levels rapidly fall and are then primarily controlled by the tides and streamflow. Therefore, the drawdown would only very slightly affect lagoon levels when the lagoon is closed and high water is ponded behind the berm. When water is ponded, the water levels in the lagoon rise as water backs up. The minimum depth for the successful migration of steelhead is reported to be 7 inches (McEwan and

[5] NAVD88 is the North American Vertical Datum of 1988. 2.4 ft NAVD is equivalent to zero ft above mean sea level in Orange County.

Predicted Groundwater Level Elevation in the Mouth of San Juan Creek Area Test Slant Well Pumping of 2.88 MGD

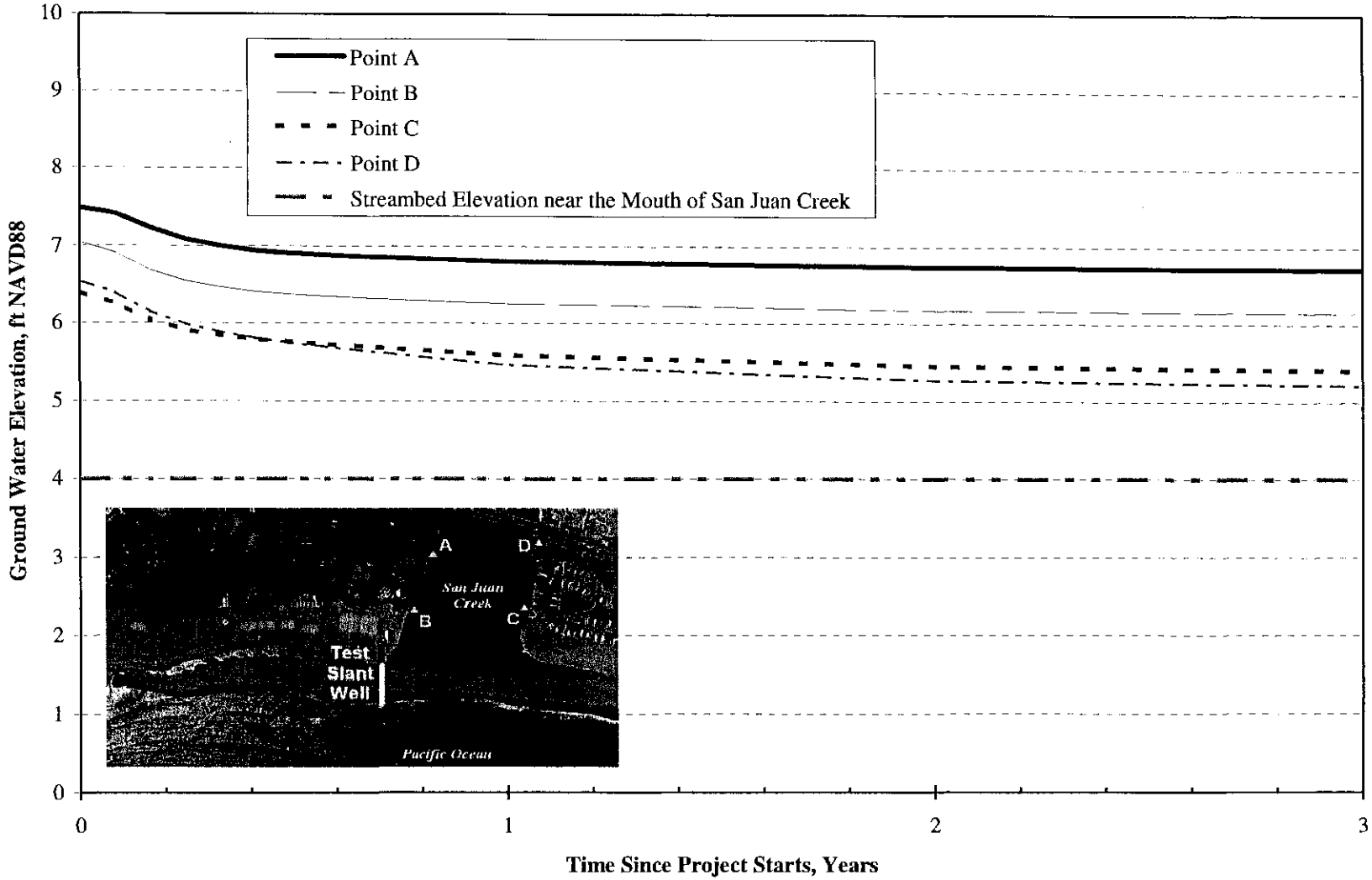

Figure 11

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Jackson 1996). During the test, the pond levels will be near normal levels as base streamflows greatly exceed any impact of pumping on lowered rising groundwater flow rates. Therefore, the extended pumping test will not reduce the lagoon water level to a depth that might impede steelhead migration. The impacts of groundwater pumping on the lagoon water level would have a less than significant effect on the habitat for southern steelhead.

The Federal threatened western snowy plover does not breed in or near the project area but may at times forage on the beach in the project area. Doheny State Beach has not been designated as critical habitat for the snowy plover. Snowy plovers occur but are relatively uncommon in the Doheny Beach area (D. Pryor, California Department of Parks and Recreation, pers. comm.). The location where project activities would take place is in a developed beach park subject to frequent human disturbance. Therefore, the project area is poor foraging and resting habitat for snowy plovers. The proposed project activities would affect a small amount of the upper beach at Doheny Beach above the high tide line and therefore would have minimum potential to interfere with snowy plover foraging. There is a slight chance that equipment involved in project activities could injure a snowy plover. Snowy plovers are cryptically colored and sometimes take refuge in depressions on the beach. A snowy plover monitor will be present during project activities to insure that no activities occur if snowy plovers are present within any of the work areas until the plovers have left the site. With this measure, the proposed project would have an insignificant impact on snowy plovers.

b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact X	No Impact ☑

If the pumping of groundwater occurs onsite during a wet year (as in 2005), Chambers Group does not expect there to be any observable effects to any riparian plants species, including the Obligate Wetland species. However, because the groundwater table is variable at the project site and weather patterns are difficult to predict, for the purposes of this analysis, it was assumed that the Test Phase would result in up to a 1 to 2-foot drawdown of groundwater and that this decline in below-ground water would occur during a dry year. Furthermore, because many of the obligate wetland species onsite tolerate flood drawdown cycles that occur to varying degrees in different wetland and riparian systems, the effects of the drawdown may not be apparent for several months, if not years. Tree of Life Nursery conducted a study in which they observed the effects of a receding water table (St. John 1995). We can predict that the species most likely to be affected at the San Juan Creek site will be the Obligate Wetland species (Table 1), followed by black willow (*Salix gooddingii*), arroyo willow, and mule fat (*Baccharis salicifolia*). The already established mature riparian tree species are not likely to be affected by a 2-foot drawdown.

Several of the riparian tree species (arroyo willow, western sycamore, Fremont cottonwood) that have recently been installed by State Parks did not appear to be in excellent condition. It is possible that these saplings may have been placed in marginal or inappropriate areas, or were installed during a suboptimal time of year not conducive to plant establishment. Perhaps a deep pipe temporary irrigation system that directly feeds these saplings would aid in their establishment if the groundwater table is to decline. A localized irrigation system also helps to minimize the spread of weeds throughout the area.

c) Would the project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

All project activities will occur in unvegetated areas. Therefore, the proposed project would have no direct impacts to vegetation

As described above under a) and b), the maximum drawdown of shallow groundwater adjacent to the mouth of San Juan Creek after three years of pumping would be approximately 1.8 ft. Because water is predicted to be above the streambed elevation during the entire three years of the pumping test, underlying and adjacent soils will remain saturated due to vertical percolation from the lagoon to the underlying groundwater, or from rising water (flow from the aquifer into the lagoon). Because soils will remain saturated, the extended pumping test will have no effect on wetland and riparian vegetation

d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The proposed project would involve temporary activities in a developed beach park. It would not interfere directly with fish or wildlife movement. As described above under a), the extended pumping test will not reduce water depths below the minimum water levels required to support steelhead migration.

Doheny State Beach is used by grunion for spawning. Activities on the beach would occur above the extreme high tide line and thus above the grunion spawning area. In addition, all construction activities would occur between January 5 and March 13, which is outside the grunion spawning season. Project construction would have no impact on grunion.

e) Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The activities would occur for a few weeks in a developed beach park. The proposed project would not interfere with any policies or ordinances protecting biological resources. Impacts to biological resources are expected to be less than significant.

f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed activities would not conflict with the provisions of an adopted Habitat Conservation Plan or other approved local, regional or state habitat conservation plan.

V. CULTURAL RESOURCES

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☐	☐	☑

A cultural resources records search for the desalinization plant project site and a one-half mile radius of the project area was completed on September 21, 2005, at the South Central Coastal Information Center (SCCIC) located at California State University, Fullerton. The SCCIC acts as a branch of the California Historical Resources Information System (CHRIS) maintained by the Office of Historic Preservation (OHP) and is the designated repository for records concerning archaeological and historical resources and associated studies documented in Orange County. The SCCIC reports that three archaeological sites have been recorded within 0.5 mile of the project area, including two prehistoric and one historic archaeological site. None are within the project's proposed boundary. No historic resources will be affected.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☐	☐	☑

While the greater Dana Point area contains a variety of cultural resources, previous studies of Doheny State Beach have found no evidence of prehistoric occupation (California Department of Parks and Recreation 2003, SCCIC Records Search September 21, 2005). There will be no impacts to archaeological resources.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
c) Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☑

As in b) above, there is no potential to disturb resources.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
d) Would the project disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☑

No disturbance of human remains would be expected from the drilling program.

VI. GEOLOGY AND SOILS

a) Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No potential for disturbance of geologic formations would occur that would result in adverse effects to people or structures.

ii) Strong seismic ground shaking?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The drilling of the wells and test pumping are temporary activities. No effects to people or structures from seismic shaking would occur as a result of the extended pumping and pilot plant testing program.

iii) Seismic-related ground failure, including liquefaction?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The drilling of the wells and test pumping are temporary activities. No ground failure or liquefaction would occur and no impacts would result to people or structures as a result of the extended pumping and pilot plant testing program

iv) Landslides?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

Landslide activity is not of concern with this program given the location on and adjacent to the beach.

b) Would the project result in substantial soil erosion or the loss of topsoil?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

Soil erosion is not of concern, given the location on the beach. A containment area will be constructed to enclose the drill rig and other equipment, which would also encase sand within its boundary. While this is to ensure containment of leaks from the equipment, it will also protect and contain the beach sand beneath and within the footprint of the equipment.

Based on an analysis of potential wave and flooding effects to the new lifeguard tower which would be located just north of the proposed well site, wave action is unlikely to damage the test slant well, monitoring wells or exploratory boreholes (Coastal Environments 2004). Because Doheny State Beach is located at the end of the littoral cell and is protected from north-northwest waves, the shoreline is likely to lose only a small amount of sand during dry periods and to accrete sand during wet periods. The analysis of wave runup and overtopping performed by Coastal Environments (2004) for the lifeguard tower showed that there would be no significant wave runup or overtopping with two- or five-year return period design waves. Ten-year or greater return period conditions could cause some level of damage. However, no significant damages would be expected to occur near the project area if the beach retains its minimum width of 300 feet. Doheny State Beach has retained a minimum width of greater than 300 feet even following the significant winter storms of 1982/83, 1988, 1993, 1995, and 1998. Therefore, potential damage to the test slant well, monitoring wells, and exploratory boreholes is considered less than significant. The discharge pipeline to the surf zone would be along the side of the groin above the high tide line. The diffuser will be protected by placing riprap from the groin on top of it.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
c) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in onsite or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☑

No onsite or offsite landslide, lateral spreading, subsidence, liquefaction or collapse would be expected.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
d) Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☑

The project would not be located on expansive soil, and no structures (buildings) are associated with the program. A temporary container beside the parking lot will serve as the mobile test facility.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☑

The soils structure of the project areas will not change. The project would not result in soils being incapable of supporting septic tanks or other wastewater treatment systems. No septic tanks or alternative wastewater disposal systems would be constructed.

VII. HAZARDS AND HAZARDOUS MATERIALS

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☑

No transport of hazardous materials is associated with the project. Emissions from construction equipment are addressed under Air Quality.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☑	☐

The project would use only diesel fuels for construction equipment. No other hazardous materials would be associated with the drilling and extended pumping and pilot plant testing program. A Prevention and Response Plan has been prepared to define practices to keep fuel from entering the ocean or San Juan Creek. Potential spills/leaks are further discussed under Hydrology/Water Quality. However the project will, prior to commencement of drilling operations, prepare a containment area under the entire footprint of the active area to contain any released fuels or fluids.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☑

No schools are located within one-quarter mile of the park are. No impacts would occur.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☑

There are no hazardous materials sites within the park.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☑

The project is not located within an airport land use plan.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☑

The project is not located within the vicinity of a private airstrip.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
g) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☑

The project involves temporary construction, exploratory drilling, and a pumping test. These activities would have no impact on local emergency response planning.

h) Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project is within a developed beach park and not near combustible vegetation.

VIII HYDROLOGY AND WATER QUALITY

Surface Water Bodies

Surface water bodies in the project vicinity include the Pacific Ocean and the mouth of San Juan Creek. Doheny Beach is a south-facing beach exposed to waves from south swells and tropical storms (Coastal Environments 2004). The area is most exposed to storms arriving from the southwest. These waves have heights that range from 2 feet to 7.5 feet with an average height of 4 feet. Shallow-water waves at Doheny State Beach during the largest north Pacific winter storms range from 5 feet to 12 feet.

Tides along the California coast are mixed, with two high and two low tides of unequal amplitude each day. In the project area the maximum tidal range is about 9 feet from 7.2 feet above mean lower low water (MLLW) to 1.8 feet below MLLW (Coastal Environments 2004). As measured on September 29, 2005, test slant well site was approximately 54 feet above the extreme high tide line.

San Juan Creek is a perennial creek that intersects the beach about midway across Doheny State Beach. The watershed of San Juan Creek is 176 square miles. The lower 2.6 miles of the creek were channelized in the 1950s for flood control (Coastal Environments 2004). At the mouth of San Juan Creek, a natural beach berm often blocks the creek from entering the ocean from late spring to late fall. The buildup of water occasionally breaks this berm. A jetty, known as Thor's Hammer, was constructed by the USACE in 1964 at the west side of San Juan Creek to prevent erosion and to stabilize the adjacent west beach. The San Juan Creek outlet is on the San Diego Regional Water Quality Control Board list of impaired water bodies under Section 303(d) of the Clean Water Act for bacteria indicators (RWQCB 2003).

Flooding from the creek and/or high tides occasionally occurs in the park (Coastal Environments 2004). Flooding of the bike trail on the west side of the creek near the Pacific Coast Highway Bridge has been a problem. The hundred year flood discharge at the San Juan Creek ocean outfall is about 53,300 cubic feet per second. A storm of this magnitude would be likely to flood the park to a depth of 3 to 5 feet. This would not impact the buried well.

Groundwater Hydrology

Under natural conditions, the underflow (groundwater) of San Juan Creek outflows to the ocean at various rates depending on the antecedent hydrologic conditions (R. Bell, MWDOC, personal communication 2005). During wet years the alluvial system is relatively full, and subsurface losses to the ocean are estimated to be in the range of approximately 1,500 acre-feet per year (Geoscience). During prolonged droughts, groundwater levels can decline significantly, which results in a corresponding decrease in subsurface outflows and potential seawater intrusion. This decline in freshwater gradient results in inland movement of higher density ocean water within the alluvial aquifer. If freshwater gradients are reduced significantly as the result of inland groundwater pumping, intrusion of ocean water would become more significant. The fresh water/salt water interface location was estimated using the Ghyben-Herzberg and Glover Models, estimated hydraulic conductivity based on test borings, and an estimated subsurface outflow of 1,050 acre-feet per year. This analysis indicates that the interface is approximately 150 feet oceanward of Monitoring Well 1.

The Phase 1 Hydrogeology Investigation test borings showed a shallow aquifer zone underlain by a three to five foot clay layer at a depth of approximately 25 ft. bgs. Fresher water in the uppermost part of this shallow zone would appear to support localized vegetation in the landscaped area and to a lesser extent the limited riparian habitat found along the banks of San Juan Creek. Riparian vegetation in this location appears to be supported in large part by freshwater flows of San Juan Creek and by localized precipitation and runoff that percolates into the uppermost sands and silty sands in this area, with drainage gradients in the nearby area to the lower San Juan Creek channel.

a) Would the project violate any water quality standards or waste discharge requirements?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The proposed project would not violate any water quality standards or waste discharge requirements. Water produced during the extended pumping and pilot plant testing would be discharged to the surf zone through a diffuser located next to the groin on the west side of the San Juan Creek mouth. The flow velocities through the diffuser would be designed to cause no liquefaction or erosion of beach sands. All discharges to the surf zone would meet NPDES permit requirements for surf zone discharges. Because the well water would be low in oxygen it would be aerated prior to discharge to meet dissolved oxygen requirements. Well discharge to the surf zone will require a minimum of 5 mg/l dissolved oxygen residual. A pump and eductor system will be used to reliably add oxygen to the well water over the 18-month test. Because all constituents in the discharge would meet NPDES requirements, discharge of test well water will have an insignificant effect on water quality.

b) Would the project substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

A water budget was performed for the model run with the Test Slant Well pumping 2,000 gpm (2.88 MGD, 3,226 acre-ft/yr) for a period of three years. Ocean and offshore recharge accounts for 67 percent (2,161 acre-ft/yr) of the recharge to the slant well with 33 percent (1,065 acre-ft/yr) of the recharge originating from the inland sources. Under existing conditions, there is a total outflow of 1,521 acre-ft/yr to the ocean including 854 acre-ft/yr of underflow and 667 acre-ft/yr of rising water. The 1,065 acre-ft/yr of recharge from inland sources to the test slant well is less than the 1,521 acre-ft/yr outflow to the ocean under existing conditions. Therefore, it can be concluded that the project would not interfere with developed groundwater rights, but would be extracting groundwater that is otherwise lost to the ocean.

c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or offsite?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The extended pumping and pilot test plant program is to determine the feasibility of developing a subsurface intake system for the desalination project. Drainage patterns would not be altered.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
d) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite?	☐	☐	☐	☑

The proposed project involves the pumping and testing of groundwater from a well located above the high tide line for informational purposes. Drainage patterns and/or rates and amount of run-off would not be altered.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e) Would the project create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☑

The proposed project would not contribute to existing runoff to stormwater drainage systems.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
f) Would the project otherwise substantially degrade water quality?	☐	☐	☑	☐

The proposed project involves the extended pumping of a test well and drilling of two exploratory boreholes on the beach. Activities would occur on a developed beach or park areas above the high tide line. To prevent any fuels, drilling fluids or other potentially toxic materials from entering the ocean or the mouth of San Juan Creek a Spill Prevention and Response Plan has been developed (Layne Christensen 1999). Prior to the commencement of drilling operations, a containment area underlain by heavy plastic sheeting will be constructed to enclose the drill rig and other equipment to minimize the potential for releasing fuel, hydraulic fluid, or water from drilling operations to the surrounding environment. Additionally, absorbent materials will be maintained onsite during work operations as part of a spill prevention plan. It is estimated that drilling operations will require the use of 40 to 60 gallons of diesel fuel daily. Fuel will be delivered by bulk truck to the site daily and will be handled in accordance with a fuel containment plan. No fuel or oil products, other than that which is in equipment fuel tanks, will be stored onsite. With adherence to the protective measures specified in the Spill Contingency Plan, degradation of water quality will be prevented.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
g) Would the project place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☑

The proposed project does not involve the construction of any housing.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
h) Would the project place, within a 100-year flood hazard, area structures that would impede or redirect flood flows?	☐	☐	☐	☑

The proposed project would not involve the construction of any structures that would affect flood flows.

i) Would the project expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project would not expose people or structures to a risk of flooding.

j) Would the project expose people to inundation by seiche, tsunami, or mudflow?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project would not expose people to inundation by seiche, tsunami, or mudflow.

IX. LAND USE AND PLANNING

a) Would the project physically divide an established community?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

There would be no division of an established community. Therefore no impacts would result.

b) Would the project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over it. Therefore no impacts would result.

c) Would the project conflict with any applicable habitat conservation plan or natural community conservation plan?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No changes would occur that would affect habitats or natural communities. The project would not conflict with any applicable habitat conservation plan or natural community plan. No impacts would result.

X. MINERAL RESOURCES

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☑

There are no known mineral resources in the project area, thus, no loss of an available mineral could occur. No impact would result.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☑

There is no known resource of a locally important mineral recovery site delineated on a local general plan, specific plan or other land use plan. Therefore no impacts would result.

XI. NOISE

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a) Would the project result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☑	☐

Because if its location, the drilling program would be subject to the local noise ordinance of the City of Dana Point. Noise Ordinance Section 11.10.014 "Special provisions" exempts:

"(e) Noise sources associated with construction, repair, remodeling, or grading of any real property, provided said activities do not take place between the hours of 8:00 pm and 7:00 am on weekdays, including Saturday, or any time on Sunday or a federal holiday."

Drilling and other activities associated with the proposed project are scheduled to occur between 10 am and 6 pm, Monday through Friday. These hours are requisite and the project proposes to construct between these hours; all project construction would comply with these days and hours. Adherence to the Code will ensure that construction impacts remain less than significant.

Workers exposed to onsite noise during drilling activities would be subject to the requirements for worker safety and hearing conservation as dictated under the Occupational Safety and Health Administration (OSHA) and any potential impacts to on-site receptors would be less than significant.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
b) Would the project result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☑	☐

Groundborne vibration is measured in terms of the velocity of the vibration oscillations. As with noise, a logarithmic decibel scale (VdB) is used to quantify vibration intensity. When groundborne vibration exceeds 75 to 80 VdB, it is usually perceived as annoying to building occupants. The degree of

annoyance is dependent upon type of land use, individual sensitivity to vibration, and the frequency of the vibration events. Typically, vibration levels must exceed 100 VdB before any building damage occurs.

The only potential for vibration is usually during construction activities. Excessive vibration is typically associated with blasting activities or the use of a percussive pile driver in proximity (i.e., less than 200 feet) of sensitive land uses. Percussive pile driving is not expected to occur, and no sensitive land uses are located within this distance. As a result, although construction of the proposed project would include use of heavy equipment, it is unlikely that construction would result in perceptible, let alone excessive, groundborne vibration or groundborne noise levels. Impacts would be less than significant.

c) Would the project result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project includes the construction and testing of a well. Once testing is complete, the well would be abandoned in place and no permanent noise increase is associated with the project. No permanent impacts to ambient noise levels are anticipated.

d) Would the project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

Noise levels associated with construction activities would be higher than the ambient noise levels in the project area today, but would subside once construction of the proposed project is completed.

Two types of noise impacts could occur during the construction phase. First, the transport of workers and equipment to the construction site would incrementally increase noise levels along site access roadways. The number of construction workers would be minimal (no more than about six on any given day). Furthermore, the number of heavy truck deliveries would be limited, averaging no more than about one per day. Even though there could be a relatively high single event noise exposure potential with passing trucks (a maximum noise level of 86 dBA at 50 feet), the increase in noise would be less than 1 dBA when averaged over a 24-hour period, and would therefore have a less than significant impact on noise receptors along the truck routes.

The second type of impact is related to noise generated by on-site drilling operations and local residents could be subject to elevated noise levels due to the operation of on-site heavy equipment. Construction activities are carried out in discrete steps, each of which has its own mix of equipment, and consequently its own noise characteristics. These various sequential phases would change the character of the noise levels surrounding the construction site as work progresses. Despite the variety in the type and size of construction equipment, similarities in the dominant noise sources and patterns of operation allow noise ranges to be categorized by work phase. Table XI-1 is typical construction equipment noise levels recommended for noise impact assessment at a distance of 50 feet.

Table XI-1
Noise Levels Generated By Typical Construction Equipment

Type of Equipment	Range of Sound Levels Measured (dBA at 50 feet)	Suggested Sound Levels for Analysis (dBA at 50 feet)
Pile Drivers, 12,000 to 18,000 ft-lb/blow	81 to 96	93
Rock Drills	83 to 99	96
Jack Hammers	75 to 85	82
Pneumatic Tools	78 to 88	85
Pumps	68 to 80	77
Dozers	85 to 90	88
Tractor	77 to 82	80
Front-End Loaders	86 to 90	88
Hydraulic Backhoe	81 to 90	86
Hydraulic Excavators	81 to 90	86
Graders	79 to 89	86
Air Compressors	76 to 86	86
Trucks	81 to 87	86
Source: Noise Control for Buildings and Manufacturing Plants, BBN 1987.		

Construction at the well site is located on the Doheny State Beach. The nearest existing permanent residential units are situated in the Dana Point Marina Mobile Home Estates located to the north, just north of Pacific Coast Highway (PCH) and the temporary RV/campers across San Juan Creek from the well drilling site. The RV/camper area is north and adjacent to the exploratory borehole locations and is within 50 feet of the nearest boring operations. The test slant well area is approximately 700 feet from the nearest RV/camper parking location. Based on an L_{eq} value of 85 dBA as measured at a distance of 50 feet, resultant exterior noise levels will be approximately 85 dBA at the closest campsite during construction activities. The actual CNEL could be considerably less, as this analysis assumes the continual production of 85 dBA Leq with no breaks in the noise, due to drill bit change-out, equipment maintenance, breaks, etc. According to GEOSCIENCE Support Services, Inc., sound panels will be installed around the drilling rig's engine compartment to minimize noise. Approximately 40 to 50 percent of the engine sound will be absorbed. As the engine remains running during the entire drilling operation, this will significantly decrease the noise levels at the nearest closest RV/camper parking location.

Projected noise levels would exceed the 60 dBA CNEL level established by the City. However, The City recognizes that the control of construction noise is difficult at best and provides exemption for this type of noise when work is limited to those hours included in the Code of Ordinances discussed above. Therefore, the project will have less than significant noise impacts.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☑

At about 18 miles to the northwest, John Wayne International Airport represents the nearest public use airfield. The project is not directly in the flight path and is well outside of the airport's 65 dBA CNEL noise contour. As such, no impacts are associated with aircraft noise.

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project is not located in the vicinity of a private airstrip and would not be impacted by private airport operations. No impacts associated with air traffic or private airstrips would result from the implementation of the proposed project.

XII. POPULATION AND HOUSING

a) Would the project induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

There are no proposed new homes and or businesses as part of this project. No impacts would result.

b) Would the project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No existing housing would be affected or require removal/relocation. No impacts would result.

c) Would the project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project would not displace substantial numbers of people. No impacts would occur.

XIII. PUBLIC SERVICES

a)	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Fire Protection? Police Protection? Schools? Parks? Other public facilities?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The extended pumping and pilot plant testing project would not require public services or new public facilities. The project will have no impact on public services.

XIV. RECREATION

a)	Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No increase in recreational facilities is proposed. No increase in or expansion of recreational facilities will occur.

b)	Does the project include recreational facilities or require the construction or expansion or recreational facilities which might have an adverse physical effect on the environment?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No increase in recreational facilities is proposed. No increase in or expansion of recreational facilities will occur.

c)	Does the project include potential safety impacts to recreational users?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

A number of measures will be implemented to ensure that the project does not represent a threat to public safety.

Drilling areas and equipment staging areas will be fenced. Temporary 6-ft high chain link fencing and a 16-ft wide gate will be installed around the drilling site during all mobilization, well drilling, construction,

development, testing and demobilization activities. A fenced staging area approximately 80 ft wide by 140 ft long will be located within the Doheny State Beach parking lot (see Figure 2). The staging area will be needed only during the construction of the wellhead and discharge facilities (January – February 2009), and again during drilling of the two exploratory boreholes (January 2010). The fence around the staging area will be a minimum of six feet in height, and each panel will have its own support base or footing and will not be driven into the pavement.

The work site at the exploratory boreholes will be underlain by a heavy-duty plastic liner which will be changed when necessary due to wear and tear from driving equipment over it. Absorbent materials will be kept on site at all times for immediate availability if needed to contain all spills, potential waste and vehicle drippings.

Prior to drilling operations, there will be a meeting between MWDOC, its consultants, California State Parks personnel, and the Drilling Contractor to review the plan of work, park rules, safety considerations, and environmental commitments. Each exploratory borehole drilling site will be visited during the pre-construction meeting.

In addition to the drilling crew, there will be one person (Site Safety Officer) onsite to interact with the public and answer questions from the public. This person will not be integral to actual drilling operations. In addition to answering public inquiries, it will be this individual's job to ensure that the perimeter around the drilling operations is safe and secure. Drilling operations will take place on the sand such that drilling equipment will not obstruct bike paths or other access roadways. Where bicycle paths and roadways may be temporarily blocked, an alternative route/detour will be clearly marked. The Site Safety Officer will also redirect pedestrian and bicycle traffic in the event that the drilling operations obstruct a traffic route.

MWDOC will prepare signage to be posted at the site of drilling operations. The sign will explain the project and provide a MWDOC telephone number where public inquiries can be directed. MWDOC will mail an informational notice to the residents of the bluff overlooking the Doheny State Beach campground and all other property owners located near the Park prior to commencement of the pilot plant testing and exploratory borehole drilling.

With the exception of construction and exploratory borehole drilling, the project operations would pose no threat to public safety. Wells would be buried and inaccessible to the public. The discharge of pumped well water through the diffuser would be gentle and would not liquefy sands or create a gully. The flow velocities through the diffuser would be designed to cause no liquefaction or erosion of beach sands.

With the proposed safety measures, the project would not pose a threat to the safety of recreational park and beach users and would not impair recreational activities.

XV. TRANSPORTATION/TRAFFIC

a) Would the project cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

As per the project description only a few pieces of heavy equipment are required for the construction and exploratory boring activities. In general, no more than five persons will be onsite for each day of activity. Those vehicles would come and go each day. This small number of vehicles would not add to a substantial increase of the local capacity of the street system.

b)	Would the project exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

Because there will not be a permanent increase in traffic, there will be no cumulative addition to the roadways in the area, and no impacts to established congestion management plans.

c)	Would the project result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	Potentially Significant Impact ☐	Less than Significant With Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project does not involve air traffic, thus there will be no impacts.

d)	Would the project substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project does not propose to redesign roadways. There will be no hazards impacts.

e)	Would the project result in inadequate emergency access?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The project involves only temporary construction equipment and worker vehicles to be active in the area for the periods of construction and exploratory borehole drilling. Construction equipment will be working off the roadways, and no impacts to emergency access would occur. The footprint is small, such that, if necessary, emergency equipment would still be able to access the beach.

f)	Would the project result in inadequate parking capacity?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

No permanent changes to parking capacity will occur as a result of the proposed modifications. Heavy construction equipment will be confined to the working footprint. A staging area for drilling operations will be established in the eastern parking lot area as shown on Figure 2. Workers may use some of the visitor parking, however, due to low parking lot usage during the time of construction (winter), a less than significant impact would occur.

g)	Would the project conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project is of a temporary nature and will not affect existing plans, policies or programs. No impacts will occur.

XVI. UTILITIES AND SERVICE SYSTEMS

a)	Would the project exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project entails only minor construction, and operations are comprised only of well pumping and pilot plant testing. No exceedance of wastewater treatment requirements will occur.

b)	Would the project require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

No need for new water or wastewater treatment or expansion of existing facilities will occur.

c)	Would the project require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project entails only minor construction. No need for new stormwater drainage facilities will occur.

d)	Would the project have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The project entails only minor construction. No need for new or expansion of existing water supplies facilities will occur.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
e)	Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☑

The project entails only minor construction. No need for new or expansion of existing wastewater treatment facilities will occur.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
f)	Would the project be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☑	☐

The project entails only minor construction. Because waste quantities are small, any impacts will be less than significant.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
g)	Would the project comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☑

The project entails only minor construction. No need for new or expansion of existing solid waste facilities will occur.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

		Potentially Significant Impact	Less than Significant with Mitigation Incorporation	Less than Significant Impact	No Impact
a)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☑	☐

The proposed project would not degrade the quality of the environment. Project activities would take place within developed areas of the park or on the upper beach above the high tide line. Most of the proposed activities would occur above the mean high tide. Groundwater drawdown during the extended pumping test would not reduce the amount of time that soils along the creek bank are saturated and there would be no impacts from the pumping on riparian and wetlands vegetation.

The decline in water depth in the lagoon from the extended pumping test would be largely offset by streamflows, and the impact from the test pumping on lagoon water levels would be too small to be measured. When the lagoon is breached, water levels are primarily controlled by the tides. Therefore, the drawdown would primarily affect lagoon levels when the lagoon is closed and high water is ponded behind the berm. Therefore, the extended pumping test will not reduce the lagoon water level to a depth that might impede steelhead migration or degrade the lagoon habitat.

The State and California Endangered California least tern and California brown pelican may visit the area during migration, however, the project would have negligible affect on the lagoon or nearshore water and thus not affect the species. Federal threatened western snowy plover may at times visit the site. Biological monitors will be present during project activities to make sure that no resting or foraging snowy plovers are harmed or disturbed. San Juan Creek is designated Critical Habitat for the Southern California Steelhead Evolutionarily Significant Unit. Steelhead may at times occur in San Juan Creek lagoon or nearshore ocean waters. A Spill and Containment Plan would insure that no fuel or fluids enters tidal waters. The decline in the lagoon water level at the end of the extended pumping test would be relatively small and would not affect the use of the lagoon by steelhead or the quality of the lagoon habitat.

Previous studies of Doheny State Beach have found no evidence of prehistoric occupation, and no impacts would be expected to cultural resources.

b)	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☐	No Impact ☑

The proposed project is of short duration and minimal environmental impact; and, thus, would not contribute to the impacts of the cumulative environment.

c)	Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	Potentially Significant Impact ☐	Less than Significant with Mitigation Incorporation ☐	Less than Significant Impact ☑	No Impact ☐

The proposed project has only a minor, short-term potential to adversely but not significantly impact Doheny Beach users. The footprint of the proposed construction and exploratory drilling work would affect only a small portion of the beach during the winter when use of the beach and park is low. Environmental commitments are incorporated into the proposed drilling program that would assure that public access is maintained, that noise impacts are minimize, and public safety ensured.

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APPENDIX

AIR QUALITY

Summary of Construction Emissions - Dana Point Test Well Project

UNMITIGATED

Source	CO lb/day	ROG lb/day	NO_X lb/day	SO_X lb/day	Total PM_{10} lb/day	Total $PM_{2.5}$ lb/day
Well Head Construction Phase	17.07	4.24	32.86	0.11	13.32	9.69
Discharge facilities	17.07	4.24	32.86	0.11	13.32	9.69
Discharge Facilities and Electrical Service Install	35.86	9.54	90.93	0.26	24.53	19.24
Electrical Service Install & Slant well redevelopment	35.29	9.72	74.91	0.18	19.13	12.50
Slant well Redevelopment & Mobile Test facility Install	26.71	5.14	21.19	0.02	8.17	3.18
Submersible pump installation	16.18	4.56	28.04	0.03	5.55	2.57
startup and shakedown testing	3.86	0.70	0.23	0.00	2.77	0.74
18-month pilot test	20.04	5.26	28.27	0.03	7.28	3.10
Exploratory borings	26.21	6.65	54.09	0.08	8.85	3.81
Removal of Mobil testing facility and Electrical service	19.78	2.54	5.60	0.01	7.27	2.32
Removal of Discharge Facilities	10.79	2.27	5.47	0.01	6.80	2.13
Maximum Daily Project Emissions	***35.86***	***9.72***	***90.93***	***0.26***	***24.53***	***19.24***
SCAQMD Thresholds (lbs/day)	550	75	100	150	150	55
Significant Impact?	**No**	**No**	**No**	**No**	**No**	**No**

MITIGATED

Source	CO lb/day	ROG lb/day	NO_X lb/day	SO_X lb/day	Total PM_{10} lb/day	Total $PM_{2.5}$ lb/day
Well Head Construction Phase	17.07	4.24	32.86	0.11	3.31	3.05
Discharge facilities	17.07	4.24	32.86	0.11	2.28	2.10
Discharge Facilities and Electrical Service Install	35.86	9.54	90.93	0.26	4.18	3.84
Electrical Service Install & Slant well redevelopment	35.29	9.72	74.91	0.18	3.24	2.98
Slant well Redevelopment & Mobile Test facility Install	26.71	5.14	21.19	0.02	1.38	1.27
Submersible pump installation	16.18	4.56	28.04	0.03	0.92	0.85
startup and shakedown testing	3.86	0.70	0.23	0.00	0.48	0.44
18-month pilot test	20.04	5.26	28.27	0.03	1.22	1.13
Exploratory borings	26.21	6.65	54.09	0.08	1.49	1.37
Removal of Mobil testing facility and Electrical service	19.78	2.54	5.60	0.01	1.25	1.15
Removal of Discharge Facilities	10.79	2.27	5.47	0.01	1.17	1.08
Maximum Daily Project Emissions	***35.86***	***9.72***	***90.93***	***0.26***	***4.18***	***3.84***
SCAQMD Thresholds (lbs/day)	550	75	100	150	150	55
Significant Impact?	**No**	**No**	**No**	**No**	**No**	**No**

	1-hour CO Total Concentration, ppm	8-hour CO Total Concentration, ppm	1-hour NO2 Total Concentration, ppm	24-hour PM10 Concentration, ug/m3	24-hour PM2.5 Concentration, ug/m3
Maximum Project Emissions	35.86	35.86	90.93	4.18	3.84
Concentration at 25 meters	2.1019	3.2713	0.0883	7.12	3.33
Concentration at 50 meters	2.1137	3.2796	0.0903	2.24	1.05
Concentration at 100 meters	2.1338	3.2937	0.0953	0.22	0.10
Concentration at 200 meters	2.1412	3.2988	0.1048	0.00	0.00
Concentration at 500 meters	2.0514	3.236	0.1004	0.00	0.00
Concentration at 800 meters	2.0293	3.2205	0.0976	0.00	0.00
Concentration at 1000 meters	2.0221	3.2155	0.0959	0.00	0.00
LST Thresholds	20	9	0.25	10.4	10.4
Significant Impact?	No	No	No	No	No

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08:31:15

```
 ***  SCREEN3 MODEL RUN  ***
 *** VERSION DATED 96043 ***

Dana Point CO

SIMPLE TERRAIN INPUTS:
   SOURCE TYPE                =        AREA
   EMISSION RATE (G/(S-M**2)) =     .100000E-04
   SOURCE HEIGHT (M)          =      5.0000
   LENGTH OF LARGER SIDE (M)  =    212.0100
   LENGTH OF SMALLER SIDE (M) =    212.0100
   RECEPTOR HEIGHT (M)        =      2.0000
   URBAN/RURAL OPTION         =       URBAN
THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

   MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION


BUOY. FLUX =     .000 M**4/S**3;  MOM. FLUX =     .000 M**4/S**2.

*** FULL METEOROLOGY ***

**********************************
*** SCREEN DISCRETE DISTANCES ***
**********************************

*** TERRAIN HEIGHT OF    0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***
```

DIST (M)	CONC (UG/M**3)	STAB	U10M (M/S)	USTK (M/S)	MIX HT (M)	PLUME HT (M)	MAX DIR (DEG)
25.	116.6	5	1.0	1.0	10000.0	5.00	45.
50.	130.0	5	1.0	1.0	10000.0	5.00	45.
100.	153.0	5	1.0	1.0	10000.0	5.00	45.
200.	161.5	5	1.0	1.0	10000.0	5.00	45.
500.	58.81	5	1.0	1.0	10000.0	5.00	45.
800.	33.49	5	1.0	1.0	10000.0	5.00	45.
1000.	25.24	5	1.0	1.0	10000.0	5.00	43.

```
     ***************************************
     *** SUMMARY OF SCREEN MODEL RESULTS ***
     ***************************************
```

CALCULATION PROCEDURE	MAX CONC (UG/M**3)	DIST TO MAX (M)	TERRAIN HT (M)
SIMPLE TERRAIN	161.5	200.	0.

```
***************************************************
** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **
***************************************************
```

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08:33:12

```
 ***  SCREEN3 MODEL RUN  ***
 *** VERSION DATED 96043 ***

Dana Point NOX

SIMPLE TERRAIN INPUTS:
   SOURCE TYPE                =        AREA
   EMISSION RATE (G/(S-M**2)) =     .253000E-04
   SOURCE HEIGHT (M)          =      5.0000
   LENGTH OF LARGER SIDE (M)  =    212.0100
   LENGTH OF SMALLER SIDE (M) =    212.0100
   RECEPTOR HEIGHT (M)        =      2.0000
   URBAN/RURAL OPTION         =       URBAN
THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

   MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION


BUOY. FLUX =     .000 M**4/S**3;  MOM. FLUX =     .000 M**4/S**2.

*** FULL METEOROLOGY ***

**********************************
*** SCREEN DISCRETE DISTANCES ***
**********************************

*** TERRAIN HEIGHT OF    0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

  DIST     CONC              U10M   USTK  MIX HT   PLUME  MAX DIR
   (M)   (UG/M**3)   STAB   (M/S)  (M/S)    (M)   HT (M)   (DEG)
-------  ----------  ----  -----  -----  ------  ------  -------
    25.   295.0        5     1.0    1.0 10000.0    5.00     45.
    50.   329.0        5     1.0    1.0 10000.0    5.00     45.
   100.   387.2        5     1.0    1.0 10000.0    5.00     45.
   200.   408.7        5     1.0    1.0 10000.0    5.00     45.
   500.   148.8        5     1.0    1.0 10000.0    5.00     45.
   800.   84.74        5     1.0    1.0 10000.0    5.00     45.
  1000.   63.85        5     1.0    1.0 10000.0    5.00     43.

     ****************************************
     *** SUMMARY OF SCREEN MODEL RESULTS ***
     ****************************************

 CALCULATION         MAX CONC    DIST TO   TERRAIN
  PROCEDURE         (UG/M**3)    MAX (M)    HT (M)
--------------     -----------   -------   -------
SIMPLE TERRAIN       408.7         200.        0.

****************************************************
** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **
****************************************************
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08:26:28

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 ***  SCREEN3 MODEL RUN  ***
 *** VERSION DATED 96043 ***

Dana Point PM10

SIMPLE TERRAIN INPUTS:
   SOURCE TYPE                =        AREA
   EMISSION RATE (G/(S-M**2)) =     .120000E-05
   SOURCE HEIGHT (M)          =      1.0000
   LENGTH OF LARGER SIDE (M)  =    212.0100
   LENGTH OF SMALLER SIDE (M) =    212.0100
   RECEPTOR HEIGHT (M)        =      2.0000
   URBAN/RURAL OPTION         =       URBAN
THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

   MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION


BUOY. FLUX =     .000 M**4/S**3;  MOM. FLUX =     .000 M**4/S**2.

*** FULL METEOROLOGY ***

**********************************
*** SCREEN DISCRETE DISTANCES ***
**********************************

*** TERRAIN HEIGHT OF    0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

  DIST     CONC              U10M   USTK  MIX HT   PLUME  MAX DIR
   (M)   (UG/M**3)   STAB   (M/S)  (M/S)    (M)   HT (M)   (DEG)
-------  ----------  ----  -----  -----  ------  ------  -------
     1.   24.05        6     1.0    1.0 10000.0    1.00     45.

     ****************************************
     *** SUMMARY OF SCREEN MODEL RESULTS ***
     ****************************************

 CALCULATION         MAX CONC    DIST TO   TERRAIN
  PROCEDURE         (UG/M**3)    MAX (M)    HT (M)
--------------     -----------   -------   -------
SIMPLE TERRAIN       24.05            1.        0.


****************************************************
** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **
****************************************************
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09:00:38

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 ***  SCREEN3 MODEL RUN  ***
 *** VERSION DATED 96043 ***

Dana Point PM10 Unmitigated

SIMPLE TERRAIN INPUTS:
   SOURCE TYPE                =        AREA
   EMISSION RATE (G/(S-M**2)) =     .680000E-05
   SOURCE HEIGHT (M)          =      1.0000
   LENGTH OF LARGER SIDE (M)  =    212.0100
   LENGTH OF SMALLER SIDE (M) =    212.0100
   RECEPTOR HEIGHT (M)        =      2.0000
   URBAN/RURAL OPTION         =       URBAN
THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

   MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION


BUOY. FLUX =     .000 M**4/S**3;  MOM. FLUX =     .000 M**4/S**2.

*** FULL METEOROLOGY ***

**********************************
*** SCREEN DISCRETE DISTANCES ***
**********************************

*** TERRAIN HEIGHT OF    0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

  DIST     CONC              U10M   USTK  MIX HT   PLUME  MAX DIR
   (M)   (UG/M**3)   STAB   (M/S)  (M/S)    (M)    HT (M)   (DEG)
-------  ----------  ----  -----  -----  ------  ------  -------
     1.    136.3       6     1.0    1.0 10000.0    1.00     45.

     ****************************************
     *** SUMMARY OF SCREEN MODEL RESULTS ***
     ****************************************

 CALCULATION         MAX CONC    DIST TO   TERRAIN
  PROCEDURE         (UG/M**3)    MAX (M)    HT (M)
--------------     -----------   -------   -------
SIMPLE TERRAIN       136.3          1.        0.


***************************************************
** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **
***************************************************
```

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 ***  SCREEN3 MODEL RUN  ***
 *** VERSION DATED 96043 ***

Dana Point PM2.5

SIMPLE TERRAIN INPUTS:
   SOURCE TYPE                =        AREA
   EMISSION RATE (G/(S-M**2)) =     .110000E-05
   SOURCE HEIGHT (M)          =      5.0000
   LENGTH OF LARGER SIDE (M)  =    212.0100
   LENGTH OF SMALLER SIDE (M) =    212.0100
   RECEPTOR HEIGHT (M)        =      2.0000
   URBAN/RURAL OPTION         =       URBAN
THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

   MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION


BUOY. FLUX =     .000 M**4/S**3;  MOM. FLUX =     .000 M**4/S**2.

*** FULL METEOROLOGY ***

**********************************
*** SCREEN DISCRETE DISTANCES ***
**********************************

*** TERRAIN HEIGHT OF    0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

  DIST     CONC              U10M   USTK  MIX HT   PLUME  MAX DIR
   (M)   (UG/M**3)   STAB   (M/S)  (M/S)    (M)    HT (M)   (DEG)
-------  ----------  ----  -----  -----  ------  ------  -------
     1.    11.24       5     1.0    1.0 10000.0    5.00     45.

     ****************************************
     *** SUMMARY OF SCREEN MODEL RESULTS ***
     ****************************************

 CALCULATION         MAX CONC    DIST TO   TERRAIN
  PROCEDURE         (UG/M**3)    MAX (M)    HT (M)
--------------     -----------   -------   -------
SIMPLE TERRAIN       11.24           1.        0.


***************************************************
** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **
***************************************************
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Mitigation Monitoring and Reporting Plan

Phase 3 Extended Pumping and Pilot Plant Testing
Dana Point Ocean Desalination Project

June 2008

MITIGATION MONITORING and REPORTING PLAN (MMRP)

In the following MMRP, each mitigation measure included in the Mitigated Negative Declaration for the Dana Point Ocean Desalination project is listed according to resource area. The project shall incorporate these environmental protection measures as part of the project and shall be carried forward and implemented in accordance with project activities.

The time frame for implementation of each mitigation measure is listed. The agency or agencies responsible for monitoring the satisfactory implementation of mitigation measures also is identified. The timing and method of verification also is included.

Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
Air Quality				
Reduce speeds on unpaved areas to 15 mph.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
Water unpaved construction areas 4x per day.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
All diesel-fueled equipment that is ten years or older shall have particulate traps with a minimum of 85 percent efficiency installed within the exhaust system.	Review of Plans and Specifications	Contractor shall provide evidence of installation of particulate traps with a minimum 85 percent efficiency in exhaust systems of ten year or older diesel fueled equipment	During project construction	MWDOC
Biological Resources				
A snowy plover monitor will be present during project activities to insure that no activities occur if snowy plovers are present within any of the work areas until the plovers have left the site.	MWDOC will hire a qualified snowy plover monitor prior to construction activities on the beach	Monitoring reports shall be submitted by the qualified snowy plover monitor to MWDOC	During construction on the beach	MWDOC

Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
Hazardous Materials/Water Quality				
Measures in the Spill Prevention and Response Plan shall be implemented. Prior to the commencement of drilling operations, a containment area underlain by heavy plastic sheeting will be constructed to enclose the drill rig and other equipment to minimize the potential for releasing fuel, hydraulic fluid, or water from drilling operations to the surrounding environment. Additionally, absorbent materials will be maintained onsite during work operations as part of a spill prevention plan. Fuel will be delivered by bulk truck to the site daily and will be handled in accordance with a fuel containment plan. No fuel or oil products, other than that which is in equipment fuel tanks, will be stored onsite.	Review of Plans and Specifications	Onsite supervisor to assure compliance with Spill Prevention and Response Plan	During construction and drilling	MWDOC
Noise				
Drilling and other noisy construction activities only will be conducted between 10 am and 6 pm, Monday through Friday.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
Sound walls will be installed around the drilling rig's engine.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
Recreation				
Drilling areas and equipment staging areas will be fenced for public safety.	Review of Plans and Specifications	Site Safety officer to assure compliance with mitigation measure	During project construction	MWDOC

Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
Prior to drilling operations, there will be a meeting between MWDOC, its consultants, California State Parks personnel, and the Drilling Contractor to review the plan of work, park rules, safety considerations, and environmental commitments. Each exploratory borehole drilling site will be visited during the pre-construction meeting.	MWDOC will arrange meeting	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
In addition to the drilling crew, there will be one person (Site Safety Officer) onsite to interact with the public and answer questions from the public. This person will not be integral to actual drilling operations. In addition to answering public inquiries, it will be this individual's job to ensure that the perimeter around the drilling operations is safe and secure.	MWDOC will hire Site Safety Officer	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
MWDOC will prepare signage to be posted at the site of drilling operations. The sign will explain the project and provide a MWDOC telephone number where public inquiries can be directed. MWDOC will mail an informational notice to the residents of the bluff overlooking the Doheny State Beach campground and all other property owners located near the Park prior to commencement of the pilot plant testing and exploratory borehole drilling.	MWDOC will prepare signs and notices	MWDOC and onsite supervisor to assure compliance with mitigation measure	Immediately prior to and during project construction	MWDOC
MWDOC will comply with all measures requested by the California Department of Parks and Recreation as terms of the Right of Entry Permit.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC

Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
Traffic, Circulation and Parking				
Drilling operations will take place on the sand such that drilling equipment will not obstruct bike paths or other access roadways. Where bicycle paths and roadways may be temporarily blocked, an alternative route/detour will be clearly marked. The Site Safety Officer will also redirect pedestrian and bicycle traffic in the event that the drilling operations obstruct a traffic route.	Review of Plans and Specifications	Onsite supervisor and Site Safety Officer	During project construction	MWDOC
Water Quality				
All discharges to the surf zone will meet NPDES permit requirements. Oxygen will be added to well discharge water to meet 5 mg/l dissolved oxygen requirement	Specified in operation plans and instructions	Monitoring of discharge water.	During operations	MWDOC

Response to Comments

Received on
Draft Mitigated Negative Declaration

Phase 3 Extended Pumping and Pilot Plant Testing
Dana Point Ocean Desalination Project

June 2008

APPENDIX – RESPONSE TO COMMENTS

COMMENT LETTERS AND RESPONSE TO COMMENTS

The Draft Mitigated Negative Declaration MND for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing, Orange County, California was available for public review for a period of thirty (30) days, May 9 – June 9, 2008. All comment letters received during this time frame are included in this section with responses to comments to each individual letter following the appropriate comment letter. Comments have been labeled on the left-hand margin of each comment letter with the corresponding response labeled with the same alphanumeric label. Below is the list of comment letters received during the comment period.

State of California, Department of Fish and Game
State of California, Department of Parks and Recreation
State of California, Department of Toxic Substances Control
State of California, Department of Transportation
State of California, Native American Heritage Commission
State of California, State Lands Commission
Orange County Coastkeeper
San Juan Basin Authority

State of California - The Resources Agency ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201

June 10, 2008

Mr. Richard Bell
Municipal Water District of Orange County
10500 Ellis Avenue
Fountain Valley, CA 92728
(Phone) 714 593-5003
(Fax) (714) 964-9389

Comments regarding Mitigated Negative Declaration for Dana Point Ocean Desalination Project Phase III Extended Pumping and Pilot Plant Testing SCH# 2008051050, Orange County

Mr. Bell:

The Department of Fish and Game (Department) has reviewed the above referenced draft Mitigated Negative Declaration (MND) received on May 15, 2008. The Department attended a meeting with Municipal Water District of Orange County (MWDOC) on March 26, 2008 to discuss components of the project that effect biological resources. During the site visit the Department expressed concerns that the proposed discharge of the pumped effluent to the mouth of San Juan Creek could have adverse effects to the existing biological resources on site. Prior to the release of the MND MWDOC notified the Department that the project would avoid discharge of effluent to San Juan Creek proper. The Department thanks MWDOC for the significant modifications in the project, and for coordinating with the Department regarding biological resources the Department manages in trust for the citizens of California.

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Section 15386) and pursuant to our authority as a Responsible Agency (CEQA Section 15381) over those aspects of the proposed project that come under the purview of Fish and Game Code Section 1600 *et seq.* regarding impacts to streams.

The proposed Project is a continuation of feasibility testing associated with the 2006 construction of a 350-foot long, 12-inch diameter slant well located on Doheny State Beach adjacent to the tidally influenced mouth of San Juan Creek and the Pacific Ocean southeast of Dana Point Harbor. The project would involve the testing of the production capacity of the slant well at a pumping rate of 2.9 million gallons/day (mgd) over a 24-month period to fine-tune and validate a groundwater model, verify the anticipated pumped diversion quantities between brackish groundwater and saline ocean water, and establish full-scale desalination process design. Testing of the pumped water would occur to measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance. Additionally, the project would involve research on the post-RO process treatment of the RO product and concentrate, materials corrosion, and microbial growth in the various supply pipelines and test facility.

Additionally, the project would study and characterize the aquifer materials deposited in the alluvial channel by drilling two exploratory boreholes south of Doheny State Park campgrounds

at the mouth of San Juan Creek. Information gleaned from boreholes would be used to refine the inflow characteristics of water that would reach the slant well.

The Department offers the following comments and recommendations regarding project-related biological impacts based on our review of the MND, our site visit on March 26, 2008, and our knowledge of declining habitat types and species within Orange County.

DFG-1 1. Impacts to Department Jurisdictional Streambed – The MND identifies that 0.3 cubic feet per second (cfs) of flow could be diverted from San Juan Creek from the proposed project. San Juan Creek including the associated sub-surface flow has been classified as a subterranean stream. Subterranean streams are classified as having a subsurface channel with impermeable bed and banks relative to the materials filling the channel. The Department regulates water diversions from surface and subterranean streams to maintain wildlife values and functions pursuant to Fish and Game Code (FGC) 1600 *et seq*. The Department recommends MWDOC submit their notification for a Streambed Alteration Agreement (SAA) to the Department pursuant to FGC section 1602. FGC 1602 requires any person, state or local governmental agency, or public utility to notify the Department before beginning any activity that will substantially obstruct or divert the natural flow of a river, stream, or lake. If a project is determined to require a SAA, the applicant and Department staff will work to develop an agreement that sets time frame, the flow rate range when diversions can occur, and monitoring documentation required during life-span of the agreement. The Department's issuance of a SAA may be viewed as a separate project and subject to CEQA. To facilitate our issuance of the Agreement when CEQA applies, the Department as a responsible agency under CEQA may consider the local jurisdiction's (lead agency) document for the project. To minimize additional requirements by the Department under CEQA the document should fully identify the potential impacts to the lake, stream, or riparian resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments for issuance of the agreement. A SAA notification form may be obtained by writing to the Department at the above address, calling (858) 636-3160, or accessing the Department's web site at www.dfg.ca.gov/habcon/1600.

DFG-2 2. Discharge location of RO concentrate- During a site visit on March 26, 2008 the sanitary sewer was proposed to be the location where the concentrate for the RO process would be sent. The connection to the sanitary sewer is depicted in Figure 2 of the MND. However, in discussion of Mobile Test Facility, pages 23 and 24, of the MND Table 1 and text discussion clearly contemplate discharging the RO concentrate via the slant well discharge line to the Pacific Ocean. This discrepancy along with any other contradictions of on-site chemical usage should be revised to reflect to actual methods and procedures proposed by MWDOC.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Matt Chirdon at (760) 757-3734.

Sincerely,

Edmund J. Pert
Regional Manager
South Coast Region

cc: Mr. Chad Loflen, State Water Resources Control Board Region 9, San Diego

Ms. Terri Dickerson, Laguna Niguel
Ms. Helen Birss, Los Alamitos
Ms. Tamara Spear, San Diego
Ms. Valerie Taylor, Los Alamitos
State Clearinghouse, Sacramento
HabCon-Chron, Department of Fish and Game

EP:mc

Response to Comments from the California Department of Fish and Game

DFG-1: The SEAWAT groundwater modeling and evaluation of base streamflows, indicates less than significant impact on water levels in the streambed and that rising water conditions will persist through the test period. This information is documented in a study prepared by Geoscience on drawdown effects which was used to address the issue in the MND. MWDOC will shortly submit an application for a Streambed Alteration Agreement next week.

DFG-2: A sewer disposal option for the RO stream was being considered at the time of writing the MND, because the NPDES permitting had not yet been finalized. The issue was not brine, but a very low level of anti-scalants that would be added to the small RO test stream. It appears that the very low levels of anti-scalants, which have either no or very low toxicity to aquatic organisms (at full commercial product strength – they will be diluted by a factor of over 100 to 1 before dilution in the surf zone), will be permitted by the RWQCB. This will avoid the need for construction of a sewer line through the park.

The pilot plant discharge plan is to recombine the desalted product stream with the reject concentrate stream prior to discharge to the pumped slant well water. In this way, there would be no brine discharge. The recombined RO streams would have the same salinity as the pumped groundwater.

The purpose of the extended pumping test is to pull in ocean water to the well, so salinity in the pumped flow will gradually increase to about 22,000 mg/l, which is about two-thirds ocean water, which is about 34,000 mg/l. The natural variation of salinity in the surf zone in this location varies from low levels during major storms all the way up to ocean water. Our discharge will be rapidly diluted and the impact on the ocean will be less than significant.

State of California • The Resources Agency
Arnold Schwarzenegger, *Governor*
DEPARTMENT OF PARKS AND RECREATION
ORANGE COAST DISTRICT
3030 AVENIDA DEL PRESIDENTE
SAN CLEMENTE CA 92672
Ruth Coleman, *Director*

June 09, 2008

Chambers Group, Inc.
Attn: Noel Davis, Ph.D.
17671 Cowan Avenue, Suite 100
Irvine, CA 92614
Tel: 949-261-5414

Subject: Draft Mitigated Negative Declaration for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing.

Dear Dr. Davis:

Thank you for the opportunity to comment on the Draft Mitigated Negative Declaration for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing. As a public trustee, the California Department of Parks and Recreation (State Parks) is responsible for protecting the natural, cultural and recreational resources found at Doheny State Beach and public lands elsewhere in the State of California. Doheny State Beach draws nearly two million visitors annually who come to enjoy the exceptional outdoor experiences available at this unique urban park.

As the project will impact Doheny State Beach, the park visitors and those resources that State Parks is mandated to protect, we submit the following comments for consideration and ask that these issues be addressed thoroughly.

Construction-related Impacts

DPR-1 • Access for construction vehicles as depicted in Figure 3 is incorrect. The alignment as shown will have vehicles going through Group Camp. An access normally reserved for emergency vehicles is available south of Group Camp, running parallel to the beach for a short distance between Group Camp and the horseshoe pits.

DPR-2 • The document mentions the possibility of installation of up to three additional monitoring wells and stations. The exact locations for these wells and stations are not included in the document and environmental impacts cannot be assessed. We recommend drilling in the alternate locations suggested on Page 14 to avoid further impacts to the Park.

DPR-3 • The outfall diffuser buried within the existing jetty rock needs to be configured for downcast flow and spray so as not to become a public attraction. We request posting informational signage at the outfall to satisfy public curiosity about the sight and sounds of the flow.

DPR-4 • Trenching for installation of water and gas lines, cables, and conduit should be along an alignment that has the least impact to existing facilities within the Park. We will work with contractors to map out a final alignment that avoids existing facilities, utilities, and mature vegetation.

DPR-5 • We request that removal of all connection vaults be included with the description of de-mobilization activities on Page 34.

Continued

Park Operations

DPR-6 • We have concerns related to operational impacts to the sewage lift station at Doheny State Beach. The system capacity of the sewage lift station should be evaluated. Load draws of the pumps and motors should be tested before construction begins. Additionally, salt and sand from the pumping operation may adversely affect the blades and motors of the lift station, requiring emergency repairs to the system at short notice. A ring-down line to State Parks Dispatch (SurCom) should be in place prior to construction start for rapid response in case of effluent release. The option to pump the approximate 20 gallons per minute with a cold tap to the SCWA sewer line may be preferable.

DPR-7 • The existing electrical system in the Park is currently operating at maximum capacity. We request a thorough evaluation of the system prior to the start of construction to determine the additional draw needed and avoid impacts to park operations.

Recreation

DPR-8 • Drilling for the exploratory boreholes as indicated on Figure 3 will take place within 60 feet of the beachfront campsites. Sights and sounds from the construction activities will have an impact on public use and enjoyment of the park, particularly for those park visitors who pay premium fees to camp at the beachfront sites. We suggest an information website be launched prior to start of construction that includes detailed project information and contact points for complaints and comments by park visitors.

DPR-9 • We suggest construction activities for test slant well redevelopment be shut down prior to 1800 hours each day to minimize impacts to the park visitors in the adjacent campground.

DPR-10 • Safe public coastal access must be maintained at all times during installation, paving, and de-mobilization of underground pipes, wires, cables, and vaults.

We appreciate the opportunity to comment on this exciting project, and congratulate the Municipal Water District of Orange County on the achievements of Phases 1 and 2. We look forward to working with MWDOC toward the successful completion of Phase 3.

Sincerely,

Joseph M. Milligan
Acting District Superintendent
Orange Coast District

Response to Comments by the California Department of Parks and Recreation

DPR-1: Vehicles will not go through the Group Camp. MWDOC will identify an access route in consultation with the department of Parks and Recreation that minimizes interference with park users.

DPR-2: No additional monitoring wells will be placed in the park.

DPR-3: The outfall diffuser will be configured for downcast flow and the requested informational signage will be installed.

DPR-4: MWDOC's contractor will work with the Department of Parks and Recreation to identify a final alignment that avoids existing facilities, utilities and mature vegetation.

DPR-5: All connection vaults will be removed during demobilization activities.

DPR-6: It has been determined that no discharge to the park's sewer system will be required. The only discharge will be to the surf zone.

DPR-7: MWDOC will not be using the Doheny State Beach electrical system. A new connection to the grid will be made by SDG&E for electrical service to the test facility. A new transformer will be placed in the rear of the park in a site that is acceptable to the Department of Parks and Recreation. It will either be removed after the test work is completed or it can be retained for use by the Department of Parks and Recreation.

DPR-8: MWDOC will establish the informational website as requested.

DPR-9: MWDOC will conduct activities as advised by the Department of Parks and Recreation to minimize disturbance to campers.

DPR-10: Safe public coastal access will be maintained at all times. A Site Safety Officer will be present during construction to direct pedestrian and bicycle traffic.

Linda S. Adams
Secretary for
Environmental Protection

Department of Toxic Substances Control

Maureen F. Gorsen, Director
5796 Corporate Avenue
Cypress, California 90630

Arnold Schwarzenegger
Governor

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MWD OF OC

May 27, 2008

Mr. Richard Bell, P.E.
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, California 92728

INITIAL STUDY AND PROPOSED MITIGATED NEGATIVE DECLARATION (ND) FOR DANA POINT OCEAN DESALINATION PROJECT PHASE 3 EXTENDED PUMPING AND PILOT PLANT TESTING (SCH #2008051050)

Dear Mr. Bell:

The Department of Toxic Substances Control (DTSC) has received your submitted document for the above-mentioned project. As stated in your document: "In 2006, the Municipal Water District of Orange County (MWDOC successfully constructed a fully buried 12-inch diameter, 350-foot long test slant well on Doheny State Beach. Long-term testing is needed to validate and fine-tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance."

Based on the review of the submitted document DTSC has the following comments:

DTSC-1 1) The ND should identify and determine whether current or historic uses at the project site may have resulted in any release of hazardous wastes/substances.

DTSC-2 2) The ND should identify any known or potentially contaminated sites within the proposed project area. For all identified sites, the ND should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

Printed on Recycled Paper

- Site Mitigation Program Property Database (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control.

- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.

- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.

- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.

- Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.

- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.

- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

DTSC-3 3) If any property adjacent to the project site is contaminated with hazardous chemicals, and if the proposed project is within 2,000 feet from a contaminated site, then the proposed development may fall within the "Border Zone of a Contaminated Property." Appropriate precautions should be taken prior to construction if the proposed project is within a Border Zone Property.

DTSC-4 4) The project construction may require soil excavation and soil filling in certain areas. Appropriate sampling is required prior to disposal of the excavated soil. If the soil is contaminated, properly dispose of it rather than placing it in another location. Land Disposal Restrictions (LDRs) may be applicable to these soils. Also, if the project proposes to import soil to backfill the areas excavated, proper sampling should be conducted to make sure that the imported soil is free of contamination.

DTSC-5 5) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. A study of the site overseen by the appropriate government agency might have to be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.

DTSC-6 6) If during construction/demolition of the project, soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented. If it is determined that contaminated soil and/or groundwater exist, the ND should identify how any required investigation and/or remediation will be conducted, and the appropriate government agency to provide regulatory oversight.

DTSC-7 7) Envirostor (formerly CalSites) is a database primarily used by the California Department of Toxic Substances Control, and is accessible through DTSC's website. DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489 for the VCA.

DTSC-8 8) In future CEQA documents please provide the contact person's e-mail address.

If you have any questions regarding this letter, please contact
Ms. Eileen Khachatourians, Project Manager, at (714) 484-5349.

Sincerely,

for Eileen Khachatourians

Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program - Cypress

cc: See next page.

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044

Mr. Guenther W. Moskat, Chief
Planning and Environmental Analysis Section
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

CEQA # 2169

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

ENVIROSTOR

PROJECT SEARCH RESULTS CLEANUP STATUS: All Statuses GO

SEARCH CRITERIA: DANA POINT, ORANGE, FEDERAL SUPERFUND SITES (NPL), STATE RESPONSE SITES, VOLUNTARY CLEANUP SITES, SCHOOL CLEANUP SITES, PERMITTED SITES, CORRECTIVE ACTION SITES

0 RECORDS FOUND EXPORT TO EXCEL PAGE 1 OF 1

NO PROJECTS FOUND WITH THOSE SEARCH PARAMETERS.

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Response to Comments by the Department of Toxic Substances Control

DTSC-1: No current or historic uses at the project site have been identified that may have resulted in any release of hazardous wastes/substances.

DTSC-2: No known or potentially contaminated sites have been identified within the proposed project area.

DTSC-3: There may have been a gasoline station with Leaking Underground Storage Tanks (LUST) within 1500 feet of the project area. MWDOC is investigating this issue. MWDOC will meet with the Orange County Health Agency in June to better understand the status of that site.

DTSC-4: The project will not result in the import, excavation, or disposal of contaminated soils.

DTSC-5: MWDOC does not anticipate any release of hazardous materials that may pose a risk to human health. A Spill Prevention and Response Plan has been prepared to prevent the leakage or spill of any fuels or hydraulic fluids involved in project construction.

DTSC-6: It is not anticipated that contaminated soil or groundwater will be encountered during project construction or demolition. If soil or groundwater is encountered that is suspected of being contaminated activities will cease and the Orange County Health Agency, and the California Department of Toxic Substances Control will be notified. Further investigations of the suspected contaminants will be conducted under agency oversight.

DTSC-7: Thank you for the information.

DTSC-8: The contact person's email address will be provided in future CEQA documents.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF TRANSPORTATION
District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
Tel: (949) 724-2267
Fax: (949) 724-2592

Post-it® Fax Note 7671	Date 6-5-08	# of pages ▶ 2
To Richard Bell	From M. Molavi	
Co./Dept. MWDOC	Co. Caltrans D-12	
Phone # 714-593-5003	Phone # 949-724-2267	
Fax # 714-964-5930	Fax #	

FAX & MAIL

June 5, 2008

Richard Bell
Municipal Water District of Orange County
10500 Ellis Avenue
P.O. Box 20895
FountainValley, California 92728

File: IGR/CEQA
SCH#: 2008051050
Log #: 2065
PCH

Subject: Dana Point Desalination Project Phase 3, Extended Pumping and Pilot Plant Testing

Dear Mr. Bell,

Thank you for the opportunity to review and comment on **the Initial Study/Negative Mitigated Negative Declaration for Dana Point Desalination Project Phase 3, Extended Pumping and Pilot Plant Testing.** In 2006, Municipal Water District of Orange County constructed a fully buried 12-inch diameter, 350-foot long slant well on Doheny State Beach. Long Term testing is needed to validate and fine-tune the ground water model and establish water quality and microbial parameters, and to establish full-scale desalination process design. The Phase 3 testing will measure changes in salinity and other water quality parameters affecting reverse osmosis process performance. Doheny State Beach is located on 25300 Dana Point Harbor Drive in the City of Dana Point. The nearest State route to the project site is Pacific Coast Highway (PCH).

The Department of Transportation (Department) is a responsible agency on this project and we have the following comment:

DOT-1 1. Any project work proposed in the vicinity of the State right of way would require an encroachment permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet the Department's requirements, additional documentation would be required before approval of the encroachment permit. Please coordinate with Caltrans to meet requirements for any work within or near State right of way. All entities other than the Department working within State right of way must obtain an Encroachment Permit prior to commencement of work. A fee may apply. If the cost of work within the State right of way is below one Million Dollars, the Encroachment Permit process will be handled by our Permits Branch, otherwise the permit should be authorized through the Department's Project Development. Allow 2 to 4 weeks for a complete submittal to be reviewed and for a permit to be issued. When applying for Encroachment Permit, please incorporate Environmental Documentation, SWPPP/ WPCP, Hydraulic Calculations, Traffic Control Plans, Geotechnical Analysis, R/W certification and all relevant design details including design exception approvals. For specific details Encroachment Permits procedure, please refer to the Department's Encroachment Permits Manual. The latest edition of the Manual is available on the web site: http://www.dot.ca.gov/hq/traffops/developserv/permits/

Please continue to keep us informed of this project and any future developments, which could potentially impact State Transportation Facilities. If you have any questions or need to contact us, please do not hesitate to call Maryam Molavi at (949) 724-2267.

Sincerely,

Ryan Chamberlain, Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

Response to Comments by Department of Transportation

DOT-1: The project does not involve work in the State right of way.

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net

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June 5, 2008

Mr. Richard Bell, P.E.
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
10500 Ellis Avenue; P.O. Box 20895
Fountain Valley, CA 92728

Re: SCH#2008051050; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Dana Point Ocean Desalination Project; Phase 3 Extended Pumping and Pilot Plant Testing; Municipal Water District of Orange County; Orange County, California

Dear Mr. Bell:

The Native American Heritage Commission is the state agency designated to protect California's Native American Cultural Resources. The California Environmental Quality Act (CEQA) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c (CEQA guidelines). Section 15382 of the 2007 CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following action:

NAHC-1 √ Contact the appropriate California Historic Resources Information Center (CHRIS) for possible 'recorded sites' in locations where the development will or might occur.. Contact information for the Information Center nearest you is available from the State Office of Historic Preservation (916/653-7278)/ http://www.ohp.parks.ca.gov. The record search will determine:

- If a part or the entire APE has been previously surveyed for cultural resources.
- If any known cultural resources have already been recorded in or adjacent to the APE.
- If the probability is low, moderate, or high that cultural resources are located in the APE.
- If a survey is required to determine whether previously unrecorded cultural resources are present.

NAHC-2 √ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- The final report containing site forms, site significance, and mitigation measurers should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for pubic disclosure.
- The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.

NAHC-3 √ Contact the Native American Heritage Commission (NAHC) for:

  * A Sacred Lands File (SLF) search of the project area and information on tribal contacts in the project vicinity that may have additional cultural resource information. Please provide this office with the following citation format to assist with the Sacred Lands File search request: USGS 7.5-minute quadrangle citation with name, township, range and section; .

- The NAHC advises the use of Native American Monitors to ensure proper identification and care given cultural resources that may be discovered. The NAHC recommends that contact be made with Native American Contacts on the attached list to get their input on potential project impact (APE). In some cases, the existence of a Native American cultural resources may be known only to a local tribe(s).

NAHC-4 √ Lack of surface evidence of archeological resources does not preclude their subsurface existence.

- Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5 (f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
- A culturally-affiliated Native American tribe may be the only source of information about a Sacred Site/Native American cultural resource.
- Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.

NAHC-5 √ Lead agencies should include provisions for discovery of Native American human remains or unmarked cemeteries in their mitigation plans.

* CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

NAHC-6 √ Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

NAHC-7 √ Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,

Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

Native American Contacts
Orange County
June 5, 2008

Juaneno Band of Mission Indians Acjachemen Nation
David Belardes, Chairperson
31742 Via Belardes Juaneno
San Juan Capistrano , CA 92675
DavidBelardes@hotmail.com
(949) 493-0959
(949) 493-1601 Fax

Juaneno Band of Mission Indians
Adolph "Bud" Sepulveda, Chairperson
P.O. Box 25828 Juaneno
Santa Ana , CA 92799
bssepul@yahoo.net
714-838-3270
714-914-1812 - CELL
bsepul@yahoo.net

Juaneno Band of Mission Indians Acjachemen Nation
Anthony Rivera, Chairman
31411-A La Matanza Street Juaneno
San Juan Capistrano , CA 92675-2674
arivera@juaneno.com
949-488-3484
949-488-3294 Fax

Sonia Johnston, Tribal Vice Chairperson
Juaneño Band of Mission Indians
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
sonia.johnston@sbcglobal.net
(714) 323-8312

Juaneno Band of Mission Indians Acjachemen Nation
Joyce Perry , Tribal Manager & Cultural Resources
31742 Via Belardes Juaneno
San Juan Capistrano , CA 92675
kaamalam@cox.net
(949) 493-0959
(949) 293-8522 Cell
(949) 493-1601 Fax

Juaneno Band of Mission Indians
Anita Espinoza
1740 Concerto Drive Juaneno
Anaheim , CA 92807
(714) 779-8832

Juaneno Band of Mission Indians
Alfred Cruz, Culural Resources Coordinator
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
alfredgcruz@sbcglobal.net
714-998-0721
slfredgcruz@sbcglobal.net

Juaneno Band of Mission Indians
Joe Ocampo, Chairperson
1108 E. 4th Street Juaneno
Santa Ana , CA 92701
(714) 547-9676
(714) 623-0709-cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the propose SCH#2008051050; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Dana Point Ocean Desalination Project: Phase 3 Pumping and Pilot Plant Testing; Municipal Water District of Orange County; Orange County, California.

Response to Comments by the Native American Heritage Commission

NAHC-1: A cultural resources records search for the project site was completed on September 21, 2005 at the South Central Coastal Information Center (SCCIC) located at California State University, Fullerton, as stated in Section V(a).

NAHC-2: Comment noted. As indicated in Section V(b), no archaeological resources are within the project boundary and there will be no impacts.

NAHC-3: A cultural resources records search for the project site was completed on September 21, 2005 and it was determined that no potential exists to impact any historic, archaeological, or paleontological resources, or human remains.

NAHC-4: Based on the cultural resources records search findings of no potential to impact any historic, archaeological, or paleontological resources, or human remains, and limited ground disturbance proposed by the project action, a certified archaeologist or a culturally affiliated Native American monitor would not be required. If an unexpected, accidental cultural resource is discovered, the suggested mitigation measures will be followed.

NAHC-5: Comment noted. See response to NAHC-4.

NAHC-6: Comment noted. See response to NAHC-4.

NAHC-7: Comment noted. See response to NAHC-4.

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1900**
Contact FAX: **(916) 574-1885**

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May 20, 2008

File No. SCH # 2008051050
PRC 8651.9

Richard Bell, P.E
Municipal Water District of Orange County
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, CA 92728

Dear Mr. Bell:

SUBJECT: Mitigated Negative Declaration (MND) for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing, city of Dana Point, Orange County

Staff of the California State Lands Commission (CSLC) has reviewed the subject document. Under the California Environmental Quality Act (CEQA), the Municipal Water District of Orange County (District) is the Lead Agency and the CSLC is a Responsible and/or Trustee Agency for any and all projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

The CSLC has jurisdiction and management authority over all ungranted sovereign lands of the State of California which includes tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes, etc. (e.g. Public Resources Code 6301.) Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the three-mile wide band of tide and submerged lands adjacent to the coast and offshore islands of the State. All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are subject to the Public Trust Doctrine.

The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. The CSLC has a legal responsibility for, and a strong interest in, protecting the ecological and Public Trust values associated with the State's sovereign lands. A lease from the CSLC is required for any portion of a project extending onto State-owned lands that are under its exclusive jurisdiction.

The project proposes to construct and operate the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant to assess the feasibility of a full scale desalination plant to produce potable water for the District. The proposed facility would take in seawater through an existing slant well and process that water. The waste and processed water will be discharged into a sanitary sewer or through an ocean outfall diffusser.

The CSLC requests that the lead agency address the following comments in the MND:

CSLC Jurisdiction

On December 5, 2005, the CSLC authorized the issuance of a five-year General Lease – Public Agency Use to the District for construction and installation of a test slant well, located on sovereign lands, offshore of Doheny State Beach. This test slant well is part of Phase One and Two of the subsurface intake system feasibility investigation in connection with the Dana Point Ocean Desalination Project. As you have discussed with Susan Young of our staff, it will be necessary for the District to submit an application to amend the existing lease to provide for the installation and maintenance of a diffuser/pump, discharge of pumped water back into State owned sovereign lands of the Pacific Ocean, for an expanded lease area and to extend the term of the lease through May of 2012. **CSLC-1**

Enclosed is the CSLC's Lease Application Packet. Please complete this application and return it to Susan Young at the above address along with the filing fee ($25) and minimum expense deposit ($2,000). Upon receipt of the application and fees, you will be provided with a reimbursement agreement. An executed reimbursement agreement to cover the CSLC's cost to process this transaction is required as part of a complete application.

Environmental Review

Many actions that would normally be considered mitigation measures are incorporated into the project description, resulting in several "less than significant impacts" in the analyses for issue areas such as noise, recreation, and biology. For example, on page 57, it was determined that impacts will be less than significant because "A snowy plover monitor will be present during project activities to insure that no activities occur if snowy plovers are present within any of the work areas until the plovers have left the site." By incorporation of mitigating actions as part of the project description, the applicant may not be required to prepare a mitigation monitoring plan and it may be more difficult to document the implementation of these actions. Therefore, we recommend that some type of assurance (monitoring or other measure) should be added to document implementation of these mitigation-like actions. **CSLC-2**

Thank you for this opportunity to comment. Should you have any further questions regarding jurisdictional issues, please contact Susan Young at (916) 574 -

1879. Questions regarding the environmental review should be directed to Steven Mindt at (916) 574 -1497.

Sincerely,

Gail Newton, Chief
Division of Environmental Planning
and Management

Enclosure

cc: Steven Mindt, DEPM
Susan Young, LMD

Response to Comments from the California State Lands Commission

CSLC-1: MWDOC will apply for an amendment to its lease.

CSLC-2: MWDOC has prepared a Mitigation Monitoring and Reporting Plan to address measures incorporated into the project to avoid significant environmental impacts.

RECEIVED
JUN 5 2008

ORANGE COUNTY
COASTKEEPER
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
Website www.Coastkeeper.org

June 3, 2008

Chambers Group, Inc.
Attn: Noel Davis, Ph.D.
17671 Cowan Avenue, Suite 100
Irvine, CA 92614

Re: Draft Mitigated Negative Declaration MND for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing

Dear Dr. Davis:

Orange County Coastkeeper is a grass roots environmental organization with the mission to preserve, protect and restore the watersheds and coastal environment of Orange County. We have reviewed the Draft Mitigated Negative Declaration MND for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing and are submitting the following comments for consideration.

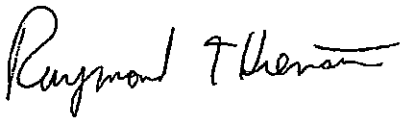
OCC-1 1. We agree with the state legislature's findings with respect to desalination projects which acknowledges that the "growing water needs of the state require the development of a cost effective and efficient water supply technology" and the development of desalination technology may be a means of meeting the future water requirements of the state. Ann.Cal.Water Code §12947. The development of desalination facilities will likely help to reduce the pressure placed on other state water resources. However, we emphasize caution in the development and approval of infrastructure in sensitive coastal areas.

OCC-2 2. We support the drafting of a construction schedule for slant well extended pumping testing which proactively takes into consideration the impact development may have on state and federal threatened species and we encourage the utilization of slant wells when constructing desalination plants near coastal areas. Slant wells are less intrusive and present fewer immediate ecological problems than alternative methods of ocean or brackish water extraction.

OCC-3 3. The NOP does not make it clear if all the brine from the test RO operation will be sent to the sewer of if some of it will be sent to the creek mixed with the returned well water, this should be clarified. Also since disposal of the brine from the RO process will be a major issue in the future we encourage you to use this test phase to identify a disposal method for the brine that does not involve using San Juan creek or its

mouth as a conveyance. Recently, state Fish & Game officials documented the existence of Steelhead in waters in the relative proximity of the proposed desalination area. Sending a high-salinity brine stream could endanger an area listed as Critical Habitat for the Southern California Steelhead Evolutionarily Significant Unit.

Sincerely,



Ray Hiemstra
Associate Director-Programs
Orange County Coastkeeper

Response to Comments by the Orange County Coastkeeper

OCC-1: Thank you for your comment.

OCC-2: Thank you for your comment.

OCC-3: A sewer disposal option for the RO stream was being considered at the time of writing the MND, because the NPDES permitting had not yet been finalized. The issue was not brine, but a very low level of anti-scalants that would be added to the small RO test stream. It appears that the very low levels of anti-scalants, which have either no or very low toxicity to aquatic organisms (at full commercial product strength – they will be diluted by a factor of over 100 to 1 before dilution in the surf zone), will be permitted by the RWQCB. This will avoid the need for construction of a sewer line through the park.

The pilot plant discharge plan is to recombine the desalted product stream with the reject concentrate stream prior to discharge to the pumped slant well water. In this way, there would be no brine discharge. The recombined RO streams would have the same salinity as the pumped groundwater.

The purpose of the extended pumping test is to pull in ocean water to the well, so salinity in the pumped flow will gradually increase to about 22,000 mg/l, which is about two-thirds ocean water, which is about 34,000 mg/l. The natural variation of salinity in the surf zone in this location varies from low levels during major storms all the way up to ocean water. Our discharge will be rapidly diluted and the impact on the ocean will be less than significant.

If the project goes forward to a full scale desalination plant, direct disposal to the ocean or San Juan Creek would not occur. Disposal would be through the SOCWA Ocean Outfall. In this manner, the ocean concentrate stream is diluted with treated wastewater, which will further reduce the impacts of both low and high salinity in the mixing zone.

SAN JUAN BASIN AUTHORITY
27500 LA PAZ ROAD • LAGUNA NIGUEL, CA 92677 • (949) 448-4055 • FAX (949) 831-5651

June 2, 2008

Noel Davis, Ph.D.
Chambers Group, Inc.
17671 Cowan Avenue, Suite 100
Irvine, CA 92614

Regarding: Dana Point Ocean Desalination Project
Phase 3 Extended Pumping and Pilot Plant Testing

Dear Ms. Davis:

Thank you for the opportunity to review the draft Mitigated Negative Declaration MWD for the subject project.

The section on Groundwater Hydrology contains statements regarding groundwater recharge (Items a and b page 57) and noted that the impacts would be less than significant.

SJBA-1 The San Juan Basin Authority holds a SWRCB Water Rights Permit that has specific requirements regarding water quality and water quantities that could be affected by the proposed project.

SJBA-2 At the meeting held at Municipal Water District of Orange County on May 19, 2008, it was agreed that an Agreement (MOU) would be prepared to outline a plan to construct some new monitoring wells as part of the project to monitor the affects of the proposed project.

Sincerely,

Donald J. Martinson
Administrator

DJM:KAR

Response to Comments by the San Juan Basin Authority

SJBA-1: As discussed in the IS/MND, A water budget was performed for the model run with the Test Slant Well pumping 2,000 gpm (2.88 MGD, 3,226 acre-ft/yr) for a period of three years. Ocean and offshore recharge accounts for 67 percent (2,161 acre-ft/yr) of the recharge to the slant well with 33 percent (1,065 acre-ft/yr) of the recharge originating from the inland sources. This inland source is groundwater inflow to the well which is recharged through stream flow infiltration. The average annual streamflow significantly exceeds the amount of stream groundwater recharge under current basin and Test Slant Well production levels. The extended pumping test will have less than significant impact on water supply. Under existing conditions, there is a total outflow of 1,521 acre-ft/yr to the ocean including 854 acre-ft/yr of underflow and 667 acre-ft/yr of rising water. The 1,065 acre-ft/yr of recharge from inland sources to the test slant well is less than the 1,521 acre-ft/yr outflow to the ocean under existing conditions. Therefore, it can be concluded that the project would not interfere with developed groundwater rights, but would be extracting groundwater that is otherwise lost to the ocean.

SJBA-2: MWDOC will construct one new monitoring well upstream of PCH and downstream of the "COSTCO" well now used by SJBA for groundwater level monitoring that is satisfactory to SJBA. Staff from MWDOC, Geoscience and Psomas (representing SJBA) conducted a site review on June 11 to identify possible locations for the new monitoring well. The groundwater model predicts the drawdown at the SCWD Groundwater Recovery Well to be less than significant at the SCWD well (about 0.2 feet after three years). This analysis is based on groundwater model runs and is documented in a Technical Memorandum prepared by Geoscience entitled *"Predicted Impacts on Ground and Surface Water After Three Years of Pumping the Test Slant Well at Doheny State Beach"* May 27, 2008. MWDOC will equip, download and analyze groundwater levels before, during and after the extended pumping test in order to monitor the effects of the proposed project.

Responses to Comment Letter A41_viii

Response to Comment A41_viii: This document is a copy of the CEQA document prepared for the Dana Point Ocean Desalination project. No response is required. Please note that this document does not identify impacts from the operation of the desalination project on the existing Doheny SMCA. It is unclear if the commenter's Mitigated Negative Declaration analyzed impacts to the existing Doheny SMCA and possible future MPAs and found them to be insignificant therefore not needing discussion, or, if the Municipal Water District of Orange County failed to complete analysis on the impacts of the proposed Dana Point Ocean Desalination Project on the existing Doheny SMCA or the implementation of the MLPA project in southern California pursuant to the MLPA Master Plan adopted by the Commission in February 2008.

RESOLUTION NO. 1836

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PLAN FOR THE DANA POINT OCEAN DESALINATION PROJECT PHASE 3 EXTENDED PUMPING AND PILOT PLANT TESTING PROJECT

WHEREAS, a Notice of Availability of an Initial Study and Proposed Mitigated Negative Declaration for the Phase 3 Extended Pumping and Pilot Plant Testing Project utilizing the Test Slant Well constructed in the spring of 2006 on Doheny State Beach, was published on May 9, 2008, in compliance with California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the Initial Study and Mitigated Negative Declaration was made available for public comment for 30-days beginning May 9, 2008 and ending June 9, 2008,

WHEREAS, the Board of Directors as CEQA Lead Agency, reviewed the Initial Study, Proposed Mitigated Negative Declaration, and Proposed Mitigation Monitoring and Reporting Plan,

WHEREAS, the Initial Study and adopted Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan will be retained and kept on file in the MWDOC Library,

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY DOES HEREGY RESOLVE AS FOLLOWS:

1. The Board of Directors has reviewed and considered the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Plan, together with any comments received during the public review process, prior to acting on the project.

2. The Board of Directors finds, based on the whole record before it, including the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Plan, and any comments received that there is no substantial evidence that the Project will have a significant effect on the environment after mitigation, and that the Mitigated Negative Declaration reflects the Municipal Water District of Orange County's independent judgment and analysis. Therefore, the Board of Directors hereby approves the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan.

NOW, THEREFORE, BE IT FURTHER RESOLOVED, that a Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Plan, attached hereto as Exhibit A, are hereby adopted with respect to environmental effects of the Phase 3 Extended Pumping and Pilot Plant Testing Project.

Said Resolution was adopted, on roll call, by the following vote:

AYES:	Directors Bakall, Barbre, Clark, Dick, Finnegan, Hinman & Royce
NOES:	None
ABSENT:	None
ABSTAIN:	None

I hereby certify that the foregoing is a true and correct copy of Resolution No. 1836 adopted by the Board of Directors of Water District at its meeting held on June 18, 2008.

MARIBETH GOLDSBY
District Secretary
Municipal Water District of Orange County

Responses to Comment Letter A41_ix

Response to Comment A41_ ix: This document is a copy of the Municipal Water District of Orange County's resolution to adopt the Mitigated Negative Declaration, and the Mitigated Negative Declaration's findings for the Dana Point Ocean Desalination Project. No response is required.

Letter A41_x

STATE OF CALIFORNIA

GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

June 11, 2008

RECEIVED

JUN 16 2008

MAYOR OF OC

Richard Bell
City of Huntington Beach
10500 Ellis Avenue
P.O. Box 20895
Fountain Valley, CA 92728

Subject: Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing
SCH#: 2008051050

Dear Richard Bell:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on June 10, 2008, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2008051050
Project Title Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing
Lead Agency Huntington Beach, City of

Type MND Mitigated Negative Declaration

Description In 2006, MWDOC successfully constructed a fully buried 12" diameter, 350' long test slant well on Doheny State Beach. Long-term testing is needed to validate and fine tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis process performance.

Lead Agency Contact

Name Richard Bell
Agency City of Huntington Beach
Phone (714) 593-5003 **Fax**
email
Address 10500 Ellis Avenue
P.O. Box 20895
City Fountain Valley **State** CA **Zip** 92728

Project Location

County Orange
City Dana Point
Region
Lat / Long 33° 27' 50" N / 117° 41' 18" W
Cross Streets 25300 Dana Point Harbor Drive
Parcel No.
Township 8S **Range** 8W **Section** **Base**

Proximity to:

Highways 1 (Pacific Coast Highway)
Airports
Railways
Waterways Pacific Ocean
Schools St. Edward School
Land Use

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Landuse

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Game, Region 5; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 12; State Lands Commission; Native American Heritage Commission; Department of Toxic Substances Control; Regional Water Quality Control Board, Region 9

Date Received 05/12/2008 **Start of Review** 05/12/2008 **End of Review** 06/10/2008

Note: Blanks in data fields result from insufficient information provided by lead agency.

Responses to Comment Letter A41_x

Response to Comment A41_x: This document is a copy of the Governor's Office of Planning and Research, State Clearinghouse letter stating that the Mitigated Negative Declaration for the Dana Point Ocean Desalination project was circulated for public review and comment. No response is required.

Letter A41_xi

RECEIVED

OCT 31 2008

MWD OF OC

TOM DALY
ORANGE COUNTY CLERK - RECORDER

ORANGE COUNTY
CLERK-RECORDER'S OFFICE
12 Civic Center Plaza, Room 106, P.O. BOX 238, Santa Ana, CA 92702
web: www.oc.ca.gov/recorder/
PHONE **(714) 834-5284** FAX **(714) 834-2500**

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
10500 ELLIS AVE PO BOX 20895
FOUNTAIN VALLEY, CA 92728

Office of the Orange County Clerk-Recorder
Memorandum

SUBJECT: NOTICE OF DETERMINATION - NEG. DEC.

The attached notice was received, filed and a copy was posted on 07/25/2008

It remained posted for 30 (thirty) days.

TOM DALY
ORANGE COUNTY CLERK - RECORDER
In and for the County of Orange

By: IBANIA ALVARADO AYALA Deputy

Public Resource Code 21092.3

The notice required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the County Clerk of each county *** in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The County Clerk shall post notices within 24 hors of receipt.

Public Resource Code 21152

All notices filed pursuant to this section shall be available for public inspection, and shall be posted ***_**within 24 hours of receipt**_ in the office of the County Clerk. Each notice shall remain posted for a period of 30 days.
*** Thereafter, the clerk shall return the notice to the local **lead** agency *** within a notation of the period it was posted. The local **lead** agency shall retain the notice for not less than nine months.

Additions or changes by underline; deletions by ***

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
1876.75

#357782

200885000803 02:19pm 07/25/08
90 271 Z03
1876.75 0.00 0.00 0.00 0.00 0.00 0.00 0.00

Notice of Determination **Form C**

To: Office of Planning and Research

P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

County Clerk
County of Orange, California

From: (Public Agency) Municipal Water District of Orange County

10500 Ellis Avenue, P.O. Box 20895

Fountain Valley, CA 92728
(Address)

FILED
JUL 25 2008
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

Subject:
Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Initial Study/Negative Declaration – Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing
Project Title

2008051050	Richard Bell, P.E.	714-593-5003
State Clearinghouse Number (If submitted to Clearinghouse)	Lead Agency Contact Person	Area Code/Telephone/Extension

Project Location (include county) Doheny State Beach, 25300 Dan Point Harbor Drive, City of Dana Point, County of Orange.

Project Description:
In 2006, the Municipal Water District of Orange County (MWDOC) successfully constructed a fully buried 12-inch diameter, 350-foot long test slant well on Doheny State Beach. Although preliminary pilot well tests have been promising, long-term testing is needed to more thoroughly validate and fine-tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will require an extended period of initial pumping to pull in ocean water. This will require operating the test slant well for up to 24 months. Phase 3 testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance.
PROJECT APPLICANT: MUNICIPAL WATER DISTRICT OF ORANGE COUNTY, RICHARD BELL

This is to advise that the Municipal Water District of Orange County has approved the project described above on
☒ Lead Agency ☐ Responsible Agency

June 18, 2008 and has made the following determinations regarding the project described above:
(Date)

1. The project [☐ will X will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   X A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A statement of Overriding Considerations [☐ was ☒ was not] adopted for this project.
5. Findings [☐ were ☐ were not] made pursuant to the provisions of CEQA.

POSTED
JUL 25 2008
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

This is to certify that the final EIR with comments and responses and record of project approval is available to the General Public at:

Municipal Water District of Orange County, 10500 Ellis Avenue, P.O. Box 20895, Fountain Valley, CA 92728

Signature (Public Agency)	July 2, 2008	Principal Engineer
	Date	Title

Date received for filing at OPR:

California Department of Fish and Game
Certificate of Fee Exemption
De Minimis Impact Finding

Project Title: Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing

Project Location (including County): Doheny State Beach, 25300 Dana Point Harbor Drive, City of Dana Point, County of Orange.

Name and Address of Project Proponent: Municipal Water District of Orange County, 10500 Ellis Avenue, P.O. Box 20895, Fountain Valley, CA 92728

Project Description: In 2006, the Municipal Water District of Orange County (MWDOC) successfully constructed a fully buried 12-inch diameter, 350-foot long test slant well on Doheny State Beach. Although preliminary pilot well tests have been promising, long-term testing is needed to more thoroughly validate and fine-tune the groundwater model, to verify the anticipated flow splits between brackish and ocean water, establish water quality and microbial parameters, and to establish full-scale desalination process design. Phase 3 pilot-plant testing and water quality testing will require an extended period of initial pumping to pull in ocean water. This will require operating the test slant well for up to 24 months. Phase 3 testing will measure changes in salinity and other water quality parameters affecting Reverse Osmosis (RO) process performance.

Findings of Exemption:

1. **An Initial Study has been conducted by** Municipal Water District of Orange County **(insert lead agency name) to evaluate the potential for adverse environmental impacts.**

2. **A** Mitigated Negative Declaration **(insert: Mitigated Negative Declaration, Negative Declaration or draft Environmental Impact Report) has been prepared by** Municipal Water District of Orange County **(insert lead agency name).**

3. **The lead agency has no evidence before it, including the information in the Initial Study, the** Initial Study/Negative Declaration – Dana Point Ocean Desalination Project Phase 3 extended Pumping and Pilot Plant Testing **(insert: Mitigated Negative Declaration, Negative Declaration or draft EIR) and public comments, to indicate that the proposed project could have any potential for an adverse effect on fish and wildlife resources or the habitat upon which the fish and wildlife depends.**

Certification:
I hereby certify that the lead agency has made the above findings and that based upon the record, the project will not individually or cumulatively have an adverse effect on fish or wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

FILED
JUL 25 2008
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

POSTED
JUL 25 2008
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

Signature of Planning Official

Principal Engineer
Title

Municipal Water District of Orange County
Lead Agency Name

November 29, 2005
Date

Reference: CCR Section 753.5

STATE OF CALIFORNIA - THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME
ENVIRONMENTAL FILING FEE CASH RECEIPT

357782

Lead Agency: Municipal Water District of O.C. Date: 7/25/08

County/State Agency of Filing: Orange / CA Document No. 2008850083

Project Title: Dana Point Ocean Desalination Project Phase 3 Extended Pumping & Pilot Plant Testing

Project Applicant Name: Municipal Water District of O.C.

Project Applicant Address: 10500 Ellis Ave PO Box 20895

City Fountain Valley State CA Zip Code 92728 Phone Number: 714 593-5003

Project Applicant *(check appropriate box)*:

- [x] Local Public Agency
- [ ] School District
- [ ] Other Special District
- [ ] State Agency
- [ ] Private Entity

Check Applicable Fees:

[ ] Environmental Impact Report	$2606.75	$
[x] Negative Declaration	$1876.75	$ 1876.75
[ ] Application Fee Water Diversion *(State Water Resources Control Board Only)*	$886.25	$
[ ] Projects Subject to Certified Regulatory Programs	$886.25	$
[x] County Administrative Fee	$50.00	$ 0.00
[ ] Project that is exempt from fees		
[ ] Notice of Exemption		
[ ] DFG No Effect Determination (Form Attached)		
TOTAL RECEIVED		$ 1876.75

Signature and title of person receiving payment: K Clara Ahara

WHITE-PROJECT APPLICANT YELLOW-DFG/ASB PINK-LEAD AGENCY GOLDENROD-COUNTY CLERK

DFG 753.5a (Rev.)

Responses to Comment Letter A41_xi

Response to Comment A41_xi: This document is a copy of the Notice of Determination on the Dana Point Ocean Desalination project's Mitigated Negative Declaration. No response is required.

Notice of Determination

Letter A41_xii

To: Office of Planning and Research

P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

County Clerk
County of Orange, California

From: (Public Agency) Municipal Water District of Orange County
10500 Ellis Avenue, P.O. Box 20895
Fountain Valley, CA 92728

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
NO FEE
200585001511 03:17pm 11/29/05
90 32 Z01
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

Subject:
Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Initial Study/Negative Declaration – Subsurface Intake System Feasibility Investigation Test Slant Well
Project Title

2005101059	Richard Bell, P.E.	714-593-5003
State Clearinghouse Number (If submitted to Clearinghouse)	Lead Agency Contact Person	Area Code/Telephone/Extension

Project Location (include county) Doheny State Beach, 25300 Dan Point Harbor Drive, City of Dana Point, County of Orange.

Project Description:
To determine the feasibility of developing a subsurface intake system for the Dana Point Ocean Desalination Project, this test slant well drilling project will be conducted to determine the hydrogeology and water quality characteristics of the San Juan Creek alluvial channel structure offshore from its mouth, which is wholly situated within Doheny State Beach. Test slant well drilling will be accomplished using a dual wall reverse circulation (DWRC) DR-40 "Barber" type drilling rig modified for angle (slant) drilling. The test well will be drilled at an angle from horizontal (approximately 23°) in order to obtain data about aquifer materials and water quality underneath the ocean floor.

This is to advise that the Municipal Water District of Orange County has approved the project described above on
☐ Lead Agency ☐ Responsible Agency

November 21, 2005 and has made the following determinations regarding the project described above:
(Date)

1. The project [☐ will X will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   X A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☐ were ☐ were not] made a condition of the approval of the project.
4. A statement of Overriding Considerations [☐ was ☐ was not] adopted for this project.
5. Findings [☐ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval is available to the General Public at:

Municipal Water District of Orange County, 10500 Ellis Avenue, P.O. Box 20895, Fountain Valley, CA 92728

Signature (Public Agency)	November 28, 2005 Date	Principal Engineer Title

Date received for filing at OPR:

FILED
NOV 29 2005
TOM DALY, CLERK-RECORDER
DEPUTY By

POSTED
NOV 29 2005
TOM DALY, CLERK-RECORDER
DEPUTY

January 2004

California Department of Fish and Game
Certificate of Fee Exemption
De Minimis Impact Finding

Project Title: Subsurface Intake System Feasibility Investigation Test Slant Well

Project Location (including County): Doheny State Beach, 25300 Dana Point Harbor Drive, City of Dana Point, County of Orange.

Name and Address of Project Proponent: Municipal Water District of Orange County, 10500 Ellis Avenue, P.O. Box 20895, Fountain Valley, CA 92728

Project Description: To determine the feasibility of developing a subsurface intake system for the Dana Point Ocean Desalination Project, this test slant well drilling project will be conducted to determine the hydrogeology and water quality characteristics of the San Juan Creek alluvial channel structure offshore from its mouth, which is wholly situated within Doheny State Beach. Test slant well drilling will be accomplished using a dual wall reverse circulation (DWRC) DR-40 "Barber" type drilling rig modified for angle (slant) drilling. The test well will be drilled at an angle from horizontal (approximately 23°) in order to obtain data about aquifer materials and water quality underneath the ocean floor.

Findings of Exemption:

1. **An Initial Study has been conducted by** Municipal Water District of Orange County **(insert lead agency name) to evaluate the potential for adverse environmental impacts.**

2. **A** Negative Declaration **(insert: Mitigated Negative Declaration, Negative Declaration or draft Environmental Impact Report) has been prepared by** Municipal Water District of Orange County **(insert lead agency name).**

3. **The lead agency has no evidence before it, including the information in the Initial Study, the** Initial Study/Negative Declaration – Subsurface Intake System Feasibility Investigation Test Slant Well **(insert: Mitigated Negative Declaration, Negative Declaration or draft EIR) and public comments, to indicate that the proposed project could have any potential for an adverse effect on fish and wildlife resources or the habitat upon which the fish and wildlife depends.**

Certification:
I hereby certify that the lead agency has made the above findings and that based upon the record, the project will not individually or cumulatively have an adverse effect on fish or wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

FILED
NOV 29 2005
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

POSTED
NOV 29 2005
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

Signature of Planning Official

Principal Engineer
Title

Municipal Water District of Orange County
Lead Agency Name

November 29, 2005
Date

Reference: CCR Section 753.5

STATE OF CALIFORNIA - THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME
ENVIRONMENTAL FILING FEE CASH RECEIPT
DFG753.5a (8-03)

268032

Lead Agency: Municipal Water District of O.C. Date: 11-29-05

County / State Agency of Filing: County of Orange Document No.: 8500511

Project Title: Subsurface Intake System feasibility Inv. Test Slant

Project Applicant Name: Municipal Water District of O.C. Phone Number: 593-5033

Project Applicant Address: 10500 Ellis Ave. Fountain Valley, CA 92728

Project Applicant *(check appropriate box)*: Local Public Agency [X] School District [ ] Other Special District [ ]
State Agency [ ] Private Entity [ ]

CHECK APPLICABLE FEES:

( ) Environmental Impact Report	$850.00	$
( ) Negative Declaration	$1,250.00	$
( ) Application Fee Water Diversion *(State Water Resources Control Board Only)*	$850.00	$
( ) Projects Subject to Certified Regulatory Programs	$850.00	$
( ) County Administrative Fee	~~$25.00~~	$ exempt
(X) Project that is exempt from fees		
	TOTAL RECEIVED	$ exempt

Signature and title of person receiving payment: [signature]

WHITE-PROJECT APPLICANT YELLOW-DFG/FASB PINK-LEAD AGENCY GOLDENROD-STATE AGENCY OF FILING

STATE OF CALIFORNIA

Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Arnold Schwarzenegger
Governor

Sean Walsh
Director

RECEIVED

NOV 21 2005

MWD OF OC

November 15, 2005

Richard Bell
Orange County Municipal Water District
10500 Ellis Ave.
Fountain Valley, CA 92728

Subject: Subsurface Intake System Feasibility Investigation - Test Slant Well
SCH#: 2005101059

Dear Richard Bell:

The State Clearinghouse submitted the above named Negative Declaration to selected state agencies for review. The review period closed on November 14, 2005, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2005101059
Project Title Subsurface Intake System Feasibility Investigation - Test Slant Well
Lead Agency Orange County Municipal Water District

Type Neg Negative Declaration

Description To determine the feasibility of developing a subsurface intake system for the Dana Point Ocean Desalination Project, this test slant well drilling project will be conducted to determine the hydrogeology and water quality characteristics of the San Juan Creek alluvial channel structure offshore from its mouth, which is wholly situated within Doheny State Beach.

Lead Agency Contact

Name Richard Bell
Agency Orange County Municipal Water District
Phone 714-593.5003 **Fax**
email
Address 10500 Ellis Ave.
City Fountain Valley **State** CA **Zip** 92728

Project Location

County Orange
City Dana Point
Region
Cross Streets Pacific Coast Highway and Dana Point Harbor Drive
Parcel No.
Township 8S **Range** 8W **Section** Unsect **Base** Dana Pt.

Proximity to:

Highways 5
Airports
Railways Yes
Waterways Pacific Ocean and San Juan Creek
Schools
Land Use State Beach / Public Recreation

Project Issues Aesthetic/Visual; Air Quality; Archaeologic-Historic; Geologic/Seismic; Noise; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Landuse; Cumulative Effects

---

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Game, Region 5; Department of Fish and Game, Marine Region; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 12; Department of Health Services; Native American Heritage Commission; Public Utilities Commission; State Lands Commission; Regional Water Quality Control Board, Region 9; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Clean Water Program

---

Date Received 10/13/2005 **Start of Review** 10/13/2005 **End of Review** 11/14/2005

Note: Blanks in data fields result from insufficient information provided by lead agency.

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
10500 Ellis Avenue
Fountain Valley, CA 92708
714/963-3058

EXCERPT OF MINUTES OF THE MEETING
OF THE BOARD OF DIRECTORS

DATE OF MEETING: November 21, 2005
DIRECTORS PRESENT: Wayne A. Clark, Larry D. Dick, Joan C. Finnegan, Susan Hinman, and Ed Royce, Sr.
DIRECTORS ABSENT: Ergun Bakall, Brett Barbre

The following item was included on the Municipal Water District of Orange County November 21, 2005 Board agenda, and was approved as follows:

DANA POINT TEST SLANT WELL CEQA APPROVAL AND CERTIFICATION AND AUTHORIZATION TO ENTER INTO A 5-YEAR LEASE WITH THE STATE LAND'S COMMISSION FOR THE TEST SLANT WELL

Upon MOTION by Director Finnegan, which was seconded by Director Hinman, and carried (5-0), the Board adopted RESOLUTION NO. 1780, Adopting a Negative Declaration for the Dana Point Ocean Desalination Project Subsurface Intake System Feasibility Investigation Test Slant Well Project, by the following roll call vote:

AYES: Directors Clark, Dick, Finnegan, Hinman & Royce
NOES: None
ABSENT: Directors Bakall and Barbre
ABSTAIN: None

Upon MOTION by Director Finnegan, which was seconded by Director Hinman, and carried (5-0-), the Board approved execution of the State Lands Commission Lease by the General Manager for the Test Slant Well Project.

I, MARIBETH GOLDSBY, Secretary of the Board of Directors of Municipal Water District of Orange County, do hereby certify the foregoing is a true and correct excerpt of the Preliminary Minutes of the November 21, 2005, Meeting of the Board of Directors jointly with the Public Affairs/MET Oversight Committee of the Municipal Water District of Orange County.

11-21-05
Date

Maribeth Goldsby
Secretary, Municipal Water
District of Orange County

RESOLUTION NO. 1780

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY ADOPTING A NEGATIVE DECLARATION FOR THE DANA POINT OCEAN DESALINATION PROJECT SUBSURFACE INTAKE SYSTEM FEASIBILITY INVESTIGATION TEST SLANT WELL PROJECT

WHEREAS, a Notice of Availability of an Initial Study and Proposed Negative Declaration for a subsurface intake system feasibility investigation test slant well project was published on October 13, 2005, in compliance with California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the Initial Study and Proposed Draft Negative Declaration was made available for public comment for 30-days beginning October 14, 2005 and ending November 14, 2005,

WHEREAS, the Board of Directors as CEQA Lead Agency, reviewed the Initial Study and Proposed Negative Declaration,

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY DOES HEREGY RESOLVE AS FOLLOWS:

1. The Board of Directors has reviewed and considered the Initial Study and Negative Declaration, together with any comments received during the public review process, prior to acting on the project.

2. The Board of Directors finds, based on the whole record before it, including the Initial Study and Negative Declaration and any comments received that there is no substantial evidence that the Project will have a significant effect on the environment, and that the Negative Declaration reflects the Municipal Water District of Orange County's independent judgment and analysis. Therefore, the Board of Directors hereby approves the Negative Declaration.

NOW, THEREFORE, BE IT FURTHER RESOLOVED, that a Negative Declaration, attached hereto as Exhibit A, is hereby adopted with respect to environmental effects of the proposed Test Slant Well Project.

Said Resolution was adopted, on roll call, by the following vote:

AYES:	Directors Clark, Dick, Finnegan, Hinman & Royce
NOES:	None
ABSENT:	Directors Bakall and Barbre
ABSTAIN:	None

I hereby certify the foregoing is a true and correct copy of Resolution No. 1780 adopted by the Board of Directors of Municipal Water District of Orange County at its meeting held on November 21, 2005.

ATTEST:

Maribeth Goldsby, Secretary
Municipal Water District of Orange County

Tom Daly
County Clerk-Recorder
12 Civic Center Plaza, Rm.106
PO Box 238
Santa Ana, CA 92702

MUNICIPAL WATER DISTRICT OF ORANGE
10500 ELLIS AVE.
FOUNTAIN VALLEY, CA 92728

RECEIVED
NOV 17 2005
MWD OF OC

Memorandum

SUBJECT: Environment Impact Reports
Amendment of "Public Resources Code, Section 21092.3"

The attached notice was received, filed and a copy was posted on **10/12/2005** It remained posted for 30 (THIRTY) days.

Tom Daly
County Clerk-Recorder
In and for the County of Orange

By: _____Deputy

Public Resource Code 21092.3

The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the County Clerk of each county in which the project will be located and shall remain for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The County Clerk shall post notices within 24 hours of receipt.

Public Resources Code 21152

All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the County clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than nine months.

DEPARTMENT OF TRANSPORTATION
District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894

RECEIVED
NOV 07 2005
MWD OF OC

Flex your power!
Be energy efficient!

October 31, 2005

Mr. Richard Bell
Municipal Water District of Orange County
10500 Ellis Avenue
Fountain Valley, CA. 92728

File: IGR/CEQA
SCH#: 2005101059
Log #: 1647
SR #: I-5

Subject: Subsurface Intake System Feasibility Investigation Test Slant Well Negative Declaration.

Dear Mr. Bell,

Thank you for the opportunity to review and comment on the **Subsurface Intake System Feasibility Investigation Test Slant Well Negative Declaration.** The proposed project is to determine the feasibility of developing a subsurface in take system for the Dana Point Ocean Desalination Project, this test slant well drilling project will be conducted to determine the hydrogeology and water quality characteristics of the San Juan Creek alluvial channel structure offshore from its mouth.

Caltrans District 12 is a reviewing agency on this project, and has no comment at this time.

If you have any questions or need to contact us, please do not hesitate to call Aileen Kennedy at (949) 724-2239.

Sincerely,

ROBERT F. JOSEPH
Chief of Advanced Planning Branch
District 12

c: Terry Roberts, Office of Planning and Research
Terri Pencovic, Caltrans HQ IGR/Community Planning
Gale McIntyre, District 12 Deputy Director of Planning
Isaac Alonso Rice, Traffic Operations
Grace Pina Garrrett, NPDES

Form A

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, PO Box 3044, Sacramento, CA 95812-3044 916/445-0613

SCH # _____

Project Title: Subsurface Intake System Feasibility Investigation – Test Slant Well

Lead Agency: Municipal Water District of Orange County
Contact Person: Richard Bell
Mailing Address: 10500 Ellis Ave.
Phone: (714) 593-5003
City: Fountain Valley, CA
Zip: 92728
County: Orange

Project Location:

County: Orange
City/Nearest Community: Dana Point
Cross Streets: Pacific Coast Highway and Dana Point Harbor Drive
Zip Code: 92629
Total Acres: 0.2
Assessor's Parcel No. N/A
Section: unsectioned
Twp. 8S
Range: 8W
Base: Dana Point
Within 2 Miles: State Hwy #: 5
Waterways: Pacific Ocean and San Juan Creek
Airports:
Railways: Yes
Schools:

Document Type:

CEQA:
- [ ] NOP
- [ ] Early Cons
- [x] Neg Dec
- [ ] Draft EIR
- [ ] Supplement/Subsequent EIR (Prior SCH No.)
- [ ] Other

NEPA:
- [ ] NOI
- [ ] EA
- [ ] Draft EIS
- [ ] FONSI

Other:
- [ ] Joint Document
- [ ] Final Document
- [ ] Other

Local Action Type:

- [ ] General Plan Update
- [ ] General Plan Amendment
- [ ] General Plan Element
- [ ] Community Plan
- [ ] Specific Plan
- [ ] Master Plan
- [ ] Planned Unit Development
- [ ] Site Plan
- [ ] Rezone
- [ ] Prezone
- [ ] Use Permit
- [ ] Land Division (Subdivision, etc.)
- [ ] Annexation
- [ ] Redevelopment
- [x] Coastal Permit
- [ ] Other

Development Type:

- [ ] Residential: *Units* ____ *Acres* ____
- [ ] Office: *Sq.ft.* ____ *Acres* ____ *Employees* ____
- [ ] Commercial: *Sq.ft.* ____ *Acres* ____ *Employees* ____
- [ ] Industrial: *Sq.ft.* ____ *Acres* ____ *Employees* ____
- [ ] Educational
- [ ] Recreational
- [x] Water Facilities: *Type* Test Slant Well *MGD* ____
- [ ] Transportation: *Type* ____
- [ ] Mining: *Mineral* ____
- [ ] Power: *Type* ____ *Watts* ____
- [ ] Waste Treatment: *Type* ____
- [ ] Hazardous Waste: *Type* ____
- [ ] Other:

Funding (approx.): Federal $ 250,000 State $ 650,000 Total $ 1,300,000

Project Issues Discussed in Document:

- [x] Aesthetic/Visual
- [ ] Agricultural Land
- [x] Air Quality
- [x] Archeological/Historical
- [ ] Coastal Zone
- [ ] Drainage/Absorption
- [ ] Economic/Jobs
- [ ] Fiscal
- [ ] Flood Plain/Flooding
- [ ] Forest Land/Fire Hazard
- [x] Geologic/Seismic
- [ ] Minerals
- [x] Noise
- [ ] Population/Housing Balance
- [x] Public Services/Facilities
- [x] Recreation/Parks
- [ ] Schools/Universities
- [ ] Septic Systems
- [ ] Sewer Capacity
- [x] Soil Erosion/Compaction/Grading
- [ ] Solid Waste
- [x] Toxic/Hazardous
- [ ] Traffic/Circulation
- [x] Vegetation
- [x] Water Quality
- [x] Water Supply/Groundwater
- [x] Wetland/Riparian
- [x] Wildlife
- [ ] Growth Inducing
- [x] Landuse
- [x] Cumulative Effe
- [ ] Other

POSTED
OCT 12 2005
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

Present Land Use/Zoning/General Plan Designation:

State beach/public recreation

Project Description:

To determine the feasibility of developing a subsurface intake system for the Dana Point Ocean Desalination Project, this test slant well drilling project will be conducted to determine the hydrogeology and water quality characteristics of the San Juan Creek alluvial channel structure offshore from its mouth, which is wholly situated within Doheny State Beach. Test slant well drilling will be accomplished using a dual wall reverse circulation (DWRC) DR-40 "Barber" type drilling rig modified for angle (slant) drilling. The test well will be drilled at an angle from horizontal (approximately 23°) in order to obtain data about aquifer materials and water quality underneath the ocean floor.

Reviewing Agencies Checklist

Form A, continued

KEY
S = Document sent by lead agency
X = Document sent by SCH
✓ = Suggested distribution

_____**Resources Agency**
_____Boating & Waterways
_____Coastal Commission
_____Coastal Conservancy
_____Colorado River Board
_____Conservation
_____Fish & Game
_____Forestry & Fire Protection
_____Office of Historic Preservation
_____Parks & Recreation
_____Reclamation Board
_____S.F. Bay Conservation & Development Commission
_____Water Resources (DWR)

Business, Transportation & Housing
_____Aeronautics
_____California Highway Patrol
_____CALTRANS District #_____
_____Department of Transportation Planning (headquarters)
_____Housing & Community Development

_____**Food & Agriculture**

Health & Welfare
_____Health Services _____

State & Consumer Services
_____General Services
_____OLA (Schools)

Environmental Protection Agency
_____Air Resources Board
_____California Waste Management Board
_____SWRCB: Clean Water Grants
_____SWRCB: Delta Unit
_____SWRCB: Water Quality
_____SWRCB: Water Rights
_____Regional WQCB #_____ (_____)

Youth & Adult Corrections
_____Corrections

Independent Commissions & Offices
_____Energy Commission
_____Native American Heritage Commission
_____Public Utilities Commission
_____Santa Monica Mountains Conservancy
_____State Lands Commission
_____Tahoe Regional Planning Agency

_____Other _____

POSTED
OCT 12 2005
TOM DALY, CLERK-RECORDER
By _____ DEPUTY

Public Review Period (to be filled in by lead agency)

Starting Date October 14, 2005 Ending Date November 14, 2005

Signature _____ Date October 12, 2005

Lead Agency (Complete if applicable):
Consulting Firm: Municipal Water District of Orange County
Address: 10500 Ellis Ave.
City/State/Zip: Fountain Valley, CA 92728
Contact: Richard Bell
Phone: (714) 593-5003

Applicant: Municipal Water District of Orange County
Address: 10500 Ellis Ave.
City/State/Zip: Fountain Valley, CA 92728
Phone: (714) 593-50003

For SCH Use Only:
Date Received at SCH _____
Date Review Starts _____
Date to Agencies _____
Date to SCH _____
Clearance Date _____
Notes:

Responses to Comment Letter A41_xii

Response to Comment A41_xii: This document is a copy of the Notice of Determination for the Initial Study/Negaive Declaration – Subsurface Intake Feasibility Investigation Test Slant Well. No response is required.

Subject: FW: MLPA CEQA Comments
From: Dodge, Theresa
Date: Wed, 20 Oct 2010 08:28:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Tom,
I dropped off a hard copy of our comment letter yesterday in case these e-mails did not get through. Please let me know if breaking the document into two pieces made it through the cyber barriers at your office.

Thanks

-----Original Message-----
From: Dodge, Theresa
Sent: Tuesday, October 19, 2010 8:23 AM
To: 'Thomas Napoli'
Subject: MLPA CEQA Comments

Tom,
I've had our comment letter separated into two documents. The first is the letter through attachment C. The second is attachments D and E. These are being submitted on behalf of Mr. Phil Friess. Please contact him if you have any questions on these issues.

Philip L. Friess
Technical Services Department Head
County Sanitation Districts of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601
(562) 908-4288, extension 2501

Let me know if these two emails get through with attachments. The hard copy of our comments were mailed on Friday October 15, 2010. You may receive those today as well.

Theresa

Theresa Dodge
Senior Engineer
Facilities Planning
Sanitation Districts of Los Angeles County
(562) 908 4288 ext 2599

Attachment: TEXT36.htm
Attachment: Mime47.822

Responses to Comment Letter A67

Response to Comment A67: This email notifies Department staff that the commenter has delivered a hard copy of a letter commenting on the Draft EIR to the Department. The email does not address the content or adequacy of the Draft EIR. Comment noted.

Subject: MLPA CEQA Comments
From: Dodge, Theresa
Date: Tue, 19 Oct 2010 08:24:00
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Tom,

Here is the second part of our comment letter, Attachments D and E. These are being submitted on behalf of Mr. Phil Friess. Please contact him if you have any questions on these issues.

Philip L. Friess
Technical Services Department Head
County Sanitation Districts of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601
(562) 908-4288, extension 2501

Let me know if these two emails get through with attachments. The hard copy of our comments were mailed on Friday October 15, 2010. You may receive those today as well.

Theresa

Theresa Dodge
Senior Engineer
Facilities Planning
Sanitation Districts of Los Angeles County
(562) 908 4288 ext 2599

Attachment: TEXT9.htm
Attachment: CSDLAC_Comment_Letter_on_MPLA_SCSR_DEIR 2 of 2.pdf
Attachment: Mime14.822

Responses to Comment Letter A67_i

Responses to Comment Letter A67_i: This email notifies Department staff that the commenter has delivered a hard copy of a letter commenting on the Draft EIR to the Department. The email does not address the content or adequacy of the Draft EIR. Comment noted.

Subject: Fwd: County Sanitation District of LA County.pdf
From: Sherrie Fonbuena
Date: Mon, 04 Oct 2010 15:05:00
To: "FGC" <FGC@fgc.ca.gov>

>>> Carol Horn 10/4/2010 2:36 PM >>>
Attached is a letter from LA County Sanitation District to Thomas Napoli, DFG, South Coast MLPA Office, (Commissioners were cc'd) requesting comment letters submitted in response to notice of preparation.

Original to Sandy.

Carol

Attachment: County Sanitation District of LA County.pdf

Responses to Comment Letter A71_i

Response to Comment A71_i: This email serves to notify the Commission of a forthcoming letter from the same commenter, and does not comment on the content or adequacy of the Draft EIR. Comment noted.

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

August 3, 2010

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2010 AUG 31 PM 2:10

Mr. Thomas Napoli
Marine Life Protection Act / South Coast Study Region
Draft Environmental Impact Report
Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

Comments on the June 29, 2010 Notice of Preparation of
Draft Environmental Impact Report Regarding Marine Protected Areas in the
California South Coast Study Region Pursuant to the Marine Life Protection Act

Thank you for the opportunity to submit comments regarding the Notice of Preparation (NOP) of the draft environmental impact report (EIR), which will study the environmental impacts of the Integrated Preferred Alternative (IPA) and the other alternatives.

The Sanitation Districts are a confederation of 23 independent special districts located throughout Los Angeles County servicing the wastewater and solid waste management needs for over 5.7 million people. For over 87 years, the Sanitation Districts have operated one of the largest regional wastewater collection and treatment systems in the nation, with a service area that covers approximately 820 square miles and encompasses 78 cities and the unincorporated territories of Los Angeles County. Within the greater Los Angeles metropolitan area, the Sanitation Districts operate an interconnected system of sewers and wastewater treatment plants called the Joint Outfall System (JOS), which serves 17 districts, 73 cities and a population of over 5 million people. The terminal treatment plant in the JOS is the Joint Water Pollution Control Plant (JWPCP), which discharges to an ocean outfall system offshore of White Point on the southern side of the Palos Verdes Peninsula. The Sanitation Districts have actively participated in the Marine Life Protection Act (MLPA) process in the California South Coast Study Region (SCSR), not only because of our duty to protect the essential public health infrastructure that the Sanitation Districts operate off shore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Sanitation Districts have conducted to ensure the protection of the marine environment.

Throughout the MLPA process, the Sanitation Districts have stated our concerns relating to the proposed marine protected areas (MPAs) offshore of South Palos Verdes. Attachment A includes a list of all the letters we have submitted during the MLPA process, and Attachment B includes copies of our most recent letters dated February 19, 2010, and March 26, 2010. Unfortunately, the Sanitation Districts' input was not reflected in the recommendations of the Blue Ribbon Task Force (BRTF), whose IPA includes low-value MPAs offshore of South Palos Verdes that would overlie the Palos Verdes Shelf Superfund site, would protect very low quality habitats impacted by the Portuguese Bend Landslide

A05_iii-2

A05_iii-3

Recycled Paper

(PBL), would add very little biological productivity to the SCSR, and are in the immediate vicinity of the Sanitation Districts' ocean outfall system.

The Palos Verdes Shelf Superfund Site is listed on the Cortese List prepared by the Department of Toxic Substances Control. The NOP should have clearly identified this listing as required by CEQA Statute Section 21092.6. The Sanitation Districts and the U.S. Environmental Protection Agency (EPA) have previously informed the California Department of Fish and Game (DFG) in comment letters submitted during the MPA designation process that Abalone Cove and Point Vicente are located in a listed superfund site. DFG did not disclose this information in the NOP. Therefore, DFG should comply with Section 21092.6 and re-issue the NOP so that responsible and trustee agencies can provide appropriate NOP scoping comments regarding the superfund site and the MPA locations.

The Sanitation Districts have prepared a detailed response to the NOP regarding DFG's approach to preparing the draft EIR. To be consistent with Section 15082 of CEQA regarding NOP comments, the Sanitation Districts have included the following information in this comment letter:

- Significant environmental issues and mitigation measures to be studied in the draft EIR
- Reasonable alternatives to be included and analyzed in the draft EIR

Additionally, we have provided comments regarding the goals and objectives of the MLPA as they relate to the selection of the IPA and the inclusion of Abalone Cove State Marine Conservation Area (Abalone Cove) and Point Vicente State Marine Conservation Area (Point Vicente) in the IPA.

Significant Environmental Issues and Mitigation Measures

The NOP proposed a quantitative analysis of many environmental resources. Comment letters prepared by the Sanitation Districts to the Fish and Game Commission on February 19, 2010, and March 26, 2010, identified the existing environmental concerns in these two areas including the PBL, the Palos Verdes Shelf Superfund Site, and the proximity to the existing White Point ocean outfall system. When DFG prepared the EIRs for the other MPA designations within the state, they took the basic analytical approach that an MPA designation results in beneficial effects to the environment because the MPA designation protects an area from environmental impacts that could occur without the designation. The standard approach used by DFG for other MPA EIRs will be inadequate for the impact analysis of Abalone Cove and Point Vicente. The protections afforded by the MPA designation could attract species to an area of known environmental concerns and problems; consequently, this may not result in beneficial effects. Therefore, DFG's draft EIR cannot simply conclude that designating Abalone Cove and Point Vicente would result in a beneficial impact on the environment because an existing unprotected area would be protected. The draft EIR must include a detailed quantitative analysis to determine the appropriate impacts of designating Abalone Cove and Point Vicente within the MPA, based on the existing environmental conditions associated with these two locations. Such analysis is required in order to provide full disclosure of potential environmental effects resulting from the IPA and alternatives under CEQA. The recommended additional analysis is outlined below by subject matter/resource.

Baseline Conditions

Section 15125 of the CEQA Guidelines states an EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the NOP is published. According to CEQA, the environmental setting normally constitutes the baseline physical environmental conditions by which a lead agency determines whether an impact is significant. Therefore, as emphasized by the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality*

Management District (2010) 48 Cal.4th 310, the characterization of the baseline is imperative to making appropriate public disclosure of the "actual environmental impacts".

For the DFG MPA designation, the appropriate characterization of the baseline at Abalone Cove, Point Vicente, and the Palos Verdes Shelf will lead to the appropriate impact analysis in the draft EIR. Therefore, the draft EIR needs to include the following information to characterize the existing setting (and baseline for determining the environmental impacts of the IPA) at Abalone Cove, Point Vicente, and the Palos Verdes Shelf:

- Characteristics of the Portuguese Bend Landslide (PBL)
- Nature (thickness and type) of the sediment inundation within Abalone Cove and Point Vicente due to PBL
- Existing turbidity due to PBL
- Existing Palos Verdes Shelf Superfund Site and the levels of both DDT and PCB within Abalone Cove and Point Vicente
- Existing levels of DDT and PCB contamination in the bodies of invertebrates, fishes, mammals, and birds within Abalone Cove and Point Vicente
- Type and quality of inter-tidal and subtidal habitats
- Existing fish, mammal, and bird species present (including type and quantity) and their use of these areas (e.g., feeding, reproduction, roosting, etc)
- Existing health risk to invertebrates, fish, mammals, birds, and humans due to DDT and PCB contamination from the Palos Verdes Shelf Superfund Site
- Proximity of the existing outfall system to Abalone Cove and Point Vicente and the volume, direction, duration, concentrations, and other water quality characteristics associated with the release of treated effluent into the Pacific Ocean
- Regulatory requirements for operation of the existing outfall system and the existing monitoring and maintenance performed by the Sanitation Districts for the existing outfall system in Abalone Cove and Point Vicente and at the existing outfalls

This information should be included in the project description, hazards and hazardous materials, water quality and oceanography, biological resources, and public services and utilitiès sections of the draft EIR, where appropriate. For preparation of the draft EIR, DFG should be collecting the most up to date and detailed data of the characteristics listed above to establish the appropriate baseline from which to determine significant impacts. The Sanitation Districts would be willing to work with DFG to provide them with the extensive data we have collected on the Palos Verdes Shelf over the years.

Hazards and Hazardous Materials

The NOP identifies that the draft EIR will consider if the proposed IPA or alternatives would directly or indirectly increase the foreseeable risk of upset or accidental release of hazardous material to the environment from facilities or vessels operating within the SCSR. The NOP also states that the draft EIR will determine whether the proposed project IPA and alternatives will result in either direct or indirect emission of hazardous materials to the environment. Furthermore, the NOP states that the MPA location within the proposed project IPA and alternatives will be compared with a list of contaminated or polluted sites to determine if the proposed project IPA and alternatives will result in increased risk to the public or the environment.

A description of the Palos Verdes Shelf Superfund Site should also be included in the existing setting section of the hazards and hazardous materials section and text be incorporated stating that Abalone Cove and Point Vicente would be located within the Palos Verdes Shelf Superfund Site. Analysis and impacts associated with designating the MPA to include the Abalone Cove and Point Vicente locations should discuss the overlap with the Palos Verdes Shelf Superfund Site designation. This analysis in the hazards and hazardous materials section of the draft EIR should be cross referenced with the impact analysis in the water quality and oceanography section and/or the biological resources section for ease of reference to the readers.

Land Use

The NOP states the land use analysis will include a review and discussion of conflicts between land use and natural resource plans operating with the SCSR. As identified in Appendix G of the State CEQA Guidelines under the land use topic, the lead agency should address how the proposed project would:

> Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction of the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance adopted for the purpose of avoiding or mitigating and environmental effect).

Therefore, the Sanitation Districts recommend the land use section also analyze the consistency of the MLPA's regional goals and objectives as they apply to Abalone Cove and Point Vicente. It is appropriate to discuss the policy of the MLPA and the goals under the land use threshold because the MLPA was adopted for the purposes of a reduction in removal of a species within MPAs due to over-fishing and other anthropogenic activites (i.e., avoiding or mitigating an environmental effect). Under CEQA, the analysis of land use consistency, as with all environmental impacts, is always linked to physical environmental effects occurring either directly or indirectly from the proposed action and alternatives (CEQA Guidelines Sections 15002(g), 15126.2, 15358, 15382). Therefore, the disclosure of the inherent conflict between the MLPA goals and objectives and the proposed designation of Abalone Cove and Point Vicente within the IPA should be connected to the environmental impacts disclosed in the other sections of the draft EIR (e.g., water quality and oceanography, and biological resources) to determine if the inherent conflict presents a significant physical environmental effect. If so, the conflict must be deemed significant and alternatives must be sought to avoid or substantially reduce this impact.

Water Quality and Oceanography

The NOP acknowledges the potential for conflicts between existing facilities operations and permitting and the proposed MPAs. The NOP identifies that such conflicts will be analyzed in the water quality and oceanography section of the draft EIR. However, the Sanitation Districts propose several additions to the scope of analysis below.

The previous comment letters dated February 19, 2010, and March 26, 2010 have documented the existing conditions of the Palos Verdes Shelf area as degraded due to the PBL and the Palos Verdes Shelf Superfund Site. The Clean Water Act requires the EPA to set ambient water quality criteria (AWQC) to serve as national water quality standards to protect aquatic life. Although the waters overlaying the Palos Verdes Shelf have met the AWQC for PCBs, they do not meet the AWQC for DDT. Therefore, based on the EPA standards for protecting wildlife, the EPA has determined that contaminants found within these areas in the water, sediment, and in the fish do not meet the protective requirements of aquatic life.

The analysis in the draft EIR needs to include an evaluation of the suitability of existing habitat and quality on the Palos Verdes Shelf for MPA designation, including the effects of DDT/PCB and the PLB on habitat quality and potential MPA performance. Specifically the analysis should include:

- A description of the existing quantity, variation, and type of habitat in Abalone Cove, Point Vicente, and on the greater Palos Verdes Shelf
- A description of the PBL and the water quality characteristics generated by the PBL (e.g., turbidity, sedimentation, etc.) and the impact of these water quality characteristics on Abalone Cove and Point Vicente
- A description of the existing levels of DDT/PCB in the sediment and water column at Abalone Cove, Point Vicente, and the Palos Verdes Shelf and a quantitative analysis of the impact of these levels on the biological communities of the Abalone Cove and Point Vicente habitats (e.g., degraded habitat; only species tolerant of contaminated sediment are supported; reproductive impairment; etc.).

As part of this analysis, the draft EIR should include a discussion and analysis of the conflict of operating the Abalone Cove and Point Vicente MPAs within the Palos Verdes Shelf Superfund Site. This analysis would include any conflicts between the interim Record of Decision (IROD) activities proposed and discussed in the Letter from Carmen White, Remedial Project Manager, to Jim Kellogg dated February 18, 2010, and the designation of the MPAs. It should discuss the impact of the designation on the efforts to remediate the Palos Verdes Shelf, including any restrictions DFG would place on the remediation process. Alternatively, it should discuss the exclusions prescribed for these activities as identified by Table 1 of the Draft Initial Statement of Reasons for Regulatory Action for South Coast MPAs dated March 29, 2010. The Sanitation Districts also request a discussion and analysis of conflicts with the existing and continued operation of the existing outfall system. Specifically the analysis should include:

- Description of the existing and likely future regulatory requirements with which the Sanitation Districts comply and how they comply (regular monitoring, reporting, etc.)
- Description of the frequency, duration, and timing of current water quality monitoring by the Sanitation Districts
- Description of the existing effluent discharge characteristics,
- Analysis of the impact of existing effluent discharge on Abalone Cove and Point Vicente

Biological Resources

The NOP states that the draft EIR analysis will consider whether the IPA or alternatives would otherwise affect the life history of native species. However, this impact does not encompass the entire effects analysis of the proposed MPA designation. The draft EIR should include an analysis of the indirect adverse effects on the species that would otherwise benefit from the MPA designation and analyze the impact associated with re-building fish populations and other species populations in the Palos Verdes Shelf Superfund Site. For example, one effect of establishing MPAs is to benefit certain species by creating attractive sanctuary areas with less external disturbances. According to the Master Plan for Marine Protected Areas (approved February 2008), Appendix G: Master List of Species Likely to Benefit from MPAs: "A reduction in removal of a species within MPAs has been shown worldwide to increase abundance, mean size, and reproductive potential of certain fished species."

While an increase in fish numbers and size is generally regarded as a beneficial effect in most areas, there exists the potential for unintended negative effects on the fish, birds, and marine mammals in the Palos Verdes Peninsula area due to the effects of bioaccumulation of DDT and PCBs in the environment from existing conditions. Heal the Bay[1] advises the public not to consume nine fish species in the proposed MPA area that are also listed by DFG as likely to benefit from creation of an MPA (Appendix G):

- Top smelt
- Rockfishes
- Surf perches
- Black croaker
- Sculpin (scorpion fish)
- Queenfish
- Kelp bass
- Corbina
- White croaker

DFG's website, "Public Advisories on Fish Consumption,"[2] also warns about human consumption of species likely to bioaccumulate DDT and PCBs, species that are also listed as benefiting (increasing) from MPAs in the SCSR. While much of the focus has been on human consumption, the use of DDT was not originally banned by the federal government because of human health effects, but because of the near catastrophic effects on some bird species, including falcons, eagles, and brown pelicans, all of which occur in Abalone Cove and Point Vicente. The Science Advisory Team (SAT) identified that the ecological risk assessment conducted for the Palos Verdes Shelf indicated intermediate risk occurs south to southwest of the outfalls as well as northwest of Point Vicente. Specifically, the aquatic water quality criterion is not met for DDT in this area. White croaker, kelp bass, and sanddabs on the Palos Verdes Shelf generally exceed the DDT no observable effects concentration (NOEC).[3] White croaker and kelp bass are stated above to benefit from the MPA designation. Therefore, in order to fully analyze the potential negative effects of including Abalone Cove and Point Vicente in the IPA and to reach a science-based determination on the significance of the indirect effects of the MPA designation, DFG will need to study and disclose the expected changes in populations of the fish species listed above known to bioaccumulate DDT and PCBs, and analyze the effects on wildlife species and humans consuming increased amounts of contaminated fish. Specifically, the analysis should include:

- Description of the existing quantity, variation, and type of invertebrate, fish, bird, and mammal species located in Abalone Cove, Point Vicente, and the greater Palos Verdes Shelf
- Description of the existing levels of DDT/PCB in these various species
- Description of the bioaccumulation of DDT/PCB through each species and through the food chain

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[1] Available at: Hhttp://www.healthebay.org/enlargephoto/default.asp?photo=stayhealthy_consumptionguidelinesH. Accessed on: July 23, 2010.

[2] Available at: http://www.dfg.ca.gov/marine/fishcon1.asp. Accessed on: July 23, 2010.

[3] The NOEC for fish is 1,900 microgram/kilogram whole body tissue for DDT.

- Quantitative analysis of the changes in the existing species populations as a result of locating Abalone Cove and Point Vicente in the Palos Verdes Shelf Superfund Site (i.e., analyze the relationship between an increase in the population of species [due to the protection offered by Abalone Cove and Pointe Vicente] and the increased number of species with DDT/PCB due to bioaccumulation in each species and in the food chain)
- Quantitative assessment of the change in health risk to wildlife and humans from locating Abalone Cove and Point Vicente in the Palos Verdes Shelf Superfund Site

Public Services and Utilities

The NOP states that the analysis will include a review of whether the IPA and alternatives would result in the need for new governmental facilities or services. The NOP notes issues related to impacts to Publicly Own Treatment Works, such as the outfall system, will be discussed in the water quality section of the draft EIR. However, the Sanitation Districts believe the draft EIR should include the need for new facilities in the service area in this section as well. DFG should analyze the indirect effect of the MPA designation related to the need for and impacts of new sanitation facilities due to the restrictions associated with the MPA designations. Since these indirect impacts have less to do with water quality and more to do with impacts associated with building new facilities, it is appropriate to include them in the public services and utilities section. As identified in Appendix G of the State CEQA Guidelines under the public services topic, the lead agency should address how the proposed project would:

> Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

As discussed in previously submitted comment letters dated February 19, 2010, and March 26, 2010, a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system. Specifically, the State Water Resources Control Board (SWRCB) has stated that the designation of new state water quality protection areas (SWQPAs) to protect water quality in MPAs will occur sometime in the near future following the completion of the updated statewide MLPA network (SWRCB pers. comm.). Therefore, the draft EIR should include a detailed analysis of the extent of the MPA restrictions on the Sanitation Districts' outfall system and if the MPA designation would lead to the construction of new facilities to increase the level of treatment and/or potentially force a reduction in volume of discharge to the ocean. Furthermore, if the DFG analysis concludes that the Sanitation Districts would need to increase or change their treatment streams or reduce the volume of discharge, the DFG would be required to include an analysis of the potentially significant impacts associated with construction and operation of the new facilities in the draft EIR. The new facilities could include modifications or additions to the facilities at the Sanitation Districts' JWPCP or new upstream water reclamation plants. Impacts associated with these new facilities would be extensive and would include, but certainly not be limited to, the following:

- Air quality impacts associated with construction due to construction equipment and possibly operation due to emergency generators, turbines, and other facility equipment
- Biological resource impacts associated with construction depending on the location of the new facilities
- Greenhouse gas impacts associated with construction and operation
- Hydrology and water quality impacts associated with construction due to earth-moving efforts and the generation of sedimentation and erosion, and possibly operation due to new locations for the releases of discharge

- Land use and planning impacts associated with operation due to land use and zoning conflicts, depending on facility location
- Noise impacts associated with construction and operation due to equipment and machinery
- Transportation impacts associated with construction due to construction worker trips and equipment, and possibly operation due to new employee trips or relocating employees

The Sanitation Districts recommend the draft EIR include a discussion of these possible impacts related to these effects in the public services and utilities section. Furthermore, the draft EIR should include mitigation measures to reduce significant public service impacts.

Cumulative

Section 15130 of the 2010 CEQA Guidelines discusses the type and scope of the cumulative analysis. As defined in Section 15355, a cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. The discussion of cumulative impacts should reflect the severity of the impacts and their likelihood of occurrence. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contributed. Mitigation measures can be proposed to reduce cumulative impacts, and with some projects, the only feasible mitigation for cumulative impacts involves the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis. As discussed above under "Public Services and Utilities," the cumulative analysis of the draft EIR also needs to consider the reasonably foreseeable condition of the Regional Water Quality Control Board establishing SWQPAs, since this is a future project. The analysis needs to include the associated potential cumulative environmental effects resulting from the placement of MPAs in and around the White Point outfall system.

Alternatives

The NOP identifies three alternatives in addition to the IPA that will be analyzed in the draft EIR. The Sanitation Districts request that the draft EIR identify and analyze project alternatives that would reduce or avoid the potentially significant environmental effects the Sanitation Districts believe will be evident once DFG completes the environmental analysis described above with respect to the Palos Verdes Shelf. The Sanitation Districts specifically request an alternative be analyzed that consists of the IPA without the inclusion of Abalone Cove and Point Vicente, per the previously submitted February 19, 2010, and March 26, 2010 letters. Such an alternative would, in the opinion of the Sanitation Districts, have the potential for attaining most of the objectives of the MLPA while mitigating or avoiding the potential for significant adverse environmental impacts on the marine environment and important public infrastructure (see below under "Goals and Objectives of the MLPA" for additional details).

Section 15126.6 of the 2010 CEQA Guidelines states the EIR should describe the rationale for selecting the alternative to be discussed. Furthermore, the EIR should identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and explain the reasons underlying the lead agency's decision. Among the factors that may be taken into account when addressing the feasibility of an alternative are: site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, and jurisdictional boundaries.

The Sanitation Districts provided factual evidence regarding the infeasibility of including MPAs on the Palos Verdes Shelf in their previously submitted letters. The Palos Verdes Shelf is not suitable as

an MPA because of the PBL, the Palos Verdes Shelf Superfund Site, and the close proximity to the existing White Point outfall system. Therefore, the Sanitation Districts request that the alternatives analysis chapter fully describe the scientific rationale for including Abalone Cove and Point Vicente in the IPA.

Furthermore, the Sanitation Districts expect the draft EIR to include sufficient information about each alternative to allow a meaningful evaluation, analysis, and comparison with the proposed project, as required by CEQA. This information should include a discussion of the following: the scientific, environmental, and socioeconomic criteria used to select the IPA and the other alternatives (e.g., contaminated sediment, turbidity, etc.); a discussion of the SAT guidelines and if they were used as criteria to select alternatives; a description of the expected functionality and value of the IPA, and Abalone Cove and Point Vicente, compared to the alternatives.

Goals and Objectives of the MLPA

As CEQA requires the lead agency to assess the potential significant impacts of a proposed action and not necessarily the underlying value of the action itself, the goals of the MLPA and the objectives of the regional MPA are technically outside the scope of the draft EIR and purposes of an NOP. However, per CEQA (CEQA Guidelines 15093) the lead agency generally uses the goals and objectives as part of its reasoning for adopting a statement of overriding considerations (if the draft EIR concludes that there are significant and unavoidable impacts of the project with no feasible mitigation or alternatives). Therefore, the administrative record needs to be supported by substantial evidence that the goals and objectives are actually met by the proposed project.

These goals and objectives speak specifically to the protection of marine life populations and ecosystems as cited below and in the *California MLPA South Coast Project Regional Goals and Objectives and Design and Implementation Considerations for the MLP South Coast Study Region* dated February 26, 2009.

Goal 1. To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems.

1. Protect and maintain species diversity and abundance consistent with natural fluctuations, including areas of high native species diversity and representative habitats.
2. Protect areas with diverse habitat types in close proximity to each other.
3. Protect natural size and age structure and genetic diversity of populations in representative habitats.
4. Protect biodiversity, natural trophic structure and food webs in representative habitats.
5. Promote recovery of natural communities from disturbances, both natural and human induced, including water quality.

Goal 2. To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.

1. Help protect or rebuild populations of rare, threatened, endangered, depressed, depleted, or over-fished species, and the habitats and ecosystem functions upon which they rely.

2. Sustain or increase reproduction by species likely to benefit from MPAs, with emphasis on those species identified as more likely to benefit from MPAs, and promote retention of large, mature individuals.

3. Sustain or increase reproduction by species likely to benefit from MPAs with emphasis on those species identified as more likely to benefit from MPAs through protection of breeding, spawning, foraging, rearing or nursery areas or other areas where species congregate.

4. Protect selected species and the habitats on which they depend while allowing some commercial and/or recreational harvest of migratory, highly mobile, or other species; and other activities.

Goal 3. Improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.

1. Sustain or enhance cultural, recreational, and educational experiences and uses (for example, by improving catch rates, maintaining high scenic value, lowering congestion, increasing size or abundance of species, and protection of submerged sites).

2. Provide opportunities for scientifically valid studies, including studies on MPA effectiveness and other research that benefits from areas with minimal or restricted human disturbance.

3. Provide opportunities for collaborative scientific monitoring and research projects that evaluate MPAs that promote adaptive management and link with fisheries management, seabird and mammals information needs, classroom science curricula, cooperative fisheries research and volunteer efforts, and identify participants.

Goal 4. Protect marine natural heritage, including protection of representative and unique marine life habitats in CA waters for their intrinsic values.

1. Include within MPAs key and unique habitats identifies by the MLPA Master Plan Science Advisory Team for this study region.

2. Include and replicate to the extent possible [practicable], representatives of all marine habitats identified in the MLPA or California Marine Life Protection Act Master Plan for Marine Protected Areas across a range of depths.

Goal 5. To ensure that south coast California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines.

1. Minimize negative socio-economic impacts and optimize positive socio-economic impacts for all users including coastal dependent entities, communities and interests, to the extent possible, and if consistent with the Marine Life Protection Act and its goals and guidelines.

2. Provide opportunities for interested parties to help develop objectives, a long-term monitoring plan that includes standardized biological and socioeconomic monitoring protocols, a long-term education and outreach plan, and a strategy for MPA evaluation.

3. Effectively use scientific guidelines in the California Marine Life Protection Act Master Plan for Marine Protected areas.

4. Ensure public understanding of, compliance with, and stakeholder support for MPA boundaries and regulations.

5. Include simple, clear, and focused site-specific objectives/rationales for each MPA and ensure that site-level rationales for each MPA are linked to one or more regional objectives.

The Sanitation Districts do not believe the goals and objectives of the MLPA are met by the inclusion of Abalone Cove and Point Vicente in the IPA or its alternatives. Furthermore, the inclusion of Abalone Cove and Point Vicente as part of the IPA or its alternatives is in direct conflict with the MLPA regional goals and objectives. The location of Abalone Cove and Point Vicente conflicts with the goals and objectives primarily because of (1) the presence of the Palos Verdes Shelf Superfund Site and legacy contaminants known to occur at concentrations that pose a threat to the health of both humans and wildlife, (2) the presence of PBL, and (3) the ongoing discharge of treated wastewater adjacent to these sites. Abalone Cove and Point Vicente have been subject to high levels of disturbance over the years; and they hold very little intrinsic value.

The location of Abalone Cove and Point Vicente conflicts with Goal 1. Abalone Cove and Point Vicente would not promote recovery from human-induced impacts since remediation of the Palos Verdes Shelf Superfund Site will continue for many decades.

The inclusion of Abalone Cove and Point Vincent in the IPA does not support Goal 2. It is illogical to rebuild fish populations that are depleted if those populations would be adversely affected by DDT/PCB. Furthermore, as discussed above under "Significant Environmental Issues and Mitigation Measures – Biological Resources," it is likely there would be significant environmental impacts if the designation of Abalone Cove and Point Vicente results in increased reproduction by species likely to benefit from MPAs and promotes the retention of large, mature individuals, since these species would likely have bioaccumulated DDT/PCB.

The inclusion of Abalone Cove and Point Vincent in the IPA does not support Goal 3. Abalone Cove and Point Vicente are not locations that have experienced "minimal human disturbance." The Palos Verdes Shelf has been highly disturbed by the presence of DDT/PCB at the superfund site.

Abalone Cove and Point Vicente do not have unique intrinsic value and, therefore, are in conflict with Goal 4. The south face of the Palos Verdes Peninsula (the area between Point Fermin and Point Vicente) lacks key habitats outlined by the SCSR SAT as being important in a functional MPA network and is impacted by the PBL.

The inclusion of Abalone Cove and Point Vicente in the IPA conflicts with Goal 5 because it does not follow SAT guidance on the Palos Verdes MPAs. For example, the SAT recommended the following design guidance regarding this portion of the Palos Verdes Shelf:

- Areas nearest the outfalls are less favorable for MPA placement due to legacy contaminants and the current effluent flow
- Areas of ongoing and planned EPA fieldwork and mitigation activities at White Point are more vulnerable to perturbation and, therefore, less favorable in the short term for proposed MPA placement
- The area from Portuguese Bend Cove to White Point would be subject to turbidity and sedimentation at levels that affect organisms and biological communities as addressed above, and also would be less favorable for MPA placement

The Sanitation Districts request that the Fish and Game Commission and staff carefully consider the many issues raised in this letter. The Sanitation Districts have a responsibility to more than 5 million people to protect essential public health infrastructure from unintended impacts resulting from

the MLPA process. We strongly recommend the draft EIR use sound science and not adopt Abalone Cove and Point Vicente as part of the IPA or any other recommended project. Thank you for consideration of our comments. We look forward to providing further assistance and information in connection with the preparation of the draft EIR for this project.

Very truly yours,

Stephen R. Maguin

Philip L. Friess

Philip L. Friess
Department Head
Technical Services

PLF:TJL:CB:ddg

Attachment A List of Comment Letters Submitted by the Sanitation Districts During the SCSR MPA Process

Attachment B Letters Submitted by the Sanitation Districts on February 19, 2010, and March 26, 2010

cc: Fish and Game Commissioners

Responses to Comment Letter A71_ii

Response to Comment A71_ii: This letter comments on the NOP, and the Draft EIR has incorporated NOP comments.

Subject: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Reg
From: Saenz, Ronald
Date: Tue, 19 Oct 2010 15:51:00
To: MLPAComments, 'MLPAComments@dfg.ca.gov'
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Hello Thomas, this email is to notify you that SANDAG's comments will arrive tomorrow.

Sincerely,

Ron Saenz
San Diego Association of Governments (SANDAG)
401 B Street, Suite 800
San Diego, CA 92101-4231

Tel. (619) 699-1922
Fax. (619) 699-1905
www.sandag.org<http://www.sandag.org>

Attachment: TEXT11.htm
Attachment: Mime16.822

Responses to Comment Letter A77

Response to Comment A77: This email serves to notify the Commission of a forthcoming letter from the same commenter, and does not comment on the content or adequacy of the Draft EIR. Comment noted.

Letter A92_i

WATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
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STEPHEN R. MAGUIN
Chief Engineer and General Manager

October 15, 2010

Mr. Thomas Napoli
Marine Life Protection Act / South Coast Study Region
Draft Environmental Impact Report
Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

MLPA CEQA Comments

Thank you for the opportunity to submit comments on the draft environmental impact report ("DEIR") regarding the Integrated Preferred Alternative ("IPA") and other alternatives for the South Coast Study Region ("SCSR"). The County Sanitation Districts of Los Angeles County ("Sanitation Districts") have actively participated in the Marine Life Protection Act ("MLPA") process for the SCSR, not only because of our duty to protect the essential public health infrastructure that the Sanitation Districts operate offshore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Sanitation Districts have conducted to ensure the protection of the marine environment. As a result, the Sanitation Districts have expert knowledge of the marine environment near the Palos Verdes Peninsula.

The Sanitation Districts are a confederation of 23 independent special districts located throughout Los Angeles County serving the wastewater and solid waste management needs for over 5.7 million people. For over 87 years, the Sanitation Districts have operated one of the largest regional wastewater collection and treatment systems in the nation, with a service area that covers approximately 820 square miles and encompasses 78 cities and the unincorporated areas of Los Angeles County. Within the greater Los Angeles metropolitan area, the Sanitation Districts operate an interconnected system of sewers and wastewater treatment plants called the Joint Outfall System ("JOS") that serves 17 districts, 73 cities, and a population of over 5 million people. The terminal treatment plant in the JOS is the Joint Water Pollution Control Plant ("JWPCP"), which discharges to an ocean outfall system offshore of White Point on the southern side of the Palos Verdes Peninsula.

Throughout the MLPA process, the Sanitation Districts have stated our concerns relating to the proposed marine protected areas ("MPAs") offshore of the Palos Verdes Peninsula. The Sanitation Districts also submitted a comment letter dated August 3, 2010, regarding the Notice of Preparation ("NOP") ("NOP comment letter") that provided recommendation about the scope and type of analysis that should be included in the DEIR. Attachment A contains a list of all of the letters we have submitted during the MLPA and CEQA processes, and Attachment B includes copies of our most recent comment letters dated August 3, 2010, February 19, 2010, and March 26, 2010.

None of the Sanitation Districts' comments in the NOP comment letter regarding the scope and type of analysis necessary were reflected in the DEIR. The DEIR failed to analyze or even mention several of the environmental impact issues identified by the Sanitation Districts. In the absence of evidence to support the impact analysis and significance determinations related to air quality, water quality, biology, and hazardous and hazardous materials provided in the DEIR, the Sanitation Districts question whether the California Department of Fish and Game ("DFG") has prepared an adequate DEIR and whether the administrative record contains substantial evidence to support any approval of the proposed action by the Fish and Game Commission.

On September 10, 2010, the Sanitation Districts sent a letter to DFG requesting all letters and scoping comments received in response to the NOP be posted on its website as it had done for the Central Coast and North Central Coast Study Areas. This information is important for the Sanitation Districts and other stakeholders to consider when reviewing the DEIR. DFG staff did not respond to this written request or make these letters and comments available during the review.

This comment letter contains the following sections, which are generally organized according to the sections of the DEIR:

- NOP Comments Not Considered in Preparing the DEIR
- Baseline Conditions and General Analysis (All DEIR Chapters and Sections)
- Chapter 3.0, Project Description
- Section 6.1, Air Quality, and Section 6.2, Global Climate Change and Greenhouse Gas Emissions
- Section 6.3, Water Quality and Oceanography
- Chapter 7.0, Biological Resources
- Section 8.2, Public Services and Utilities
- Section 8.3, Land Use and Recreational Resources
- Section 8.4, Recreational Vessels
- Section 8.5, Hazards and Hazardous Materials
- Chapter 9.0, Cumulative
- Chapter 10.0, Alternatives

Each section identifies information that was requested in the NOP comment letter but not addressed in the DEIR and includes a discussion of statements made in the DEIR that require clarification or additional analysis. The DEIR statements requiring clarification are also summarized in Attachment C. In addition, the Sanitation Districts recently commissioned two technical reports prepared by leading experts to discuss the performance of the proposed Point Vicente State Marine Conservation Area ("Point Vicente SMCA") and Abalone Cove State Marine Conservation Area ("Abalone Cove SMCA") and the effect of the existing Palos Verdes Superfund Site ("PVSS") on the proposed SMCAs. These technical reports are included as Attachment D, An Analysis of the Proposed Point Vicente and Abalone Cove Marine Protected Areas and Attachment E, An Evaluation of the Impacts of the Palos Verdes Shelf Superfund Site on Proposed Marine Protected Areas off the Palos Verdes Peninsula, and are referenced throughout the various sections of this letter.

NOP Comments Not Considered in Preparing the DEIR

Section 15375 of the CEQA Guidelines states that the purpose of the NOP is to solicit guidance from Responsible Agencies, Trustee Agencies, the Office of Planning and Research, and involved federal agencies as to the scope and content of the environmental information to be included in the EIR. The NOP scoping period for the SCSR started June 29, 2010, and ended August 3, 2010. Fifteen days later, on August 18, 2010, the 500-plus page DEIR was released to the public. A92_i-1

Although CEQA does not specify a minimum time for the lead agency to consider and address comments raised during the NOP comment period, release of the DEIR within approximately 2 weeks after the close of the NOP comment period strongly suggests that, contrary to the policy underlying CEQA, DFG made no significant attempt to consider the scoping issues comments (see CEQA Guidelines Sections 15002(j), 15003, 15044, 15082, 15083). Because of the time required to prepare a DEIR of this magnitude, it is obvious that the analyses in the DEIR were completed prior to the end of the scoping period. The DEIR could not adequately address any of the issues raised by the Sanitation Districts or others during the NOP scoping period because there was insufficient time for DFG to consider the issues raised and prepare the appropriate analyses. The specific issues raised by the Sanitation Districts' comments will be addressed separately in this letter.

Since the NOP scoping comments were not considered in the DEIR, and many substantive issues raised by the Sanitation Districts and others identifying potentially significant impacts were not addressed in the DEIR, we believe that the EIR should be revised to include a full discussion of all the substantive issues identified during the NOP scoping period. The revised EIR must provide analyses supported by substantial evidence regarding the significance of the potential impacts identified and, where appropriate, must address any feasible mitigation measures or alternatives that may avoid or substantially reduce the potentially significant impacts.

Baseline Conditions and General Analysis (All DEIR Chapters and Sections)

The CEQA Guidelines require that an EIR include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the NOP is published (CEQA Guidelines Section 15125). The environmental setting normally constitutes the baseline physical environmental conditions by which a lead agency determines whether an impact is significant. Characterization of the baseline is crucial to appropriately disclosing the actual environmental impacts of a project. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010), 48 Cal.4th 310, 321-322) A92_i-2

As stated in the Sanitation Districts NOP comment letter, the DEIR should have included information characterizing the existing setting to provide a baseline for determining the environmental impacts of MPAs identified in the IPA. Specifically, the existing setting should have been characterized at the proposed Point Vicente and Abalone Cove SMCAs on the Palos Verdes Shelf. This information is important not only for creating a DEIR with a complete and appropriate administrative record demonstrating full disclosure, but also it is fundamental to the impact analysis. The following information should have been included in the water quality and oceanography, biological resources, public services and utilities, and hazards and hazardous materials sections of the DEIR:

- Characteristics of the Portuguese Bend Landslide, Klondike Canyon Landslide, and Abalone Cove Landslide ("PBL").
- Nature (thickness and type) of the sediment within the proposed Abalone Cove and Point Vicente SMCAs due to the PBL.

- Existing turbidity due to the PBL.
- Existing PVSS and the levels of both dicholorodiphenyltricholoroethane ("DDT") and polychlorinated biphenyls ("PCB") within the proposed Abalone Cove and Point Vicente SMCAs. A92_i-2 cont'd
- Existing levels of DDT and PCB contamination in the bodies of invertebrates, fishes, mammals, and birds within the proposed Abalone Cove and Point Vicente SMCAs.
- Existing fish, mammal, and bird species present (including type and quantity) and their use (e.g., feeding, reproduction, and roosting) of the proposed Abalone Cove and Point Vicente SMCAs, and the Palos Verdes Shelf.
- Existing health risk to invertebrates, fish, mammals, birds, and humans due to DDT and PCB contamination from the PVSS.
- Proximity of the existing ocean outfall system to the proposed Abalone Cove and Point Vicente SMCAs and the volume, direction, duration, concentrations, and other water quality characteristics associated with the release of treated effluent into the Pacific Ocean up-current from these SMCAs.
- Regulatory requirements for operation of the existing ocean outfall system and the existing monitoring and maintenance performed by the Sanitation Districts for the existing ocean outfall system in the proposed Abalone Cove and Point Vicente SMCAs and at the existing outfalls.

An appropriate description of the existing setting or baseline at the proposed Abalone Cove and Point Vicente SMCAs and at the Palos Verdes Shelf would provide a more appropriate impact analysis for the DEIR. This information is not included in the project description of the DEIR, or in any other section of the DEIR. The DEIR failed to establish baseline conditions necessary to analyze the potential environmental impact of the IPA.

Also, DFG failed to collect and analyze the most up-to-date and detailed data available regarding the existing setting. The Sanitation Districts offered in the NOP comment letter to work with DFG and provide the extensive data that the Sanitation Districts regularly collect on the Palos Verdes Shelf. In fact, more than 1½ years ago the Sanitation Districts provided DFG with information to help characterize the baseline for the analysis, which should have been included in the DEIR (e-mail to Brian Owens, May 15, 2009). These reports and scientific publications were again submitted via compact disk in the Districts' February 19, 2010 comment letter to the Fish and Game Commission (Attachment B). None of this data was used in the DEIR, and the Sanitation Districts are not even listed as a reference in the document. This demonstrates that DFG failed to use any of this relevant information to analyze the potential impacts of its IPA.

Chapter 3.0, Project Description

The PVSS is listed on the Cortese List prepared by the Department of Toxic Substances Control;[1] however, DEIR Section 3.1, "Project Location," (Page 3-2) describes the entire Palos Verdes Peninsula A92_i-3

[1] As identified in the Sanitation Districts NOP comment letter dated August 3, 2010: the NOP should have clearly identified this listing, as required by CEQA Statute Section 21092.6. The Sanitation Districts and the U.S. Environmental Protection Agency (EPA) have previously informed the California Department of Fish and Game (DFG) in comment letters submitted during the MPA designation process that Abalone Cove and Point Vicente are located in a listed Superfund Site. DFG did not disclose this information in the NOP and, therefore, many parties commenting on the NOP were unaware of the fact that DFG was planning to designate the MPA within an area designated as a Superfund Site on the Cortese List. Therefore, DFG should correct this inadequacy and withdraw the DEIR, comply with Section 21092.6 and re-issue the NOP so responsible and trustee agencies and the public can provide appropriate NOP scoping comments regarding the superfund site and the MPA locations. After receiving

and fails to mention the PVSS or the contaminants that currently exist there. Because these existing conditions are omitted from the DEIR, its project description is inadequate.

The project description also inexplicably omits mention of any continuing operation of the White Point ocean outfall system from discussions of the Point Vicente SMCA (Section 3.5.10) and Abalone Cove State Marine Park ("SMP") and SMCA (Section 3.5.11) while mentioning the PVSS remediation program. This omission makes the project description incomplete, in part, because the DEIR does not fully describe the regulations applicable to the project area. As requested by the Sanitation Districts in their November 4, 2009 letter, the following language for both of these SMCAs should be included under "Proposed Modifications of Other Regulated Activities": A92_i-3 cont'd

> The intent of the MPA is to allow ongoing and future operations associated with the Sanitation Districts of Los Angeles County's White Point Outfall system to continue without restriction. It would be inappropriate to redesignate the Abalone Cove SMCA and the Point Vicente SMCA as a state marine reserve and/or state water quality protection areas (e.g., ASBS) due to the proximity of these locations to the White Point ocean outfall system and the critical need for ongoing operations of this infrastructure to protect the public health of the residents of Los Angeles County.

The language from the November 4, 2009 letter needs to be added to the project description of the DEIR. Also, the project description needs to be modified to accurately reflect baseline conditions including the PVSS and Outfall, and the regulatory setting for the project area.

Section 6.1, Air Quality, and Section 6.2, Global Climate Change and Greenhouse Gas Emissions

The assessment of recreational vessel effects contained in Section 6.1.3.1.1, "Commercial Fishing Vessels and Commercial Passenger Fishing Vessels – All Areas" (Page 6.1-14) identifies a number of speculative assumptions made by DFG in connection with its analysis. These assumptions, while possibly applicable to the North Coast and Central Coast where recreational vessel traffic is more fragmented, are not appropriate for the SCSR. Recreational fishing is the dominant type of vessel traffic in the SCSR, and emissions from recreational fishing vessels should be modeled to provide a more accurate analysis. Data from recreational fishing groups, DFG fishing license and catch statistics, game warden observations, and Ecotrust fishing displacement analysis, should be included in this analysis to provide a realistic description of typical recreational users and a quantitative assessment of impacts associated with these vessels. This requires correction and revision of the analysis of air quality impacts associated with the project's effect of increasing recreational vessel travel as well as its conclusions regarding the significance of this impact. A92_i-4

The analysis of Criterion GHG-1 (Page 6.2-8) does not accurately quantify the increase in greenhouse gas emissions arising from increased recreational vessel traffic. These impacts of inclusion of the proposed Point Vicente and Abalone Cove SMCAs in the IPA must be disclosed and considered.

Attachment C identifies DEIR statements requiring clarification in Section 6.1. DFG's failure to substantiate or clarify these statements makes its analysis of the IPA inadequate pursuant to CEQA Guidelines Sections 15064, 15126.2, and 15151.

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comments to the revised NOP, DFG should modify the DEIR to correct this deficiency and the other deficiencies identified in this letter and in conjunction with the scoping and other comments received in response to that NOP.

Section 6.3, Water Quality and Oceanography

The Sanitation Districts NOP comment letter proposed several additions to the scope of analysis for the DEIR that were based on information we submitted to the Blue Ribbon Task Force ("BRTF") in previous comment letters in February and March 2010. These letters documented that the existing conditions at the Palos Verdes Shelf area are degraded due to the PBL and the PVSS. Based upon these conditions, the analysis was required to include an evaluation of the suitability of the Palos Verdes Shelf for MPA designation, including the effects of DDT and PCB and the PLB on habitat quality and potential MPA performance. No such analysis was included in the DEIR, and it must be revised to address these issues. Specifically, this analysis must include: A92_i-5

- A description of the PBL and water quality characteristics generated by the PBL (e.g., turbidity, sedimentation, etc.) and the impact of these water quality characteristics on the proposed Abalone Cove and Point Vicente SMCAs.
- A description of the existing levels of DDT/PCB in the sediment and water column at the proposed Abalone Cove and Point Vicente SMCAs and at the Palos Verdes Shelf, as well as a quantitative analysis of the impact of these levels on the biological communities of the habitats of these proposed SMCAs (e.g., degraded habitat, only species tolerant of contaminated sediment are supported, reproductive impairment, etc.).

The PVSS is not mentioned in Section 6.3.2.1.4, "Contaminated Sediment," and the reference to a Regional Profile (DFG 2009) does not adequately disclose information on the sediment that has an adverse biological impact in the SCSR. The description of existing conditions in Section 6.3.2.2.3, "Point Dume to Newport Beach (Subregion 3)," of the soft bottom areas adjacent to White's Point and other location at the Palos Verdes Peninsula as "among the most severely impacted" by DDT and PCB sediment contamination neglects to mention that the proposed the Point Vicente and Abalone Cove SMCAs are in this 'severely impacted' area. Neither of these sections contains information regarding the levels of DDT/PCB that currently exist at the PVSS or any description of the location of the PVSS. These omissions make the impact analyses in these sections, as well as the significance conclusions based upon them, inadequate. The DEIR water quality analysis should be redone.

Section 6.3.2.2.3, "Point Dume to Newport Beach (Subregion 3)," also fails to acknowledge that many of the nearshore/offshore areas of Palos Verdes (including both Santa Monica and San Pedro bays) are listed as impaired waterbodies pursuant to Section 303(d) of the Clean Water Act due to DDT and PCB contamination of sediment and/or fish tissue. Specific impaired areas within the IPA proposal include Point Vicente, Abalone Cove, Long Point, and Inspiration Point (SWRCB 2006), none of which are mentioned as "main impaired water bodies of the subregion."

There is no information regarding the PBL in the DEIR discussion of oceanography and water quality. As discussed in Attachment D, the turbidity plume associated with the PBL transports sediment towards Point Fermin to the east and Rocky Point to the northwest following the longshore current and associated longshore transport on the Palos Verdes Peninsula (Hickey 1993). As a result, rocky reefs continue to be buried by sediment in this area. (Pondella D. J., II 2009; Pondella D. J., et al. 2010; USACE 2000) Further, chronic reduced water clarity along the southern face of the Palos Verdes Peninsula due to turbidity from the PBL has been well documented in monthly surveys performed by the Sanitation Districts since 1982. As a result, kelp forest growth and the associated biological communities dependent upon this habitat are impaired relative to similar coastal water habitats without chronic turbidity (Attachment D). The omission of descriptions of the PVSS and the PBL inadequately characterizes the existing environmental setting, and therefore the EIR provides an inadequate and

incomplete water quality analysis regarding inclusion of the proposed Point Vicente and Abalone Cove SMCAs in the IPA.

Section 6.3.4, "Water Quality and Oceanography," discusses the PVSS remediation program in the description for the proposed Point Vicente and Abalone Cove SMCAs and concludes there would be no conflict between the designation of the MPAs and the U.S. Environmental Protection Agency's ("USEPA's") remediation program. The analysis also states that since existing discharges or activities "would continue under the proposed Project IPA pursuant to any required federal, state, and local permits, or activities pursuant to Section 630, Title 14, CCR, or as otherwise authorized by the Fish and Game Commission (Commission)," mitigation would not be required. We presume impacts would either not occur or would be less than significant because the impact determination was omitted or excluded from the discussion of Criterion WQ-1. Clarifying language in the Initial Statement of Reasons ("ISOR") was included in the MPA regulations for sites where possible conflicts could occur with activities such as the remediation program. However, as noted on Page 4 of this letter regarding Sections 3.5.10 and 3.5.11, the operation and maintenance of the White Point ocean outfall system (including sampling of biomass and sediment along the Palos Verdes Shelf) was not included in the "Other Regulated Actions" sections of either the proposed Point Vicente SMCA or Abalone Cove SMCA. These existing activities should have been discussed and analyzed for conflicts with the proposed MPA designation, including, without limitation: A92_i-5 cont'd

- A description of the frequency, duration, and timing of current water quality monitoring by the Sanitation Districts
- A description of the existing effluent discharge characteristics
- An analysis of the impact of existing effluent discharge on the proposed Abalone Cove and Point Vicente SMCAs

Attachment C identifies DEIR statements requiring clarification in Section 6.3. DFG's failure to substantiate these statements makes its analysis of the IPA inadequate pursuant to CEQA Guidelines Sections 15064, 15126.2, and 15151.

Chapter 7.0, Biological Resources

The Sanitation Districts' comment letters dated August 3, February 19, and March 26, 2010 identified existing environmental concerns in the proposed Point Vicente and Abalone Cove SMCAs including the PBL, the PVSS, and their proximity to the existing White Point ocean outfall system. The MLPA EIRs for the other study areas essentially assumed that an MPA designation results in either less than significant impacts or beneficial impacts to the environment because the MPA designation protects an area from environmental impacts that could occur without the designation. This standard approach is not appropriate for impact analysis of the SCSR IPA and, specifically, for the proposed Point Vicente and Abalone Cove SMCAs. The protections afforded by the MPA designation for these areas could attract species to an area of known environmental problems and, therefore, may not result in less than significant impacts or beneficial impacts. Further, a more incisive analysis is required for considering potential impacts for these proposed MPAs. USEPA's Palos Verdes Shelf Interim Record of Decision ("IROD") states that the response action to be taken in the PVSS is necessary "to protect the public health or welfare, or the environment, from actual or threatened releases of pollutants or contaminants into the environment, which may present an imminent and substantial endangerment to public health, welfare, or the environment" (USEPA 2009). The USEPA Montrose Resettlement Program ("MRSP") was established to protect the public from consuming contaminated fish from this area and to reduce contamination intake. The DEIR does not analyze these issues and this omission makes both its impact analysis and significance conclusions insufficient. Specifically, the DEIR conclusion that the IPA will A92_i-6

create less than significant environmental impacts to biological resources is not only inadequate and erroneous but potentially endangers public health. This analysis must be redone to address these significant potential impacts.

The Sanitation Districts NOP comment letter identified further studies necessary for a DEIR including the expected changes in populations of the fish species known to bioaccumulate DDT and PCBs and the effects on wildlife species and humans consuming increased amounts of contaminated fish. Analysis of these potential impacts would fully disclose the potential negative effects of the proposed Point Vicente and Abalone Cove SMCAs in the IPA including but not limited to generating more contaminated biomass, biomagnification up the food chain, and increased exposure of wildlife and humans to DDT and PCBs. These potential impacts need to be identified and analyzed to provide full disclosure of potential environmental effects resulting from the IPA and alternatives under CEQA. Specifically, the DEIR should have included the following: A92_i-6 cont'd

- A description of the existing quantity, variation, and type of invertebrate, fish, bird, and mammal species located in the proposed Point Vicente and Abalone Cove SMCAs and the greater Palos Verdes Shelf in the existing setting
- A description of the existing levels of DDT/PCB in these various species in the existing setting
- A description of the bioaccumulation of DDT/PCB through each species and through the food chain in the existing setting
- A quantitative analysis of the changes in the existing species populations as a result of locating the proposed Abalone Cove and Point Vicente SMCAs in the PVSS (i.e., analyze the relationship between an increase in the population of species [due to the protection offered by Abalone Cove and Point Vicente] and the increased total contaminant load of DDT/PCBs within these increased populations due to bioaccumulation in each species and in the food chain)
- A quantitative assessment of the change in health risk to wildlife and humans from locating the proposed Abalone Cove and Point Vicente SMCAs in the PVSS

Like other sections described above, Section 7 does not include an adequate description of the existing conditions. Section 7.1.2.1.10, "Sandy/Soft Bottom Habitats," (Page 7-28) states that anthropogenic discharge has been associated with the degraded health and quality of soft-bottom habitat, and discloses that studies have found that demersal fish are negatively affected by outfall discharge. Yet no analysis was conducted to assess the significance of the SMCA designations in this area.

In addition, this section does not identify the PVSS or explain its existing conditions and current impacts. Section 7.1.2.1.11, "Hard bottom/Rocky Reef Habitats," does not identify the PBL, which is of anthropogenic origin, or its current impacts on hard bottom/rock reef habitats. Finally, Section 7.1.2.2, "Habitat Restoration Activities," (Pages 7-36 and 7-37) does not discuss the current studies and work conducted by the USEPA to restore the PVSS. Therefore, the existing setting is incomplete.

The DEIR must include a detailed quantitative analysis that will set forth the actual impacts of the designating the Abalone Cove and Point Vicente SMCAs based upon existing environmental conditions at these locations. The DEIR should have analyzed the indirect adverse effects on species that would otherwise benefit from the MPA designation and the impacts associated with re-building fish populations and other species populations in the PVSS. According to the Master List of Species Likely to Benefit from MPAs from the Master Plan for Marine Protected Areas (approved February 2008): "A reduction in removal of a species within MPAs has been shown worldwide to increase abundance, mean size, and reproductive potential of certain fished species." While an increase in fish numbers and sizes is generally

regarded as a beneficial effect in most areas, unintended negative effects to the fish, birds, and marine mammals in the Palos Verdes Peninsula area may result from bioaccumulation of DDT and PCBs from existing conditions in that environment. Heal the Bay (2010) advises the public not to consume nine fish species in the proposed MPA areas that are also listed by DFG as likely to benefit from creation of an MPA: A92_i-6 cont'd

- Top smelt
- Rockfish
- Surf perch
- Black croaker
- Sculpin (scorpion fish)
- Queenfish
- Kelp bass
- Corbina
- White croaker

The DFG website, "Public Advisories on Fish Consumption," also warns against human consumption of species likely to bioaccumulate DDT and PCBs, species that are also listed as benefiting (increasing) from MPAs in the SCSR (DFG 2010). While much attention regarding DDT's impacts has been about human consumption, DDT was originally banned by the federal government because of the near-catastrophic effect of DDT on some bird species, including falcons, eagles, and brown pelicans. All of these species are present within the proposed Point Vicente and Abalone Cove SMCAs. The Science Advisory Team ("SAT") found in its ecological risk assessment of the Palos Verdes Shelf that intermediate risk exists south to southwest of the outfalls as well as northwest of Point Vicente. Specifically, the aquatic water quality criterion is not met for DDT in these areas. White croaker, kelp bass, and sanddabs on the Palos Verdes Shelf generally exceed the DDT no observable effects concentration ("NOEC").[7] DFG has found that white croaker and kelp bass benefit from the MPA designations.

Attachment D summarizes the results of the models used for analysis of the IPA that were performed by the UC Davis ("UCD") and UC Santa Barbara ("UCSB") modeling research groups. These models utilized spatial data on habitat, fishery effort, and proposed MPA locations (in the IPA) to simulate population dynamics of fished species (n = 8) and to generate predicted spatial distributions of species abundance and fishery yield. These analyses resulted in a calculation of long-term equilibrium estimates of conservation value (i.e., biomass) and economic value (i.e., fishery yield and profit). Results are averaged across all 8 species used for analysis, which are ocean whitefish, black surfperch, opaleye, kelp bass, kelp rockfish, sheephead, red urchin, and halibut. Appendix B3 in the MLPA master plan contains additional detailed parameter values and literature sources for each estimate (life history information in model). A closer evaluation of the model and research indentifies two potential issues with the analysis: (1) the assumptions used for modeling may not be accurate or appropriate for the Point Vicente and Abalone Cove SMCAs, and (2) further analysis of the effects of locating these two proposed MPAs within the DDT/PCB PVSS is necessary if the results of the model are correct. Details regarding these two potential issues are discussed below.

[7] The NOEC for fish is 1,900 microgram/kilogram whole body tissue for DDT.

(1) As discussed in Attachment D, the modeling did not account for deleterious impacts on growth and reproduction due to contamination with DDT and PCBs or the effects of the PBL on the habitat at the Point Vicente and Abalone Cove SMCAs. The modeling treats all rocky reef habitats as equal and does not account for variations in habitat quality due to turbidity or reef burial (associated with the PBL). As discussed above in connection with DEIR Section 6.3, empirical evidence exists that the sedimentation of PBL has an impact on the water column and water quality off the coast of the Palos Verdes Peninsula. This sedimentation results in the degradation of reef habitat and has had significant biological consequences. Furthermore, modeling assumed that the Abalone Cove SMCA biological metrics (i.e., biomass) were the same as those for the proposed Point Vicente SMCA. This over-emphasizes the value of this PBL-degraded habitat. Finally, there is a disconnect between the model inputs and realistic empirical data. The biomass estimates are dated and not fine-scaled enough to make realistic assumptions of relative biomass estimates. Therefore, the models may be over estimating the effect of the two MPAs when compared to the other MPAs, thus presenting an inflated benefit to the overall IPA. A92_i-6 cont'd

(2) The effect of these two locations on total biomass compared to the overall array of MPAs in the IPA is very small (Attachment D). However, when modeling the efficiency of the two MPAs (a measure of the efficiency of the MPA at increasing biomass), the results indicated the two areas would greatly increase the overall biomass (assuming no deleterious impacts on growth and reproduction due to contamination with DDT and PCBs). If this model is correct, these two areas would be efficient at generating fish that are susceptible to the uptake of DDT/PCB (surfperch, rockfish, kelp bass). These fish would propagate and then spread to other non-contaminated areas where humans could catch them. Further, the protected areas may become a magnet for picivorous birds and mammals that would consume these more highly contaminated fish and increase the potential risk to humans and wildlife. The DEIR failed to evaluate these potential impacts, resulting from the models used in the analysis, from the establishment of MPAs off the Palos Verdes Shelf.

Attachment C identifies DEIR statements requiring clarification in Section 7.0. For example, the analysis and findings under "Potential Impact BIO-4: Impacts on Special-status Marine Species Resulting from Removal or Modification of Existing MPAs" are incomplete and unsubstantiated. Specifically, the analyses of the bald eagle, golden eagle, American peregrine falcon, and brown pelican (Section 7.1.3.3, Pages 7-75 and 7-77) do not mention the potential indirect or direct effects of bioaccumulation of DDT in the food chain that would result from the designation of the proposed Point Vicente and Abalone Cove SMCAs. All of these birds have been affected in the past by legacy DDT contamination. Although the MSRP is enhancing their status by restricting further access to DDT, the opposite result is likely under the IPA. Protection of the species in areas with large legacy DDT deposits would facilitate further dispersal of the DDT. Fish would eventually be forced to leave the proposed MPAs (as discussed above) and would take the body burden of the DDT they acquired with them. The net result would be a wider dissemination of increased DDT body burden through contaminated fish. The biomagnification of this contamination would increase the chances for additional DDT exposure in marine mammals and birds feeding on the contaminated fish and ultimately increased DDT exposure for raptors scavenging carcasses found on beaches. Tests of such food sources and the predators that feed on them have shown high body burdens of DDT and its metabolites in tissues (Blasius and Goodmanlowe 2008; NOAA/EPA 2007). Therefore, the analysis in the DEIR of these special-status species is incomplete, and the findings are unsubstantiated.

Section 8.2, Public Services and Utilities

Sanitation Districts' NOP comment letter indicated that the DEIR should have discussed the reasonably foreseeable future need for new public service facilities in the service area. Although the DFG A92_i-7

proposed project "protects" existing activities such as the Sanitation Districts' Publicly Owned Treatment Works (POTW) discharges by allowing all permitted related activities, the DFG action would not limit the State Water Resources Control Board's (SWRCB's) authority to impose additional water quality standards on the Sanitation Districts' discharge as a result of an MPA being placed in proximity to that discharge. In Table 3.3 of the DEIR, the SAT level of protection specified for the Point Vicente and Abalone Cove SMCAs is very high and high respectively. For the Point Vicente MPA this is the highest level of protection the same as specified for a State Marine Reserve. Because the SWRCB has specifically stated that it would revise all existing ocean discharge permits pursuant to DFG's MPA designation (see below), the DEIR should have analyzed the indirect effect of the MPA designation upon the need for and impacts on new sanitation facilities. Since these indirect impacts have less to do with water quality and more to do with impacts associated with relocating existing facilities and building new facilities, it is appropriate to discuss them in the public services and utilities section of the DEIR. As stated in Appendix G of the State CEQA Guidelines, the lead agency should address how the proposed project would: A92_i-7 cont'd

> Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

As discussed in the Sanitation Districts' February 19, 2010, and March 26, 2010 comment letters, a reasonably foreseeable indirect effect of including the proposed Point Vicente and Abalone Cove SMCAs as part of the IPA is the restriction of the discharge from the Sanitation Districts' White's Point ocean outfall system. Specifically, the SWRCB has stated that the designation of new state water quality protection areas (SWQPAs) to protect water quality in MPAs will occur sometime in the near future as a result of the completion of the updated statewide MLPA network (SWRCB pers. comm.; SAT 2009). Therefore, the DEIR should have included a detailed analysis of the extent of the MPA restrictions on the Sanitation Districts' White's Point ocean outfall system and the potential for the MPA designation to ultimately cause the requirement to construct new facilities to increase the level of treatment and/or a reduction in volume of discharge to the ocean. If this analysis leads to a conclusion that the Sanitation Districts would need to increase or change treatment streams or reduce the volume of discharge, the DEIR needs to include at least at a qualitative level analysis of the potentially significant impacts associated with construction and operation of the new facilities. The new facilities could include modifications or additions to the facilities at the Sanitation Districts' JWPCP or new upstream water reclamation plants. Impacts associated with these new facilities would be extensive and would include, but not be limited to:

- Air quality impacts associated with construction due to construction equipment and possibly operation due to emergency generators, turbines, and other facility equipment.
- Biological resource impacts associated with construction depending on the location of the new facilities.
- Greenhouse gas impacts associated with construction and operation.
- Hydrology and water quality impacts associated with construction due to earth-moving efforts and the generation of sedimentation and erosion, and possibly operation due to new locations for the releases of discharge.
- Land use and planning impacts associated with operation due to land use and zoning conflicts, depending on facility location.
- Noise impacts associated with construction and operation due to equipment and machinery.

- Transportation impacts associated with construction due to construction worker trips and equipment, and possibly operation due to new employee trips or relocating employees.

A92_i-7 cont'd

DFG did not accept the Sanitation Districts offer in the NOP comment letter to assist with the analysis of these reasonably foreseeable impacts. Section 8.2.2, "Environmental Setting," (Page 8.2-7) states that establishment of MPAs within the SCSR would not have an impact on existing utilities and discharge locations within the proposed MPAs, and these facilities would continue to operate based on existing permit conditions. However, it is reasonably foreseeable that, as a result of the MPA, the SWRCB/regional water quality control board (RWQCB) will alter the discharge requirements applicable to the Sanitation Districts' facilities and thereby impact the public services they provide. The public services and utilities section does not discuss these potentially significant impacts. Because it lacked any analysis of these impacts, that section also did not include any mitigation measures to reduce significant public service impacts.

Attachment C identifies statements requiring clarification in Section 8.2. DFG's failure to substantiate these statements makes its analysis of the IPA inadequate pursuant to CEQA Guidelines Sections 15064, 15126.2, and 15151.

Section 8.3, Land Use and Recreational Resources

Appendix G of the State CEQA Guidelines states that, in addressing land use in environmental documentation, the lead agency should address how the proposed project would:

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> Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction of the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance adopted for the purpose of avoiding or mitigating and environmental effect).

The DEIR, in order to meet this requirement, should have included an analysis in its DEIR land use section of the potential inconsistency between the MLPA's regional goals and objectives and whether they would be achieved by locating the proposed Abalone Cove and Point Vicente SMCAs within the PVSS. The purpose underlying the MLPA was to reduce the removal of species within MPAs through over-fishing and other anthropogenic activites (i.e., avoiding or mitigating an environmental effect). However, the MPA designation could conflict with USEPA's response action as documented in the IROD, along with the policies, plans, and regulations of other agencies , because of the potential release of additional toxins into the food chain and environment and other issues discussed in the Sanitation Districts' comments to Sections 6.3 and 7.0, above. Under CEQA, the analysis of land use consistency is always linked to physical environmental effects resulting either directly or indirectly from the proposed action and alternatives (CEQA Guidelines Sections 15002(g), 15126.2, 15358, 15382). Disclosure of the inherent conflict between the MLPA goals and objectives and the proposed designation of Point Vicente and Abalone Cove as MPAs should have been included in the DEIR and should have been studied in connection with the environmental impacts disclosed in the other sections of the DEIR (e.g., water quality and oceanography, and biological resources) to determine if the inherent conflict presents a significant physical environmental effect. If so, the conflict must be deemed significant and alternatives or mitigation must be sought to avoid or substantially reduce this impact.

Attachment C identifies statements requiring clarification in Section 8.3. For example, in Section 8.3.3.3, the DEIR states, "The proposed Project IPA is consistent with the policies contained in the California Coastal Act." The significance conclusion is not supported by substantial evidence because it is an assumption made on only a portion of the facts. There are policies that are relevant to the proposed project that were omitted in the analysis and are detailed in Attachment C. DFG's failure to substantiate

these statements makes its analysis of the IPA inadequate pursuant to CEQA Guidelines Sections 15064, 15126.2, and 15151. A92_i-8 cont'd

Section 8.4, Recreational Vessels

Attachment C identifies statements requiring clarification in Section 8.4. For example, the analysis of Criterion VT-1 seems to be contradictory to the analysis of VT-2 and seems to lack specific evidence. Details related to these two criteria are discussed in Attachment C. DFG's failure to substantiate these statements makes its analysis of the IPA inadequate pursuant to CEQA Guidelines Sections 15064, 15126.2, and 15151. A92_i-9

Section 8.5, Hazards and Hazardous Materials

The DEIR states that while there are areas within the Southern California Bight that have been identified as having contaminated sediments the designation process of the MPAs has avoided known contaminated sediment areas. This statement is not correct. The proposed designations of the Point Vicente and Abalone Cove SMCAs are located in the PVSS where DDT and PCB impacts currently create a hazard to the public, wildlife and the environment (USEPA 2009). The possibility of toxic biomass migration of fish gestating in larger numbers within these proposed SMCAs entirely contradicts the assumption that the designations would not create hazards to the public or the environment. These potentially significant impacts have not been analyzed in the DEIR. A92_i-10

The NOP comment letter indicated the designation of Abalone Cove and Point Vicente SMCAs within the PVSS should have been analyzed for impacts on both marine life and humans. In addition, the letter recommended that the existing setting and analysis discussions in other relevant sections such as Chapter 7.0, "Biology," and Section 6.3, "Water Quality and Oceanography," be cross-referenced with the hazard and hazardous materials section, as this would provide appropriate context and an interdisciplinary approach to the analysis. However, Section 8.5, "Hazards and Hazardous Materials," does not adequately address the hazardous issues of the PVSS or cross-reference analysis in any other chapters. It fails to adequately describe the existing setting, and it fails to reach impact determinations based on correct, factual, substantial evidence.

Section 8.5.2.1.1, "Sediment Contamination within the Regional Water Quality Control Board Los Angeles Region," (Page 8.5-8) describes a health advisory warning only for ingestion of the white croaker. The most recent consumption guidance includes restricted consumption for more than a dozen species. The existing setting must be updated to include this information.

Section 8.5.2.2, "Superfund Sites," confuses the effluent affected sediment deposit (a clearly identifiable feature composed of JWPCP discharge solids buried by cleaner sediment) with the extent of the sediment contamination. The DEIR incorrectly states that the site is located over one (1) mile offshore in 150 feet (45 meters) or more of water. The USEPA has identified the zone of sediment contamination much more broadly than the area of the effluent-affected sediment deposit. Studies in 1992 for the Natural Resource Damage Assessment ("NRDA") (Lee 1994) indicated that a 5-cm to 60-cm-thick elliptical shaped, deposit of effluent-affected sediment extended over most of the shelf and slope from White Point to Point Vicente. As described in the USEPA IROD, the shore side of the deposit ends relatively sharply at the 30-m depth contour, while the ocean side extends over the Palos Verdes Shelf break to the mid- to lower slope. Cross-shore, the thickest part of the EA deposit extends along the 60-m isobath. Along-shore, the deposit is thickest (60+ cm) near the 90-inch outfall. It thins rapidly toward the southeast, just exceeding 15 cm a kilometer from the outfall. It tapers much more gradually toward the northwest. About 12 km northwest from the outfalls, the effluent-affected deposit is still 25 cm thick. The contamination levels in 2002/2004 are shown throughout the Palos Verdes Shelf in Figures 1-8 and

1-9 (DDT and PCB respectively) of the USEPA Palos Verdes Shelf Feasibility Study (May 2009). The PVSS extends from shore to 200 meters deep with the areas with contamination levels of the most concern beginning in about 30 meters of water. The existing setting discussion of the PVSS inaccurately characterizes the extent of sediment contamination and does not discuss the levels of contamination within the site at all.

The analysis contained in Section 8.5 does not consider the potential hazards associated with locating the proposed Point Vicente and Abalone Cove SMCAs within the PVSS. Specifically, "Criterion HAZ-9: Have environmental effects which will result in substantial adverse effects on human beings," is focused solely on the displacement of commercial and recreational vessels from areas where it is safe to eat the fish to areas where it is unsafe and/or not advised to eat the fish (e.g., the Palos Verdes Peninsula). While this impact may occur under Criterion HAZ-9 as a result of the proposed project, the analysis completely ignores the possibility that designation of the Point Vicente and Abalone Cove SMCAs would result in a hazard to human beings, directly or indirectly, through the movement of contaminated biomass (e.g., fish) from these MPAs to other locations. DDT present in the PVSS contaminated layer of sediment still exchanges with the ocean water, as demonstrated by DDT concentrations in the water and in the tissues of local marine animals (Attachment E). Numerous studies over the last several decades have documented the accumulation of DDT and PCB in marine animals of the Palos Verdes Shelf, particularly with fish (Attachment E). Fish frequenting the area of legacy deposits have elevated body burdens of toxicants as a function of their location, and that the level of toxic body burden for fish decreases the farther they get from "hot spots" (CSDLAC 2010). As discussed above, the proposed Abalone Cove and Point Vicente SMCAs have the potential for relatively high biomass production efficiency when compared to other MPAs. Therefore, they will, in theory, likely generate numerous fish of larger size. However, due to the bioaccumulative nature of DDT and PCBs, these fish would also carry a larger contaminant load from the PVSS than the same population of fish without MPA protection. These fish would then migrate outside the MPA boundaries to adjacent nontoxic areas. This result is inconsistent with the MSRP's goal of limiting public exposure to elevated tissue burdens of toxic materials through not-take and limited take zones and public education. This result is also inconsistent with the policies underlying the USEPA IROD. The USEPA's evaluation of human health and ecological risks determined that existing conditions exceed ambient water quality objectives and pose a threat to human health and the ecosystem. Consequently, the USEPA decided that simply allowing natural processes to remedy the threat of DDT and PCB to the local marine ecosystem and human health was insufficient. Finally, none of this information is addressed or analyzed under Criterion HAZ-9.

The mitigation measure included in the DEIR (Page 8.5-20) does not address the issue of fish behavior and the migration of contaminated fish. The mitigation measure reads as follows:

> The state has issued Safe Eating Guidelines for Fish from Coastal Waters of Southern California: Ventura Harbor to San Mateo Point (OEHHA 2009). The public has been notified through the Department website and in the written regulations books distributed to fisherman of these known risks. Should OEHHA notify the Department of further health advisories, the Department will amend the information in the regulatory booklets and the website to reflect these changes.

The location of the proposed MPAs would increase the average tissue concentration in individual fish and the overall contaminated biomass in these areas. This biomass would be expected to spillover from the MPAs, thus altering the geographic distribution of contaminated fish into areas that are not currently contaminated. Further, current fish consumption advisories are based upon fish tissue contaminant concentrations prior to MPA protection and may be rendered ineffective at protecting public health when MPA protection increases the average tissue concentration of these species. MPAs over the PVSS would, therefore, potentially increase exposure to the public of the contaminated food source and

actually compromise the proposed mitigation measure. Although Criterion HAZ-9 would have been an appropriate location to discuss the migration of toxic biomass, no discussion of this potential impact is contained in that criterion. The conclusion that this potential impact is less than significant with mitigation is not supported by a complete analysis and is therefore unsubstantiated.

DEIR statements requiring clarification are identified in Attachment C. The most egregious unsubstantiated statement in the DEIR occurs in this section on Page 8.5-17:

> Criterion HAZ-4: Be located on a site, which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create significant hazard to the public or the environment.
>
> There are areas within the Southern California Bight that have been identified on lists compiled pursuant to Government Code Section 65962.5 as having contaminated sediments. Many of these sites are currently undergoing assessment, monitoring and remediation. The designation process of the MPAs has avoided known contaminated sediment areas. MPAs could be located in areas where contaminated sediments exist, but have not been identified. However, the designations of the MPAs would not create a hazard to the public or the environment. Therefore, there would be no impact.

This "no impact" statement is incorrect. The proposed Point Vicente and Abalone Cove SMCAs are located in the PVSS, which is designated as a superfund site. Furthermore, the PVSS is listed on the Cortese List, which is one of the lists compiled pursuant to Government Code Section 65962.5. The MPAs are located in areas where DDT has been recorded between 0 and 10 mg/kg, and PCB has been recorded between 0 and 1.5 mg/kg in up to 2 centimeters of sediment (USEPA 2009). Furthermore, at least the upper layers of contaminated material will likely remain within 5–10 centimeters of the surface of the seabed for the foreseeable future, due to the shift of fully secondary treatment at the JWPCP in 2002 and the lack of particulate matter currently deposited (Attachment E). The possibility of toxic biomass migration of fish gestating in larger numbers within MPAs, as described above, entirely contradicts the assumption that the designations would not create hazards to the public or the environment. Therefore, that conclusion is entirely unsubstantiated. Unsubstantiated statements result in inadequate analysis and are not appropriate in a DEIR per CEQA Guidelines Sections 15064, 15126.2, and 15151.

Chapter 9.0, Cumulative

CEQA Guidelines Section 15130 discusses the type and scope of cumulative analysis required in an EIR. A "cumulative impact" is an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. (CEQA Guidelines Section 15355.) The discussion of cumulative impacts should reflect the severity of the impacts and their likelihood of occurrence, and that discussion should be guided by the standards of practicality and reasonableness and should focus on the cumulative impact to which the identified other projects contributed. A92_i-11

One reasonably foreseeable cumulative project in the bight is USEPA actions associated with the IROD. In Section 9.3.6.2 Montrose Settlements Restoration Program the discussion ends with:

> In 2005 the resource trustee agencies identified above prepared a joint programmatic Environmental Impact Statement (EIS)/EIR for the proposed restoration effort. In 2006, the Department issued a Notice of Determination stating that the restoration program

would not have a significant impact on the environment, and approving the project (Department 2006).

It is unclear from this description whether this is referring to the USEPA signed IROD discussed in the USEPA letter to the California Fish and Game Commission dated February 18, 2010. The IROD specifically identifies the type of future activities USEPA will conduct to remediate the superfund site. Some of these activities involve capping contaminated sediments on the Palos Verdes Shelf, which may result in temporary resuspension of some of the contaminated sediments, disruption of the benthic community and increased turbidity (Attachment E). These impacts would likely have an effect on the function of the MPAs and could result in significant cumulative effects (Attachment E). None of this is discussed in the cumulative impact chapter. While the area is expected to recover from the disturbance in less than ten years, the estimated dates of achieving the objectives under the USEPA preferred alternative are 2023 for the water and 2039 for the sediment. The IROD and these activities should be described in the cumulative section for a complete identification of the future actions that may have a cumulative effect when combined with the proposed project.

The DEIR should also have analyzed two additional reasonably foreseeable projects within Southern California that may have cumulative impacts in the cumulative project chapter. The first project is the reasonably foreseeable circumstance of the RWQCB establishing SWQPAs in these coast areas as described in the Ocean Plan. The likelihood of this action is shown not only through communications between the Sanitation Districts and the SWRCB but also by the record of the MPA process. SAT's Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLP South Coast Study Region (SAT 2009) states that one potential MPA designation implementation strategy to protect and restore water quality is to inform the water boards of potential water quality concerns for MPAs, since the SWRCB and the RWQCB have the primary responsibility for regulating water quality. For example, the regional water boards may recommend to the State Water Resources Control Board the designation of additional state water quality protection areas ("SWQPAs"), or work on priority total maximum daily loads that could restore water quality in MPAs" (SAT 2009). The analysis needed to include the associated potential cumulative environmental effects resulting from the placement of MPAs in and around the White's Point ocean outfall system. The second project is the Long Beach Terminal Island Rail Project, which would create efficiencies in the rail system and remove an at-grade crossing by filling sections of the harbor. This project was omitted from the cumulative projects list and needs to be included in the analysis. A92_i-8

Chapter 10.0, Alternatives

A DEIR should describe the rationale for selecting the alternatives analyzed in the DEIR, identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process, and explain the reasons underlying the lead agency's decision. (CEQA Guidelines Section 15126.6.) Among the factors that may be taken into account when addressing the feasibility of an alternative are: site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, and jurisdictional boundaries. (*Id.*) The Sanitation Districts' comment letters provided the BRTF and DFG with evidence of the infeasibility of creating MPAs on the Palos Verdes Shelf. The Palos Verdes Shelf is not suitable location for MPAs because of the PBL, the PVSS, and its proximity to the existing White's Point ocean outfall system. Further, the two proposed locations on that shelf are not suitable because they do not satisfy the scientific guidelines identified in the MLPA Master Plan for Marine Protected Areas. For these reasons, the Sanitation Districts' NOP comment letter requested that the DEIR alternatives analysis chapter must fully describe a scientific basis for including the proposed Abalone Cove and Point Vicente SMCAs in the IPA. However, the DEIR alternatives analysis section does not provide any information regarding the feasibility of the alternatives or the scientific rationale for including either of these proposed MPAs in the IPA. Although Section 2.0 A92_i-12

of the DEIR describes the process regarding how the IPA was developed and Section 3 lists the objectives and detailed project description, the DEIR does not provide either a discussion of the feasibility of or scientific rationale for including either the proposed Abalone Cove SMCA or Point Vicente SMCA.

While CEQA requires the lead agency to assess the potential significant impacts of a proposed action and not necessarily the underlying value of the action itself, the failure of the proposed action to meet the goals or objectives specified by the lead agency suggests that it has failed to properly screen alternatives to the proposed project. The goals and objectives of the MLPA relate to the protection of marine life populations and ecosystems. The goals and objectives of the MLPA are inconsistent with the inclusion of the proposed Abalone Cove and Point Vicente SMCAs in the IPA. Attachments D and E, and Table 1 present substantial factual and scientific evidence showing that the effects of designating these two areas as MPAs will be inconsistent with the stated goals and objectives of the MLPA. Inclusion of these proposed MPAs in the IPA subverts these goals and objectives because of: (1) the existing site conditions at the PVSS and PBL; (2) deficiencies in the type, size, and level of protection of desirable habitats within these MPAs; and (3) the ongoing discharge of treated wastewater adjacent to these sites. A92_i-12 cont'd

Table 1. Analysis of Goals and Objectives Relative to Point Vicente and Abalone Cove

Goal	Objective	Analysis
Goal 1: To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems	Objective 1: Protect and maintain species diversity and abundance consistent with natural fluctuations, including areas of high native species diversity and representative habitats.	The proposed Point Vicente and Abalone Cove SMCAs are predominantly deep sand habitat, which does not support high native species diversity. Several depleted and overfished species of interest in the Palos Verdes Shelf region (black sea bass, kelp bass, barred sand bass, white sea bass, red urchin, sheephead, spiny lobster, etc.) occur within shallow rocky habitats; however, little of this habitat occurs within the proposed Point Vicente and Abalone Cove SMCAs. In addition, the persistent kelp beds in these MPAs do not satisfy SAT habitat guidelines. Persistent kelp beds provide key habitat for a large percentage of the depressed and depleted species along Palos Verdes and in the Southern California Bight. Locating these MPAs within a superfund site puts achievement of these goals and objectives at risk. In practical terms reduced abundances of marine organisms will result in lower productivity in the ecosystem and reduced species diversity will result in reduced ecosystem function. The capping operations proposed for remediation of the PVSS increase the chances of further reductions in diversity in the next decades.
Goal 2: To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.	Objective 1: Help protect or rebuild populations of rare, threatened, endangered, depressed, depleted, or over-fished species, and the habitats and ecosystem functions upon which they rely.	
Goal 2: See text above.	Objective 2: Sustain or increase reproduction by species likely to benefit from MPAs, with emphasis on those species identified as more likely to benefit from MPAs, and promote retention of large, mature individuals.	Species more likely to benefit from MPAs include bocaccio, giant sea bass, broomtail grouper, canary rockfish, pink/green/white/black abalone, and purple hydrocoral, all of which occur on or near shallow rock habitat within this region. The proposed Point Vicente and Abalone Cove SMCAs protect mostly deep sand habitat and, therefore, are unlikely to increase or sustain

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		these species. In addition, these MPAs have less reef habitats than recommended and so provide less opportunity to protect these species, which have an adult home range greater than the MPA boundaries. These MPAs are proposed in areas with reproductive toxins exceeding screening levels established by the USEPA that biomagnify up the food web which compromises this goal and supporting objectives. Rebuilding populations, especially large, mature individuals, would have an adverse affect due to likely bioaccumulated and biomagnified DDT/PCB.
Goal 1: See text above.	Objective 2: Protect areas with diverse habitat types in close proximity to each other. Objective 4: Protect biodiversity, natural trophic structure and food webs in representative habitats.	The proposed Point Vicente and Abalone Cove SMCAs would not protect deep rock or hard bottom habitat, which is a key habitat that supports the greatest biodiversity. In addition, these MPAs do not capture the persistent kelp habitat, which has become increasingly rare in the SCSR over the past 50 years. Therefore, there is no replication of these key habitats within these two MPAs or the IPA. In addition, the soft bottom habitat, which encompasses the majority of this SMCA cluster, is much less diverse than shallow rock habitat.
Goal 4: Protect marine natural heritage, including protection of representative and unique marine life habitats in CA waters for their intrinsic values.	Objective 1: Include within MPAs key and unique habitats identifies by the MLPA Master Plan Science Advisory Team for this study region. Objective 2: Include and replicate to the extent possible [practicable], representatives of all marine habitats identified in the MLPA or California Marine Life Protection Act Master Plan for Marine Protected Areas across a range of depths.	

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Goal 3:Improve opportunities provided by marine ecosystems that are subject to minimal human disturbance.	All three objectives.	The Palos Verdes Shelf has been highly disturbed by the presence of DDT/PCB at the superfund site, and will continue to experience disturbance during remediation activities over the coming decade, or longer. In addition, the PBL continues to have an adverse impact on the habitat proposed for the Abalone Cove SMCA.
Goal 5: To ensure that south coast California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines.	Objective 3: Effectively use scientific guidelines in the California Marine Life Protection Act Master Plan for Marine Protected areas. Objective 5: Include simple, clear, and focused site-specific objectives/rationales for each MPA and ensure that site-level rationales for each MPA are linked to one or more regional objectives.	None of the spacing guidelines are met for the proposed Point Vicente and Abalone Cove SMCAs or for key habitat types in the region. In addition, these MPAs barely meet the size guideline for MPAs as identified by the SAT. These SMCAs are also located near outfalls, planned EPA remediation activities and the turbidity and sedimentation of the PBL. All three of these conditions are not consistent with the SAT guidance for this area.

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The Sanitation Districts request that the Fish and Game Commission and staff carefully consider the issues raised in this letter. The Sanitation Districts are responsible to more than 5 million people to protect essential public health infrastructure from unintended impacts resulting from the MLPA process. We strongly recommend that the DFG complete its obligations under CEQA to address the issues raised in this letter and the NOP scoping letter, to fully disclose the significant impacts associated with including the proposed Abalone Cove and Point Vicente SMCAs as part of the IPA or any other recommended project.

Thank you for consideration of our comments. We look forward to providing further assistance and information in connection with the preparation of the environmental documentation for this project.

Very truly yours,

Stephen R. Maguin

Philip L. Friess

Philip L. Friess
Department Head
Technical Services

PLF:TDD:mh

Attachment A List of Comment Letters Submitted by the Sanitation Districts During the SCSR MPA Process and CEQA Process

Attachment B Letters Submitted by the Sanitation Districts on August 3, 2010 (NOP comment letter), March 26, 2010, and February 19, 2010

Attachment C DEIR Statements Requiring Clarification

Attachment D An Analysis of the Proposed Point Vicente and Abalone Cove Marine Protected Areas

Attachment E An Evaluation of the Impacts of the Palos Verdes Shelf Superfund Site on Proposed Marine Protected Areas off the Palos Verdes Peninsula

cc: Fish and Game Commissioners

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Responses to Comment Letter A92_i

Response to Comment A92_i-1: LACSD correctly notes that CEQA does not specify a timeline for lead agencies to consider and address comments raised during the Notice of Preparation comment period. LACSD further notes that many comments they deemed to be substantive and CEQA-relevant were not addressed in the Draft EIR. LACSD notes the short turnaround time between the end of the public comment period and the publication of the Draft EIR.

Analysis of the proposed Project for the Draft EIR began prior to the close of the Notice of Preparation public comment period. A significant portion of the Draft EIR had already been written by the close of the public comment period as many issues required under CEQA had already been identified through the public-, stakeholder-, and scientifically-driven MPA design process in the two years leading up to the environmental review, and as such, anticipatorily covered in the initial drafting of the Draft EIR. All comments received during the Notice of Preparation public comment period were reviewed, and relevant issues that had not been anticipated in the initial analysis of the Draft EIR were subsequently considered and incorporated into the Draft EIR prior to its publication.

Response to Comment A92_i-2: The LACSD comments that additional baseline data should have been incorporated into the Draft EIR. Additional relevant information related to impacts discussed in each section has been incorporated into sections of the Draft EIR to improve readability, including Sections 6.3 (Water Quality) and 8.5 (Hazards and Hazardous Materials). The additional information, however, did not fundamentally alter the conclusions of the impact analysis presented in the Draft EIR.

Response to Comment A92_i-3: Section 3.0 of the Draft EIR presents information on the project being proposed by the Commission. The proposed Project involves the regulation of allowable take of marine biological resources within defined areas of the Southern California coastline. Baseline information is contained within this section and in each subsequent chapter. In general, each chapter details the environmental setting relevant to the discussion presented in the given chapter. The amount of detail being presented was proportional to the potential impacts that may occur from the proposed Project to those baseline conditions.

The Palos Verdes Superfund site is included in the discussion of the environmental setting in Section 8.5 on Hazards and Hazardous Material Chapters (See Section 8.5.2). Additional information regarding the extent of contamination and the planned remediation of this site has been included in the Final EIR, as well as information on the White Point Ocean Outfall system.

Response to Comment A92_i-4: See Master Response 10.

Response to Comment A92_i-5: Discussion of the Palos Verdes Shelf Superfund Site is contained in Chapter 8.5 of this EIR. Only discussions related to impacts from the proposed Project on the Palos Verdes Shelf Superfund Site or biological resources are contained in the Draft EIR. CEQA does not require a discussion of the impacts of the Palos Verdes Shelf Superfund Site on the proposed Project where the proposed Project would have no effect on these existing conditions. Evaluation of the impacts of the existing setting on the proposed designation of MPAs was conducted through the two-year process leading up to the development of the proposed Project IPA. Details on these deliberations and discussion can be found at http://www.dfg.ca.gov/mlpa/meetings_sc.asp. The regulations for the two MPAs located within the Palos Verdes Shelf Superfund Site include an exemption for take that would occur as a result of the permitted remediation activities located within the Point Vicente SMCA or the Abalone Cove SMCA.

LACSD correctly notes that no mention of the Portugese Bend Landslide was incorporated into the Draft EIR. The affected area is located predominately within a terrestrial area of the City of Rancho Palos Verdes and not within the SCSR, which begins at the shoreline and extends seaward. The City of Rancho Palos Verdes is actively addressing the anthropogenic causes of the landslide, as well as any risk to the public that the landslide presents. The city has commented on the Draft EIR and has presented no concerns on coverage of the landslide area in the Draft EIR. The proposed replacement of the existing Abalone Cove SMP with the Abalone Cove SMCA is supported by the City of Rancho Palos Verdes.

LACSD correctly notes that no discussion on potential impact to the White Point Ocean Outfall were included in the Draft EIR. These pipes are located over 1.5 miles from the adjacent MPAs. Testimony by Jonathan Bishop of the State Water Resources Control Board (SWRCB) to the Commission on September 29, 2010 (Response A31_ii-2) indicates that the State Water Board is not proposing to increase restrictions on existing point source discharges due to the placement of MPAs. A resolution (Consideration of a resolution to provide staff with direction regarding marine protected areas and state water quality protection areas, November 16, 2010) adopted by the SWRCB supports the conclusion that implementation will not result in increased restriction to permitted discharges occurring within or adjacent to MPAs within the SCSR). LACSD's presumption that water quality restrictions near the White Point Ocean Outfall would increase due to MPAs is not based on statements made by the SWRCB, by policies currently in place, or by other provisions of law or regulation that would indicate that such a future occurrence is reasonably foreseeable. Lastly, the proposed Project IPA contains provisions allowing the take of living marine resources as part of permitted water quality monitoring activities of the White Point Ocean Outfall facility. (See proposed MPA regulations Section 632(a)(9)). For further information, please refer to the State Water Resources Control Board's resolution on MPAs and State Water Quality Protection Areas, included in Response A31_ii-2.

Response to Comment A92_i-6: LACSD has asserted that fishing restrictions associated with MPAs along the Palos Verdes Peninsula (which is located atop of contaminated sediments) would cause an increase in contaminated fish populations, and exacerbate the issue of bioaccumulation in fish from this area.

One could not repudiate the fact that MPAs will not shield ecosystems with contaminated food webs from continued exposure to contaminants. Bioaccumulation would still occur within an MPA the same as it would outside an MPA, until the contaminants are removed from the system. If the MPA excels in productivity, then one would expect that MPA to have a higher abundance of invertebrates and fish that are exposed to the contaminated food web. In order for this MPA to impact other areas that are not influenced by the sediment contamination, the productivity of the MPA would have to be so great as to replace the uncontaminated fish with the contaminated fish and for this replacement to be significant. An additional variable would need to be added for this to occur. This would entail locating the MPA directly over the entire zone of contamination and directly adjacent to areas considered not at risk to the sediment contamination. This is not the case with the two MPAs LACSD is concerned with (the Point Vicente SMCA and the Abalone Cove SMCA). These two MPAs are located over only a portion of the superfund site, and furthermore, are not co-located in the area that the EPA has defined as requiring remedial actions.

While an increase of proportions in the biomass and fish abundance are expected to occur within these MPAs (specifically the Point Vicente SMCA and the Abalone Cove SMCA) off the Palos Verdes Peninsula, this increase is not expected to be significant enough to create a new public health hazard. Bioeconomic modeling by the SAT, which simulated predicted species abundance and fishery yields, indicates that the Point Vicente SMCA and the Abalone Cove SMCA may be among the lowest performing MPAs in the proposed network (Report to the California Fish and Game Commission: Bioeconomic model evaluations of revised third round SCRSG MPA proposals and MLPA Integrated Preferred Alternative marine protected proposal for the South Coast Study Region, December 8, 2009). This indicates that the productivity of these two MPAs will not be high enough to significantly increase the output of fish migrating out of these MPAs and inhabiting nearby fishing grounds with contaminated fish in significantly greater numbers than already exist. As previously mentioned, the largest contamination concern on the Palos Verdes shelf lies west of the Point Vicente SMCA and the Abalone Cove SMCA, where remediation work is ongoing to mitigate the impacts from the superfund site. Even if one were to assume a high productivity from these two MPAs, it would be difficult to determine whether contaminated fish caught by fisherman are coming from the MPAs or from adjacent and more heavily contaminated areas on the Palos Verdes Shelf. Additionally, any increase in fish availability by these MPAs would still be restricted the daily bag limits and the fish consumption advisory warnings which are in affect from Ventura Harbor to San Mateo Point.

Response to Comment A92_i-7: Please refer to Response A31_ii-2.

Response to Comment A92_i-8: LACSD comments on Section 8.3 of the Draft EIR should have been directed to other sections of the document. Section 8.3 covers impacts from the proposed Project to recreational facilities and land use plans governing land uses within or adjacent to the proposed Project. LACSD's comments pertain to the idea of bioaccumulation. Restrictions to fishing activities imposed by the proposed MPAs may impact existing recreational activities; however, the assertion that increasing contamination will result in impacts to fishing activity outside these MPAs is speculative because areas outside of MPAs are not subject to the regulations being proposed.

In their comment, LACSD assumes that increased body loads of contaminants will impact recreational fishing activity. The act of fishing is not contingent on the quality of the fish being caught. Only the angler's decision to keep and consume fish catch would be influenced by contaminant levels of fish being caught. Fish consumption advisories have been published and distributed in the areas around Palos Verdes, but not all species caught are reported to pose a health risk to anglers. Information on bioaccumulation and impacts to marine resources has been added to 8.5.2.2. The potential risks associated with consumption of contaminated fish has been reviewed in Section 8.5.3.3.

Response to Comment A92_i-9: Comment noted. See Master Response 10.

Response to Comment A92_i-10: Additional information has been added to Sections 8.5.2.1 and 8.5.2.2 to clarify descriptions on the superfund site in the Palos Verdes headlands area.

LACSD claims that the location of these two MPAs within the Palos Verdes Superfund Site would "result in a hazard to human beings, directly or indirectly, through the movement of contaminated biomass from these MPAs to other locations" (Section 8.5). LACSD is assuming that the Point Vicente SMCA and the Abalone Cove SMCA will produce enough biomass to yield an increase or spill over of fish from the contaminated area to surrounding waters, which would increase the overall availability of contaminated fish to the public. For their assertion to be correct, these two MPAs would have needed to be designed in such a way that would lead to high fishery yields and productivity for noticeable spill over affects to occur. However, LACSD's own expert testimony, presented as an attachment to their main comment letter, clearly states that these two MPAs contain MLPA SAT defined key habitats that are either too small or missing all together to be very productive MPAs and would have "little individual bioeconomic value". Additionally, their expert also indicated that "the Point Vicente and Abalone Cove SMCAs encompass degraded habitats that individually or as a cluster are not likely sufficient to meet the goals of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process." Therefore LACSD's' comments on including language under "Criterion Haz-9: Have environmental effects which will result in substantial adverse effects on human beings" would not need to be addressed since any

movement of contaminated biomass from these MPAs to other locations would not be significant based on LACSD's own expert testimony.

This comment also refers to Haz-4 criteria in Section 8.5. The Draft EIR was amended to reflect the primary concern that sites on the Cortese list was not included. There are areas within the Southern California Bight that have been identified on lists compiled pursuant to Government Code Section 65962.5 as having contaminated sediments. Many of these sites are currently undergoing assessment, monitoring, and remediation. There were MPAs designated on the Palos Verdes Superfund Site (see Section 8.5.2.2) which is also listed on the Cortese list pursuant to Government Code Section 65962.5. While a large majority of the area within the proposed MPAs contains fish and invertebrate communities at reference levels, there is still is a concern for the legacy contaminants bioaccumulating throughout the food web which could affect higher trophic species, specifically birds and marine mammals. However, regardless of any assumed increase in biomass availability to marine mammals and birds from an MPA located within a superfund site, the benefits gained to the marine ecosystem from creating a network of MPAs in Southern California should overshadow any localized impacts the superfund site may contribute to MPAs around Palos Verdes. This is because a strong network of MPAs is expected to improve the health and abundance of the marine resources in Southern California. In fact, the Montrose Settlement Restoration Program stated that an increase in marine protection at the Northern Channel Islands could benefit eagles foraging along the coastlines of the Channel Islands by shifting their foraging habitats to areas away from the Palos Verdes Peninsula to areas with cleaner and more abundant fish (See Section 8.5.2.2). This effect may increase the proportion of fish in the diet versus marine mammal carcasses (See Section 8.5.2.2). Additionally, other MPA locations along the mainland coast can offer additional cleaner foraging areas for sea birds that can be vulnerable to bioaccumulation affects from contaminated sediments. This newly created MPA network would serve as an overall net benefit to the marine ecosystem, in which the proposed MPAs located on the Palos Verdes shelf could play a key role in contributing towards larval transport to other MPAs for certain key marine communities**.**

Newly designated MPAs are not expected to create a new significant hazard to humans because of bioaccumulation concerns in fish within those MPAs. Remediation efforts are already in place by numerous government agencies to protect the public from consuming contaminated fish that are present from the existing baseline condition. These efforts include public outreach and fish consumption advisories which are in affect from Ventura Harbor to San Mateo Point and are further discussed in Section 8.5.3.3. The most stringent fish consumption advisory area (the red zone) spans the waters from the Santa Monica Pier in Los Angeles County to the Seal Beach pier in Orange County (see Section 8.5.3.3). This red zone is large enough to suggest that any MPA placed within it would not displace users to more impacted areas, since the advisory warnings are homogenous across the entire red zone. Since the proposed MPAs are generally in the geographic center of the red zone, any assumed spillover affect from the MPAs into adjacent waters will still be ameliorated by the

advisory warnings. Additionally, any potential increase in fish availability by these MPAs would continue to be controlled by existing daily bag limits. Therefore, it is not expected that any new significant hazard on the public would be created by the designation of MPAs within the Palos Verdes Shelf Superfund Site.

Response to Comment A92_i-12: An analysis of the feasibility of the proposed Project IPA and various alternatives to achieve the goals and objectives of the MLPA was conducted during the design phase of the proposed Project IPA (California Department of Fish and Game Feasibility Analysis for the Blue Ribbon Task Force Integrated Preferred Alternative, November 30, 2009; California Department of Fish and Game Feasibility Analysis of Final Stakeholder Marine Protected Area Proposals, October 14, 2009). The Proposed Project IPA and alternatives all were viewed as substantially achieving the goals of the MLPA (described in Section 3.0 of the Draft EIR) and were forwarded for analysis under CEQA prior to adoption of a final regulatory proposal and certification of the Draft EIR. Input from LACSD submitted during this design phase was considered, but ultimately the position taken by LACSD was not adopted by the Commission. As defined by CEQA, the Draft EIR is an informational document intended to inform public agency decision-makers and the public generally of the significant environmental effect of a project, possible ways to minimize significant effects, and reasonable alternatives to the proposed Project. It is not necessary for the Draft EIR to analyze possible implementation of an SMR at Children's Pool because it is neither part of the proposed Project, nor any of the alternatives identified by the lengthy design process. *No changes to the Draft EIR are required.*

Response to Comment A92_i-13: See response to comment A92_i-12. LACSD presents its case about modification of the existing MPA on the Palos Verdes headland and establishment of the Point Vicente SMCA. Issues related to impacts of the Palos Verdes Shelf Superfund Site to the proposed Project IPA and alternatives were reviewed during the design phase (California MLPA Master Plan Science Advisory Team Draft Recommendations for Evaluating Water and Sediment Quality Along the Palos Verdes Shelf- Supplemental Guidance to the Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region, June 17, 2009). LACSD also presents its case that the MLPA goals and regional objectives would not be met for the Point Vicente SMCA and the Abalone Cove SMCA. The Commission conducted its own evaluation on the assigned goals and objectives of these two MPAs and found that the MPAs met the minimum requirements for the selected goals and objectives. Monitoring efforts after the adoption and implementation of these MPAs will assess the effectiveness of these MPAs in regards to their assigned goals and objectives, and adaptive management can be used to adjust these MPAs so that their contribution to the network is more balanced.

Attachment A

List of Comment Letters Submitted by the Sanitation Districts During the SCSR MPA Process and CEQA Process

- Avoid Areas of Wastewater Impact, March 3, 2009
- Methods to Evaluate MPA Proposals: Water and Sediment Quality, April 4, 2009
- Analysis and Proposal of MPAs, April 23, 2009
- Alternative Proposal for MPAs, April 24, 2009
- SAT Special Evaluation of MPA Placement, April 24, 2009
- Comments to the Master Plan Science Advisory Team, August 26, 2009
- Comments Opposing the Abalone Cove SMCA, October 9, 2009
- Opposition to Abalone Cove SMCA, November 4, 2009
- Opposition to Adoption of Abalone Cove SMCA, November 30, 2009
- Opposition to Proposed MPAs – Integrated Preferred Alternative, February 19, 2010
- Opposition to Proposed MPAs in South Palos Verdes, March 26, 2010
- Comments at NOP Scoping Meeting, July 23, 2010
- NOP Comment Letter, August 3, 2010
- Request for Extension of Review Period, August 24, 2010
- Request for Comment Letters Submitted in Response to NOP, September 10, 2010

Responses to Comment Letter A92_ii

Response to Comment A92_ii: This comment provided the list of attachments to Comment Letter A92_i (no comments are submitted). No response required.

Attachment B

Letters Submitted by the Sanitation Districts on
August 3, 2010, March 26, 2010, and February 19, 2010

WATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
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STEPHEN R. MAGUIN
Chief Engineer and General Manager

February 19, 2010
File No. 98-50.1.10 SI

Jim Kellogg, President
Members of the California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

Dear Commissioners:

Opposition to Proposed Marine Protected Areas in
South Palos Verdes – Integrated Preferred Alternative

The Sanitation Districts are a confederation of 23 independent special districts serving the wastewater and solid waste management needs for over 5.5 million people in Los Angeles County. For over 80 years, the Sanitation Districts have operated one of the largest regional wastewater collection and treatment systems in the nation, with a service area that covers approximately 820 square miles and encompasses 78 cities and unincorporated territories within Los Angeles County. Thus, it is with great interest that the Sanitation Districts have participated in the Marine Life Protection Act (MLPA) process in the South Coast Study Region, not only because of the essential public health infrastructure that the Districts operate offshore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Districts have conducted to ensure the protection of the marine environment.

Throughout the MLPA process, the Sanitation Districts' Marine Biology staff has provided expertise and insight regarding how best to protect the many uses and interests in the coastal waters along the Palos Verdes Peninsula, while at the same time achieving the goals of the MLPA. Unfortunately, the Sanitation Districts' input was not reflected in the recommendations of the Blue Ribbon Task Force, whose Integrated Preferred Alternative (IPA) includes Marine Protected Areas (MPAs) offshore of south Palos Verdes that do not conform to the scientific guidelines of the MLPA, subject these MPAs to the local impacts of planned EPA remediation efforts that have been designed to protect the marine environment, and threaten important scientific receiving water monitoring activities. Moreover, the proposed MPAs offshore of south Palos Verdes jeopardize the ongoing operation of the Sanitation Districts' ocean outfall system, and would cause great socioeconomic impact to Los Angeles County residents should this infrastructure have to be relocated or costly, energy-intensive treatment upgrades have to be implemented, ultimately as a result of the proposed MPA designations. Despite our best efforts to inform the Blue Ribbon Task Force about these critical flaws associated with MPA placement off south Palos Verdes, the Blue Ribbon Task Force recommended an IPA proposal for the Commission's consideration incorporating south Palos Verdes MPAs.

Recycled Paper

As the Commission deliberates on the South Coast IPA proposal, the Sanitation Districts request that the Commission and staff seriously consider the many issues raised in the detailed comments that are attached to this letter. The Sanitation Districts have a responsibility to more than 5.5 million ratepayers to protect this essential public health infrastructure. We strongly recommend that the Commission prioritize science considerations and remove south Palos Verdes from further consideration for ultimate adoption of Palos Verdes area MPAs.

Very truly yours,

Stephen R. Maguin

Stephen R. Maguin

SRM:JRG:SMW:dhs

cc: Adrianna Shea
John Carlson
Sonke Mastrup
Becky Ota
Ken Wiseman

Attachment

DOC #1497025

ATTACHMENT

SPECIFIC COMMENTS REGARDING THE INAPPRORIATE PLACEMENT OF MARINE PROTECTED AREAS IN SOUTH PALOS VERDES IN THE INTEGRATED PREFERRED ALTERNATIVE

Introduction

The Sanitation Districts of Los Angeles County (Sanitation Districts) serve the wastewater and solid waste management needs for over 5.5 million people in Los Angeles County. One key element of the wastewater infrastructure operated by the Districts is the White Point ocean outfalls (Figure 1), located off the south coast of the Palos Verdes (PV) Peninsula. This outfall system constitutes essential public health infrastructure that cannot be practically moved without great expense to the public. It is also our responsibility to be stewards of the coastal environment and ensure that our operations have no discernable impact to local aquatic life. The Sanitation Districts have actively participated in the MLPA process and provided our expertise in an effort to help establish an array of Marine Protected Areas (MPAs) in the South Coast Study Region (SCSR) that would achieve the worthy goals of the Marine Life Protection Act (MLPA) in this region. However, we are deeply disappointed and concerned by the SCSR Blue Ribbon Task Force's (BRTF) Integrated Preferred Alternative (IPA) proposal because the proposed MPAs in PV fail to fully achieve the scientific goals of the MLPA and threaten significant regulatory and socioeconomic impacts to the Sanitation Districts and the more than 5.5 million people we serve.

Specifically, the south coast of PV contains poor quality habitats due to the Portuguese Bend Landslide (PBL) and the water and sediment contamination associated with the Palos Verdes Shelf Superfund Site. Also, critical rare habitats were not captured as a result of siting MPAs off south PV, resulting in exceedances of habitat spacing guidelines so great as to make the entire SCSR MPA network dysfunctional. The BRTF's IPA also subjects the MPAs to the local impacts (e.g. take) of long-term EPA DDT remediation efforts as well as NPDES monitoring programs that have been designed to protect the marine environment.

The BRTF's placement of MPAs in south PV in their IPA creates a high probability that these MPAs will underperform. Not only does this compromise the goals of the MLPA, but it jeopardizes the ongoing operation of the Sanitation Districts' ocean outfall system through potential imposition of future regulatory restrictions that would disallow continued operation of this outfall or require costly, energy-intensive treatment process upgrades. The socioeconomic impact of this outcome to Los Angeles County residents greatly exceed the socioeconomic impacts considered by the BRTF, which apparently were the basis for the proposed MPA placement off south PV.

Below, we have provided more detailed explanations of these issues. We are also providing copies of all literature cited and relevant supplemental material on the enclosed CD for your consideration. We hope that our discussion of these issues and the information in the supporting documents will clearly identify the inappropriateness of MPA placement along the south coast of PV. It should be noted that this information was also supplied by the Sanitation Districts to the Regional Stakeholder Group and BRTF as they developed MPA proposals, but it was not reflected in the BRTF recommendation of MPA designations of the IPA.

ISSUE 1: IPA Placement of MPAs off south Palos Verdes Fails to Achieve the Scientific Objectives of the MLPA

The PV Peninsula is an essential component of any MPA array in the SCSR. It is the only rocky headland in the central mainland portion of the region providing suitable habitat for a substantial kelp

forest ecosystem. However, the IPA includes MPAs on the south face of PV that contains the least suitable habitat on the PV Peninsula. The south face of Palos Verdes (the area between Point Fermin and Point Vicente) is a poor choice for MPA placement due to: (1) Lack of key habitats outlined by the SCSR Science Advisory Team (SAT) as being important in a functional MPA network, causing spacing gaps that grossly exceed SAT guidelines (2) the sedimentation and turbidity associated with the ongoing Portuguese Bend landslide (PBL); and (3) the existing and ongoing risk to fish and wildlife from the EPA Superfund Site in this area. A detailed discussion of each of these issues is provided below.

SAT Habitat Spacing Guidelines Grossly Exceeded

The SAT analysis concluded that the IPA leaves a large habitat gap of persistent kelp (111 mile gap between habitats) and hard-bottom habitat (232 mile gap between habitats) (MLPA SAT 2009). The habitat spacing for both of these habitat types could have been significantly reduced had the BRTF chosen a different option in Palos Verdes (Figures 2 and 3). The SAT habitat spacing guidelines (31-62 miles between habitats) were put into place to ensure that species most likely to benefit from MPAs can successfully move between MPAs and that the goals of the MPA network will be met. *See* Fish and Game Code, Sections 2856(2)(D) and 2857(c). Because the proposed MPAs offshore of south PV failed to minimize the distance between critical habitat in comparison with other areas in PV, the entire MPA network of the BRTF's IPA proposal is less likely to succeed, due to the greatly reduced protection that will be provided for these species.

Degradation of Habitat from the Portuguese Bend Landslide (PBL)

The PBL, which began moving in 1956, has become a major source of sediment particulate and resulting turbidity to the PV rocky subtidal environment. Between 1956 and 1987, 9.0 million metric tons of material was introduced to the ocean from toe-erosion of the landslide (Kayen et al. 1994). Portuguese Bend is located about 2.1 miles west of the Sanitation Districts' outfall system. Slide movement was relatively slow until 1978, when increased annual rainfall caused it to accelerate rapidly. The mass emission rate of PBL materials to the nearshore rocky subtidal environment averaged approximately 146,000 cubic yards of material per year between 1977-2000 (USACE 2000) resulting in significant degradation of the marine rocky bottom and kelp habitat and ecosystem. The U.S. Army Corps of Engineers (USACE) Feasibility Study (2000) concludes that the eroded material was deposited in the nearshore area of south PV, burying many rocky reef areas and kelp habitats so highly valued in the MPA siting process. The findings also conclude that the remaining material has increased turbidity in the nearshore and downcoast areas, causing sustained losses and degradation of these habitats.

Figure 4 is a 1986 aerial photograph showing the general transport dispersal pattern of Portuguese Bend slide material. This material is typically carried east and offshore by the prevailing easterly nearshore current with much of the deposition occurring in the eastern rocky subtidal region between Point Vicente and Point Fermin. As a result of this input, low lying reefs in this region have, particularly at depths greater than 6 meters, been buried with PBL material, severely limiting the growth of Giant Kelp which is the basis for the entire kelp forest ecosystem in Southern California (Figure 5). Consequently, the rocky subtidal communities at survey sites between Abalone Cove and Bunker Point have been negatively impacted by turbidity and sedimentation from the PBL (LACSD 2002). Therefore, it can be expected that an MPA placed along this southern section of Palos Verdes will not perform as well as in other parts of Palos Verdes, which are not significantly affected by the PBL.

For additional information regarding the Portuguese Bend Landslide, please see the supplemental material provided via CD.

DDT Contamination off south PV Poses an Increased Risk to Aquatic Life

From the late 1940s to 1971, Montrose Chemical Company (Montrose), the nation's largest producer of the insecticide DDT (dichlorodiphenyltrichloroethane), relied upon the collection system tributary to the Sanitation Districts' Joint Water Pollution Control Plant (JWPCP) for disposal of process wastes containing high concentrations of DDT. Since the wastewater treatment process employed during this period was not designed to remove DDT, much of the DDT passed through the treatment system. It is estimated that between 800 and 1,800 metric tons (mt) of DDT were discharged through the JWPCP's White Point outfall system on the PV shelf during this period (Chartrand et al. 1985; Amendola 2000).

Following detection of DDT in the discharge and subsequent disconnection of Montrose from the sewer system in 1971, DDT discharged to the ocean through the JWPCP outfalls dropped dramatically. Effluent concentrations of total DDTs (the sum of six isomers) have been near or below detection for the past twenty years. In fact, DDTs have not been detected in JWPCP effluent since 2002. However, due to the historical discharge of DDT on the PV shelf, there is a very strong spatial gradient of DDTs in sediment beginning with the highest concentrations near the Sanitation Districts' outfall and decreasing in concentration to the northwest along the southern coastline of the PV shelf (Figure 6).

In 1990, the Federal government and the State of California filed a lawsuit under the federal "Superfund" law. The lawsuit charged that DDTs and PCBs discharged to the coastal environment damaged natural resources, including fish and wildlife that live in and around coastal waters of Southern California. The lawsuit was settled in 1999 for approximately $140 million dollars and the entire PV shelf between Point Fermin and Redondo Canyon was designated as a Superfund study area (i.e. site).

The United States Environmental Protection Agency (EPA) conducted an ecological risk assessment for the PV shelf, which was published in 2003 (USEPA 2003). The risk assessment found that the levels of DDT and PCBs in the sediment and overlying water were a substantial risk to the health of benthic infauna, fish, seabirds, and marine mammals. The EPA also concluded that the greatest risk is found near the outfalls and gradually declines with distance away from the outfall.

In 2009, the EPA issued an Interim Record of Decision (IROD) for remediation of the PV shelf which included a cleanup goal of 23 mg/kg organic carbon (OC) as the median DDT concentration in PV shelf surface sediments that is not expected to be attained within the PV shelf study area until 2039 (USEPA 2009). Because EPAs cleanup goal is a median for the entire PV shelf, it is important to recognize that the gradient of DDT in sediments will mean that even thirty years from now, when attainment of this goal is expected for the shelf as a whole, areas closer to the outfall will likely still exceed this cleanup goal. Further evidence demonstrating the long-term risk to aquatic life is displayed in Figure 6, which depicts 2004 surface sediment DDT concentrations in relation to the EPA's cleanup goal. As shown in this figure, there are no sediments in the monitoring area that meet the cleanup goal (i.e. there are no white areas). It should also be noted that, the sediments in portions of the IPA proposed MPAs exceed the cleanup goal by more than 15 times in the Abalone Cove SMCA (orange) and by more than 10 times (yellow) in the Point Vicente SMR. Therefore, placement of MPA's off south PV, where the exposure of aquatic life to DDT is greatest, is at odds with the goals of the MLPA because these areas include substandard habitats that are contaminated, and consequently not as suitable as other areas in PV for the protection of aquatic life. The proposed MPAs off south Palos Verdes are not pristine areas that can be maintained in an undisturbed and unpolluted state.

ISSUE 2: IPA Placement of MPA's off south Palos Verdes Subjects MPAs to Impacts of EPA Superfund Remediation and Monitoring Efforts

EPA's IROD (USEPA 2009) includes the placement of a sediment cap initially in the area between and just northwest of the Sanitation Districts' outfall system, but potentially as far west as

Bunker Point depending on the success of the initial capping effort and other factors (Figure 6). Placement of cap material is expected to take several years and may need to be repeated periodically to maintain the cap. Capping activities will be detrimental to benthic organisms and result in short–term increases in sedimentation and turbidity in these areas and to the northwest where the IPA proposed MPAs are located due to prevailing currents. Further, EPA's IROD includes periodic monitoring of sediment and fish tissue chemistry within the IPA proposed MPAs offshore of south PV, which would constitute "take" and therefore be in conflict with the proposed Point Vicente SMR designation. A description of these activities has been provided to the Fish and Game Commission in a letter from the PV Shelf Superfund Site Project Manager (Carmen White) on February 18, 2010 (USEPA 2010). Therefore, placement of MPA's in south PV, proximal to where the EPA will have ongoing activities including capping and monitoring operations over the next several decades, is inappropriate and contrary to the MLPA.

ISSUE 3: IPA Placement of MPAs off south Palos Verdes Threatens the Established Environmental Monitoring Program Network

The Sanitation Districts protect the environment by providing wastewater treatment services to over 5 million residents in 78 cities and unincorporated areas in Los Angeles County and by doing extensive environmental monitoring and research in local and regional waters. Approximately 300 MGD of wastewater is treated by the Sanitation Districts' Joint Water Pollution Control Plant (JWPCP) and subsequently discharged to the Pacific Ocean, through the White Point outfall system, located 1.5 miles offshore from the PV Peninsula (Figure 1).

The Sanitation Districts have conducted extensive monitoring of coastal conditions near the outfall for nearly 40 years to evaluate possible impacts to the coastal ecosystem as a result of our operations. We own and operate several research vessels including the 66-foot *Ocean Sentinel* and employ a staff of marine biologists, geologists, chemists, toxicologists, and engineers to ensure we carry out our duty to protect the environment and to fulfill our National Pollution Elimination Discharge System (NPDES) permit ocean receiving water monitoring requirements. The monitoring is focused along the PV Peninsula and includes physical and chemical water column profiling, surf-zone and nearshore bacteriology, physical and chemical characterization of sediments, benthic infauna and demersal fish and invertebrate assemblage characterization, and assessment of chemical contamination of local fish and invertebrate tissues.

Establishment of MPAs along the south Coast of PV as proposed in the IPA will result in 13 of 44 benthic stations (Figure 7), 4 of 16 trawl lines (Figure 8), and of 1 of 3 fish tissue collection zones (Figure 9) falling within the MPAs. These monitoring activities may be considered "take" by the Department of Fish and Game (DFG), consisting of hundreds of species and thousands of individual organisms removed annually within these MPAs, including species most likely to benefit from MPA protection such as California scorpionfish, kelp bass, and barred sand bass. It is our understanding that these monitoring activities would likely be deemed to be illegal by DFG. However, we are legally mandated by the Regional Water Quality Control Board, Los Angeles Region, to perform this monitoring under our NPDES permit or face severe penalties for non-compliance. Similar legal conflicts will arise during required regional monitoring efforts (i.e. Bight surveys), which involve extensive scientific collection efforts in the Southern California Bight every five years.

These monitoring activities are not only a legal requirement for the continued operation of our infrastructure, but, along with similar efforts by other dischargers, provide a highly valued assessment of environmental conditions in the SCSR which is complementary to the future MPA monitoring that will

occur in the south coast region. If components of these monitoring activities are disallowed due to MPA designations, the scientific integrity of this effort will be diminished.

ISSUE 4: IPA Placement of MPAs off south Palos Verdes Jeopardizes the Ongoing Operation of the Sanitation Districts' Ocean Outfall System

As shown in Figure 1, the Sanitation Districts operate a major outfall system offshore of White Point to dispose of approximately 300 million gallons per day (MGD) of treated wastewater from a facility that serves over 5.5 million Los Angeles County residents. The four outfalls have been in place for four to seven decades, and cannot practically be removed or altered (in terms of their basic mode of operation), are essential for the protection of public health and safety, and are important infrastructure used for the provision of future regional water supplies through wastewater recycling. Placement of an MPA near this essential public health infrastructure is particularly ill-advised because of the high likelihood that the proposed MPAs will underperform for the many reasons previously discussed under Issue 1 (i.e., lack of habitat, degradation from historic landslides in Portugese Bend, historic sediment contamination and its impacts on aquatic life). With essential public health infrastructure so close to the proposed MPAs in south Palos Verde (within 1.9 miles), any underperformance of these MPAs will likely be attributed to this infrastructure, requiring either relocation or severe restrictions. The risk that this essential public health infrastructure would have to be moved or restricted to improve performance of marginal MPAs is unacceptable to the Los Angeles County residents that depend daily on this infrastructure.

This risk is further compounded given the uncertainty of how overlapping regulations between DFG and State Water Resources Control Board and/or Regional Water Quality Control Board, Los Angeles Region, will be implemented in the future. Of greatest concern is the ambiguity related to how water quality protection areas (established by the State Water Resources Control Board) will be set in the Marine Protected Areas established by this MLPA process. Currently, the State Water Resources Control Board has only one designation for their water quality protected areas, namely the designation of an Area of Special Biological Significance (ASBS). Any change in natural water quality associated with discharge into or proximal to an area designated as an ASBS is prohibited. With only one designation for water quality protected areas and provisions in the MLPA indicating that marine life reserves should receive the highest level of protection from human activities, it has to be assumed that the proposed State Marine Reserve off south Palos Verdes, if adopted by the Commission, will likely be designated as an ASBS. Given the close proximity of the essential public health infrastructure to this proposed reserve, the ASBS standard prohibiting changes in natural water quality cannot be achieved, which would require that this essential public health infrastructure be moved or treatment process upgrades be implemented at great expense to Los Angeles County residents (see Issue 5). The unintended consequences of these overlapping regulations cannot be dismissed by the Department of Fish and Game.

ISSUE 5: IPA Placement of MPAs off south Palos Verdes Threatens Great Socioeconomic Impact to Los Angeles County Residents

As described in Issue 4, the Sanitation Districts believe that the south Palos Verdes MPAs jeopardize ongoing operation of essential public health infrastructure, and will result in requirements for this infrastructure to be relocated or that costly, energy-intensive treatment upgrades be implemented. The Sanitation Districts have a fiduciary responsibility to protect the public's investment in this critical infrastructure and are obligated to exhaust all available administrative and legal remedies to prevent ultimate adoption of any MPAs in south Palos Verdes by the Commission. The Sanitation Districts are in the process of capital improvement planning related to the tunnel and outfall systems that are needed to convey treated wastewater for ocean disposal for the next 50 years. As these planning efforts continue, the

threat that the south Palos Verdes MPAs pose to existing infrastructure may very well force the Sanitation Districts to no longer consider the use of existing infrastructure as a viable alternative over other more costly alternatives that involve the relocation of the tunnel and outfall systems. The cost to relocate this essential public health infrastructure is estimated to exceed $1.5 billions of dollars, fourteen times greater than the socioeconomic impacts considered by the BRTF (Ecotrust 2009).

Throughout the MLPA process, the Sanitation Districts have been clear about our concerns and the potential socioeconomic impacts associated with placing an MPA (such as those in the IPA) so close to the outfall system. We have submitted numerous oral and written comments throughout the process, including requests that outfall-related socioeconomic impacts be assessed as part of the Science Advisory Team socioeconomic analysis. Despite these repeated requests, to date there appears to have been no attempt to address socioeconomic impacts associated with restriction or relocation of this critical infrastructure. Rather, the focus appears to have been limited to other socioeconomic impacts. The Sanitation Districts consider the socioeconomic impact studies conducted in support of the South Coast process to be flawed due to the failure to account for outfall-related socioeconomic impacts to the millions of people served. We request that in the review of conflicts in use between proposed MPAs in the South Coast Region and existing use of the area, an analysis of socioeconomic impacts to the public served by coastal-dependent entities such as the Sanitation Districts be included in the report. These impacts should also be disclosed and discussed when the Department of Fish and Game prepares the Economic and Fiscal Impact Statement as part of the MLPA regulatory process for the South Coast Region, and as required under the state Administrative Procedure Act (Government Code, Section 11346.5(a)(6)).

Summary

The PV Peninsula is an essential part of any successful MPA array in the SCSR. However, the placement of MPAs along the southern face of the PV Peninsula in the IPA does not serve the scientific goals of the MLPA due to the poor habitat quality and failure to capture rare habitats found elsewhere in Palos Verdes. Further, the proposed MPAs will be impacted by ongoing EPA Superfund remediation efforts and will threaten a vital monitoring effort in Palos Verdes meant to ensure Sanitation Districts operations do not have an impact on the coastal environment. Finally, the IPA proposal would cause great socio-economic impact to Los Angeles County residents should the Districts' essential public health infrastructure be relocated or costly, energy-intensive treatment upgrades be implemented, ultimately as a result of the proposed MPA designations. Fortunately, there are other areas available to place MPAs that will better meet the goals of the MLPA and we fully expect the Commission to recognize and repair the BRTF's flawed decision-making in Palos Verdes.

Literature Cited (see Supplemental Material provided via CD for documents)

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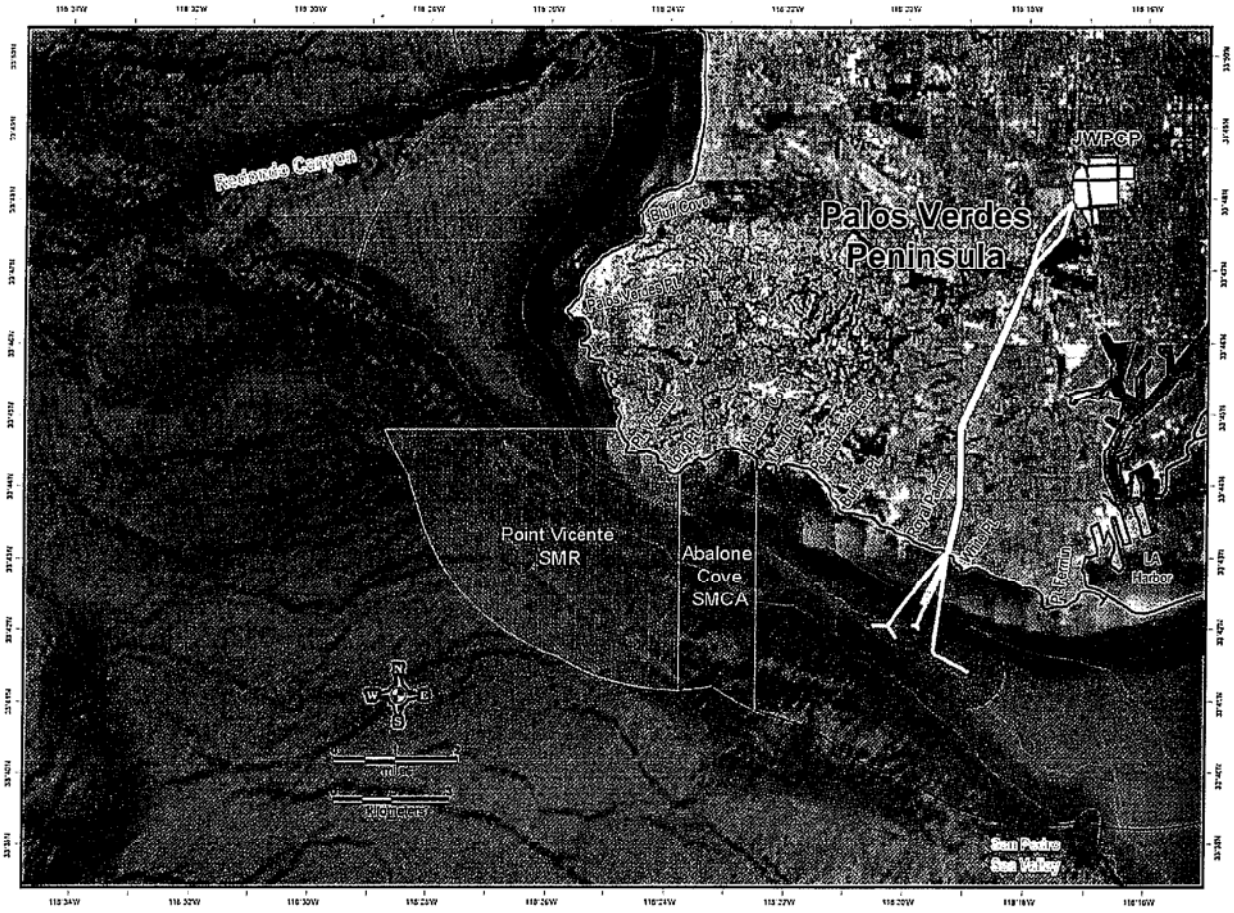

Figure 1. Location of the JWPCP, Tunnels, and Ocean outfalls

Map of the Palos Verdes Peninsula depicting the location of the Joint Water Pollution Control Plant (JWPCP) in the City of Carson, two tunnels (8 ft and 12 ft diameter) under the peninsula which convey secondary effluent to the coast near White Point, and four outfalls (60", 72", 90", and 120" inner diameter) which discharge the effluent into the ocean. The two continuously active outfalls 90" and 120") are approximately 1.5 miles offshore and lie at a depth of approximately 200 feet. The 72" outfall, and to a lesser extent the 60" outfall, are only used occasionally to relieve hydraulic pressure, typically during heavy rain events. The MLPA SAT guidance of allowing a ½ mile buffer around major discharges is indicated via shaded area surrounding the outfall pipes.

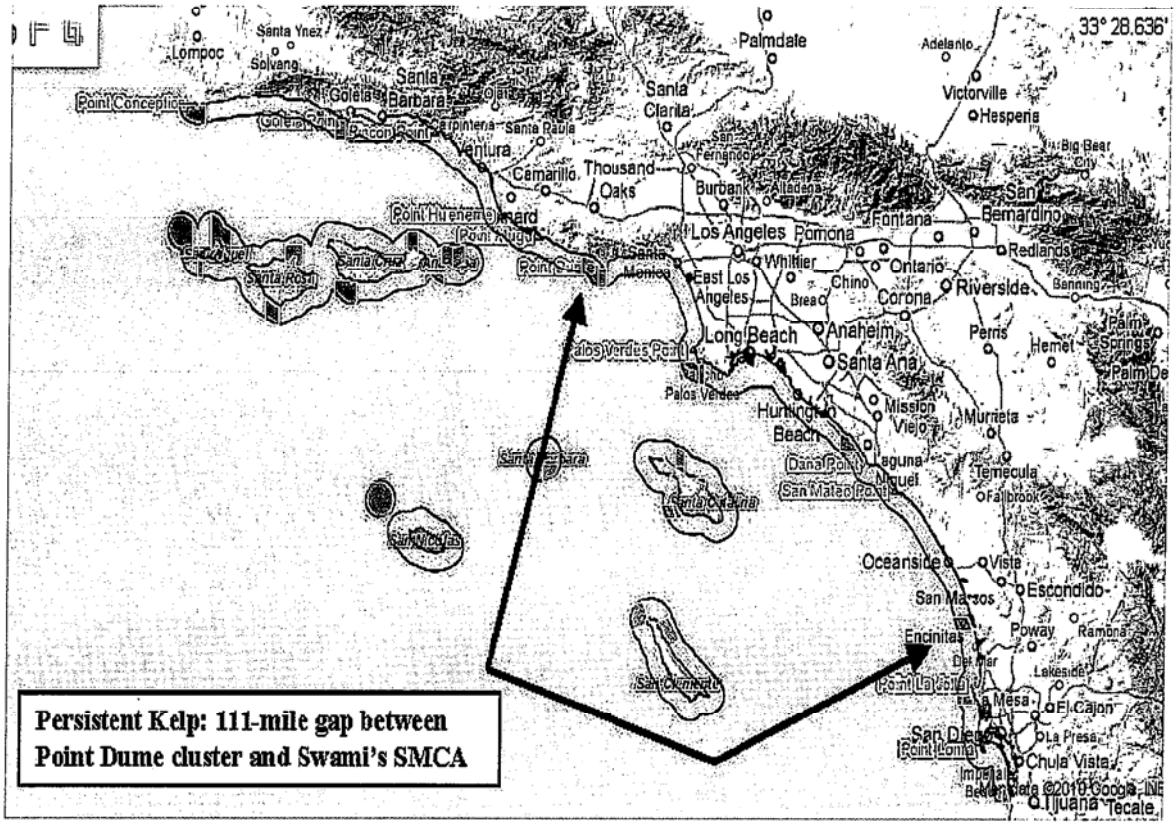

Figure 2. IPA Proposal: Persistent Kelp habitat identified as exceeding SAT spacing guidelines at Moderate-High protection. The habitat spacing for persistent kelp could have been significantly reduced had the BRTF chosen a different option in Palos Verdes.

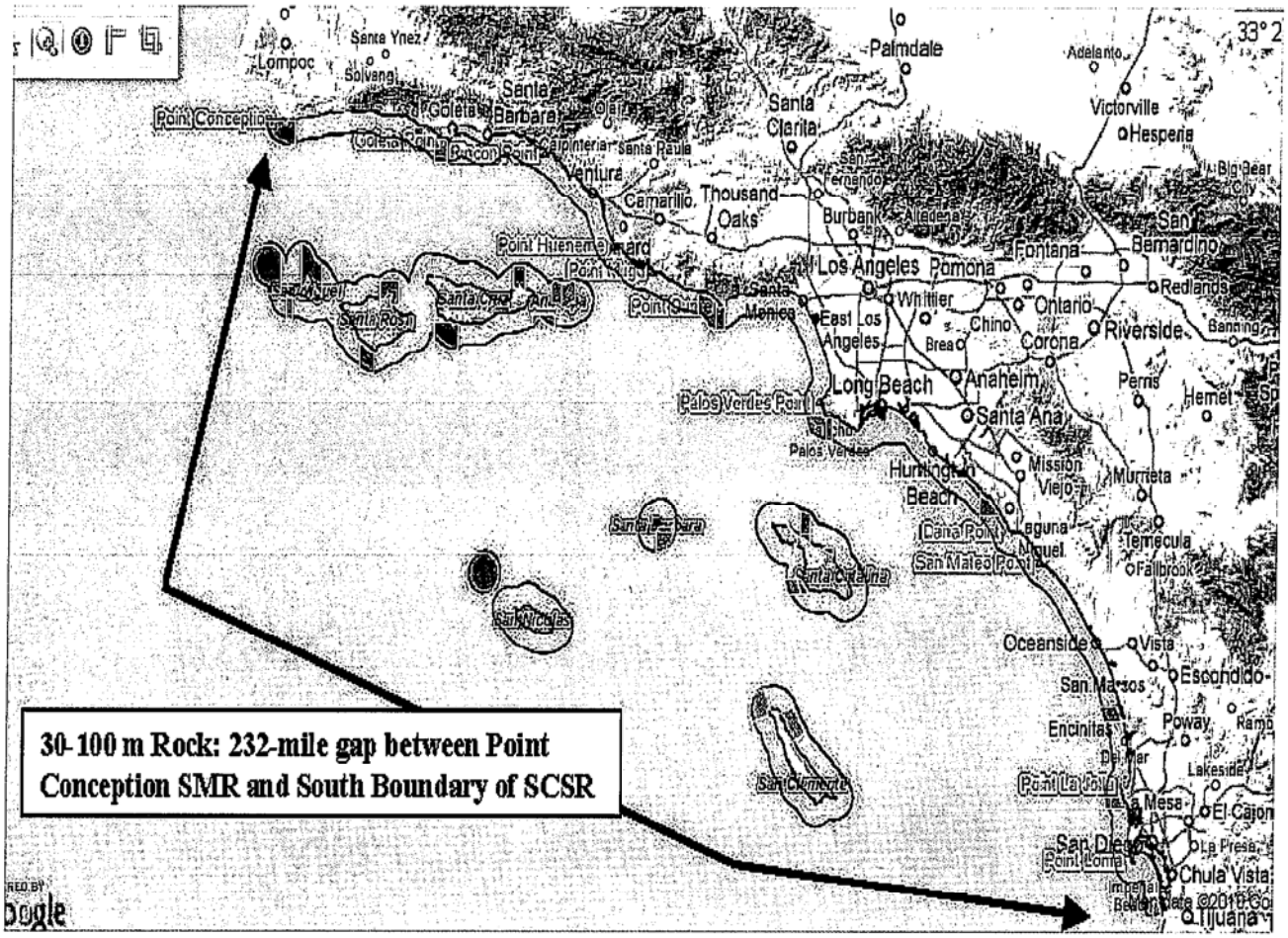

Figure 3. IPA Proposal: Offshore rock (30-100 m) habitat identified as exceeding SAT spacing guidelines at Moderate-High Protection. The habitat spacing for 30-100 m rock could have been significantly reduced had the BRTF chosen a different option in Palos Verdes.

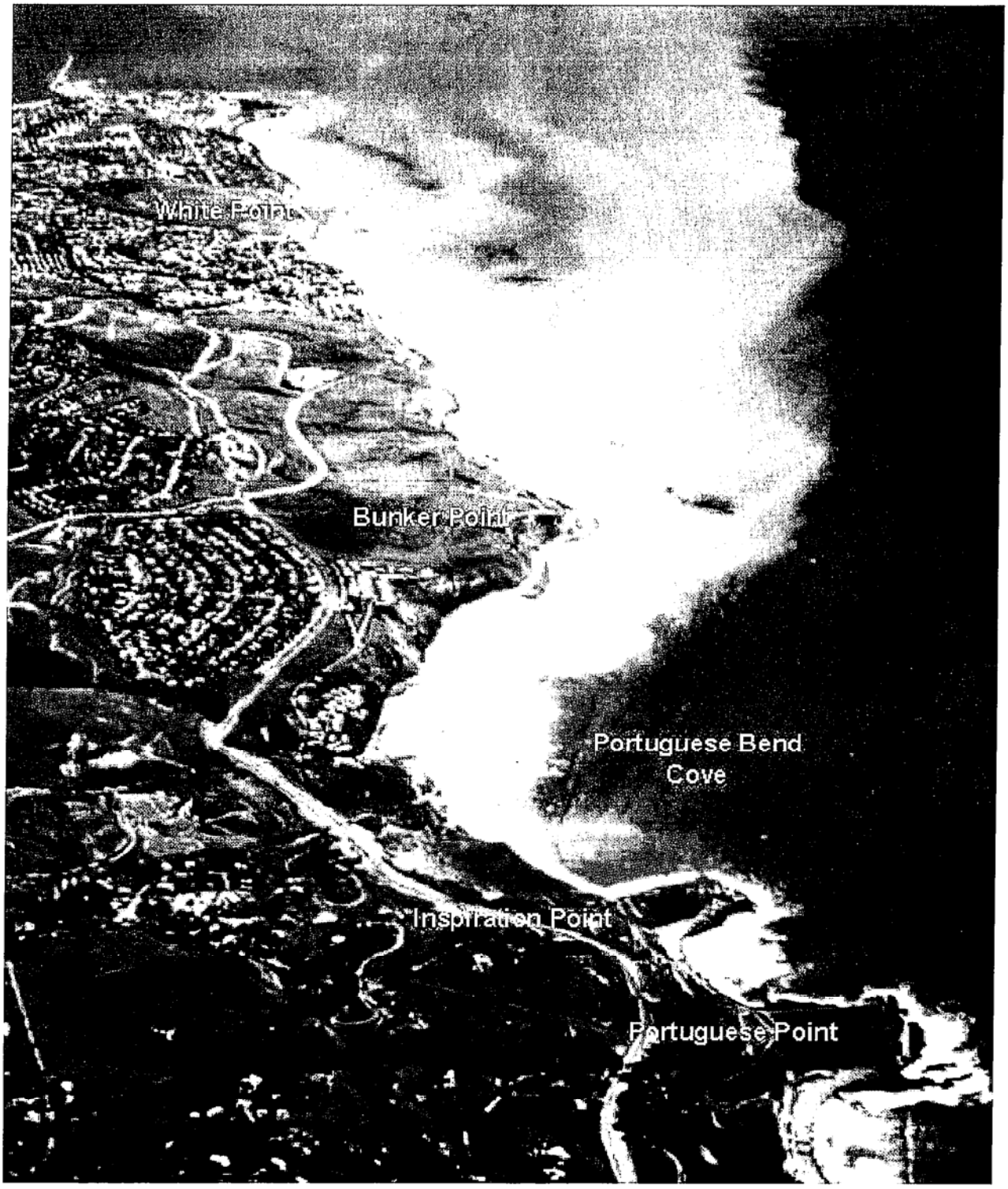

Figure 4 Sedimentation and Turbidity from the Portuguese Bend Landslide Sediment plume from the Portuguese Bend Landslide (PBL) on the south face of Palos Verdes following a rain event in 1986. The continuous sediment input to this region of Palos Verdes has resulted in high turbidity and burial of low-lying reef environment essential for the establishment of kelp forest ecosystems. Similar plumes can be seen today.

Figure 5. Examples of Buried Reefs in the Portuguese Landslide Area.
Bunker Point (above), October 22, 2008 and White Point (below), June 3, 2009.

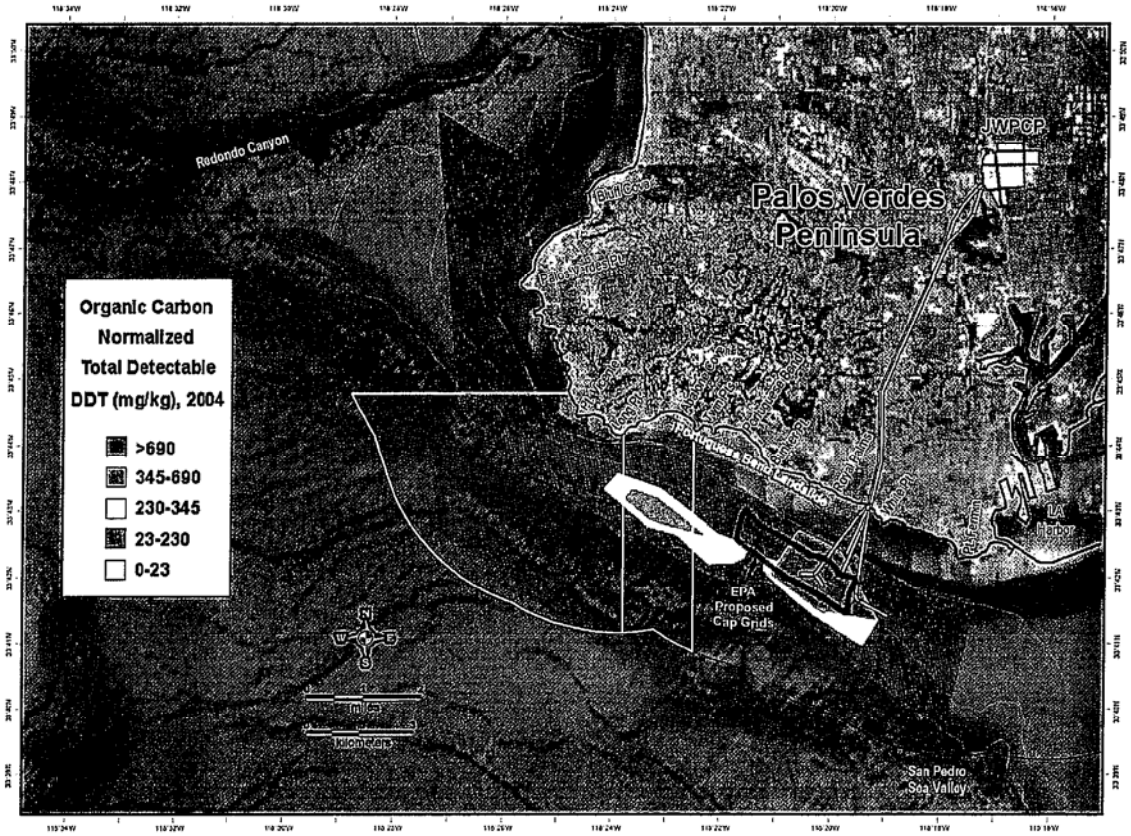

Figure 6. Total DDT in Palos Verdes Sediments. Total DDT normalized for organic carbon from sediment samples collected in 2004 in relation to the MPAs proposed in the IPA. Contamination results are expressed in relation to the EPA Superfund sediment cleanup goal of 23 mg/kg OC (organic carbon). Areas impacted by the Portuguese Bend Landslide and the proposed EPA Superfund capping areas are also depicted.

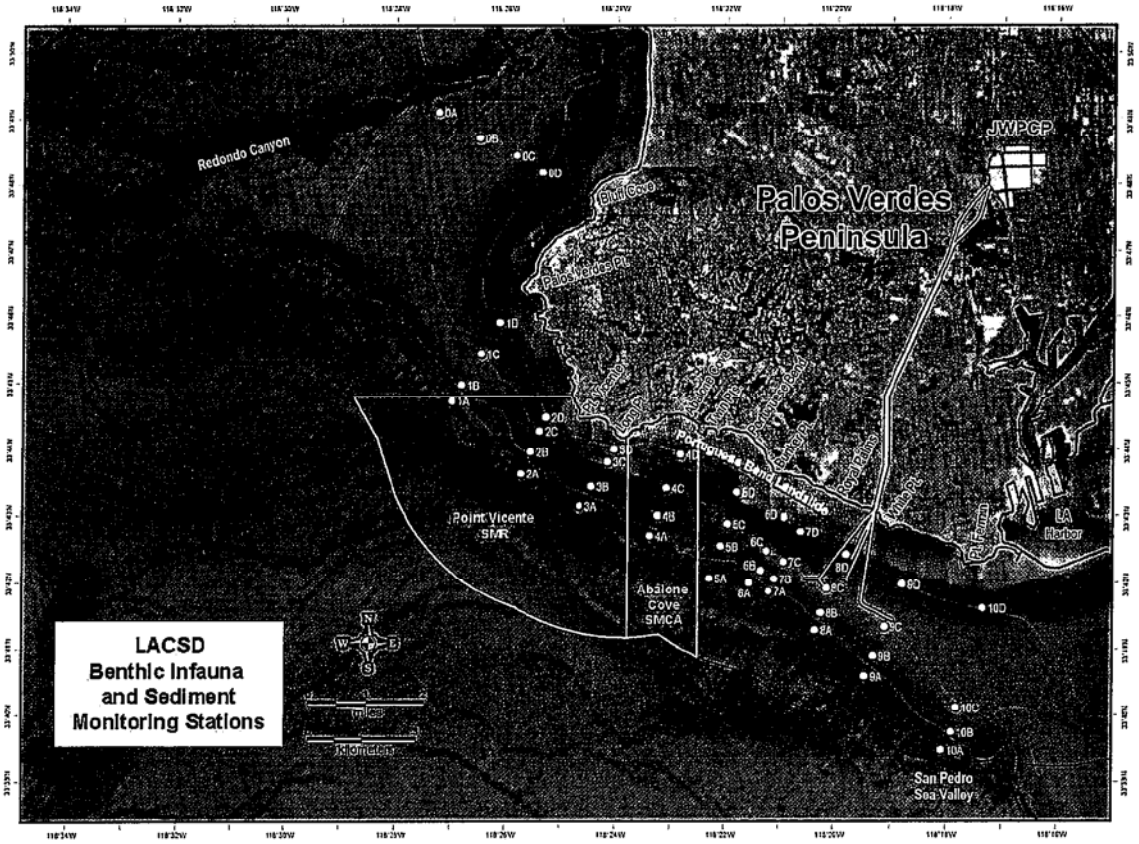

Figure 7 Benthic Infauna and Sediment Monitoring Stations

Map of the sampling sites for analysis of infaunal communities contained within the sediments and physical and chemical analysis of surficial (top two centimeters) sediments. This sampling is required by the Los Angeles Regional Water Quality Control Board, and would constitute significant take.

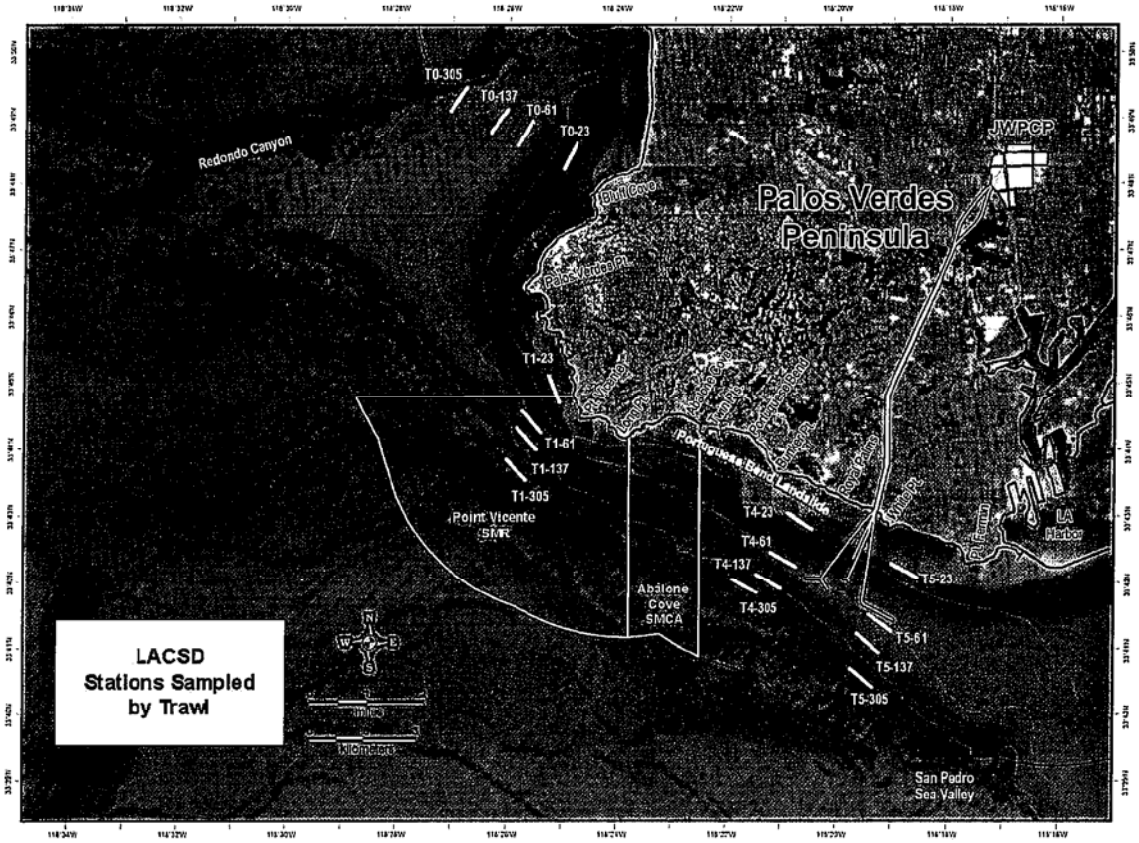

Figure 8 Stations Sampled by Trawl

Map of quarterly monitoring survey stations. The trawl is towed on bottom along the isobath of each station for 10 minutes approximately 1 m/sec, thus traversing about 0.6 km at each station. This sampling is required by the Los Angeles Regional Water Quality Control Board, and would constitute significant take.

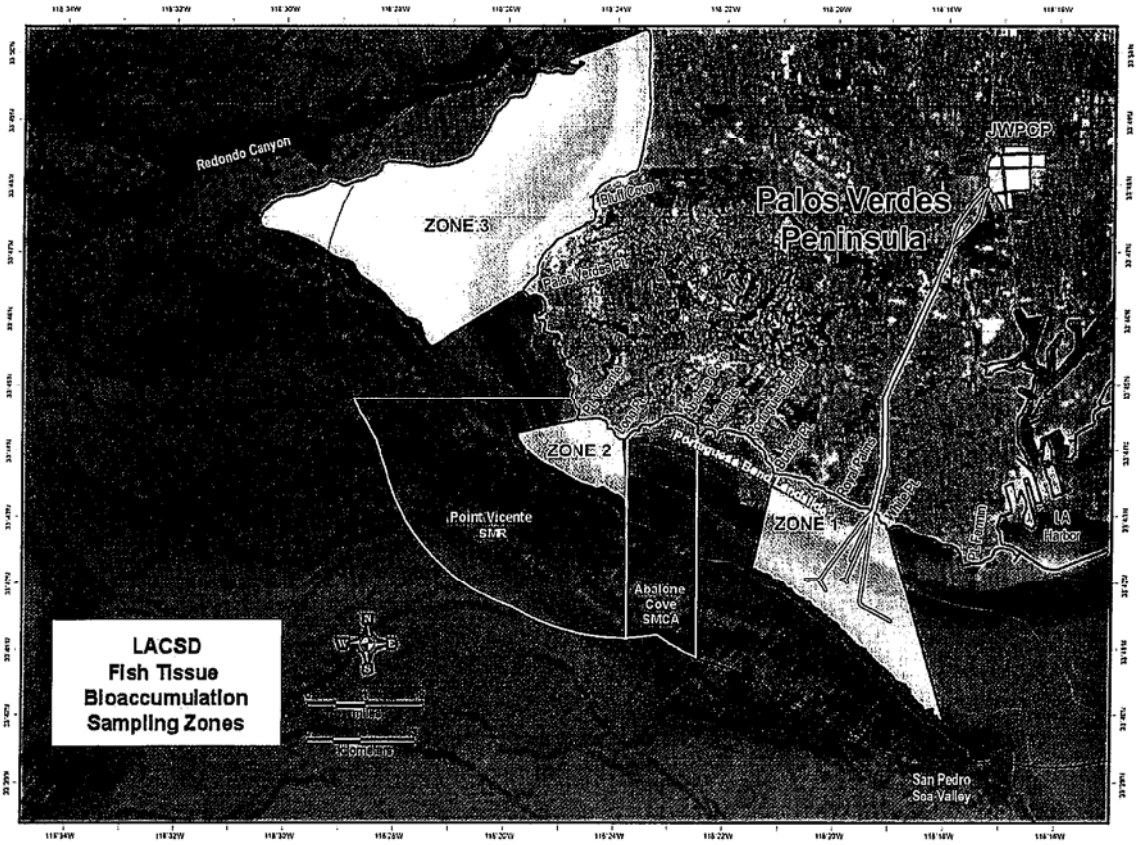

Figure 9 Fish Tissue Bioaccumulation Sampling Zones

Map of sampling zones associated with the local fish contamination trends and seafood safety monitoring. This sampling is required by the Los Angeles Regional Water Quality Control Board, and would constitute significant take.

WATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

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STEPHEN R. MAGUIN
Chief Engineer and General Manager

March 26, 2010
File No. 98-50.1.10 SI

Jim Kellogg, President
Members of the California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

Dear Commissioners:

Comments on April 7, 2010 Fish and Game Commission Meeting Agenda Item 9:
Opposition to Proposed Marine Protected Areas in South Palos Verdes

Thank you for the opportunity to submit additional comments regarding the Sanitation Districts' opposition to adoption of the proposed South Palos Verdes Marine Protected Areas (MPAs) in the South Coast Region. In brief, the Blue Ribbon Task Force (BRTF) failed to adhere to requirements in the Marine Life Protection Act (MLPA) or the MLPA Master Plan to properly incorporate scientific and socioeconomic information when it selected the South Palos Verdes MPAs for inclusion in its Integrated Preferred Alternative (IPA). The proposed South Palos Verdes MPAs are of very low value with respect to habitats protected and potential for biological productivity, yet they threaten to inflict enormous socioeconomic impacts, that were never considered by the Regional Stakeholder Group or the BRTF for the South Coast region, to the millions of people the Sanitation Districts serve in the greater Los Angeles metropolitan area. The Sanitation Districts repeat our previous request to the Commission to eliminate these MPAs from consideration for CEQA analysis and ultimate adoption in the South Coast region MPA network.

The Sanitation Districts are a confederation of 23 independent special districts serving the wastewater and solid waste management needs for over 5.5 million people in Los Angeles County. For over 87 years, the Sanitation Districts have operated one of the largest regional wastewater collection and treatment systems in the nation, with a service area that covers approximately 820 square miles and encompasses 78 cities and the unincorporated territories within Los Angeles County. Within the greater Los Angeles metropolitan area, the Sanitation Districts operate an interconnected system of sewers and wastewater treatment plants called the Joint Outfall System (JOS), which serves 17 districts and 73 cities. The terminal treatment plant in the JOS is the Joint Water Pollution Control Plant (JWPCP), which discharges to an ocean outfall system offshore of White Point on the southern side of the Palos Verdes peninsula. The Sanitation Districts have actively participated in the MLPA process in the South Coast Study Region, not only because of our duty to protect the essential public health infrastructure that the Districts operate offshore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Districts have conducted to ensure the protection of the marine environment.

Recycled Paper

Throughout the MLPA process, the Sanitation Districts have stated our concerns relating to the proposed MPAs offshore of South Palos Verdes. A compilation of these concerns is attached to this letter, detailing many scientific and legal issues. Unfortunately, the Sanitation Districts' input was not reflected in the recommendations of the BRTF, whose IPA includes low-value MPAs offshore of South Palos Verdes that would overlie one of the most contaminated areas of a Superfund site, would protect very low quality habitats, would add very little biological productivity to the South Coast region, and are in the immediate vicinity of the Sanitation Districts' ocean outfall system. Indisputably, these proposed MPAs are located in an area heavily impacted by human activities, as evidenced by the contaminated sediments in the area.

The Palos Verdes Shelf was designated as a Superfund site in 1997 due to the legacy DDT contamination in the area resulting from historical industrial wastewater discharge. As detailed in **Attachment 1**, the proposed MPAs offshore of South Palos Verdes overlie a portion of the site containing some of the most contaminated sediments and waters in the Region. The sediments exceed EPA's DDT cleanup goal, designated to be protective of human and aquatic life, by more than 20 times in the proposed Abalone Cove State Marine Conservation Area (SMCA) and by 10-20 times in the proposed Point Vicente State Marine Reserve ("SMR"), further demonstrating how low in value these MPAs are to the region as a whole. The Science Advisory Team (SAT) for the South Coast Study Region was specifically asked by the Sanitation Districts to provide guidance for appropriate placement of MPAs in these areas. A summary of these contamination issues and the SAT's guidance is provided in Attachment 1. Despite finding that sedimentation and turbidity associated with the Portuguese Bend Landslide, sediment and water contamination associated with the EPA Superfund site, and impacts associated with the Superfund site remedial actions make the proposed areas harmful to aquatic life, the SAT concluded that only a narrow portion of the Palos Verdes Shelf should be excluded from MPA consideration. That narrow portion did not include the Point Vicente SMR or Abalone Cove SMCA. Such a conclusion is inexplicable in light of the SAT's findings, and demonstrates a deliberate choice to issue guidance that does not adequately reflect the best available science, which must be considered under the MLPA and MLPA Master Plan. As detailed in **Attachment 2**, this choice to not consider the best available science makes the BRTF's designation of the South Palos Verdes MPAs legally and scientifically suspect.

Further, the habitats in both the proposed Abalone Cove SMCA and Point Vicente SMR are primarily characterized by soft bottom silt and sand, and provide negligible protection for "rare, threatened or endangered native plants, animals, or habitats" that should characterize SMCAs and SMRs as defined in the Marine Managed Areas Improvement Act. As such, removal of the proposed MPAs in South Palos Verdes from the IPA would not reduce replication between bioregions or cause exceedance of spacing guidelines. Also, removal of these MPAs would only cause a *de minimus* (<5%) reduction in the area of protected habitats (with the exception of >200m soft-bottom habitat) and potential for biological productivity associated with the IPA (**Attachment 3**).

Of critical importance, the proposed MPAs offshore of South Palos Verdes jeopardize the ongoing operation of the Sanitation Districts' JWPCP and ocean outfall system. The State Water Resources Control Board (SWRCB) is responsible for designating Water Quality Protection Areas, which may overlie MPAs to increase their overall level of protection and to ensure the best possible water quality in MPAs. SWRCB staff have indicated their intent to designate SMRs as Areas of Special Biological Significance (ASBSs), which would prohibit waste discharges should natural background levels within ASBSs be changed as a result of the discharges. The proposed Abalone Cove SMCA and Point Vicente SMR are only a short distance down-current from JWPCP's ocean outfall system. Even though the JWPCP effluent discharge meets all California Ocean Plan and permit standards, very low levels of some constituents can be measured above natural background levels in the waters of the proposed Abalone Cove SMCA and Point Vicente SMR.

The prospect that the discharge from the JWPCP would be restricted beyond current stringent permit requirements or that the outfall system would have to be relocated due to the placement of these MPAs threatens severe impacts to the millions of Los Angeles County residents who depend daily on this essential public health infrastructure. The socioeconomic impacts to Los Angeles County residents would be in the billions of dollars, which would dwarf the socioeconomic impacts considered by the BRTF. The Sanitation Districts repeatedly submitted this information to the BRTF to make clear that a MPA designation could cause significant socioeconomic impacts that require careful consideration. The recommendations of the BRTF, however, failed to reflect this testimony. Instead, the record indicates that the BRTF considered only socioeconomic impacts associated with fishing activities. However, the MLPA and Master Plan require that the socioeconomic impacts raised by the Sanitation Districts be evaluated before an IPA can be selected.

Had the BRTF adhered to the requirements of the MLPA, it is inconceivable that MPAs would have been proposed in such poor habitat, with well documented sediment and water quality impairments, contributing little or nothing toward the achievement of the stated goals of the MLPA, while simultaneously threatening major socioeconomic impact to 5 million people. In fact, it is legally impermissible to designate the Point Vicente MPA as an SMR because of existing incompatible uses as described above. Therefore, it is improper for the BRTF to have included these proposed MPAs in their proposed IPA and to have forwarded another Regional Stakeholder Group alternative also including these MPAs to the Commission.

Fortunately, the Commission can still act to eliminate these low value MPAs offshore of South Palos Verdes. As stated in our previous comment letter dated February 19, 2010, the Sanitation Districts have the responsibility to exhaust all administrative and legal remedies to ensure the public's investment in this critical infrastructure is protected. We strongly recommend that the Commission eliminate the proposed MPAs offshore of South Palos Verdes from further consideration.

In order to more fully discuss the specific issues associated with the proposed MPAs offshore of South Palos Verdes, the Sanitation Districts also request a special sub-agenda item be included during the April 7, 2010 Commission meeting. We look forward to discussing these matters with you in the future.

Very truly yours,

Stephen R. Maguin

Grace R Chan

Grace R. Chan
Assistant Chief Engineer and Assistant
General Manager

GRC:JRG:SMW:dhs
Attachments

cc: Susan Ashcraft
John Carlson
Sonke Mastrup
Becky Ota
Adrianna Shea
Ken Wiseman

DOC #1526747

ATTACHMENT 1
Palos Verdes Shelf (PVS) Superfund Site is not Appropriate for MPA Placement

From the late 1940s to 1971, Montrose Chemical Company (Montrose), the nation's largest producer of the insecticide DDT (dichlorodiphenyltrichloroethane), relied upon the collection system tributary to the Joint Water Pollution Control Plant (JWPCP) for disposal of process wastes containing high concentrations of DDT. Since the wastewater treatment process employed during this period was primary treatment only, much of the DDT passed through the treatment system.

It is estimated that 1800 metric tons (mt) of DDT were discharged through the White Point outfall system during the subject period (Chartrand et al., 1985). Following disconnection of Montrose from the sewer system in 1971, DDT discharged to the ocean through the JWPCP outfalls dropped dramatically. Effluent concentrations of total DDTs (the sum of o,p'- and p, p'- isomers of DDT, DDE, and DDD) have been near or below detection for the past twenty years. In fact, DDTs have not been detected in JWPCP effluent since 2002. However, as a result of the past discharges discussed above, there is a very strong spatial gradient of DDTs with the highest sediment concentrations beginning at the Sanitation Districts' outfall and moving to the northwest along the southern coastline of the PV shelf (**Figure 1**).

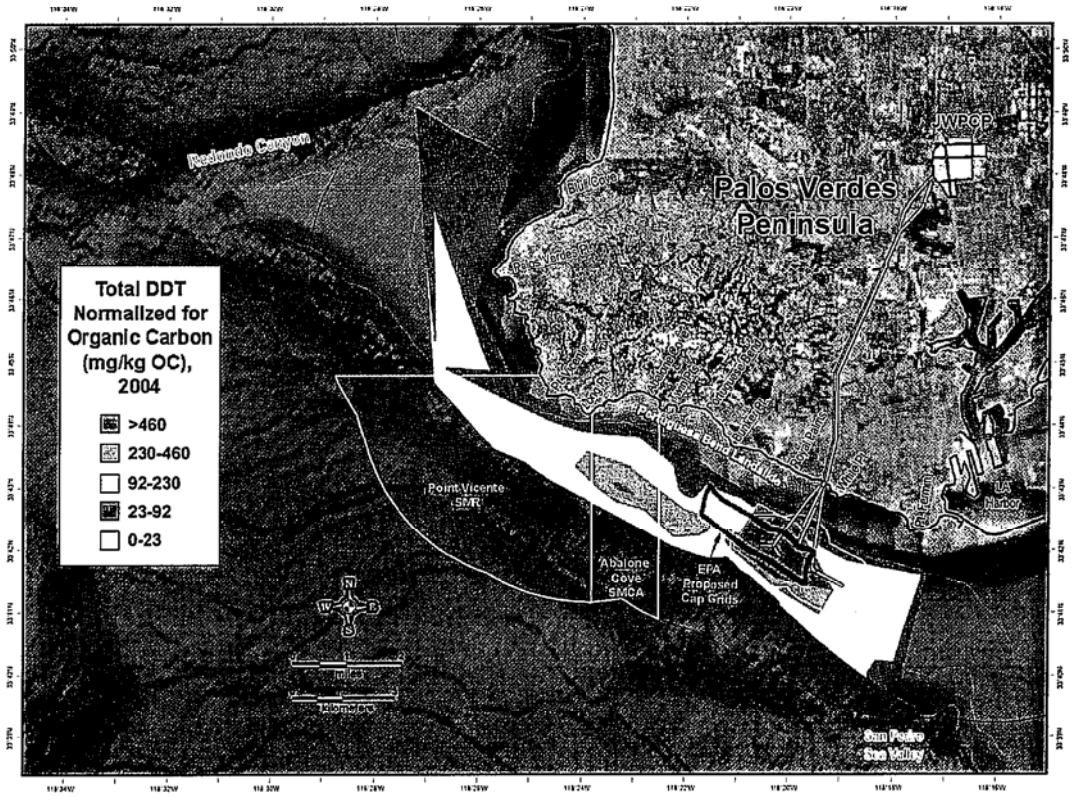

Figure 1. Proposed MPAs in relation to the gradient of DDT contamination in South Palos Verdes expressed as multiples of the EPA's cleanup goal to protect aquatic life and human health (23 mg DDT/kg organic carbon (OC)). White areas (none) are below the goal, while green, yellow, orange, and red areas are 1-4, 4-10, 10-20, and greater than 20 times the cleanup goal. Also depicted are the areas degraded by the Portuguese Bend Landslide and EPA's proposed capping area.

In 1990, the Federal government and the State of California filed a lawsuit under the federal "Superfund" law. The lawsuit charged that DDTs and PCBs damaged natural resources, including fish and wildlife that live in and around coastal waters of Southern California. EPA designated the entire PV shelf between Point Fermin and Redondo Canyon as a Superfund Site in 1997. The lawsuit was eventually settled through four separate consent decrees with the final agreement reached in 2001. A total of approximately $140 million dollars were collected from the defendants.

The United States Environmental Protection Agency (EPA) subsequently conducted an ecological risk assessment for the PV Shelf (USEPA, 2003). The risk assessment found that the levels of DDT and PCBs in the sediment and overlying water were a substantial risk to the health of benthic infauna, fish, seabirds, and marine mammals all of which are meant to benefit from the Marine Life Protection Act (MLPA) process. The EPA further concluded that the greatest risk is found near the outfalls and gradually declines with distance away from the outfall. Based upon this information and other subsequent research, EPA established a cleanup goal of 23 mg DDT/ kg organic carbon (OC) to protect aquatic life and human health in their Record of Decision for remediation of the PV Shelf (USEPA, 2009). The EPA predicts that the PV shelf median sediment DDT concentration will not meet the cleanup goal until the year 2039 even with planned remediation activities.

Examination of Figure 1 demonstrates that there are no areas within the Sanitation Districts' sediment monitoring grid (30-305 m depth range) that comply with EPA's cleanup goal. In fact, portions of the proposed Abalone Cove SMCA are more than 20 times the cleanup goal while parts of the Point Vicente SMR are 10-20 times the cleanup goal. One would expect areas with such highly contaminated sediments that threaten the health of the very species likely to benefit from the MLPA would never be considered for a Marine Protected Area (MPA). However, that is exactly what the Blue Ribbon Task Force (BRTF) proposed in their Integrated Preferred Alternative (IPA).

All parties involved in the development of the IPA were aware of the DDT contamination issues. The Sanitation Districts (and others) raised these concerns numerous times in both public testimony and written letters to South Coast MLPA planning groups including the BRTF, Regional Stakeholder Group (RSG), Science Advisory Team (SAT), and most recently to the Department of Fish and Game staff and Fish and Game Commission. In fact, the Sanitation Districts specifically asked the SAT to develop guidance for MPA placement in Palos Verdes in light of the DDT contamination and other sources of habitat degradation (LACSD 2009).

The resulting guidance document (SAT 2009) included the following statements regarding the significant threat the PV Shelf Superfund Site contaminated seawater, sediments, and associated remediation activities pose to aquatic life:

> *"The E[cological] R[isk] A[ssessment] results showed the highest biological risk to fish and invertebrates occurring near the immediate vicinity of the outfalls. Intermediate risk occur south to southwest of the outfalls as well as northwest of Point Vicente, while the lowest-risk area is around the northern areas of the PV shelf near Redondo Beach." (SAT 2009, page 4)*

> *"Although the waters overlaying PV Shelf have met the A[quatic] W[ater] Q[uality] C[riterion] for PCBs, they do not meet the AWQC for DDT. The AWQC for protection of aquatic life (including fish) is 1 nanogram/liter DDT. The no observable effects concentration (NOEC) for fish is 1,900 microgram/kilogram whole body tissue for DDT. White croaker, sanddabs, and kelp bass on the PV Shelf generally exceed the DDT NOEC, according to the EPAs standards." (SAT 2009, pages 4-5)*

"Based on the EPA standards for protecting wildlife, the EPA has determined that contaminants found in the water, sediment and in the fish do not meet the protective requirements of aquatic life." (SAT 2009, page 5)

"As outlined above, capping will result in disturbance to the benthic environment, and the potential re-suspension and availability of legacy contaminants would deleteriously affect organisms and potentially community composition in the area. If capping at the first proposed site is successful, then additional sites in the area would be considered for treatment, which would occur approximately 5 to 7 years after initial treatment. This prolonged disturbance could reduce the effectiveness of MPAs that are placed near the mitigation site, and therefore MPA placement in the area should be avoided." (SAT 2009, page 7)

Contrary to these statements and the goals of the MLPA to protect habitat suitable for the healthy propagation of marine life, the SAT guidance only suggested exclusion of "the mitigation sites identified by the EPA and the areas with the **highest** (emphasis added) known levels of toxicity and turbidity/sedimentation" (SAT 2009, page 8; **Figure 2**). According to the SAT's guidance, only the most severely contaminated areas closest to the outfall were recommended for exclusion, leaving many highly contaminated and unsuitable areas of the Superfund Site available for MPA placement. As such, the SAT failed to provide the RSG and BRTF with suitable guidance regarding the true areal extent of the threat posed by the PV Shelf Superfund Site to aquatic life, including species likely to benefit from the MLPA. Further, the BRTF failed to heed SAT warnings that placement of MPAs near future sediment capping sites should be avoided.

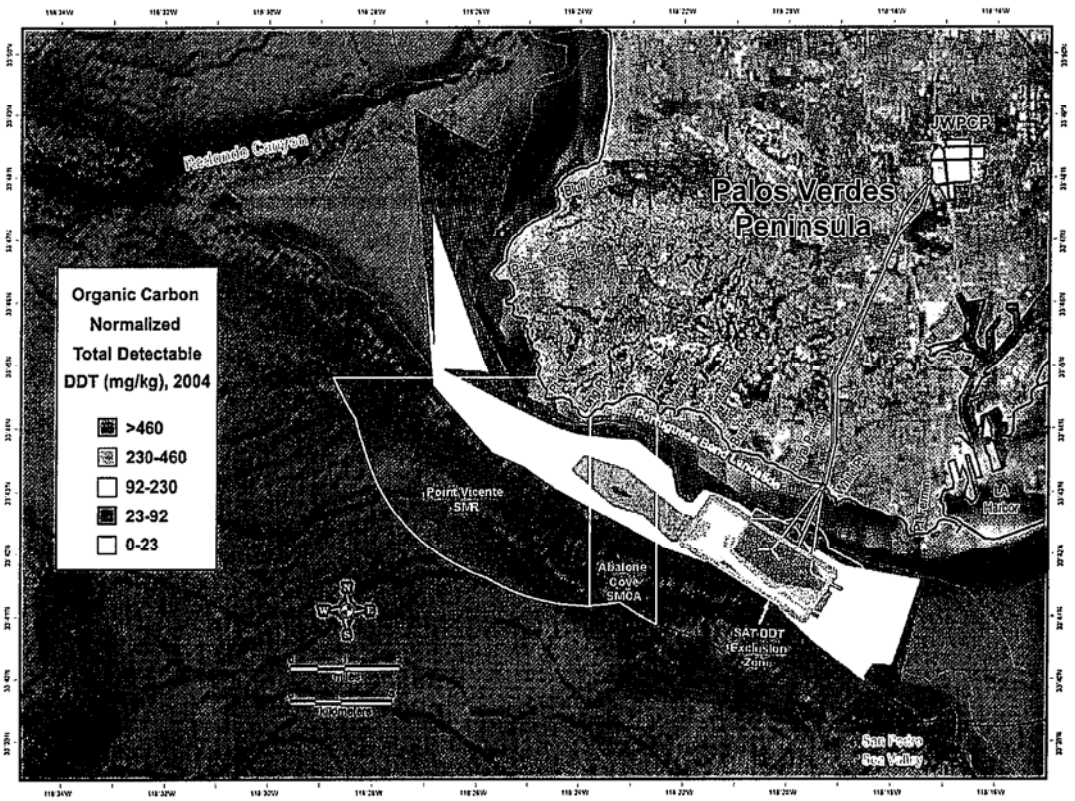

Figure 2. SAT recommended MPA exclusion zone (blue rectangle over outfalls) in relation to sediment DDT contamination (expressed as multiples of the EPA's cleanup goal of 23 mg/kg organic carbon (OC) to protect aquatic life and human health) and the proposed MPAs in South PV.

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ATTACHMENT 2
Legal Comments Related to
Proposed Marine Protected Areas in South Palos Verdes

These comments are submitted by the Sanitation Districts of Los Angeles County (Sanitation Districts) to the Fish and Game Commission regarding the Marine Life Protection Act (MLPA) Blue Ribbon Task Force (BRTF) Integrated Preferred Alternative (IPA) and other network alternatives for the South Coast Region. The Sanitation Districts oppose the BRTF's proposal to include the proposed South Palos Verdes Marine Protected Areas (MPAs) in the IPA or other alternatives that include these or similar MPAs in South Palos Verdes because the BRTF developed them in violation of the requirements of the MLPA and Master Plan.

A. South Coast Study Region Blue Ribbon Task Force Failed to Properly Consider Water Quality Concerns and Socioeconomic Impacts When Approving MPA Boundary Alternatives for South Palos Verdes

The MLPA mandates that both water quality and socioeconomic impacts be evaluated in siting new Marine Protected Areas (MPAs) and modifying existing MPAs. The MLPA requires the Fish and Game Commission to adopt a Master Plan that guides the siting of new MPAs. FGC §2855(a). The BRTF was required to use the Master Plan to develop the MPAs for the South Coast Region, however, it is clear from the record that they did not adhere to it in several important respects. The failure of the BRTF to develop MPA alternatives in compliance with the MLPA and the Master Plan renders the entire process legally invalid.

1. The BRTF failed to properly consider water quality in the development of the South Palos Verdes MPAs

A primary goal of the MLPA is "[t]o protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems." FGC §2853(b)(1). Good water quality is critical to achieving this goal. In recognition of this, the MLPA specifies that the Department and "team" assembled to prepare the Master Plan "shall have expertise ... with water quality and related issues." FGC §2855(b)(2). Additionally, staff from the State Water Resources Control Board "shall" be part of the team, and the Department and team "shall solicit comments and advice for the master plan from interested parties on issues including ... (1) Practical information on the marine environment and the relevant history of fishing and other resources use ... and water pollution in the state's coastal waters." FGC §2855(b)(3)(A); 2855(c)(1) (emphasis added). The Master Plan explains that water quality is one of the important biophysical indicators of the success of marine management actions to implement the MLPA, and recommends that the Science Advisory Team (SAT) work with the State Water Resources Control Board to more fully evaluate potential water quality impacts. Master Plan § 6.2.1, p. 78; *Id.* §3.8.1, p. 53. The MLPA mandates that the Master Plan be "based on the *best readily available science*." FGC §2855(a) (emphasis added). And, the Master Plan requires that the BRTF evaluate water quality during the initial development of the proposed MPAs, and certainly prior to designating an IPA. *See* Master Plan §2.3, p. 21.

In light of the mandates of the MLPA and Master Plan, a Science Advisory Team was appointed that provided recommendations to the BRTF for considering water quality in developing alternative MPA proposals, and evaluated alternative MPA proposals using these recommendations. *See* California Marine Life Protection Act Initiative, Draft Methods Used to Evaluate Marine Protected Area Proposals in the MLPA South Coast Study Region (SAT Draft Methods) (October 6, 2009); California MLPA Master Plan Science Advisory Team, Summary of SAT Water and Sediment Quality Evaluation of Round 3 SCRSG MPA Proposals for the MLPA South Coast Study Region (SAT Evaluation) (October 7, 2009).

Significantly, the SAT concluded that "[w]here water quality is significantly compromised, marine life may be affected. Impaired water quality may lead to changes to population rates (growth, reproduction, and mortality), population abundance and ecological community composition through a variety of interactions (e.g., decreased diversity, loss of sensitive species and abundance of tolerant species)." SAT Draft Methods, p. xiv. The SAT also stated that "[i]t is generally accepted that degraded water and sediment quality results in impacts to marine life, including undesirable changes to community structure and function." California MLPA Master Plan Science Advisory Team, Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA South Coast Study Region (SAT Draft WQ Recommendations), p. 13 (April 30, 2009) (citations omitted). However, the SAT inexplicably, and contrary to law, concluded that [w]ater quality evaluations are not mandated by the MLPA, and should therefore be considered secondary to other MPA network design guidelines." *Id.*, p. 101. And, despite SAT's recommendation that "areas that are significantly impacted by a variety of pollutants from large industrial or developed watersheds" should be avoided as sites for MPAs, it failed to recommend that the Palos Verdes Shelf Superfund Site be avoided. *Id.*, pp. xiv-xv. Thus, while the SAT determined that placement of MPAs "in or near areas of impaired water quality (e.g. Santa Monica Bay)" would be acceptable if there are other reasons to place MPAs in such areas, this conclusion is at odds with the conclusions cited above as well as other scientific evaluations by the SAT. *Id.*

Specifically, in response to a request by the Sanitation Districts, the SAT performed a site-specific evaluation and provided additional guidance for MPA designation in the vicinity of the South Palos Verdes MPAs. The SAT included the following important information and conclusions regarding water and sediment quality and MPA placement in this area in its report:

- The waters overlaying the PV [Palos Verdes] Shelf do not meet the ambient water quality criteria for DDT, and based on the EPA standards for protecting wildlife, EPA has determined that contaminants found in the water, sediment and in the fish do not meet the protective requirements of aquatic life.

- Since the EPA will continually be working in this area through the next several years, if not longer, the SAT determines that it is important to include and consider the current process by the EPA of selecting an interim remedial action for the PV Shelf.

- Capping activities conducted as an interim remedial action could lead to re-suspension events of the contaminated layer and cause some temporary increase in bioavailability of the toxins and a temporary increase in fish exposure to legacy contaminants (i.e. DDT, PCB). If approved, initial capping activities would begin in 2011 and take one to two years to complete.

- If capping at the first proposed site is successful, then additional sites in the area would be considered for treatment, which would occur approximately 5 to 7 years after initial treatment. <u>This prolonged disturbance could reduce the effectiveness of MPAs that are placed near the mitigation site, and therefore MPA placement in the area should be avoided</u>.

SAT Draft Recommendations for Evaluating Water and Sediment Quality Along the Palos Verdes Shelf (SAT Draft PV Recommendations), pp. 4-7 (August 31, 2009) (emphasis added).

It is important to note that the additional sites that would be considered for remedial capping activity are even closer than the first proposed capping site to the proposed Abalone Cove SMCA and Point Vicente SMR, and would therefore be expected to potentially have even greater impacts on the proposed MPAs (*see **Attachment 1**)*. The SAT also found that sedimentation and turbidity associated with the Portuguese Bend landslide make the area off Portuguese Bend (from Long Point to White Point) the least suitable area for proposed MPAs on PV. *Id.*, pp. 5-7.

However, despite these findings acknowledging that the water and sediment quality of the proposed areas, including the Point Vicente SMR and the Abalone Cove SMCA, does not support inclusion in an MPA, the SAT concluded that only a small area should be excluded from MPA designation. That narrow exclusion area did not include the proposed Point Vicente SMR or the Abalone Cove SMCA, even though EPA has clearly documented and the SAT concurred that all along the PV shelf (and inclusive of the areas occupied by the proposed South Palos Verdes MPAs) "contaminants found in the water, sediment and in the fish do not meet the protective requirements of aquatic life." SAT Draft PV Recommendations, p. 5. The SAT's conclusion and the BRTF's proposed designation of the South Palos Verdes MPAs demonstrate that the MPAs are not supported by the best readily available science, in violation of the MLPA and the Master Plan. The SAT's recommendation is also at odds with the legal mandates for state marine reserves that they "be maintained to the extent practicable in an undisturbed and unpolluted state" and "be designed . . . to ensure that activities that upset the natural ecological functions of the area are avoided," and the overall goal of the MLPA "to improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance." PRC §36710(a); FGC §§2857(c)(4) and 2853(b)(3) (emphasis added). Thus, BRTF's decision to accept the SAT's flawed recommendations and ignore readily available scientific information about historic water and sediment pollution and the ongoing and anticipated future ecological impacts from human activities (due to EPA's Superfund cleanup activities) in the waters off of South Palos Verdes makes the proposed designation of the South Palos Verdes MPAs legally improper. The BRTF's failure in this matter is particularly egregious in that subsequent analyses demonstrate how little value these proposed South Palos Verdes MPAs provide to the overall MPA network of the IPA. (*see **Attachment 3***). Had the BRTF properly considered the poor sediment and water quality with respect to how little value the proposed Point Vicente SMR and the Abalone Cove SMCA provide to the overall MPA network for the IPA, it seems inconceivable that the proposed South Palos Verdes MPAs would ever have been proposed in the first place.

2. BRTF failed entirely to consider the socioeconomic impacts of the proposed South Palos Verdes MPAs on the communities served by the Sanitation Districts

The MLPA and the Master Plan include a legal mandate to consider the socioeconomic impacts of MPA alternatives. Section 2855(c)(2) of the California Fish and Game Code specifically states that the Department and the team responsible for preparing the Master Plan to implement the MLPA "shall" solicit advice on issues including "socioeconomic and environmental impacts of various alternatives." This advice is not limited to the preparation of the Master Plan, but includes soliciting advice on the various alternatives when the competing MPA proposals are being developed. Master Plan § 2.3, p. 21.

The Master Plan could not be clearer on the requirement to consider socioeconomic impacts: "Choosing a location for a marine reserve or protected area requires an understanding of probable socioeconomic impacts as well as the environmental criteria for siting." Master Plan §1.4, p. 12. Indeed, the Master Plan is replete with references to the importance of evaluating socioeconomic impacts early on and throughout the entire MLPA process. Master Plan §3.11, p. 59 ("The regional MPA process should make every effort to assemble socioeconomic information early and to apply it in the design and evaluation of MPAs."); *Id.* §2.3, p.21 (evaluation process includes conducting "environmental and socioeconomic analysis as required by law."); *Id.* §2.4, p. 28-29 (SAT and Department mandate to

"prepare a preliminary socioeconomic analysis of potential impacts of each alternative proposal."); *Id.* §3.3, p. 41 (The design of MPA proposals should include consideration of "areas of intensive human use and the cost and benefit of establishing MPAs in these areas.") (emphasis added). This includes requirements for the Department of Fish and Game, MLPA Master Plan Team, and BRTF to consider information concerning socioeconomic impacts that affected communities provide during the development of each MPA under review. FGC §§2855(c), 2857.

The Sanitation Districts repeatedly submitted information to the BRTF emphasizing that the socioeconomic impacts to Los Angeles County residents could be in the billions of dollars should the Sanitation Districts be required to take measures in response to restrictions that could be imposed as a result of the designation of the South Palos Verdes MPAs. This is because the proposed MPAs offshore of South Palos Verdes jeopardize the ongoing operation of the Sanitation Districts' Joint Water Pollution Control Plant (JWPCP) and ocean outfall system in two ways. First, the placement of MPAs, such as the Point Vicente SMR and the Abalone Cove SMCA contained in the IPA over areas of impaired sediment and water quality and poor quality habitat creates a high likelihood that underperformance of these MPAs will occur and, as MPA performance is evaluated and adaptive management measures are applied, that this lack of success in attaining the goals of the MLPA could result in new restrictions being imposed on the discharge from the Sanitation Districts' infrastructure. The MLPA and Master Plan require monitoring of MPAs to ensure that they are meeting their stated goals. FGC §2853(c)(3); Master Plan §6, p. 73-79. Such new requirements on the Sanitation Districts' infrastructure could include relocation of the point of discharge (resulting in the need for significant investments in new infrastructure), restrictions on the quantity of flow allowed to be discharged, and/or restrictions on the mass or concentration of pollutants allowed to be discharged, resulting in the need for major treatment plant upgrades. Any of these scenarios could cost the Sanitation Districts, and the millions of Los Angeles metropolitan area residents served by these facilities, billions of dollars.

Second, these potential socioeconomic impacts could be effectuated by the designation of these MPAs, and the subsequent overlying designation of State Water Quality Protection Areas (SWQPAs) by the State Board. The State Water Resources Control Board (State Board) is responsible for designating SWQPAs, which may overlie MPAs to increase their overall level of protection and to ensure the best possible water quality in MPAs. PRC §36725(d). The State Board and Regional Water Quality Control Boards are charged with responsibility for taking appropriate actions to protect SWQPAs. PRC §36725(f)(3). According to the SAT, "[f]urther protection from water quality threats, or restoration of water quality to meet standards, should be targets to be accomplished after MPA implementation using the appropriate mechanisms." SAT Draft WQ Recommendations, p. 2. The SAT goes on to identify the following potential post MPA designation implementation strategies to protect and restore water quality: "for example, the regional water boards may recommend to the State Water Resources Control Board the designation of additional state water quality protection areas (SWQPAs), or work on priority total maximum daily loads that could restore water quality MPAs."[1] *Id.*, p. 13. Further, the Marine Managed

[1] An MPA designation has important ramifications for the State Board's subsequent designation of ASBS pursuant to the Ocean Plan. Through the Ocean Plan, the State Board has the authority to control the discharge of waste to ocean waters to protect the quality of those waters. Ocean Plan Introduction. Included in the beneficial uses of the ocean that are protected by the Ocean Plan are ASBSs and marine habitats. Ocean Plan I(A). The State Board is responsible for designating an ASBS if the area is (1) located in ocean waters; (2) intrinsically valuable or has recognized value to man for scientific study, commercial use, recreational use, or esthetic reasons; and, (3) needs protection beyond that offered already. Ocean Plan Appendix IV. Once an ASBS has been designated, any change in the natural water quality associated with any discharge into or proximal to that area is prohibited. Ocean Plan III(E). Because the MLPA specifies that an area designated as a State Marine Reserve ("SMR") should receive the highest level of protection from human activities, an SMR would likely be designated as an ASBS. *See* FGC §2852 (d); PRC §36710(a).

Areas Improvement Act (MMAIA) establishes that Areas of Special Biological Significance (ASBS) are a subset of SWQPAs that require special protection. PRC §36700(f). In areas receiving the ASBS designation by the State Board, waste discharges are prohibited should natural background levels within that ASBS be changed as a result of the discharges. Ocean Plan III(E). The proposed Point Vicente SMR is only a short distance down current from JWPCP's ocean outfall system. Even though the JWPCP effluent discharge meets all Ocean Plan and permit standards, very low levels of some constituents can be measured above natural background levels in the waters of the proposed Abalone Cove SMCA and Point Vicente SMR. Thus, designation of these MPAs leads to a high likelihood that a series of related actions would be triggered that will result in the outfall system having to be relocated and/or treatment upgraded at JWPCP due to the placement of these MPAs.

Despite the Sanitation Districts' repeated submittals of comments to the BRTF relaying these concerns about socioeconomic impacts, the BRTF appears to have given no consideration to this testimony. Instead, the record reflects that the BRTF considered only the socioeconomic impacts to fishing interests from locating the Palos Verdes MPAs north of Point Vicente and Abalone Cove. *See e.g.* South Coast Study Region Blue Ribbon Task Force November 10, 2009 meeting video, statements by BRTF members Bill Anderson and Meg Caldwell (e.g. "although the science was clear as to what should ultimately take place there [Palos Verdes] . . . .it was ultimately a choice of the impacts to the fishing and boating community and the ultimate socioeconomics."); *also see,* Draft Methods, pp. 109-113 (description of methodology for conducting economic impact analysis for commercial and recreational fisheries). The MLPA and Master Plan require that the socioeconomic impacts raised by <u>all</u> affected communities be considered during the development of the MPAs. Futhermore, the BRTF's failure to even assess these cost impacts is particularly egregious given how little biological value the proposed South Palos Verdes MPAs provide to the overall MPA network of the IPA. *See **Attachment 3**.*

In conclusion, the BRTF's failure to consider categories of socioeconomic impacts other than fishing, such as those of the public served by the Sanitation Districts, merits exclusion of the South Palos Verdes MPAs in the IPA and other alternatives under consideration for the South Coast Region.

B. Designation of a No-Take State Marine Reserve on South Palos Verdes Peninsula is Legally Impermissible

If any MPAs are to be designated on South Palos Verdes, designation as a No-Take State Marine Reserve (SMR) is legally impermissible. For instance, the BRTF's IPA includes an MPA at Point Vicente, which the BRTF has proposed to designate as an SMR. The designation of a SMR makes it illegal to engage in activities that result in a take as that term is defined. PRC §36710(a). Currently, the EPA Superfund Site remediation program described above necessitates periodic monitoring of sediment and fish tissue chemistry within the IPA proposed Point Vicente SMR and other MPAs offshore of South Palos Verdes, which would constitute "take." The EPA's activity is in direct conflict with the designation of the Point Vicente MPA as an SMR.

The California Attorney General (AG) has provided legal advice to the Natural Resources Agency for dealing with conflicts such as this one. The AG identified several options for how existing permitted activities, like those covered by EPA Superfund Site remediation, may be accounted for in designation of MPAs. Informal Advice from the Office of Attorney General regarding marine protected areas and the Marine Managed Areas Improvement Act (AG Memo), p.2 (October 1, 2009). The AG noted that "prohibitions for marine reserves are the strictest of all marine managed areas" and that "the Legislature intended marine reserves to be 'genuine no take areas.'" *Id.* p. 5. Thus, the AG concluded "The Fish and Game Commission . . . <u>must</u> exclude the area occupied by an existing incompatible use

from a designation or choose a less stringent designation that can accommodate the use." *Id.* p. 2 (emphasis added). The proposed SMR on South Palos Verdes included in the IPA did not allow for "take," and thus is legally at odds with the MLPA and MMAIA due to these existing incompatible uses.

C. Conclusion

The BRTF's disregard of the clear requirements of the MLPA and Master Plan to consider water quality and socioeconomic impacts renders their decision to include the proposed South Palos Verdes MPAs in their proposed IPA legally invalid. The Fish and Game Commission can still act to eliminate the South Palos Verdes MPAs from further consideration in the South Coast Region. For all the reasons stated above and in the other Attachments, the Sanitation Districts strongly recommend that the Commission take such action.

ATTACHMENT 3
Exclusion Analysis for South Palos Verdes MPAs

The Abalone Cove SMCA/Point Vicente SMR Marine Protected Areas (South Palos Verdes MPAs) cluster proposed in the Blue Ribbon Task Force's (BRTF's) Integrated Preferred Alternative (IPA) represents low-value habitats that only minimally contribute to the overall habitat protection within the IPA. The following information demonstrates this point by quantifying the impact to the IPA if the South Palos Verdes MPAs were removed from the IPA. This analysis uses several key parameters utilized by the MLPA Master Plan Science Advisory Team (SAT) in their evaluation of marine protected area (MPA) proposals in relation to the goals of the MLPA. SAT evaluations include: 1) an analysis of habitat representation within ecosystems and habitats; 2) habitat replication within ecosystems and habitats; 3) evaluation of MPA spacing with respect to marine life populations and connectivity; and 4) bioeconomic modeling which is used as an indicator of relative productivity in an MPA.

1) Area of Habitats Protected

The SAT habitat representation analysis addresses how well key habitat types are represented in individual MPAs or MPA clusters. In evaluating the key habitat types in the IPA, the South Palos Verdes MPAs only contributed between 0 and 5.2 percent or less of total areal or linear habitat in the region for all but one habitat (**Figure 1**). The exception was deep soft-bottom (200-3000 m) habitat, which within the South Palos Verdes MPAs, is heavily contaminated with DDT and PCBs (see **Attachment 1**). The loss of this contaminated soft-bottom habitat is even less significant in the context that offshore soft-bottom habitats are the most abundant habitats in the study region (>37 square miles in IPA). Removal of the South Palos Verdes MPAs still leaves approximately 24 square miles of deep (200-300 m) soft-bottom habitat and over 285 square miles of total soft-bottom habitat protected in the region. By comparison less than 28 square miles of crucial hard bottom habitats (sum of all depths) are protected by the IPA. Therefore, the removal of the South Palos Verdes MPAs from the IPA has little impact on the quantity of habitat protected in the region.

2) Habitat Replication

The science guidelines for design of MPAs recommend replication of habitats within 3-5 MPAs in the South Coast biogeographical region. Additionally, to represent the full diversity of marine ecosystems within the South Coast region, the SAT recommended that habitats should be replicated in at least one MPA in each of the five bioregions (south and north mainland, and west, mid-, and east Channel Islands), to the extent possible. Removal of the South Palos Verdes MPAs from the IPA does reduce the number of replicates obtained in some habitats at the high and very high levels of protection by one replicate. However, the loss of a single replicate within the south mainland bioregion does not result in any exceedances of the SAT guidelines for habitat replication. Additionally, the South Palos Verdes MPAs do not sufficiently represent enough hard-bottom habitat (both inshore and offshore), or kelp persistence, to even form a replicate. Therefore, removal of the South Palos Verdes MPAs from the IPA would have no impact on the replication of these crucial habitats in the South Coast region.

3) Habitat Spacing

SAT spacing guidelines were developed to provide for the dispersal of larvae for a range of important bottom-dwelling fish and invertebrate groups between MPAs and to promote connectivity in the network. To facilitate dispersal and connectivity, spacing guidelines along the mainland recommend that habitats replicated in MPAs be placed at a maximum of 31-62 statute miles from each other. Since marine populations are generally habitat specific, the spacing evaluation was conducted for each habitat. Spacing analyses included the maximum distance (gap) between MPA clusters that include a replicate of each habitat for MPAs at very high, high, and moderate-high levels of protection.

Removal of the South Palos Verdes MPAs did not cause any exceedences of the SAT guidelines for habitat spacing. For habitats in which removal of the South Palos Verdes MPAs caused a habitat gap increase, the SAT guideline for maximum spacing (62 miles) had already been exceeded. Therefore, the existing IPA is already deficient in terms of larval connectivity for the habitats represented by the South Palos Verdes MPAs. The removal of the South Palos Verdes MPAs from the IPA will not further add to these deficiencies as defined by the SAT guidelines.

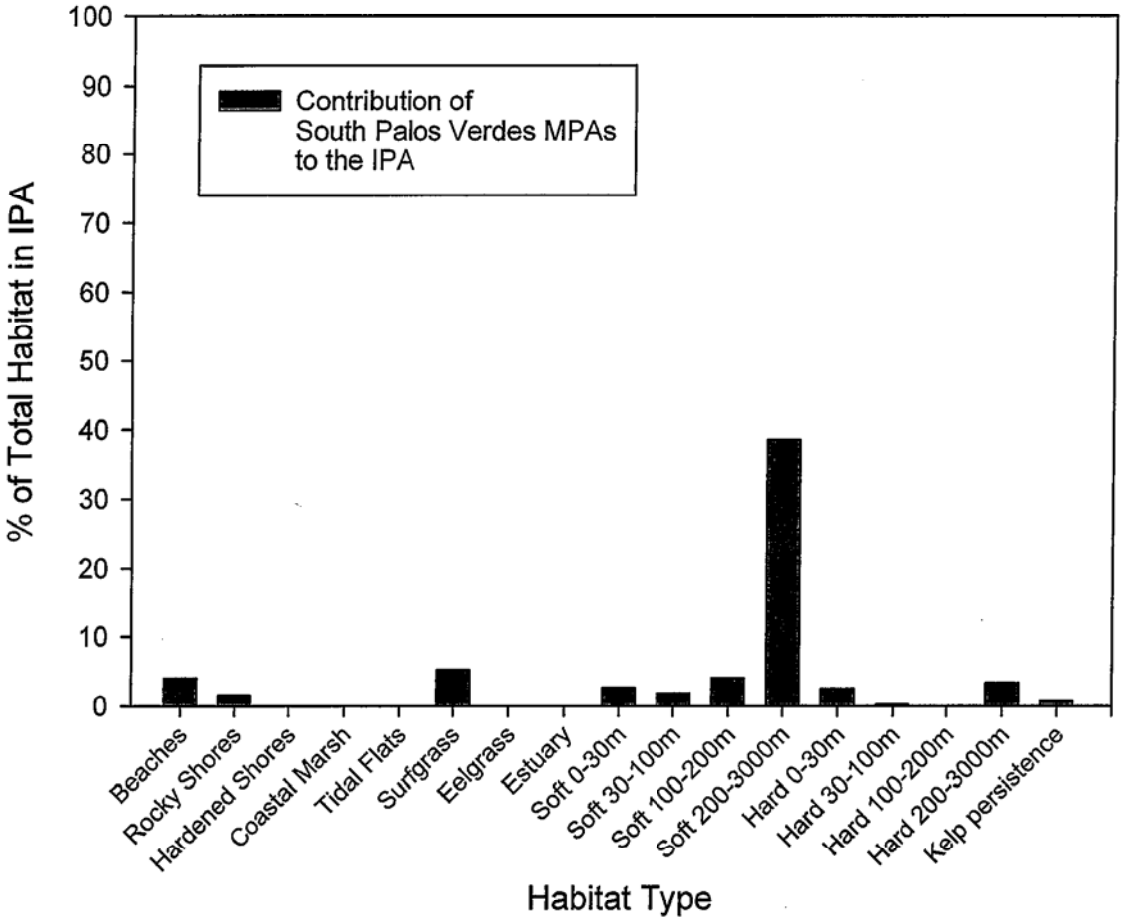

Figure 1. Percent of total area represented by South Palos Verdes MPAs. Data taken from Habitat Calculations for MLPA South Coast Integrated Preferred Alternative (IPA). November 30, 2009. http://www.dfg.ca.gov/mlpa/pdfs/scsr_habcalcs_ipa.pdf

4) Effect on Biomass

SAT bioeconomic model analyses of the MPA proposals were performed by the UC Davis (UCD) and UC Santa Barbara (UCSB) modeling research groups. The results of the bioeconomic modeling evaluations indicate a direct relationship between biomass and fishery production (productivity). The analysis may be used to evaluate whether a particular MPA is attaining a desired level of biomass production (or supporting a desired level of fishery yield). The bioeconomic analysis can also reveal which MPAs are particularly successful in improving connectivity with the MPA network, and which locations are predicted to benefit most from increased larval production inside MPAs.

Included in the modeling was a deletion analysis, in which each MPA in a proposal is sequentially removed, one-at-a-time, and conservation value is recalculated. The difference between the biomass with and without a given MPA is an indication of that MPA's relative contribution to the MPA network. Comparison of the IPA network with and without the South Palos Verdes MPAs reveals little change on the conservation value (biomass) over the entire network (**Figure 2**). In either model, there was a less than five percent contribution of the South Palos Verdes MPAs to network biomass. Therefore, removal of the South Palos Verdes MPAs will have negligible impact to the overall biomass and productivity of fisheries within the South Coast region.

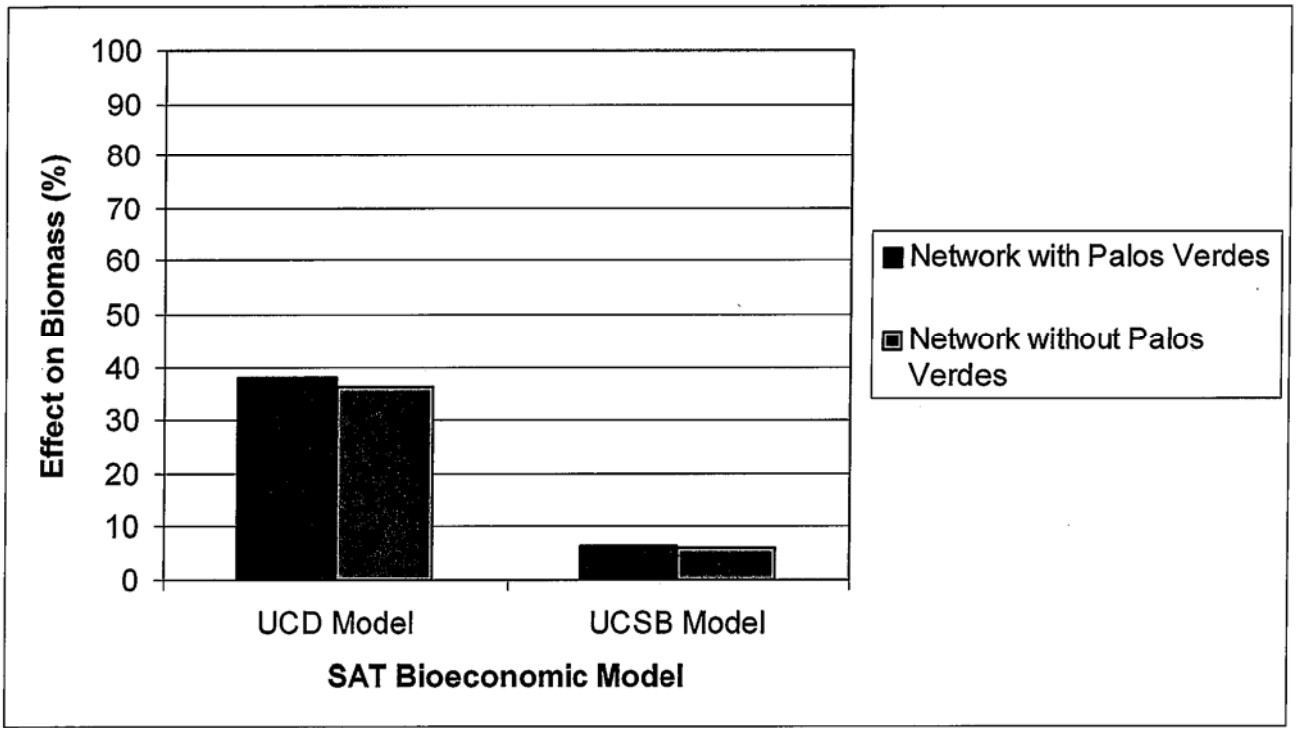

Figure 2. SAT Bioeconomic Models of the effect that the IPA Network has on total Biomass of the region, with and without South Palos Verdes MPAs. Data taken from California MLPA Master Plan Science Advisory Team Outputs from Bioeconomic Model Evaluations of Revised SCRSG MPA Proposals and MLPA South Coast Integrated Preferred Alternative: MPA Deletion Evaluations. December 7, 2009.
http://resources.ca.gov/mlpa_scrsg/2009_DEC_9_FGC_BRTF_MEETING/Model_Table4_MPA_deletion_eval_091208.pdf

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STEPHEN R. MAGUIN
Chief Engineer and General Manager

August 3, 2010

Mr. Thomas Napoli
Marine Life Protection Act / South Coast Study Region
Draft Environmental Impact Report
Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720

Dear Mr. Napoli:

Comments on the June 29, 2010 Notice of Preparation of
Draft Environmental Impact Report Regarding Marine Protected Areas in the
California South Coast Study Region Pursuant to the Marine Life Protection Act

Thank you for the opportunity to submit comments regarding the Notice of Preparation (NOP) of the draft environmental impact report (EIR), which will study the environmental impacts of the Integrated Preferred Alternative (IPA) and the other alternatives.

The Sanitation Districts are a confederation of 23 independent special districts located throughout Los Angeles County servicing the wastewater and solid waste management needs for over 5.7 million people. For over 87 years, the Sanitation Districts have operated one of the largest regional wastewater collection and treatment systems in the nation, with a service area that covers approximately 820 square miles and encompasses 78 cities and the unincorporated territories of Los Angeles County. Within the greater Los Angeles metropolitan area, the Sanitation Districts operate an interconnected system of sewers and wastewater treatment plants called the Joint Outfall System (JOS), which serves 17 districts, 73 cities and a population of over 5 million people. The terminal treatment plant in the JOS is the Joint Water Pollution Control Plant (JWPCP), which discharges to an ocean outfall system offshore of White Point on the southern side of the Palos Verdes Peninsula. The Sanitation Districts have actively participated in the Marine Life Protection Act (MLPA) process in the California South Coast Study Region (SCSR), not only because of our duty to protect the essential public health infrastructure that the Sanitation Districts operate off shore of the Palos Verdes Peninsula, but also because of the decades of comprehensive monitoring that the Sanitation Districts have conducted to ensure the protection of the marine environment.

Throughout the MLPA process, the Sanitation Districts have stated our concerns relating to the proposed marine protected areas (MPAs) offshore of South Palos Verdes. Attachment A includes a list of all the letters we have submitted during the MLPA process, and Attachment B includes copies of our most recent letters dated February 19, 2010, and March 26, 2010. Unfortunately, the Sanitation Districts' input was not reflected in the recommendations of the Blue Ribbon Task Force (BRTF), whose IPA includes low-value MPAs offshore of South Palos Verdes that would overlie the Palos Verdes Shelf Superfund site, would protect very low quality habitats impacted by the Portuguese Bend Landslide

(PBL), would add very little biological productivity to the SCSR, and are in the immediate vicinity of the Sanitation Districts' ocean outfall system.

The Palos Verdes Shelf Superfund Site is listed on the Cortese List prepared by the Department of Toxic Substances Control. The NOP should have clearly identified this listing as required by CEQA Statute Section 21092.6. The Sanitation Districts and the U.S. Environmental Protection Agency (EPA) have previously informed the California Department of Fish and Game (DFG) in comment letters submitted during the MPA designation process that Abalone Cove and Point Vicente are located in a listed superfund site. DFG did not disclose this information in the NOP. Therefore, DFG should comply with Section 21092.6 and re-issue the NOP so that responsible and trustee agencies can provide appropriate NOP scoping comments regarding the superfund site and the MPA locations.

The Sanitation Districts have prepared a detailed response to the NOP regarding DFG's approach to preparing the draft EIR. To be consistent with Section 15082 of CEQA regarding NOP comments, the Sanitation Districts have included the following information in this comment letter:

- Significant environmental issues and mitigation measures to be studied in the draft EIR
- Reasonable alternatives to be included and analyzed in the draft EIR

Additionally, we have provided comments regarding the goals and objectives of the MLPA as they relate to the selection of the IPA and the inclusion of Abalone Cove State Marine Conservation Area (Abalone Cove) and Point Vicente State Marine Conservation Area (Point Vicente) in the IPA.

Significant Environmental Issues and Mitigation Measures

The NOP proposed a quantitative analysis of many environmental resources. Comment letters prepared by the Sanitation Districts to the Fish and Game Commission on February 19, 2010, and March 26, 2010, identified the existing environmental concerns in these two areas including the PBL, the Palos Verdes Shelf Superfund Site, and the proximity to the existing White Point ocean outfall system. When DFG prepared the EIRs for the other MPA designations within the state, they took the basic analytical approach that an MPA designation results in beneficial effects to the environment because the MPA designation protects an area from environmental impacts that could occur without the designation. The standard approach used by DFG for other MPA EIRs will be inadequate for the impact analysis of Abalone Cove and Point Vicente. The protections afforded by the MPA designation could attract species to an area of known environmental concerns and problems; consequently, this may not result in beneficial effects. Therefore, DFG's draft EIR cannot simply conclude that designating Abalone Cove and Point Vicente would result in a beneficial impact on the environment because an existing unprotected area would be protected. The draft EIR must include a detailed quantitative analysis to determine the appropriate impacts of designating Abalone Cove and Point Vicente within the MPA, based on the existing environmental conditions associated with these two locations. Such analysis is required in order to provide full disclosure of potential environmental effects resulting from the IPA and alternatives under CEQA. The recommended additional analysis is outlined below by subject matter/resource.

Baseline Conditions

Section 15125 of the CEQA Guidelines states an EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the NOP is published. According to CEQA, the environmental setting normally constitutes the baseline physical environmental conditions by which a lead agency determines whether an impact is significant. Therefore, as emphasized by the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality*

Management District (2010) 48 Cal.4th 310, the characterization of the baseline is imperative to making appropriate public disclosure of the "actual environmental impacts".

For the DFG MPA designation, the appropriate characterization of the baseline at Abalone Cove, Point Vicente, and the Palos Verdes Shelf will lead to the appropriate impact analysis in the draft EIR. Therefore, the draft EIR needs to include the following information to characterize the existing setting (and baseline for determining the environmental impacts of the IPA) at Abalone Cove, Point Vicente, and the Palos Verdes Shelf:

- Characteristics of the Portuguese Bend Landslide (PBL)
- Nature (thickness and type) of the sediment inundation within Abalone Cove and Point Vicente due to PBL
- Existing turbidity due to PBL
- Existing Palos Verdes Shelf Superfund Site and the levels of both DDT and PCB within Abalone Cove and Point Vicente
- Existing levels of DDT and PCB contamination in the bodies of invertebrates, fishes, mammals, and birds within Abalone Cove and Point Vicente
- Type and quality of inter-tidal and subtidal habitats
- Existing fish, mammal, and bird species present (including type and quantity) and their use of these areas (e.g., feeding, reproduction, roosting, etc)
- Existing health risk to invertebrates, fish, mammals, birds, and humans due to DDT and PCB contamination from the Palos Verdes Shelf Superfund Site
- Proximity of the existing outfall system to Abalone Cove and Point Vicente and the volume, direction, duration, concentrations, and other water quality characteristics associated with the release of treated effluent into the Pacific Ocean
- Regulatory requirements for operation of the existing outfall system and the existing monitoring and maintenance performed by the Sanitation Districts for the existing outfall system in Abalone Cove and Point Vicente and at the existing outfalls

This information should be included in the project description, hazards and hazardous materials, water quality and oceanography, biological resources, and public services and utilities sections of the draft EIR, where appropriate. For preparation of the draft EIR, DFG should be collecting the most up to date and detailed data of the characteristics listed above to establish the appropriate baseline from which to determine significant impacts. The Sanitation Districts would be willing to work with DFG to provide them with the extensive data we have collected on the Palos Verdes Shelf over the years.

Hazards and Hazardous Materials

The NOP identifies that the draft EIR will consider if the proposed IPA or alternatives would directly or indirectly increase the foreseeable risk of upset or accidental release of hazardous material to the environment from facilities or vessels operating within the SCSR. The NOP also states that the draft EIR will determine whether the proposed project IPA and alternatives will result in either direct or indirect emission of hazardous materials to the environment. Furthermore, the NOP states that the MPA location within the proposed project IPA and alternatives will be compared with a list of contaminated or polluted sites to determine if the proposed project IPA and alternatives will result in increased risk to the public or the environment.

A description of the Palos Verdes Shelf Superfund Site should also be included in the existing setting section of the hazards and hazardous materials section and text be incorporated stating that Abalone Cove and Point Vicente would be located within the Palos Verdes Shelf Superfund Site. Analysis and impacts associated with designating the MPA to include the Abalone Cove and Point Vicente locations should discuss the overlap with the Palos Verdes Shelf Superfund Site designation. This analysis in the hazards and hazardous materials section of the draft EIR should be cross referenced with the impact analysis in the water quality and oceanography section and/or the biological resources section for ease of reference to the readers.

Land Use

The NOP states the land use analysis will include a review and discussion of conflicts between land use and natural resource plans operating with the SCSR. As identified in Appendix G of the State CEQA Guidelines under the land use topic, the lead agency should address how the proposed project would:

> Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction of the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance adopted for the purpose of avoiding or mitigating and environmental effect).

Therefore, the Sanitation Districts recommend the land use section also analyze the consistency of the MLPA's regional goals and objectives as they apply to Abalone Cove and Point Vicente. It is appropriate to discuss the policy of the MLPA and the goals under the land use threshold because the MLPA was adopted for the purposes of a reduction in removal of a species within MPAs due to over-fishing and other anthropogenic activites (i.e., avoiding or mitigating an environmental effect). Under CEQA, the analysis of land use consistency, as with all environmental impacts, is always linked to physical environmental effects occurring either directly or indirectly from the proposed action and alternatives (CEQA Guidelines Sections 15002(g), 15126.2, 15358, 15382). Therefore, the disclosure of the inherent conflict between the MLPA goals and objectives and the proposed designation of Abalone Cove and Point Vicente within the IPA should be connected to the environmental impacts disclosed in the other sections of the draft EIR (e.g., water quality and oceanography, and biological resources) to determine if the inherent conflict presents a significant physical environmental effect. If so, the conflict must be deemed significant and alternatives must be sought to avoid or substantially reduce this impact.

Water Quality and Oceanography

The NOP acknowledges the potential for conflicts between existing facilities operations and permitting and the proposed MPAs. The NOP identifies that such conflicts will be analyzed in the water quality and oceanography section of the draft EIR. However, the Sanitation Districts propose several additions to the scope of analysis below.

The previous comment letters dated February 19, 2010, and March 26, 2010 have documented the existing conditions of the Palos Verdes Shelf area as degraded due to the PBL and the Palos Verdes Shelf Superfund Site. The Clean Water Act requires the EPA to set ambient water quality criteria (AWQC) to serve as national water quality standards to protect aquatic life. Although the waters overlaying the Palos Verdes Shelf have met the AWQC for PCBs, they do not meet the AWQC for DDT. Therefore, based on the EPA standards for protecting wildlife, the EPA has determined that contaminants found within these areas in the water, sediment, and in the fish do not meet the protective requirements of aquatic life.

The analysis in the draft EIR needs to include an evaluation of the suitability of existing habitat and quality on the Palos Verdes Shelf for MPA designation, including the effects of DDT/PCB and the PLB on habitat quality and potential MPA performance. Specifically the analysis should include:

- A description of the existing quantity, variation, and type of habitat in Abalone Cove, Point Vicente, and on the greater Palos Verdes Shelf
- A description of the PBL and the water quality characteristics generated by the PBL (e.g., turbidity, sedimentation, etc.) and the impact of these water quality characteristics on Abalone Cove and Point Vicente
- A description of the existing levels of DDT/PCB in the sediment and water column at Abalone Cove, Point Vicente, and the Palos Verdes Shelf and a quantitative analysis of the impact of these levels on the biological communities of the Abalone Cove and Point Vicente habitats (e.g., degraded habitat; only species tolerant of contaminated sediment are supported; reproductive impairment; etc.).

As part of this analysis, the draft EIR should include a discussion and analysis of the conflict of operating the Abalone Cove and Point Vicente MPAs within the Palos Verdes Shelf Superfund Site. This analysis would include any conflicts between the interim Record of Decision (IROD) activities proposed and discussed in the Letter from Carmen White, Remedial Project Manager, to Jim Kellogg dated February 18, 2010, and the designation of the MPAs. It should discuss the impact of the designation on the efforts to remediate the Palos Verdes Shelf, including any restrictions DFG would place on the remediation process. Alternatively, it should discuss the exclusions prescribed for these activities as identified by Table 1 of the Draft Initial Statement of Reasons for Regulatory Action for South Coast MPAs dated March 29, 2010. The Sanitation Districts also request a discussion and analysis of conflicts with the existing and continued operation of the existing outfall system. Specifically the analysis should include:

- Description of the existing and likely future regulatory requirements with which the Sanitation Districts comply and how they comply (regular monitoring, reporting, etc.)
- Description of the frequency, duration, and timing of current water quality monitoring by the Sanitation Districts
- Description of the existing effluent discharge characteristics,
- Analysis of the impact of existing effluent discharge on Abalone Cove and Point Vicente

Biological Resources

The NOP states that the draft EIR analysis will consider whether the IPA or alternatives would otherwise affect the life history of native species. However, this impact does not encompass the entire effects analysis of the proposed MPA designation. The draft EIR should include an analysis of the indirect adverse effects on the species that would otherwise benefit from the MPA designation and analyze the impact associated with re-building fish populations and other species populations in the Palos Verdes Shelf Superfund Site. For example, one effect of establishing MPAs is to benefit certain species by creating attractive sanctuary areas with less external disturbances. According to the Master Plan for Marine Protected Areas (approved February 2008), Appendix G: Master List of Species Likely to Benefit from MPAs: "A reduction in removal of a species within MPAs has been shown worldwide to increase abundance, mean size, and reproductive potential of certain fished species."

While an increase in fish numbers and size is generally regarded as a beneficial effect in most areas, there exists the potential for unintended negative effects on the fish, birds, and marine mammals in the Palos Verdes Peninsula area due to the effects of bioaccumulation of DDT and PCBs in the environment from existing conditions. Heal the Bay[1] advises the public not to consume nine fish species in the proposed MPA area that are also listed by DFG as likely to benefit from creation of an MPA (Appendix G):

- Top smelt
- Rockfishes
- Surf perches
- Black croaker
- Sculpin (scorpion fish)
- Queenfish
- Kelp bass
- Corbina
- White croaker

DFG's website, "Public Advisories on Fish Consumption,"[2] also warns about human consumption of species likely to bioaccumulate DDT and PCBs, species that are also listed as benefiting (increasing) from MPAs in the SCSR. While much of the focus has been on human consumption, the use of DDT was not originally banned by the federal government because of human health effects, but because of the near catastrophic effects on some bird species, including falcons, eagles, and brown pelicans, all of which occur in Abalone Cove and Point Vicente. The Science Advisory Team (SAT) identified that the ecological risk assessment conducted for the Palos Verdes Shelf indicated intermediate risk occurs south to southwest of the outfalls as well as northwest of Point Vicente. Specifically, the aquatic water quality criterion is not met for DDT in this area. White croaker, kelp bass, and sanddabs on the Palos Verdes Shelf generally exceed the DDT no observable effects concentration (NOEC).[3] White croaker and kelp bass are stated above to benefit from the MPA designation. Therefore, in order to fully analyze the potential negative effects of including Abalone Cove and Point Vicente in the IPA and to reach a science-based determination on the significance of the indirect effects of the MPA designation, DFG will need to study and disclose the expected changes in populations of the fish species listed above known to bioaccumulate DDT and PCBs, and analyze the effects on wildlife species and humans consuming increased amounts of contaminated fish. Specifically, the analysis should include:

- Description of the existing quantity, variation, and type of invertebrate, fish, bird, and mammal species located in Abalone Cove, Point Vicente, and the greater Palos Verdes Shelf
- Description of the existing levels of DDT/PCB in these various species
- Description of the bioaccumulation of DDT/PCB through each species and through the food chain

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[1] Available at: Hhttp://www.healthebay.org/enlargephoto/default.asp?photo=stayhealthy_consumptionguidelinesH. Accessed on: July 23, 2010.

[2] Available at: http://www.dfg.ca.gov/marine/fishcon1.asp. Accessed on: July 23, 2010.

[3] The NOEC for fish is 1,900 microgram/kilogram whole body tissue for DDT.

- Quantitative analysis of the changes in the existing species populations as a result of locating Abalone Cove and Point Vicente in the Palos Verdes Shelf Superfund Site (i.e., analyze the relationship between an increase in the population of species [due to the protection offered by Abalone Cove and Pointe Vicente] and the increased number of species with DDT/PCB due to bioaccumulation in each species and in the food chain)
- Quantitative assessment of the change in health risk to wildlife and humans from locating Abalone Cove and Point Vicente in the Palos Verdes Shelf Superfund Site

Public Services and Utilities

The NOP states that the analysis will include a review of whether the IPA and alternatives would result in the need for new governmental facilities or services. The NOP notes issues related to impacts to Publicly Own Treatment Works, such as the outfall system, will be discussed in the water quality section of the draft EIR. However, the Sanitation Districts believe the draft EIR should include the need for new facilities in the service area in this section as well. DFG should analyze the indirect effect of the MPA designation related to the need for and impacts of new sanitation facilities due to the restrictions associated with the MPA designations. Since these indirect impacts have less to do with water quality and more to do with impacts associated with building new facilities, it is appropriate to include them in the public services and utilities section. As identified in Appendix G of the State CEQA Guidelines under the public services topic, the lead agency should address how the proposed project would:

> Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

As discussed in previously submitted comment letters dated February 19, 2010, and March 26, 2010, a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system. Specifically, the State Water Resources Control Board (SWRCB) has stated that the designation of new state water quality protection areas (SWQPAs) to protect water quality in MPAs will occur sometime in the near future following the completion of the updated statewide MLPA network (SWRCB pers. comm.). Therefore, the draft EIR should include a detailed analysis of the extent of the MPA restrictions on the Sanitation Districts' outfall system and if the MPA designation would lead to the construction of new facilities to increase the level of treatment and/or potentially force a reduction in volume of discharge to the ocean. Furthermore, if the DFG analysis concludes that the Sanitation Districts would need to increase or change their treatment streams or reduce the volume of discharge, the DFG would be required to include an analysis of the potentially significant impacts associated with construction and operation of the new facilities in the draft EIR. The new facilities could include modifications or additions to the facilities at the Sanitation Districts' JWPCP or new upstream water reclamation plants. Impacts associated with these new facilities would be extensive and would include, but certainly not be limited to, the following:

- Air quality impacts associated with construction due to construction equipment and possibly operation due to emergency generators, turbines, and other facility equipment
- Biological resource impacts associated with construction depending on the location of the new facilities
- Greenhouse gas impacts associated with construction and operation
- Hydrology and water quality impacts associated with construction due to earth-moving efforts and the generation of sedimentation and erosion, and possibly operation due to new locations for the releases of discharge

- Land use and planning impacts associated with operation due to land use and zoning conflicts, depending on facility location
- Noise impacts associated with construction and operation due to equipment and machinery
- Transportation impacts associated with construction due to construction worker trips and equipment, and possibly operation due to new employee trips or relocating employees

The Sanitation Districts recommend the draft EIR include a discussion of these possible impacts related to these effects in the public services and utilities section. Furthermore, the draft EIR should include mitigation measures to reduce significant public service impacts.

Cumulative

Section 15130 of the 2010 CEQA Guidelines discusses the type and scope of the cumulative analysis. As defined in Section 15355, a cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. The discussion of cumulative impacts should reflect the severity of the impacts and their likelihood of occurrence. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contributed. Mitigation measures can be proposed to reduce cumulative impacts, and with some projects, the only feasible mitigation for cumulative impacts involves the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis. As discussed above under "Public Services and Utilities," the cumulative analysis of the draft EIR also needs to consider the reasonably foreseeable condition of the Regional Water Quality Control Board establishing SWQPAs, since this is a future project. The analysis needs to include the associated potential cumulative environmental effects resulting from the placement of MPAs in and around the White Point outfall system.

Alternatives

The NOP identifies three alternatives in addition to the IPA that will be analyzed in the draft EIR. The Sanitation Districts request that the draft EIR identify and analyze project alternatives that would reduce or avoid the potentially significant environmental effects the Sanitation Districts believe will be evident once DFG completes the environmental analysis described above with respect to the Palos Verdes Shelf. The Sanitation Districts specifically request an alternative be analyzed that consists of the IPA without the inclusion of Abalone Cove and Point Vicente, per the previously submitted February 19, 2010, and March 26, 2010 letters. Such an alternative would, in the opinion of the Sanitation Districts, have the potential for attaining most of the objectives of the MLPA while mitigating or avoiding the potential for significant adverse environmental impacts on the marine environment and important public infrastructure (see below under "Goals and Objectives of the MLPA" for additional details).

Section 15126.6 of the 2010 CEQA Guidelines states the EIR should describe the rationale for selecting the alternative to be discussed. Furthermore, the EIR should identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and explain the reasons underlying the lead agency's decision. Among the factors that may be taken into account when addressing the feasibility of an alternative are: site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, and jurisdictional boundaries.

The Sanitation Districts provided factual evidence regarding the infeasibility of including MPAs on the Palos Verdes Shelf in their previously submitted letters. The Palos Verdes Shelf is not suitable as

an MPA because of the PBL, the Palos Verdes Shelf Superfund Site, and the close proximity to the existing White Point outfall system. Therefore, the Sanitation Districts request that the alternatives analysis chapter fully describe the scientific rationale for including Abalone Cove and Point Vicente in the IPA.

Furthermore, the Sanitation Districts expect the draft EIR to include sufficient information about each alternative to allow a meaningful evaluation, analysis, and comparison with the proposed project, as required by CEQA. This information should include a discussion of the following: the scientific, environmental, and socioeconomic criteria used to select the IPA and the other alternatives (e.g., contaminated sediment, turbidity, etc.); a discussion of the SAT guidelines and if they were used as criteria to select alternatives; a description of the expected functionality and value of the IPA, and Abalone Cove and Point Vicente, compared to the alternatives.

Goals and Objectives of the MLPA

As CEQA requires the lead agency to assess the potential significant impacts of a proposed action and not necessarily the underlying value of the action itself, the goals of the MLPA and the objectives of the regional MPA are technically outside the scope of the draft EIR and purposes of an NOP. However, per CEQA (CEQA Guidelines 15093) the lead agency generally uses the goals and objectives as part of its reasoning for adopting a statement of overriding considerations (if the draft EIR concludes that there are significant and unavoidable impacts of the project with no feasible mitigation or alternatives). Therefore, the administrative record needs to be supported by substantial evidence that the goals and objectives are actually met by the proposed project.

These goals and objectives speak specifically to the protection of marine life populations and ecosystems as cited below and in the *California MLPA South Coast Project Regional Goals and Objectives and Design and Implementation Considerations for the MLP South Coast Study Region* dated February 26, 2009.

Goal 1. To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems.

1. Protect and maintain species diversity and abundance consistent with natural fluctuations, including areas of high native species diversity and representative habitats.
2. Protect areas with diverse habitat types in close proximity to each other.
3. Protect natural size and age structure and genetic diversity of populations in representative habitats.
4. Protect biodiversity, natural trophic structure and food webs in representative habitats.
5. Promote recovery of natural communities from disturbances, both natural and human induced, including water quality.

Goal 2. To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.

1. Help protect or rebuild populations of rare, threatened, endangered, depressed, depleted, or over-fished species, and the habitats and ecosystem functions upon which they rely.

2. Sustain or increase reproduction by species likely to benefit from MPAs, with emphasis on those species identified as more likely to benefit from MPAs, and promote retention of large, mature individuals.

3. Sustain or increase reproduction by species likely to benefit from MPAs with emphasis on those species identified as more likely to benefit from MPAs through protection of breeding, spawning, foraging, rearing or nursery areas or other areas where species congregate.

4. Protect selected species and the habitats on which they depend while allowing some commercial and/or recreational harvest of migratory, highly mobile, or other species; and other activities.

Goal 3. Improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.

1. Sustain or enhance cultural, recreational, and educational experiences and uses (for example, by improving catch rates, maintaining high scenic value, lowering congestion, increasing size or abundance of species, and protection of submerged sites).

2. Provide opportunities for scientifically valid studies, including studies on MPA effectiveness and other research that benefits from areas with minimal or restricted human disturbance.

3. Provide opportunities for collaborative scientific monitoring and research projects that evaluate MPAs that promote adaptive management and link with fisheries management, seabird and mammals information needs, classroom science curricula, cooperative fisheries research and volunteer efforts, and identify participants.

Goal 4. Protect marine natural heritage, including protection of representative and unique marine life habitats in CA waters for their intrinsic values.

1. Include within MPAs key and unique habitats identifies by the MLPA Master Plan Science Advisory Team for this study region.

2. Include and replicate to the extent possible [practicable], representatives of all marine habitats identified in the MLPA or California Marine Life Protection Act Master Plan for Marine Protected Areas across a range of depths.

Goal 5. To ensure that south coast California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines.

1. Minimize negative socio-economic impacts and optimize positive socio-economic impacts for all users including coastal dependent entities, communities and interests, to the extent possible, and if consistent with the Marine Life Protection Act and its goals and guidelines.

2. Provide opportunities for interested parties to help develop objectives, a long-term monitoring plan that includes standardized biological and socioeconomic monitoring protocols, a long-term education and outreach plan, and a strategy for MPA evaluation.

3. Effectively use scientific guidelines in the California Marine Life Protection Act Master Plan for Marine Protected areas.

4. Ensure public understanding of, compliance with, and stakeholder support for MPA boundaries and regulations.

5. Include simple, clear, and focused site-specific objectives/rationales for each MPA and ensure that site-level rationales for each MPA are linked to one or more regional objectives.

The Sanitation Districts do not believe the goals and objectives of the MLPA are met by the inclusion of Abalone Cove and Point Vicente in the IPA or its alternatives. Furthermore, the inclusion of Abalone Cove and Point Vicente as part of the IPA or its alternatives is in direct conflict with the MLPA regional goals and objectives. The location of Abalone Cove and Point Vicente conflicts with the goals and objectives primarily because of (1) the presence of the Palos Verdes Shelf Superfund Site and legacy contaminants known to occur at concentrations that pose a threat to the health of both humans and wildlife, (2) the presence of PBL, and (3) the ongoing discharge of treated wastewater adjacent to these sites. Abalone Cove and Point Vicente have been subject to high levels of disturbance over the years; and they hold very little intrinsic value.

The location of Abalone Cove and Point Vicente conflicts with Goal 1. Abalone Cove and Point Vicente would not promote recovery from human-induced impacts since remediation of the Palos Verdes Shelf Superfund Site will continue for many decades.

The inclusion of Abalone Cove and Point Vincent in the IPA does not support Goal 2. It is illogical to rebuild fish populations that are depleted if those populations would be adversely affected by DDT/PCB. Furthermore, as discussed above under "Significant Environmental Issues and Mitigation Measures – Biological Resources," it is likely there would be significant environmental impacts if the designation of Abalone Cove and Point Vicente results in increased reproduction by species likely to benefit from MPAs and promotes the retention of large, mature individuals, since these species would likely have bioaccumulated DDT/PCB.

The inclusion of Abalone Cove and Point Vincent in the IPA does not support Goal 3. Abalone Cove and Point Vicente are not locations that have experienced "minimal human disturbance." The Palos Verdes Shelf has been highly disturbed by the presence of DDT/PCB at the superfund site.

Abalone Cove and Point Vicente do not have unique intrinsic value and, therefore, are in conflict with Goal 4. The south face of the Palos Verdes Peninsula (the area between Point Fermin and Point Vicente) lacks key habitats outlined by the SCSR SAT as being important in a functional MPA network and is impacted by the PBL.

The inclusion of Abalone Cove and Point Vicente in the IPA conflicts with Goal 5 because it does not follow SAT guidance on the Palos Verdes MPAs. For example, the SAT recommended the following design guidance regarding this portion of the Palos Verdes Shelf:

- Areas nearest the outfalls are less favorable for MPA placement due to legacy contaminants and the current effluent flow
- Areas of ongoing and planned EPA fieldwork and mitigation activities at White Point are more vulnerable to perturbation and, therefore, less favorable in the short term for proposed MPA placement
- The area from Portuguese Bend Cove to White Point would be subject to turbidity and sedimentation at levels that affect organisms and biological communities as addressed above, and also would be less favorable for MPA placement

The Sanitation Districts request that the Fish and Game Commission and staff carefully consider the many issues raised in this letter. The Sanitation Districts have a responsibility to more than 5 million people to protect essential public health infrastructure from unintended impacts resulting from

the MLPA process. We strongly recommend the draft EIR use sound science and not adopt Abalone Cove and Point Vicente as part of the IPA or any other recommended project. Thank you for consideration of our comments. We look forward to providing further assistance and information in connection with the preparation of the draft EIR for this project.

Very truly yours,

Stephen R. Maguin

Philip L. Friess

Philip L. Friess
Department Head
Technical Services

PLF:TJL:CB:ddg

Attachment A List of Comment Letters Submitted by the Sanitation Districts During the SCSR MPA Process

Attachment B Letters Submitted by the Sanitation Districts on February 19, 2010, and March 26, 2010

cc: Fish and Game Commissioners

Responses to Comment Letter A92_iii

Response to Comment A92_iii: This attachment includes three letters from LACSD. The first two letters were sent before any CEQA work commenced and represents criticism of the Commission's decisions regarding MPAs on the Palos Verdes headland. The third letter is a copy of the letter sent in response to the Notice of Preparation. No response is required.

Attachment C

DEIR Statements Requiring Clarification

DEIR Statements Requiring Clarification

Page	DEIR Statement	Reason Statement Requires Clarification	
Section 6.1, Air Quality			
6.6.1-15 and 6.61-16	"These vessels [recreational vessels] would have significantly less emissions per hour of operation than the diesel engines typically used by commercial vessels. Even if the recreational fleet doubled the number of trips and hours of the commercial fleet, the emissions expected to be produced as a result of the proposed Project IPA would be less than the existing significance thresholds."	This statement presents information that purportedly supports the lead agency's conclusion that the impact of the proposed action is less than significant. However, this statement is not substantiated and there are no facts to support this claim. CEQA requires that the conclusions regarding significance be based upon substantial evidence (CEQA Guidelines Section 15064). Substantial evidence is defined by the CEQA Guidelines as "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines 15384). DFG has presented no sources for the information on which it bases its assertions. In addition, the statement does not identify the size of the recreational fleet in comparison to the commercial fleet. This assumption is used in the methodology of the air quality analysis and is not based on any identified facts. Therefore, the air quality analysis associated with recreational vessels is inadequate.	A92_iv-1
Section 6.3, Water Quality			
6.3-30	**Criterion WQ-1: Violate any water quality standards or waste discharge requirements.** "The MLPA does not provide the Department regulatory authority over water quality discharges; however, the MPAs have been located in areas some distance from regulated discharges to ensure that water quality within the MPAs is suitable for the beneficial uses to the degree feasible."	There are no facts presented to support the assertion that the location of MPAs "some distance" from regulated discharges would, in fact, "ensure" water quality within the MPAs. Facts, evidence, and expert opinion based on facts that the proposed Abalone Cove and Point Vicente MPAs are indeed located the appropriate distance from the existing White Point Ocean Outfall are needed to adequately comply with CEQA's requirement to support significance determinations with substantial evidence. These facts and evidence would include information regarding plume dispersion from the existing White Point Ocean Outfall.	A92_iv-2
6.3-30	"The previous clarifying language in the ISOR has been included in the MPA regulations for sites where possible conflicts would occur. Further, should presently unknown conflicts be identified in the future the MPA Master Plans adaptive management strategy would result in these conflicts being reviewed and if feasible or necessary mitigated."	This section needs to discuss the nature of the "adaptive management strategy" and possible future mitigation mentioned so that readers can understand future potential conflicts. If the conflicts are reasonably foreseeable, the analysis should also include a description of any "necessary mitigation" because CEQA requires mitigation for all indirect and direct impacts described in a project-level EIR and does not allow the	A92_iv-3

Page	DEIR Statement	Reason Statement Requires Clarification	
		deferral of mitigation to some future time or future CEQA document. There would be no future CEQA document for a project-level EIR.	
6.3-31	**Criterion WQ-2: Otherwise Substantially Degrade Water Quality.** "Shifts in boating associated with prohibition of consumptive uses would be similar to those described above, although more consumptive users are likely to be displaced due to the new regulations. The actual locations selected by displaced users and associated incremental travel time and/or increase in risk of collisions cannot be predicted; however, they are expected to be slight. Areas of high boat density fishing activity already occur within the SCSR during sand bass spawning season on the Huntington Beach flats and at times near smaller artificial and natural reefs along the SCSR. Should high fish densities occur along the edges of MPAs then these areas may attract fisherman and may become crowded during times of increased fish bite. The Commission does not expect this to result in significant impacts to water quality (T. Napoli Personal communication 2010)."	There are no facts or evidence presented in these two statements. There is very little discussion in these two statements and the entire paragraph above them as to how fish densities and populations would be affected as a result of the designations of the proposed Abalone Cove and Point Vicente MPAs. These statements are also not supported by any factual discussion explaining why the movement of the fish and thus the movement of consumptive use fishing would not be expected to result in significant impacts to water quality. There is no evidence about the specific knowledge possessed by the person identified permitting that person to adequately assess any potential impact and conclude whether it was significant.	A92_iv-4
Chapter 7, Biological Resources			
7-70	**Potential Impact BIO-3: Impacts on Marine Species Populations and Habitats Inside MPAs Habitat Protection.** "There would be substantial biological resource benefits because of the increased habitat protection that would occur under the revised MPA network"	The analysis does not identify how or why substantial benefits would occur. This statement is not based on any facts, evidence, or expert opinion presented in the analysis. CEQA requires that conclusions regarding significance be based upon substantial evidence (CEQA Guidelines Section 15064). Substantial evidence is defined as "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines 15384). DFG presents no sources for the information forming the basis of its assertions regarding projected benefits other than the assumption that protecting areas from fishing automatically benefits fish. However, as the Sanitation Districts have pointed out, because of the presence of the existing Superfund site, protecting fish in this area could have the opposite effect.	A92_iv-5
7-70	"Marine biological resources within MPAs would be expected to benefit from the proposed project, and impacts on species within the MPAs would be less than significant."	The analysis does not explain how or why substantial benefits would occur. This statement is not based on any facts or evidence presented in the analysis. See the previous comment.	A92_iv-6
7-75	**Potential Impact BIO-4: Impacts on Special-Status Marine**	These discussions of potential impacts upon the bald eagle, golden eagle,	

Page	DEIR Statement	Reason Statement Requires Clarification
and 7-77	**Species Resulting from Removal or Modification of Existing MPAs.** "Bald Eagle In 2007, the bald eagle (*Haliaeetus leucocephalus*) was delisted from the Endangered Species Act and their current protection comes from the Bald and Golden Eagle Act. Additionally, they are listed as endangered by the CESA, and fully protected by the Department. While recreational or commercial fisheries do not target marine birds, they can benefit both directly and indirectly from the establishment of MPAs. Direct benefits include reduced disturbance at breeding and roosting sites and lower probability of interaction with humans and fishing gear at foraging areas. Indirect benefits include reduced competition for important prey resources. The proposed Project IPA and its alternatives each provide an increased level of protection for seabirds (SAT 2009). With the expansion of the proposed MPAs this species will be further protected and conserved. The proposed Project IPA involves designation of a network of MPAs and impacts of the proposed Project IPA will be evaluated as a whole...As such, bald eagle prey species occurring within the SCSR would likely benefit from the proposed Project IPA. Impacts would be less than significant. Golden Eagle The golden eagle (*Aquila chrysaetos*) is fully protected by the Department...Due to the golden eagle's primarily terrestrial habitat and food requirements, it would not commonly use the habitat within the SCSR, therefore the proposed Project IPA would not adversely affect this species. American Peregrine Falcon The American peregrine falcon (*Falco peregrinus anatum*) is fully protected by the Department...Due to the American peregrine falcon's habitat and food requirements, it would not commonly use the habitat within the SCSR, therefore the proposed Project IPA would not adversely affect this species..."	American peregrine falcon, and brown pelican do not mention the potential indirect or direct effects of bioaccumulation of DDT in the food chain due to the proposed designation of the Point Vicente and Abalone Cove MPAs. Therefore, this analysis is incomplete and inadequate. The analysis does not identify how or why benefits would occur. These statements are not based on any identified facts, evidence, or expert opinion. CEQA requires that the conclusions regarding significance be based on substantial evidence (CEQA Guidelines Section 15064). Substantial evidence is defined as "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines 15384). The DEIR does not identify the supporting facts, which it contends are contained in the cited reference (SAT 2009). All of these birds identified as benefiting from the proposed action have been affected in the past by legacy DDT contamination. While the analysis does identify the decreased level of persistent compounds in the environment and the slow recovery of the brown pelican, the analysis completely omits any discussion of the Palos Verdes Superfund site and the creation of two MPAs in this superfund area. One of the aspects of the Montrose Settlements Restoration Program (MSRP) is the enhancement of these species by restricting further access to DDT. Under the IPA the opposite is likely to occur. Designation of the proposed Point Vicente and Abalone Cove MPAs in an area with large legacy DDT deposits would facilitate further dispersal of the DDT. Fish would eventually be forced to leave the MPAs and would take the body burden of the DDT they have acquired with them. The net result would be a wider dissemination of increased DDT via contaminated fish. The upward movement of this contamination would increase the chances for additional DDT uptake by marine mammals and birds feeding on the contaminated fish and ultimately increased DDT exposure for raptors scavenging carcasses found on beaches. Tests of such food sources have routinely shown high body burdens of DDT and its metabolites accumulated in fats of higher-level predators. Since it is fully acknowledged that the brown pelicans were subject to diminishing populations from exposure to organochloride pesticide residues, and it is acknowledged that the MPAs increase fish species within an organochlorine Superfund site, the analysis should discuss why brown	A92_iv-6 cont'd

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	"California Brown Pelican The California brown pelican was protected under both the ESA and the CESA due to diminishing populations stemming from exposure to organochloride pesticide residues...As a result, the environmental residue levels of these persistent compounds have steadily decreased in most areas. Pesticide residue levels in brown pelican eggs have steadily decrease since they were first measured...Consequently, populations of brown pelicans on the west coast of the U.S. have substantially increased during the past two decades. Impacts to this species [California Brown Pelican] would be less than significant."	pelicans and other special status bird species would not be indirectly affected by the designation of the MPAs in a Superfund site. Therefore, the analysis in the DEIR of these special-status species is incomplete, and the findings are unsubstantiated.	A92_iv-6 cont'd
Section 8.2, Public Services and Utilities			
8.2-7	**8.2.2 Environmental Setting** "Proposed marine protected areas (MPAs) are not currently served by public services and utilities due to their nature as protected, offshore areas for underwater habitats. Establishment of MPAs within SCSR would not impact the existing utilities identified in Table 8.2-1. Intake and discharge locations within proposed MPAs would continue to operate based on existing permitted conditions."	There are no facts, evidence, or existing analysis in the section that support the second statement. One of the primary public services providers that would be affected by the implementation of the Proposed IPA, the Sanitation Districts, has submitted several documents presenting the substantial evidence to the contrary. However, DFG has not sought or cited any information from the Sanitation Districts and provides no other sources of substantial evidence to make this significance determination. Furthermore, the statement is made in the environmental setting section of the document, whereas statements such as these should be reserved for the impact analysis section.	A92_iv-7
8.2-10	**8.2.2 Environmental Setting** "...The permit requirements for these facilities will continue to be monitored under the terms and conditions of the existing NPDES permits issued by the RWQCB. The permit conditions include discharge prohibitions, treated water limitations, receiving water limitations, pretreatment specifications, infiltration/inflow and spill prevention program requirements and other provisions intended to protect the beneficial uses of the receiving water body. The establishment of the MPAs will not result in a modification of the permit requirements for POTWs and/or outfalls these permit requirements would be retained."	The concluding sentence is not supported by substantial evidence because it is an assumption based on an incomplete factual basis. As identified in the Sanitation Districts' NOP Comment Letter dated August 3, 2010, and as discussed in previously submitted comment letters dated February 19, 2010, and March 26, 2010, a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as MPAs as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system. Specifically, the State Water Resources Control Board (SWRCB) has stated that the designation of new state water quality protection areas (SWQPAs) to protect water quality in MPAs will occur sometime in the near future following the completion of the updated statewide MLPA network. Therefore, the MPAs would result in an indirect effect of modifying permit requirements, and this indirect	A92_iv-8

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		effect needs to be analyzed.
Section 8.3, Land Use and Recreational Resources		
8.3-22	**Criterion LAND-2: Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.** "The proposed Project IPA is consistent with the polices contained in the California Coastal Act..."	The significance conclusion is not supported by substantial evidence because it is an assumption made based upon incomplete facts. There are policies underlying the California Coastal Act relevant to the proposed project that were omitted in the analysis. These include: *Section 30212.5 Public Facilities; distribution* *Whenever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding and over use by the public of any single area.* Although the proposed project is a set of regulatory changes, those changes may result in an overuse of existing public fishing locations by constraining the number of accessible locations. Therefore, this issue should be discussed under Criterion LAND-2. *Section 30230 Marine Resources; Maintenance* *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.* The proposed Point Vicente and Abalone Cove MPAs will not maintain healthy populations of all species of marine organisms. The protection of these areas, as discussed in comments relating to Sections 6.3 and 7.0 above, would subject marine organisms to contamination and may increase bioaccumulation and spread contamination throughout the food chain and noncontaminated areas. Therefore, this issue should be discussed under Criterion LAND-2. *Section 30234.5 Economic, commercial, and recreational importance of*

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		fishing *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.* The proposed project clearly would have some effect on the economic, commercial, and recreational importance of fishing. This policy should be discussed under Criterion LAND-2 and should cross-reference Section 5 of the DEIR where appropriate. *Section 30254.5 Terms or conditions on sewage treatment plant development; prohibition* *Notwithstanding any other provision of law, the commission may not impose any term or condition on the development of any sewage treatment plant, which is applicable to any future development that the commission finds, can be accommodated by that plant consistent with this division. Nothing in this section modifies the provisions and requirements of Sections 30254 and 30412.* Since there are several POTWs within the immediate vicinity of the proposed MPAs, this policy should be included and discussed under Criterion LAND-2.	A92_iv-9 cont'd
Section 8.4, Vessel Traffic			
8.4-20	**Criterion VT-1: Substantially increase oceanic hazards, in particular due to changes in vessel traffic concentration (i.e., congestion).** "The primary vessel groups that would be potentially impacted by the proposed MPAs are those engaged in commercial and recreational fishing....Because the area available for fishing uses greatly exceeds the area from which fishing effort would be displaced by the proposed Project IPA, it is reasonable to conclude that substantial vessel congestion in fishing grounds would not occur..."	The conclusion that "...it is very unlikely boat concentrations within the proposed MPAs would cause congestion..." is contradicted by the claims in the first paragraph. The first paragraph states that commercial and recreational fishing may be forced to conduct their activities at the periphery of proposed MPA boundaries, and divers and scientific researchers would be attracted to the proposed MPAs resulting in additional wildlife viewing vessel trips.	A92_iv-10
8.4. - 21	**Criterion VT-2: Result in disruption of existing vessel traffic patterns and marine navigation.** The offshore boundary of the proposed Point Vicente SMR is	As stated in the environmental setting, the Los Angeles/Long Beach ports are the two busiest ports in the nation. The claim that "Because of this limited interface between shipping lanes and proposed MPAs, and	A92_iv-11

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	adjacent to the northbound coastwise shipping lane leaving the Los Angeles/Long Beach port complex, and the southern extent of the proposed Abalone Cove SMCA, which would border the Point Vicente SMR to the east, is only slightly further away. With the exception of these two locations, all other MPAs designated by the IPA would be located at least one nautical mile from designated shipping lanes. Because of this limited interface between shipping lanes and proposed MPAs, and because boaters are generally familiar with the locations of shipping lanes, it is unlikely that implementation of the proposed Project IPA would result in a substantial increase in the number of fishing vessels within commercial shipping lanes. Thus, the proposed Project IPA would not significantly disrupt vessel traffic patterns and marine navigation with respect to the coastwise shipping lanes.	because boaters are generally familiar with the locations of shipping lanes, it is unlikely that implementation of the proposed Project IPA would result in a substantial increase in the number of fishing vessels within commercial shipping lanes" is unsubstantiated. CEQA requires that the conclusions regarding significance be based on substantial evidence (CEQA Guidelines Section 15064). Substantial evidence is defined as "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines 15384). DFG, however, has presented no sources for the facts it purports to assert. In addition, Criterion VT-1 states that commercial and recreational fishing may be forced to conduct activities at the periphery of proposed MPA boundaries. The impact of commercial and recreational fishing forced to the periphery of the boundaries of the proposed Abalone Cove and Point Vicente MPAs and the potential for additional wildlife viewing vessel trips within and adjacent to shipping lanes leaving the two busiest ports in the nation is not discussed.	A92_iv-11 cont'd
Section 8.5, Hazards and Hazardous Materials			
8.5-14 and 8.5-15	"Desktop research as performed as well as consultation with various agencies including the DTSC and RWQCBs. The understanding that the project, as a set of regulations, will not utilize hazardous materials in its implementation provided context for analysis in relation to CEQA's significance criteria..."	The context for environmental evaluation should always be the baseline. It is not appropriate to narrow the scope of the analysis simply because the project is a set of regulations and would not physically utilize hazardous materials. CEQA is clear that both direct and indirect effects of the proposed action must be addressed in the EIR (CEQA Guidelines Sections 15126, 15126.2, 15358). DFG presents no information to support the conclusion that, because the regulation will not "utilize hazardous materials," there would be no impact regarding hazardous materials. The Sanitation Districts have in fact presented evidence to the contrary: that the regulations would in fact cause possible effects in relation to the existing environment with the implementation of the Proposed IPA.	A92_iv-12
8.5-17	**Criterion HAZ-4: Be located on a site, which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create significant hazard to the public or the environment.** "There are areas within the Southern California Bight that have been identified on lists compiled pursuant to Government Code Section 65962.5 as having contaminated sediments. Many of	The significance conclusions are not supported by substantial evidence because they are assumptions made based upon incomplete facts. The designated MPAs *have not* avoided known contaminated sediment areas. The Palos Verdes Shelf Superfund site is a *known* contaminated sediment area that is listed pursuant to Government Code 65962.5. The designation of the proposed Point Vicente MPA and the enlargement of the Abalone Cove MPA would locate them over the Palos Verdes	A92_iv-13

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	these sites are currently undergoing assessment, monitoring and remediation. The designation process of the MPAs has avoided known contaminated sediment areas. MPAs could be located in areas where contaminated sediments exist, but have not been identified. However, the designations of the MPAs would not create a hazard to the public or the environment. Therefore, there would be no impact."	Superfund site, where there is known contamination that has been regularly sampled and mapped by both the USEPA and the Sanitation Districts. Furthermore, the Sanitation Districts identified the listing of the Palos Verdes Superfund site pursuant to Government Code 65962.5 in their NOP Comment Letter dated August 3, 2010. The statement that the designation process has avoided known contaminated sediment areas is erroneous. Based on this error, the conclusion "that the MPAs would not create a hazard to the public or environment" is also in incorrect and is not substantiated by facts, evidence, or the existing analysis in the chapter. The ultimate conclusion that impacts would not occur is also not supported by facts, evidence, or the existing analysis in the chapter. As discussed in the comment letter, direct and indirect impacts could occur to the environment by designating Point Vicente and Abalone Cove as MPAs. To appropriately analyze the direct and indirect impacts in the DEIR, the following information should have been included in Section 8.5 and in HAZ-4 analysis: • A description of the existing quantity, variation, and type of habitat in the proposed Abalone Cove and Point Vicente MPAs, and on the greater Palos Verdes Shelf. • A description of the PBL, the water quality characteristics generated by the PBL (e.g., turbidity, sedimentation, etc.), and the impact of these water quality characteristics on the proposed Abalone Cove and Point Vicente MPAs. • A description of the existing levels of DDT/PCB in the sediment and water column at the proposed Abalone Cove and Point Vicente MPAs, and at the Palos Verdes Shelf along with a quantitative analysis of the impact of these levels on the biological communities at the proposed MPAs (e.g., degraded habitat; only species tolerant of contaminated sediment are supported; reproductive impairment; etc.). • A description of the existing quantity, variation, and type of invertebrate, fish, bird, and mammal species located at the proposed Abalone Cove and Point Vicente MPAs, and at the greater Palos Verdes Shelf. • A description of the existing levels of DDT/PCB in these species. • A description of the bioaccumulation of DDT/PCB through each species and through the food chain.	A92_iv-13 cont'd

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		• A quantitative analysis of the changes in the existing species populations as a result of locating the proposed Abalone Cove and Point Vicente MPAs within the Palos Verdes Shelf Superfund Site (i.e., analyze the relationship between an increase in the population of species [due to the protection offered by Abalone Cove and Pointe Vicente] and the increased number of species with DDT/PCB due to bioaccumulation in each species and in the food chain). • A quantitative assessment of the change in health risk to wildlife and humans from locating the proposed Abalone Cove and Point Vicente MPAs within the Palos Verdes Shelf Superfund Site. None of this information was included in Section 8.5 or cross-referenced between hazards and other resource areas such as water quality and biology. Therefore, the analysis is inaccurate and incomplete, and the impact determination is unsubstantiated.	A92_iv-13 cont'd
8.5-19 & 8.5-20	**Criterion HAZ-9: Have Environmental Effects which will result in substantial adverse effects on human beings, either directly or indirectly?** "Because marine waters in certain portions of the SCSR are contaminated to the extent where consuming particular fish or shellfish species may be unhealthful, it is possible that commercial or recreational fishing efforts could be displaced from an area of acceptable water quality into such contaminated waters...For the purposes of this impact, displacement to areas of lower water quality is of concern only if the reduced water quality could result in excess contaminant levels in the seafood or ocean vegetables harvested for consumption...If the users comply with the consumption guidelines, then potential adverse effects from consuming fish from this area would be considered acceptable, and therefore potential impacts would be less than significant...The percentage of the entire SCSR that would be closed to consumptive uses compared to the area available for consumptive uses is small. Thus potential impacts of displacement of uses from open water areas (i.e., areas only accessible by boat) would be considered less than significant; users could travel to near-by open water areas to obtain the same or similar type of seafood or sea vegetables (kelp)."	This discussion completely ignores the direct and indirect impacts of protecting species of fish within a known Superfund site and the bioaccumulation that would likely occur or the migration of contaminated biomass (e.g., fish); therefore, these "reasonable" assumptions predicated upon facts are incomplete because they are based upon an incomplete set of facts. The existence of bioaccumulation through the food chain has been acknowledged by DFG in its discussion of the California brown pelican in the biology section. The protection of fish species known to pose a risk to wildlife and humans (e.g., White Croaker) through the designation of the proposed Point Vicente and Abalone Cove MPAs are environmental impacts that could result in substantial adverse effects on human beings, either indirectly or directly. Bioaccumulation and the hazard it poses to humans needs to be analyzed under this criterion. Furthermore, reports have consistently shown that fish frequenting areas of legacy deposits have elevated toxic body burdens as a function of their location, and that the sites more distant from the hot spots have fish with reduced toxic body burdens. The MPAs will likely generate numerous fish of larger size known to uptake the existing toxins in the PVSS. These fish would then migrate outside the MPA boundaries to adjacent nontoxic areas. This is contrary to the MSRP's goals to limit public exposure to elevated tissue burdens of toxic materials through not-take and limited take zones and public education, and it is completely contrary to the activities outlined in the USEPA's	A92_iv-14

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		IROD.	
Chapter 9, Cumulative Impacts			
9-2	"Because the SCSR is fully encompassed within the bight and because the bight is distinct from the surrounding waters from an oceanographic and biological perspective, the limits of the bight represent reasonable and logical study boundaries for the cumulative impact analysis...Because of this, and because of the very large geographic context of the bight, the list of past, present, and probable future projects considered in this section is not exhaustive, but instead focuses on the most prominent projects in the bight..."	The significance conclusions in the cumulative impact analysis are not supported by substantial evidence because they are assumptions made based upon incomplete facts. Prominent projects in the bight were omitted from the cumulative project list. These are described below. • future regulations imposed by the RWQCB to maintain water quality in coastal areas as described in the Ocean Plan. The cumulative analysis needs to consider the reasonably foreseeable condition of the Regional Water Quality Control Board establishing SWQPAs because this is a future project. The analysis needs to include the associated potential cumulative environmental effects resulting from the placement of MPAs in and around the White Point outfall system. • A prominent project in the bight is the Long Beach Terminal Island Rail Project, which would create efficiencies in the rail system and remove an at-grade crossing by filling sections of the harbor. This project was omitted from the cumulative projects list and needs to be included in the analysis.	A92_iv-15
9-13	"In 2005 the resource trustee agencies identified above prepared a joint programmatic Environmental Impact Statement (EIS)/EIR for the proposed restoration effort. In 2006, the Department issued a Notice of Determination stating that the restoration program would not have a significant impact on the environment, and approving the project (Department 2006)."	It is unclear from this description whether this is referring to the EPA signed interim Record of Decision (IROD) discussed in the EPA letter to the California Fish and Game Commission dated February 18, 2010. The IROD specifically identifies the type of future activities EPA will conduct to remediate the superfund site. The IROD and these activities should be described in the cumulative section for a complete identification of the future actions that may have a cumulative effect when combined with the proposed project.	A92_iv-16

Responses to Comment Letter A92_iv

Response to Comment A92_iv-1: Commenter mischaracterizes the data presented in the Draft EIR. Data on recreational and commercial boat trips are located within the Draft EIR in Sections 6.0 and related appendices, 8.4, 8.2 and 8.6.

Response to Comment A92_iv-2: CEQA requires an analysis of the proposed project's impacts on the existing environment and does not require an analysis of the impacts that the existing environment may pose to the proposed project or its ultimate success. Impacts from existing sources of known contamination on MPAs and the network as a whole have been reviewed during the design process and have been reviewed as part of this EIR.

Response to Comment A92_iv-3: Adaptive management is intended to address future unknown results and conflict through a known process of evaluation and response. If conflict from the designation of MPAs should occur in the future then the adaptive management process is where these conflicts may be identified and remedied. At the present time MPAs are not expected to conflict with existing uses of SCSR water by dischargers due to specific language exempting the operation and maintenance of existing facilities from the take provisions within MPAs. Further statements made by Jonathon Bishop of the State Water Resources Control Board and a resolution (Consideration of a resolution to provide staff with direction regarding marine protected areas and state water quality protection areas, November 16, 2010) adopted by the SWRCB support the conclusion that implementation will not result in increased restriction to permitted discharges occurring within or adjacent to MPAs within the SCSR. See response to comment A31_ii-2.

Response to Comment A92_iv-4: Revisions to this section have been made to more accurately present the conclusions reached. Water quality impacts based on shifts in the locations of fishing boats are not expected to significantly increase any existing impacts that occur with boat operations. The proposed Project IPA is merely shifting the location of any impacts occurring within the SCSR to areas adjacent to where these impacts may already be occurring.

Response to Comment A92_iv-5: Background information on MPAs is discussed in Section 2.0 of the Draft EIR and in the *Master Plan for Marine Protected Areas*, cited in the Draft EIR. Also see Section 8.5.2.2 regarding the recovery of the communities living along the Palos Verdes shelf from legacy contaminants.

Response to Comment A92_iv-6: See above and see comment A92_i-10.

Response to Comment A92_iv-7: Commenter mischaracterizes the data presented in the Draft EIR. The SCSR is composed of state marine waters. Other than existing oil and gas production facilities no facilities are present that require service from public utilities. The Draft EIR does analyze impact to enforcement services provided within the SCSR and

includes detailed analysis of the public safety and law enforcement services that may be impacted by the proposed Project IPA.

Response to Comment A92_iv-8: See response to comment A92_i-5 and comment A92_iv-3 regarding potential increased restriction for discharges resulting from MPA designation.

Response to Comment A92_iv-9: The commenter states that sections 30212.5, 30230, 30234.5, and 30254.5 of the California Coastal Act (i.e., issues such as distribution of public facilities, maintenance of marine resources, and the importance of fishing) were not properly analyzed in the Draft EIR. The California Coastal Act was introduced in Section 8.3.1.2.1 of the Draft EIR, as its stated declarations and goals: to protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources (PRC Section 30001.5). Further, the act states that it is not designed to limit the power of governments to establish even stronger restrictions against any activity that could potentially adversely affect the resources of the coastal zone (PRC Section 30005), suggesting that it encourages broader protections and efforts to ensure the health of California's coastal waters long into the future. Given these sections of the statute, and the mission of the Coastal Commission to "protect, conserve, restore, and enhance the environment of the California coastline," it is clear that creation of MPAs is not in conflict with the legislative goals of the California Coastal Act. Also see Response A31_ii-2 and the Coastal Commission's comment letter A73_ii for their opinion of the proposed Project IPA.

Response to Comment A92_iv-10: The commenter excerpts language from Criterion VT-1 (Section 8.4.3.3), focusing specifically on the potential for congestion within MPAs due to a possible increase in passive recreational users and wildlife viewers. However, the analysis points out that the 93 percent increase in protected areas is more than enough to compensate for any increase in passive recreational users. Additionally, consumptive users displaced from MPAs would have the opposite effect (lower vessel densities) compared to non-consumptive users being attracted to MPAs. As discussed in Section 8.4 of the Draft EIR, maritime regulations and U.S. Coast Guard vessel safety requirements would ensure that all vessels transiting the SCSR do so safely. Text in Section 8.4.3.3 of the Draft EIR has been edited to clarify the discussion. For more information regarding the displacement of vessels due to the proposed regulatory changes, please refer to Master Response 10.

Response to Comment A92_iv-11: The commenter states that assertions made in the CEQA analysis (Section 8.4.3.3 of the Draft EIR) are lacking because focused discussion of the impacts to shipping lanes near the Point Vicente and Abalone Cove SMCAs is not presented. The comment reiterates the Draft EIR's statement that if fishing vessels are forced to relocate their activities, some increase in fishing effort near the boundaries of MPAs can reasonably be expected. However, the commenter then suggests that recreational and commercial fishers who operated in the Los Angeles or Long Beach area would, by

definition, fish adjacent to these MPAs or increase the risks to ocean navigation. This suggestion is not supported by evidence. On the contrary, vessel operators are required to be aware of the rules of navigation and the location of shipping lanes. Additionally, displaced consumptive users would relocate to open fishing grounds. It is illegal to fish within an established shipping lane.

Response to Comment A92_iv-12: See response to comment A92_iv-3.

Response to Comment A92_iv-13: Section 8.5.2.2 has been revised to better describe existing conditions. However, no new significant impacts from the implementation of MPAs on the Palos Verdes headland have been identified based on a review resulting from public comments to the Draft EIR. Also see comment A92_i-10.

Response to Comment A92_iv-14: LACSD claims that the location of these two MPAs within the Palos Verdes Superfund Site would "result in a hazard to human beings, directly or indirectly, through the movement of contaminated biomass from these MPAs to other locations" (Section 8.5). LACSD is assuming that the Point Vicente SMCA and the Abalone Cove SMCA will produce enough biomass to yield an increase, or spill over, of fish from the contaminated area to surrounding waters, which would increase the overall availability of contaminated fish to the public. For their assertion to be correct, these two MPAs would have needed to be designed in such a way that would lead to high fishery yields and productivity for noticeable spill over affects to occur. However, LACSD's own expert testimony, presented as an attachment to their main comment letter, clearly states that these two MPAs contain MLPA SAT defined key habitats that are either too small or missing all together to be very productive MPAs and would have "little individual bioeconomic value." Additionally, their expert also indicated that "the Point Vicente and Abalone Cove SMCAs encompass degraded habitats that individually or as a cluster are not likely sufficient to meet the goals of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process". Therefore LACSD's' comments on including language under "Criterion Haz-9: Have environmental effects which will result in substantial adverse effects on human beings" would not need to be addressed since any movement of contaminated biomass from these MPAs to other locations would not be significant based on LACSD's own expert testimony.

Response to Comment A92_iv-15: The comment states that the significance conclusions in the cumulative impact analysis are not supported by substantial evidence because they are assumptions made based upon incomplete facts. The commenter then lists projects that were not studied in the list of cumulative projects considered in the analysis. Due to the regional nature of the proposed Project IPA and its large geographic area, the inclusion and evaluation of every proposed project was not feasible or required by CEQA. The Draft EIR captured prominent projects past, present, and probable, located offshore or along the coast, with the potential to impact the same resources as the proposed Project IPA.

Attachment D

An Analysis of the Proposed Point Vicente and Abalone Cove Marine Protected Areas

An Analysis of the Proposed Point Vicente and Abalone Cove Marine Protected Areas

Daniel J. Pondella, II, MA, Ph.D.
Director of the Vantuna Research Group
Associate Professor of Biology
Moore Laboratory of Zoology
Occidental College

October 14, 2010

Qualifications: The major focus of my research program is the fish assemblages of the rocky reefs in the Southern California Bight. The field portion of my research program is based out of King Harbor, Redondo Beach; thus, the most of my work has been conducted at the Palos Verdes Peninsula. I started completing subtidal surveys of this region in 1985 when I started as a technician with the Vantuna Research Group (VRG). One of the core research projects of the VRG, which has been studying the fishes at Palos Verdes since the mid-1960s, is the long-term monitoring of fishes at Rocky Point and King Harbor (1974-present). In the late 1980s and early 1990s, I completed biological assessments of both Abalone Cove and Portuguese Bend Landslides (Envirosphere 1989; Pondella 1996). Since becoming the director of the VRG, I expanded this program to include spatial surveys of rocky-reefs throughout the Southern California Bight (Clark 2005; Pondella et al. 2005). Recently, my program has completed extensive surveys of Santa Monica Bay and the Palos Verdes Peninsula (Pondella 2009; Pondella et al. 2010).

In addition, to the dozens of published peer-reviewed I have also edited the volume "The Ecology of Marine Fishes: California and Adjacent Waters", the most comprehensive work on fishes in California. Beyond my current research program, I am also the Editor of the Bulletin of the Southern California Academy of Sciences, chair of the Santa Monica Bay Restorations Commission's Marine Resources Technical Advisory Committee, chair of Southern California Coastal Water Research Project Bight '08 Rocky Reef Committee and just finished serving on the California Marine Life Protection Act's Master Plan Science Advisory Team for the South Coast Study Region. This research and service has given me a unique insight into the issues concerning the Palos Verdes Peninsula.

SUMMARY

Question 1: *Are the habitats being protected in the proposed Abalone Cove and Point Vicente Marine Protected Areas (MPA) sufficient for meeting the goals of the Marine Life Protection Act (MLPA*), *Marine Managed Areas Improvement Act (MMAIA), and the regional guidelines provided for the South Coast Study Region (SCSR) MPA process?*

Answer 1: The Abalone Cove and Point Vicente MPAs contain poor-quality nearshore habitats as a result of the continued sedimentation and turbidity associated with the Portuguese Bend Landslide and the historic landslide in Abalone Cove. Indications of this poor habitat quality are defaunated reefs and purple urchin barrens. These deleterious effects are greatest in Abalone Cove, but also present at Point Vicente.

Question 2: *Evaluate the anticipated effectiveness of the proposed Abalone Cove and Point Vicente MPAs as part of an interconnected network of MPAs in the context of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process.*

Answer 2: In the Abalone Cove and Point Vicente MPAs, all habitats with exception of soft bottom habitats do not meet the recommended scientific guidelines established by the Science Advisory Team (SAT) . The lack of the anticipated benefits is particularly significant with respect to critical rocky reef habitats that are most likely to benefit from a reserve network. As such, these proposed reserves have little individual bioeconomic value.

Question 3: *How do the proposed Abalone Cove and Point Vicente MPAs compare to other MPAs of similar size in the IPA in terms of meeting the goals of the MLPA, MMAIA, and regional guidelines provided for the SCSR MPA process?*

Answer 3: They do not adequately compare to the proposed MPAs of similar size. The size of this reserve cluster has been intentionally inflated by the inclusion of deep soft bottom habitat. Thus, it is more similar to a small MPA.

Question 4: *Is the document "MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options" comprehensive and accurate in describing the proposed Abalone Cove and Point Vicente MPAs?*

Answer 4: No, this document is inaccurate and appears to be intentionally misleading.

INTRODUCTION

The Blue Ribbon Task Force (BRTF) has forwarded an Integrated Preferred Alternative (IPA) reserve network proposal to the Fish and Game Commission for approval. After a two-year stakeholder process, the BRTF apparently ignored the stakeholder proposals and the scientific guidelines from its Science Advisory Team (SAT). The area where these discrepancies occur is located at the center of the Southern California Bight, the Palos Verdes Peninsula. At this location, the BRTF ignored critical and limiting habitats, reduced the remaining rocky-reef habitats below the recommended habitat size guidelines, and disregarded spacing guidelines. Being at the center of the bight, the Palos Verdes Peninsula is critical for network connectivity. The limited habitat size and importance of Palos Verdes for connectivity were confirmed by two separate bioeconomic models. Further complicating the long term performance of the Palos Verdes MPAs and associated network connectivity is the lack of integration into the analysis of the IPA of known empirical studies of the region that demonstrate the known poor habitat quality of these proposed MPAs. The designation of the proposed Point Vicente and Abalone Cove MPAs compromises a long term assessment of the MPA network and the performance of the proposed MPAs.

Question 1: Are the habitats being protected in the proposed Abalone Cove and Point Vicente MPAs sufficient for meeting the goals of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process?

According to the scientific guidelines for the *California Marine Life Protection Act Master Plan for Marine Protected Areas*, MPAs should have a minimum alongshore span of 3-6 statute miles (preferably 6-12.5 miles) and should extend offshore to deep waters. The SCSR SAT combined these guidelines to recommend that an individual MPA or MPA cluster should have a minimum area of 9-18 square statute miles (preferably 18-36 square miles). The Point Vicente SMCA has an alongshore span of 3.69 mi (minimum = 3.0 mi), while the Abalone Cove SMCA has an alongshore span of 1.23 mi for a total of 4.92 mi (Table 1). While the MPA cluster is near the minimum guidelines, these measures fall significantly below even the low end of the range of the preferred size guidelines for the individual MPAs**.**

In addition, the individual habitats represented in the Palos Verdes IPA proposal are either of significantly lower quality than required by the science guidelines or are absent. First, the reported habitat area calculations are inconsistent (Table 1). Both maximum kelp (Point Vicente SMCA = 1.23 mi, Abalone Cove SMCA = 0.86 mi) and surfgrass (Point Vicente SMCA = 1.14 mi, Abalone Cove SMCA = 1.41 mi) estimates are greater than the estimates of rocky shore habitat (Point Vicente SMCA = 1.06 mi, Abalone Cove SMCA = 0.23 mi). Since both; the kelp and surfgrass habitats are themselves dependent upon rocky habitat, these estimates are incorrect. The only habitats that meet the scientific guidelines are soft bottom habitats, rocky shores and rock proxy.

The critical and limiting habitats along this stretch of coastline are all associated with hard bottom features. None of these habitats are represented below 30 m below the surface. Also, the estimates for the nearshore (0-30 m) rocky reef habitats are incorrect. The proposed Point Vicente SMCA contains 0.138 mi^2 (358,074 m^2) of nearshore rocky reef habitat (Pondella 2009), 55% of the reported value. While the Abalone Cove MPA appears to have a higher estimated amount of nearshore rocky habitat, that area is either buried reef or under intense sediment load from the Portuguese Bend Landslide.

Table 1. Reported overall sizes and habitat sizes for the IPA proposed Point Vicente SMCA and Abalone Cove SMCA. Minimum scientific guidelines where evaluated are in parentheses. Values below scientific guidelines are highlighted in yellow.

	Point Vicente SMCA	Abalone Cove SMCA	Total
Area (9-18 mi^2)	15.12	4.75	19.87
Alongshore span (3-6 mi)	3.69	1.23	4.92
Depth range (ft)	0-2640	0-2181	0-2640
Beaches (1 mi)	1.4	0.76	2.16
Rocky shores (1 mi)	0.21	0.87	1.08
hardened shores (1 mi)	0	0	0
coastal marsh (mi)	0	0	0
coastal marsh area (mi^2)	0	0	0
tidal flats (mi)	0	0	0
surfgrass (mi)	1.14	1.41	2.55
eelgrass (mi^2)	0	0	0
estuary(0.12 mi^2)	0	0	0
soft 0-30 m (10 mi^2)	0.41	0.51	0.92
soft 0- 30 m proxy (1 mi)	0.47	1.09	1.56
soft 30-100 m (mi^2)	1.09	1.17	2.26
soft 100-200 m (mi^2)	1.05	0.56	1.61
soft 200-3000 m (mi^2)	12.24	2.32	14.56
hard 0-30 m (1 mi)	0.25	0.14	0.39
hard 0-30 m proxy (1 mi)	1.06	0.23	1.29
hard 30-100 m (0.3 mi^2)	0	0.02	0.02
hard 100-200 m (0.28 mi^2)	0	0	0
hard 200-3000 m (mi^2)	0.03	0	0.03
unknown 0-30 m (mi^2)	0.02	0.03	0.05
maximum kelp (linear) (1 mi)	1.23	0.86	2.09
kelp persistence (linear) (1 mi)	0.13	0.08	0.21

Road construction on Palos Verdes Drive triggered the Portuguese Bend Landslide in 1956. From 1956 to 1999, approximately 5.7 to 9.4 million metric tons of sediment slid onto the inner shelf (Kayen 2002). By 1999, the landslide was dewatered, slowed appreciably and now only releases sediment due to wave action. Unfortunately sedimentation and associated turbidity continue to have chronic impacts. First there is continued turbidity, sediment transport and scour associated with the sediment deposited in Portuguese Bend from the landslide (Figure 1). In 1999, the Klondike Canyon Landslide was triggered by water issues associated with the Trump National Golf Course, adding to the sediment load in this area (Figure 1). The third slide track, the Abalone Cove Landslide, occupied approximately 80 acres extending west of Portuguese Point into Abalone Cove County Beach from the surf zone inland nearly 2,200 feet with a slide plane located 84 feet below sea level (Figure 2). The Abalone Cove Landslide

includes an ancient slide tract exacerbated by an increase in ground water levels beginning in 1948 that were caused by increased development. Historic and continued sedimentation from these three slides continues to plague this stretch of the peninsula. First, this turbidity plume (Figure 3) transports sediment toward Point Fermin and Rocky Point following the longshore current and associated longshore transport on the Palos Verdes Peninsula (Hickey 1993). In addition, rocky reefs continue to be buried by sediment in this area (USACE 2000; Pondella 2009; Pondella et al. 2010). These chronic stressors continue to cause deleterious impacts to the nearshore rocky environment (Stephens et al. 1996). Reef loss due to burial has significantly reduced kelp canopy and persistent kelp in this area.

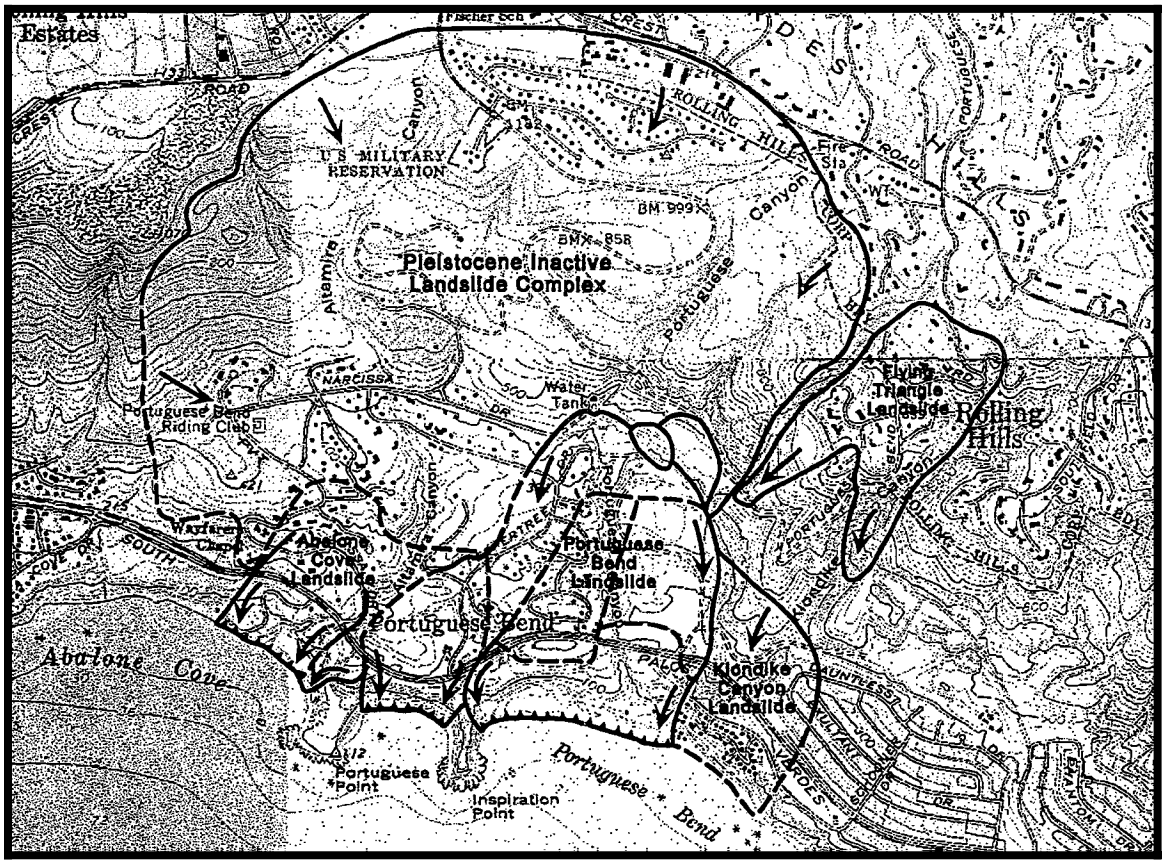

Figure 1. Landslides of the Palos Verdes Peninsula (USACE 2000).

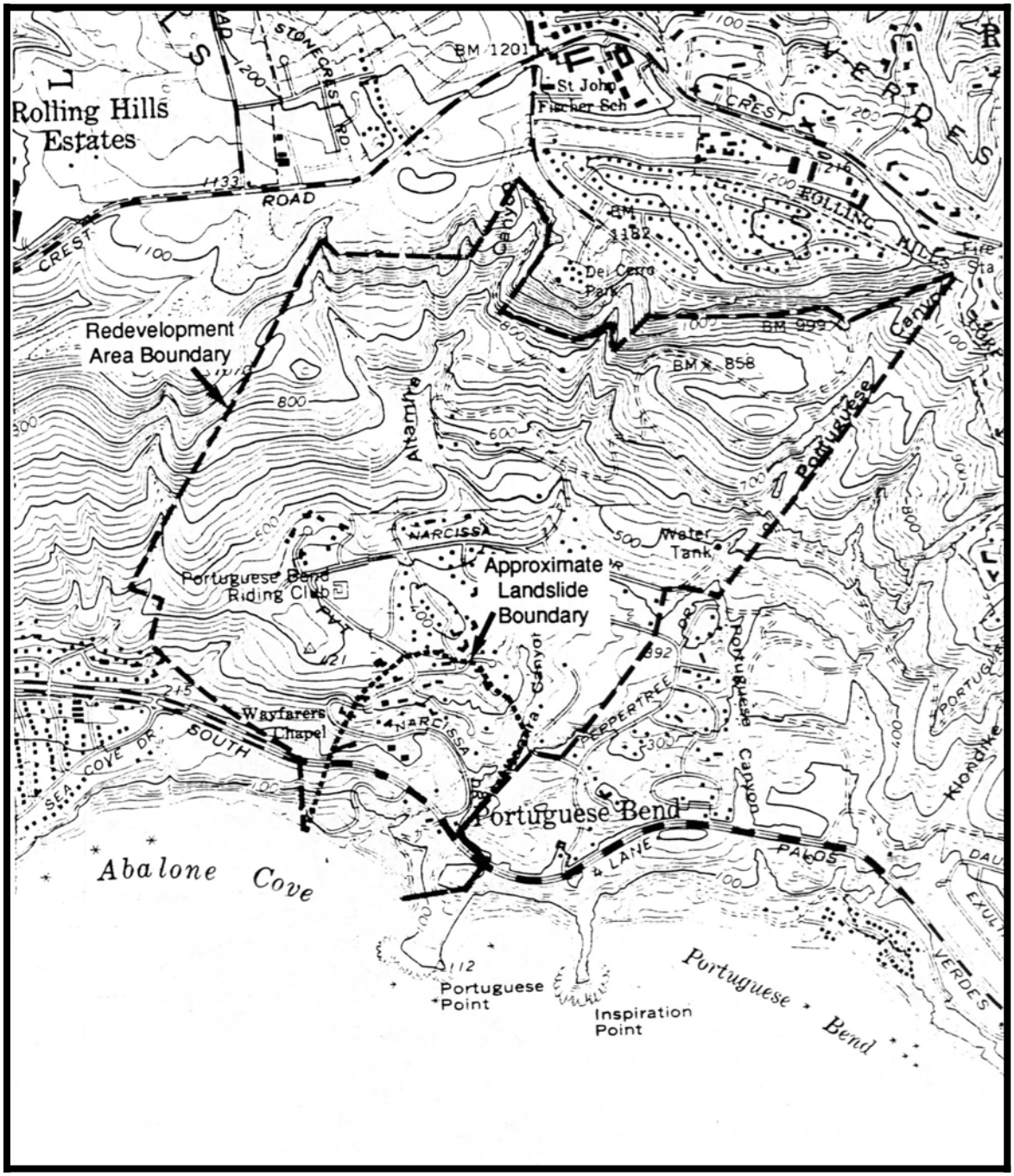

Figure 2. The Abalone Cove Landslide (Envirosphere 1989).

Figure 3. Turbidity plume from the Portuguese Bend Landslide (Pondella et al. 2010).

The chronic damage associated with the turbidity along the southern face of the Palos Verdes Peninsula was demonstrated from an empirical survey of the water column profile of light energy (measured as photosynthetically active radiation or PAR) conducted monthly from 1982-2009 at seven nearshore sites along the Palos Verdes Peninsula demonstrates the chronic damage associated with turbidity along the southern face of the Palos Verdes Peninsula (Figure 4). This survey is part of the Joint Water Pollution Control Plant (JWPCP) NPDES monitoring program. The survey included readings taken at 0.5 m and 1m below the surface and then at 2 m intervals until contact with the bottom or 20 m, whichever comes first. The light energy value measured at each depth (quanta/sec/cm^2) is divided by the surface light energy measurement (also quanta/sec/cm^2) to obtain a percentage of surface light energy that passes through the water column to each depth. That percentage was then averaged over every sampling period from April 1982 to December 2009 to obtain a mean percentage of surface light energy captured at each depth. By plotting the difference between the percentage at each site/depth and the average percentage of all sites at each depth, discernable patterns begin to appear (Figure 5). The upcoast stations Rocky Point (L1) and Long Point (L2) have greater light penetration at depth than at stations between Abalone Cove and Point Fermin (L3-L7). At 18 meters, there is significant variation among these sites (ANOVA: $F_{1,6} = 6.862$, $p < 0.000001$). Thus, turbidity associated with the Portuguese Bend Landslide may be limiting algal growth from Abalone Cove to Point Fermin. This turbidity plus the previously described reef burial limit kelp canopy density, persistence and the corresponding performance of the associated biota.

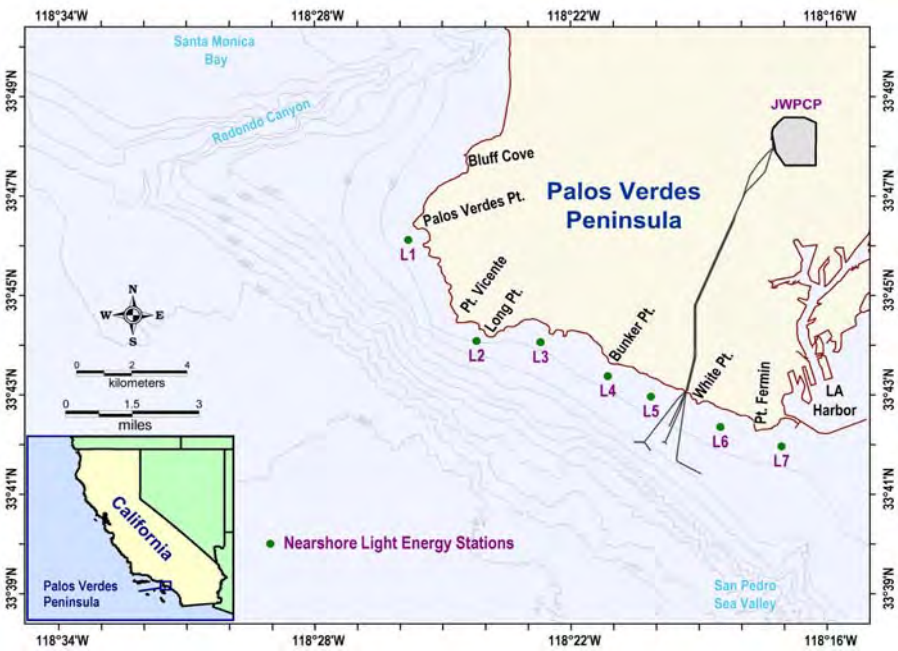

Figure 4. Map showing locations of the Sanitation Districts' light energy stations. Stations names are as follows: L1 = Rocky Point, L2 = Long Point, L3 = Abalone Cove, L4 = Bunker Point, L5 = 3 Palms, L6 = East of Whites Point, L7 = Point Fermin.

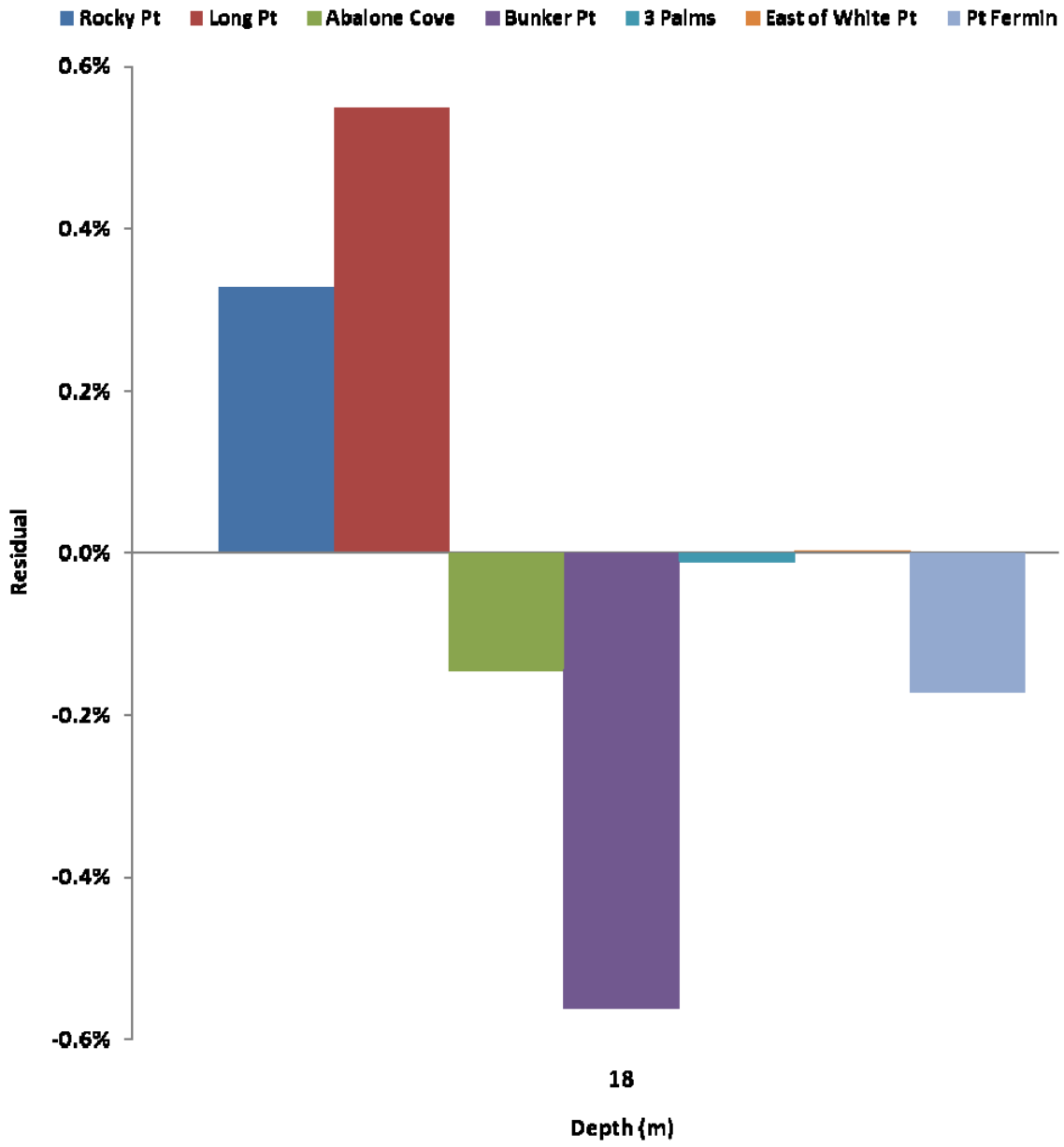

Figure 5. Light attenuation % difference from the mean at seven Palos Verdes Peninsula locations by depth.

This degradation of reef habitat has had significant biological consequences, particularly to the area associated with the Abalone Cove SMCA. To examine this area (Abalone Cove-Point Vicente) 27 CRANE (Tenera 2006; Pondella 2009) surveys of fishes, invertebrates and benthic characteristics were conducted (Table 2, Figure 6). The rocky reefs in the proposed IPA are degraded by anthropogenic impacts (turbidity, sedimentation etc). Characteristic of this degraded habitat are urchin barrens (North 1964) and buried reefs (USACE 2000, Pondella et al. 2010). Abalone Cove and Point Vicente have been dramatically affected by these ongoing processes. This degraded habitat quality has resulted in unusually high fractions of biota-free reef (Table 3). Up to 33% of the area on these reefs has no invertebrate or algal cover which is at least twice the percentage that would be expected for a healthy reef. The resulting invertebrate and benthic fauna (Appendix I and II) is dominated by purple urchin barrens. The appearance of these barrens appears to be linked to poor reef quality associated with ongoing problems with sedimentation and turbidity (Foster 2010). Particularly problematic is the Abalone Cove MPA, where there is significantly lowered fish diversity (17 fish species versus 40) and reef fish biomass compared to the proposed Point Vicente MPA (Figure 7, Table 4). This low species richness is a result of both poor habitat quality and habitat diversity. The assemblage found in the proposed Point Vicente MPA is more typical of what is expected on nearshore rocky reefs in the Southern California Bight (Pondella et al. 2005; Stephens 2006). Comparing biomass between the two reefs, the dominant nearshore rocky reef species (blacksmith, sheephead, garibaldi, senorita, etc.) dominate the biomass density (g/m^2) plot for the proposed Point Vicente MPA. By contrast, at the proposed Abalone Cove MPA, excluding jack mackerel, which is a pelagic species, biomass density is lower and many key species (i.e. opaleye and topsmelt) are absent.

Fish diversity and biomass are the key factors in evaluating the performance of MPAs and assessing their design. Although the 2008 data were provided to the BRTF, these recent surveys were not incorporated into the SAT evaluations, including the bioeconomic models. Those modeling products treat all rocky reef habitats as equal and do not account for variations in habitat quality due to turbidity or reef burial. In addition, modeling products assumed that Abalone Cove's biological metrics (i.e. biomass) were the same as those for the proposed Point Vicente MPA. This over-emphasizes the value of this degraded habitat. The inclusion of the proposed Abalone Cove MPA with the proposed Point Vicente MPA adds very little biological value to this MPA cluster. In summary, the Point Vicente and Abalone Cove SMCAs encompass degraded habitats that individually or as a cluster are not likely sufficient to meet the goals of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process.

Table 2. Locations of 27 natural reef zones surveyed within the Point Vicente and Abalone Cove SMCAs, 2004-2010. Point Vicente North coordinates are approximate; no coordinates were recorded at this site by zone.

Station	Zone	Latitude	Longitude
120 Reef	Inner	33.73766	-118.39196
120 Reef	Middle	33.73693	-118.39213
Abalone Cove Kelp East	Inner	33.74154	-118.38373
Abalone Cove Kelp East	Middle	33.73981	-118.38309
Abalone Cove Kelp West	Inner	33.73945	-118.38753
Abalone Cove Kelp West	Middle	33.73923	-118.38695
Hawthorne Reef	Inner	33.74684	-118.41522
Hawthorne Reef	Middle	33.74654	-118.41658
Hawthorne Reef	Outer	33.74637	-118.41745
Hawthorne Reef	Deep	33.74648	-118.41817
Long Point East	Inner	33.73620	-118.39983
Long Point East	Middle	33.73588	-118.40040
Long Point East	Outer	33.73546	-118.40118
Long Point West	Inner	33.73845	-118.40320
Long Point West	Middle	33.73803	-118.40398
Point Vicente North	Inner	33.74514	-118.41562
Point Vicente North	Middle	33.74514	-118.41562
Point Vicente North	Outer	33.74514	-118.41562
Point Vicente East	Inner	33.74063	-118.40822
Point Vicente East	Middle	33.74042	-118.40745
Point Vicente East	Outer	33.74013	-118.40748
Point Vicente West	Inner	33.74130	-118.41208
Point Vicente West	Middle	33.73912	-118.41451
Point Vicente West	Outer	33.73807	-118.41488
Point Vicente West	Deep	33.73759	-118.41522
Portuguese Point	Inner	33.73713	-118.38373
Portuguese Point	Middle	33.73692	-118.37700

Figure 6. Overlain on the South Coast Integrated Preferred Alternative (IPA) for the Palos Verdes Coast are the natural reef zone locations for the 2004 (white), 2007 (yellow), 2008 (red), 2009 (green) and 2010 (blue) field seasons sampling stations, as well as the location of the 1995-1997 fish transects (orange circle). The Point Vicente SMCA is outlined (in white) on the left and the Abalone Cove State Marine Conservation Area is outlined on the right.

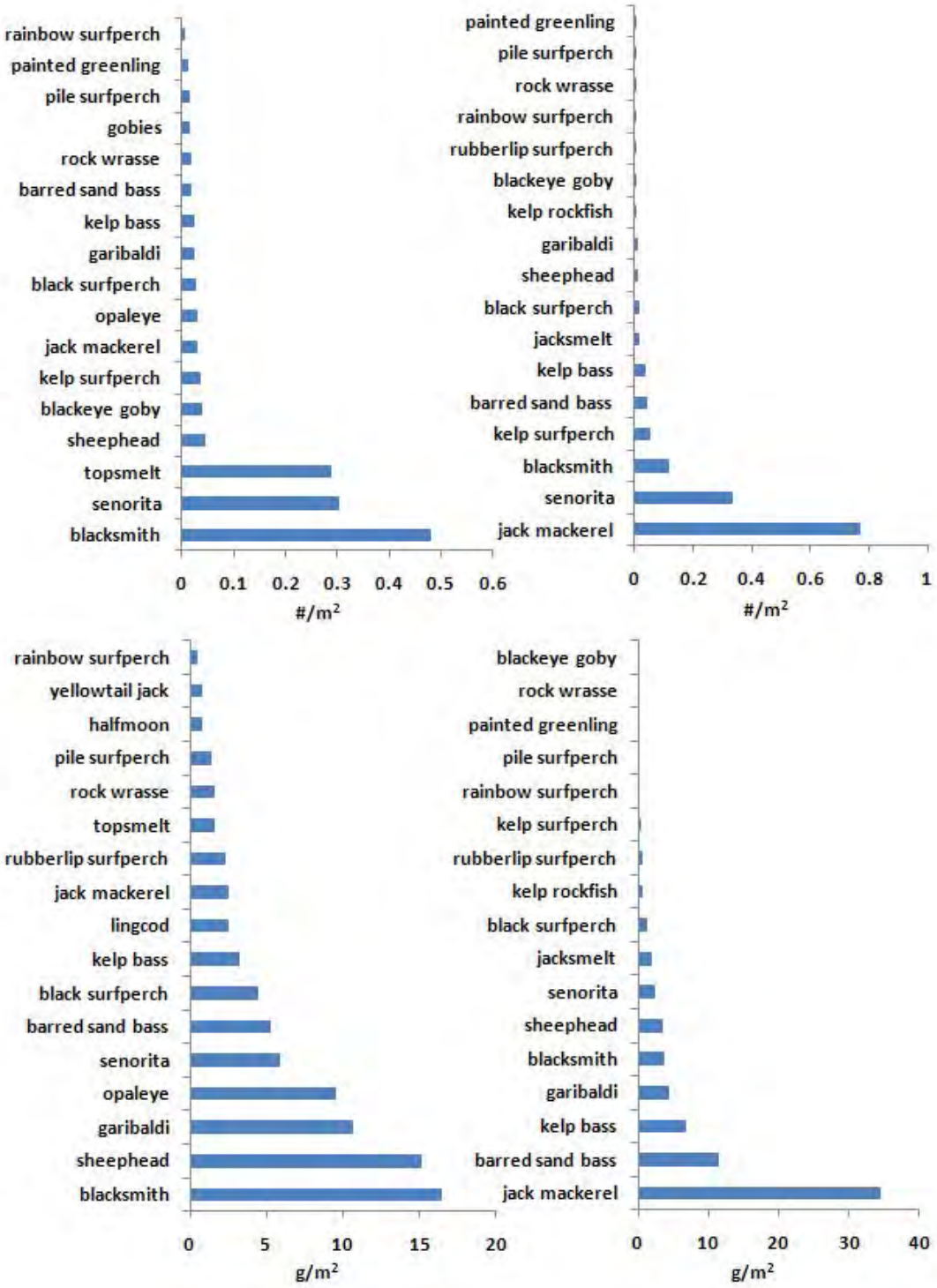

Figure 7. Density (abundance/m^2) and biomass (g/m^2) of top 17 fishes observed at sites within the Point Vicente SMCA (left) and Abalone Cove SMCA (right).

Table 3. Reef classification characteristics (% cover categories) including average relief (m) from sites within the Point Vicente and Abalone Cove SMCAs, 2004-2010.

Reef (SMCA)	Relief (m)	no biota	algal coverage	Invertebrate cover
Hawthorne Reef (Pt. Vicente)	0.41	19.43%	65.18%	15.38%
Point Vicente North (Pt. Vicente)	1.41	25.56%	65.56%	8.89%
Point Vicente West (Pt. Vicente)	0.80	17.79%	57.44%	24.77%
Point Vicente East (Pt. Vicente)	0.64	33.33%	56.45%	10.22%
Long Point West (Pt. Vicente)	1.61	13.71%	54.03%	32.26%
Long Point East (Pt. Vicente)	0.75	12.37%	75.27%	12.37%
120 Reef (A. Cove)	0.63	32.26%	34.68%	33.06%
Abalone Cove Kelp West (A. Cove)	0.21	19.35%	61.29%	19.35%
Abalone Cove Kelp East (A. Cove)	0.34	21.77%	68.55%	9.68%
Portuguese Point (A. Cove)	0.62	8.06%	63.71%	28.23%

Table 4. Species list, density (#/m^2) and biomass (g/m^2) of all fishes observed at sites within the Point Vicente and Abalone Cove SMCAs.

		Point Vicente SMCA		Abalone Cove SMCA	
Species	**Common Name**	**#/m^2**	**g/m^2**	**#/m^2**	**g/m^2**
Alloclinus holderi	island kelpfish	0.0001	0.0004		
Anisotremus davidsonii	sargo	0.0015	0.291		
Atherinops affinis	topsmelt	0.2893	1.5876		
Atherinopsis californiensis	jacksmelt	0.0022	0.2428	0.0174	1.8883
Brachyistius frenatus	kelp surfperch	0.0371	0.4656	0.0521	0.4889
Cheilotrema saturnum	black croaker	0.001	0.1121		
Chromis punctipinnis	blacksmith	0.4814	16.4342	0.1174	3.8061
Embiotoca jacksoni	black surfperch	0.0262	4.4449	0.0146	1.3745
Girella nigricans	opaleye	0.0293	9.5154		
Gobiidae sp	gobies	0.0149	0.0001		
Halichoeres semicinctus	rock wrasse	0.0176	1.5664	0.0014	0.0819
Hermosilla azurea	zebra perch	0.0004	0.2454		
Hypsurus caryi	rainbow surfperch	0.0065	0.532	0.0021	0.163
Hypsypops rubicundus	garibaldi	0.0241	10.6356	0.0097	4.4653
Medialuna californiensis	halfmoon	0.0039	0.8457		
Ophiodon elongatus	lingcod	0.0006	2.5734		
Orthonopias triacis	snubnose sculpin	0.0001	0		
Oxyjulis californica	senorita	0.3042	5.9106	0.3368	2.2966
Oxylebius pictus	painted greenling	0.0115	0.2123	0.0014	0.0911
Paralabrax clathratus	kelp bass	0.024	3.2417	0.0396	6.8052
Paralabrax nebulifer	barred sand bass	0.0195	5.3272	0.0444	11.4331
Phanerodon furcatus	white surfperch	0.0001	0.0074		
Rhacochilus toxotes	rubberlip surfperch	0.0051	2.3491	0.0035	0.627
Rhacochilus vacca	pile surfperch	0.0149	1.3815	0.0014	0.1225
Rhinogobiops nicholsii	blackeye goby	0.0387	0.205	0.0042	0.024
Scorpaena guttata	California scorpionfish	0.0003	0.1276		
Scorpaenichthys marmoratus	cabezon	0.0004	0.3978		
Sebastes atrovirens	kelp rockfish	0.0003	0.0165	0.0063	0.6904
Sebastes carnatus	gopher rockfish	0.0001	0.0377		
Sebastes caurinus	copper rockfish	0.0001	0.0046		
Sebastes chrysomelas	black and yellow rockfish	0.0003	0.0006		
Sebastes miniatus	vermilion rockfish	0.0015	0.1254		
Sebastes mystinus	blue rockfish	0.0016	0.1079		
Sebastes rosaceus	rosy rockfish	0.0001	0.0042		
Sebastes serriceps	treefish	0.0009	0.1637		
Sebastes umbrosus	honeycomb rockfish	0.0009	0.047		
Semicossyphus pulcher	California sheephead	0.0451	15.1494	0.0097	3.5183
Seriola lalandi	yellowtail jack	0.0006	0.8079		
Trachurus symmetricus	jack mackerel	0.0298	2.5714	0.7674	34.5991
Urobatis halleri	round stingray	0.0001	0.0732		

Question 2: Evaluate the anticipated effectiveness of the proposed Abalone Cove and Point Vicente MPAs as part of an interconnected network of MPAs in the context of the MLPA, MMAIA, and the regional guidelines provided for the SCSR MPA process.

Habitat size within reserves and spacing among reserves are the critical components of the bioeconomic models. The IPA proposal, especially with reference to the proposed Point Vicente and Abalone Cove MPAs, ignores the science guidelines for both components. Key habitats associated with rocky reefs are either not present, or are present in a degraded state (particularly in the proposed Abalone Cove MPA) that compromises network performance. Further complicating these bioeconomic assessments are the overestimated and inaccurate nearshore rocky-reef habitats (Question 1) and a disconnect between the model inputs and realistic empirical data. This is especially true for biomass estimates, which are dated and not fine scaled enough to make realistic assumptions of relative biomass estimates. The effectiveness of the network with respect to the proposed Palos Verdes MPAs is discussed in greater detail in Question 3.

The replication and spacing guidelines from the MLPA Master Plan for Marine Protected Areas (Fish and Game Commission 2008) are as follows:

<u>Replication</u>: Recommendation of replication of habitats within three to five SMCA's in each biogeographical region. The SCSR SAT then recommended that habitats should be replicated in at least one MPA in each of the five bioregions within the SCSR to the extent possible.

<u>Spacing (along mainland coast):</u> "for an objective of facilitating dispersal of important bottom-dwelling fish and invertebrate groups among MPAs, based on currently known scales of larval dispersal, MPAs should be placed within 50-100 kilometers (31-62 miles) of each other." Neighboring MPAs placed closer than 50 kilometers apart also meet the spacing guidelines.

Since the spacing guidelines were formed to connect marine life populations (and have the MPA design work as a true network), and populations only occur within suitable habitat, the habitats encompassed within each individual MPA must also be considered in a spacing analysis. In order for the MPAs to meet the spacing guidelines, the habitat type must be protected in each MPA in a sufficient amount to be counted as a replicate (amount of habitat needed to include 90% of the associated species, see habitat replication guidelines above). In addition, MPAs and MPA clusters also must meet minimum size guidelines (9 mi^2) to count as a replicate in the MPA network spacing analysis (Figure 8).

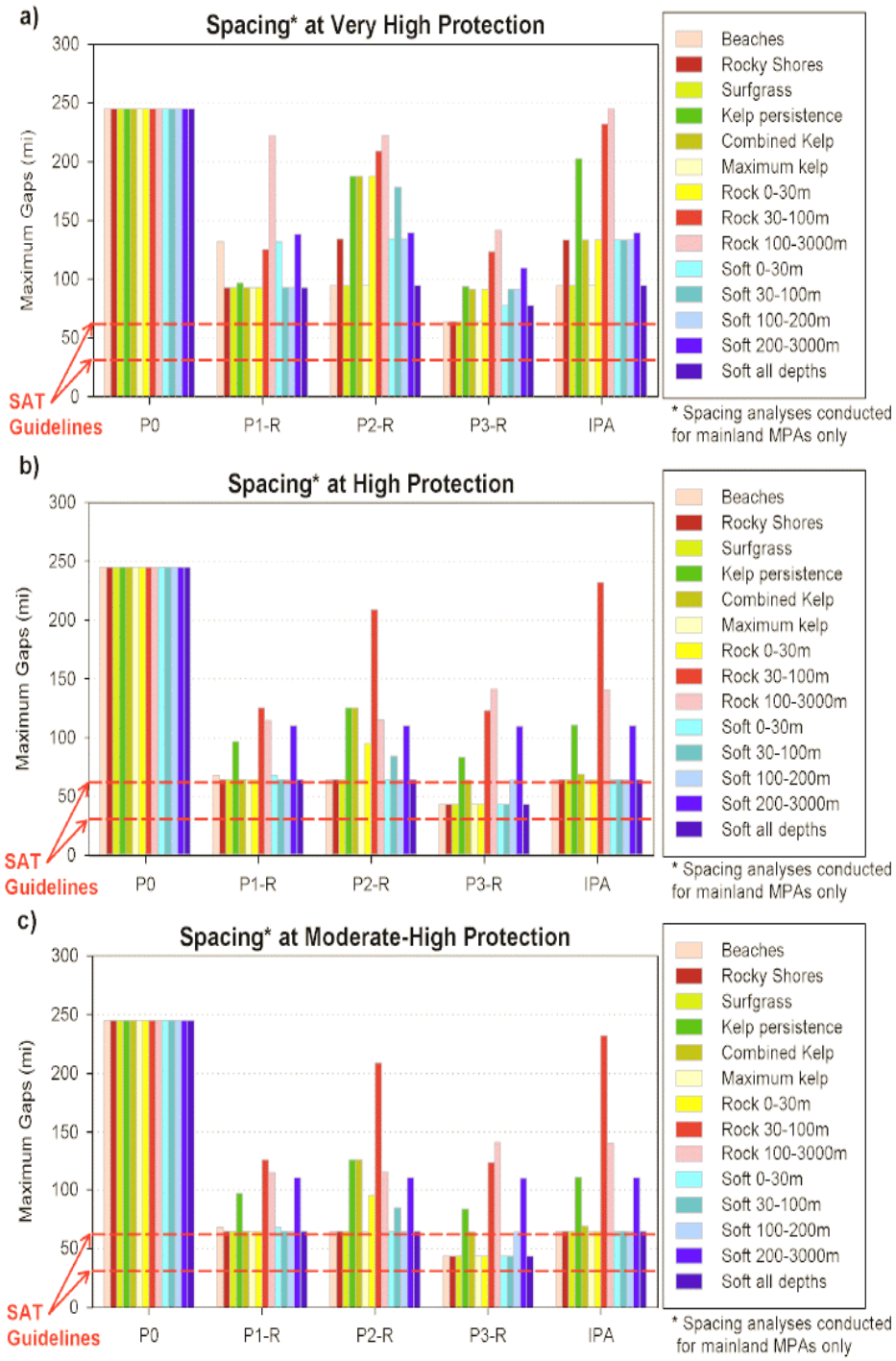

Figure 8. Spacing and SAT guidelines for the various habitats used in the MPA analyses for the Southern California Bight. P0 is the no new MPA option; P1R-P3R are the three regional stakeholder proposals; and, the IPA proposal is on the right.

Table 5. Gaps that exceed the SAT spacing guidelines for the IPA.

Very High Protection					
Habitat	# gaps over guideline	gap #1	gap #1 location	gap #2	gap #2 location
Beaches	2	94	Campus Point SMR to Point Vicente Cluster	78	Laguna Cluster to south boundary of SCSR
Rocky shores	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
Surfgrass	2	94	Campus Point SMR to Point Vicente Cluster	78	Laguna Cluster to south boundary of SCSR
kelp persistance (linear)	1	202	Campus Point SMR to south bundary of SCSR		
Combined kelp	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
maximum kelp (linear)	2	94	Campus Point SMR to Point Vicente Cluster	78	Laguna Cluster to south boundary of SCSR
hard 0-30 m proxy	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
hard 30-100 m	1	232	Point Conception SMR to south boundary of SCSR		
hard 100-3000 m	1	245	Vandenberg SMR to south boundary of SCSR		
soft 0- 30 m proxy	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
soft 30-100 m	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
soft 100-200 m	2	133	Campus Point SMR to Laguna Cluster	78	Laguna Cluster to south boundary of SCSR
soft 200-3000 m	2	140	Vandenberg SMR to Point Vicente cluster	78	Laguna Cluster to south boundary of SCSR
soft 0-3000m	2	94	Campus Point SMR to Point Vicente Cluster	78	Laguna Cluster to south boundary of SCSR
High Protection					
Habitat	# gaps over guideline	gap #1	gap #1 location	gap #2	gap #2 location
Beaches	1	64	Campus Point SMR to Point Dume cluster		
Rocky shores	1	64	Campus Point SMR to Point Dume cluster		
Surfgrass	1	64	Campus Point SMR to Point Dume cluster		
kelp persistance (linear)	2	111	Point Dume cluster to Swami's SMCA	64	Campus Point to Point Dume cluster
Combined kelp	2	69	Point Dume cluster to Laguna cluster	64	Campus Point to Point Dume cluster
maximum kelp (linear)	1	64	Campus Point SMR to Point Dume cluster		
hard 0-30 m proxy	1	64	Campus Point SMR to Point Dume cluster		
hard 30-100 m	1	232	Point Conception SMR to south boundary of SCSR		
hard 100-3000 m	2	141	Point Dume cluster to south boundary of SCSR	110	Vandenberg SMR CCSR to Point Dume cluster
soft 0- 30 m proxy	1	64	Campus Point SMR to Point Dume cluster		
soft 30-100 m	1	64	Campus Point SMR to Point Dume cluster		
soft 100-200 m	1	64	Campus Point SMR to Point Dume cluster		
soft 200-3000 m	1	110	Vandenberg SMR CCSR to Point Dume cluster		
soft 0-3000m	1	64	Campus Point SMR to Point Dume cluster		
Moderate-High Protection					
Habitat	# gaps over guideline	gap #1	gap #1 location	gap #2	gap #2 location
Beaches	1	64	Campus Point SMR to Point Dume cluster		
Rocky shores	1	64	Campus Point SMR to Point Dume cluster		
Surfgrass	1	64	Campus Point SMR to Point Dume cluster		
kelp persistance (linear)	2	111	Point Dume cluster to Swami's SMCA	64	Campus Point to Point Dume cluster
Combined kelp	2	69	Point Dume cluster to Laguna cluster	64	Campus Point to Point Dume cluster
maximum kelp (linear)	1	64	Campus Point SMR to Point Dume cluster		
hard 0-30 m proxy	1	64	Campus Point SMR to Point Dume cluster		
hard 30-100 m	1	232	Point Conception SMR to south boundary of SCSR		
hard 100-3000 m	2	141	Point Dume cluster to south boundary of SCSR	110	Vandenberg SMR CCSR to Point Dume cluster
soft 0- 30 m proxy	1	64	Campus Point SMR to Point Dume cluster		
soft 30-100 m	1	64	Campus Point SMR to Point Dume cluster		
soft 100-200 m	1	64	Campus Point SMR to Point Dume cluster		
soft 200-3000 m	1	110	Vandenberg SMR CCSR to Point Dume cluster		
soft 0-3000m	1	64	Campus Point SMR to Point Dume cluster		

Figure 8 (from the 'SAT Evaluation of Final MPA Proposals from the SCSR: Habitat Representation, Habitat Replication, MPA Size, and MPA Spacing Analyses' document) shows that the IPA proposal does not meet the minimum SAT guidelines for spacing at very high protection for <u>any</u> of the listed habitats. For rock 30-100 m, rock 100-3000 m, and kelp persistence, the spacing between these habitats in the IPA is more than three times larger than the SAT's suggested spacing guidelines. In addition, combined kelp and rock 0-30 m in the IPA have double the spacing distance between MPAs as that set by the SAT guidelines. At high protection (Figure 8) in the IPA, rock 30-100 m, rock 100-3000 m, and kelp persistence all have much larger gaps between MPAs than is suggested by the SAT.

Table 5 (Table 5.2d in the SAT Evaluation) lists the location of the gaps that exceed SAT-suggested guidelines for spacing in the IPA. For very high protection, the majority of habitat types have gaps between MPAs that are much larger than is suggested for these MPAs to act as a network (allowing larval dispersal between them). For rocky shores, kelp persistence, combined kelp, hard 0-30 m proxy, hard 0-30 m, hard 30-100 m, soft 0-30 m, soft 30-100 m, and soft 100-200 m, there is a spacing gap exceeding SAT guidelines that ranges from Campus Point SMCA (Santa Barbara County) to either the Laguna SMCA, or the southern boundary of the SCSR. Therefore, the Palos Verdes Cluster (which is in between these two locales) does not connect MPAs to the north or south for any of these key habitat types. Spacing between very high protection MPAs of 202 miles for kelp persistence, and 232 miles for hard 30-100 m habitat (IPA proposal) is much greater than suggested for the majority of species' larval duration and dispersal.

The spacing guidelines and analysis are compromised even further by the fact that the minimum guidelines for habitat size were not met for the PV cluster. The lack of adequate habitat representation for rocky reefs of all depths and associated kelp bed communities indicates that the IPA proposal will not operate as a MPA network and will not satisfy the goals of MLPA or MMAIA or the regional guidelines.

The bioeconomic models used for analysis in the South Coast IPA were performed by the UC Davis (UCD) and UC Santa Barbara (UCSB) modeling research groups. These models utilized spatial data on habitat, fishery effort, and proposed MPA locations (from the IPA) to simulate population dynamics of fished species (n = 8) and generate predicted spatial distributions of species abundance and fishery yield. These analyses resulted in a calculation of long-term equilibrium estimates of conservation value (i.e. biomass) and economic value (i.e. fishery yield and profit). Structural elements of these models include: larval connectivity across patches driven by currents (Watson 2010); pelagic larval duration and spawning season; larval settlement, growth and survival dynamics of resident adult populations; reproductive output (increasing with adult size); adult movement; and harvest in areas outside MPAs. Appendix B3 in the MLPA master plan contains additional detailed parameter values and literature sources for each estimate (life history information in a model). Detailed and spatially

explicit model outputs, including maps for each response variable and sub-regional summaries of key statistics for each species and management scenario can be found online at http://www.dfg.gov/mlpa.

The information in Table 6 may be used to evaluate whether the proposed Palos Verdes MPAs in the IPA are attaining a desired level of biomass production. Values of biomass are scaled relative to total unfished biomass such that values of 0 indicate no biomass and values of 1 indicate maximum unfished biomass (these values provide no measures (kg/m^2) of actual fish biomass in these regions). Biomass production in the proposed Abalone Cove and Point Vicente MPAs is very low, particularly for recreationally important and overfished species along the peninsula like kelp bass (0.0043 and 0.0050, respectively).

'Self- recruitment' is the proportion of settling larvae in an MPA that were produced within that MPA. This metric (values of 0 to 1) provides info on the relative isolation of the MPA from other larval sources, such that a value of 0 indicates the population is completely isolated. It is a modeled estimate that accounts for MPA size, currents and the early life history of the study species. Most species have a pelagic larval stage (days to months) and under the proper oceanographic conditions, in a MPA of significant size these larvae will recruit to the MPA. As MPA size decreases, the likelihood of 'self-recruitment' diminishes. Optimally a MPA would be self sustaining, independent of the MPA network.

'Self-persistence' is only calculated by the UCD model, and is defined as the degree to which an MPA is self-sustaining. It is calculated based on larval production and the proportion of larvae produced within an MPA that return to that MPA, also on a scale of 0 to >1 (values <1 are dependent on larvae from elsewhere, values > 1 are self-sufficient). Self persistence', which provides an indication of the MPA's self sufficiency in terms of larval production (i.e. its reliance on larval sources from elsewhere), have very low values for all the species listed except for black perch. However, black perch are live bearers and do not rely on pelagic larval dispersal to sustain the population. On a scale of 0 to 1, important fish species such as kelp bass and kelp rockfish scored 0.0444 and 0.0095, respectively, for the proposed Point Vicente MPA, probably because: 1) the habitat type protected within the proposed MPAs lacks a sufficient hard bottom habitat for these species to feed and reproduce; and 2) the proposed MPAs' boundaries are located over somewhat-continuous reef around the peninsula. Since the proposed MPA cluster lacks sufficient hard bottom habitat for these species, it is likely that the majority of larvae that support the reserve will come from better habitat outside of the cluster (following dominant current patterns). In other words, these proposed MPAs as designated in the IPA are not self sufficient for larval dispersal.

Even in the document that contains Table 6 and describes the bioeconomic models ("Bioeconomic Model evaluations of revised 3rd-round proposals and IPA, 12/8/2009"), the proposed Point Vicente and Abalone Cove MPAs demonstrate

relatively poor performance. The biomass estimates for this proposed MPA cluster may represent the poorest bioeconomic results from the entire IPA proposal for the SCSR.

Table 6. Bioeconomic outputs for the Abalone Cove SMCA and Point Vicente SMCA.

	Species	Biomass (UCSB)	Biomass (UCD)	Self-recruitment (UCSB)	Self-recruitment (UCD)	Self-persistence (UCD)
Abalone Cove SMCA	black perch	0.0024	0.0011	1.0000	1.0000	4.0000
	halibut	0.0039	0.0006	0.0091	0.0043	0.0068
	kelp bass	0.0043	0.0017	0.0039	0.0108	0.0235
	kelp rockfish	0.0039	0.0008	0.0027	0.0045	0.0058
	whitefish	0.0030	0.0011	0.0042	0.0056	0.0186
	opaleye	0.0034	0.0013	0.0026	0.0052	0.0100
	red urchin	0.0023	0.0013	0.0028	0.0036	0.0155
	sheephead	0.0040	0.0017	0.0054	0.0115	0.0272
Point Vicente SMCA	black perch	0.0022	0.0010	1.0000	1.0000	4.0000
	halibut	0.0038	0.0006	0.0124	0.0052	0.0123
	kelp bass	0.0050	0.0020	0.0092	0.0158	0.0444
	kelp rockfish	0.0047	0.0008	0.0063	0.0057	0.0095
	whitefish	0.0028	0.0011	0.0103	0.0055	0.0274
	opaleye	0.0041	0.0016	0.0091	0.0112	0.0278
	red urchin	0.0022	0.0012	0.0074	0.0034	0.0246
	sheephead	0.0045	0.0019	0.0088	0.0120	0.0362

Question 3: How do the proposed Abalone Cove and Point Vicente MPAs compare to other MPAs of similar size in the IPA in terms of meeting the goals of the MLPA, MMAIA, and regional guidelines provided for the SCSR MPA process?

The proposed Abalone Cove and Pt. Vicente MPAs may be compared to those IPA-designated MPAs of similar size to the Point Vicente MPA (10.42 – 22.51 mi^2) with respect to the habitat types represented and the existing protection level (Table 7). Other than the previously described deficiencies in all habitats except for sand for the Palos Verdes cluster, the most noteworthy habitat for comparison is the soft bottom habitat (200-3000 m^2). This habitat alone represents 81% of the proposed Point Vicente MPA, is greater in size than that found in all other MPAs of similar size combined, and is 2 to 1200 times larger than that found in any other similarly-sized MPAs. Critical habitats, such as kelp persistence and hard bottom habitats are at the same level or are markedly below those in MPAs of similar size. With the exception of the Santa Barbara Island SMCA, (a known urchin barren and thus does not support kelp) kelp persistence in other comparable MPAs ranged from 0.65 to 4.26 linear miles, well above the 0.13 and 0.08 linear miles reported for the proposed Point Vicente and Abalone Cove MPAs, respectively. Also, the lowest combined values for all hard bottom habitats (0 - 3000m) were reported for this MPA cluster (Table 7). Thus the site-specific rationale for designating this MPA cluster at a larger than preferred size (19.85 sq. statute miles) is missing since this cluster's size has been artificially inflated by the inclusion of soft bottom habitat.

The pie-shaped design of the proposed Point Vicente/Abalone Cove MPA cluster is intentionally misleading. By encircling 14.56 mi^2 of deep soft bottom habitat (200-3000 m) it is disproportionately large relative to the proportion of soft bottom and rocky reef habitats at similarly-sized reserves. Based solely on habitat sizes, this cluster will perform in a similar fashion to a small reserve or small reserve cluster. Unfortunately, as discussed in Question 1, the relative quality of this habitat is poor.

Table 7. Habitat measures of MPAs of similar size in the IPA.

	MPAs of similar size in IPA											
	Point Conception SMCA	Campus Point SMCA	Point Dume SMCA	Point Vicente SMCA	Abalone Cove SMCA	San Clemente Milt Closure 1	San Clemente Milt Closure 2	South Point SMCA	Carrington Point SMCA	Gull Island SMCA	Anacapa Island SMCA	Santa Barbara Island SMCA
Area (mi^2)	22.5	10.4	15.9	15.1	4.75	17.4	19.2	13.1	12.8	19.9	11.5	12.8
Alongshore span (mi)	5.27	2.86	4.24	3.69	1.23	3.93	5.37	3.55	4.02	4.78	3.05	0.95
Depth (ft)	489	748	2023	2640	2181	1682	3938	1071	211	2205	709	1655
Beaches (mi)	1.53	1.97	4.03	1.4	0.76	0.79	5.25	1.45	0.81	2.1	0.79	0.15
Rocky shores (mi)	3.14	1.32	0.44	0.21	0.87	1.04	0.77	3.34	5.35	1.88	6.38	1.02
hardened shores (mi)	0	0	0	0	0	0	0.11	0	0	0	0	0
coastal marsh (mi)	0	0	0	0	0	0	0	0	0	0	0	0
coastal marsh area (mi^2)	0	0	0	0	0	0	0	0	0	0	0	0
tidal flats (mi)	0	0	0	0	0	0	0	0	0	0	0	0
surfgrass (mi)	3.65	1.14	0.87	1.14	1.41	0.63	2.11	1.77	3.99	1.14	3.23	0.78
Eelgrass (mi^2)	0	0	0	0	0	0	0	0	0	0	0	0
Estuary (mi^2)	0	0	0	0	0	0	0	0	0	0	0	0
soft 0-30 m (mi^2)	2.14	0.89	2.02	0.41	0.51	0.01	0	1.22	7.15	1.9	0.87	0.47
soft 0- 30 m proxy (mi)	1.83	1.21	3.14	0.47	1.09	0	1.3	1.7	3.32	2.77	2.59	0.72
soft 30-100 m (mi^2)	15.8	7	5.94	1.09	1.17	0.96	0	3.51	3.82	3.76	7.25	1.69
soft 100-200 m (mi^2)	3.26	1.41	1.38	1.05	0.56	0	0	5.34	0	3.2	0.78	0.42
soft 200-3000 m (mi^2)	0	0.05	5.79	12.2	2.32	0	0	0.05	0	1.43	0	0.02
hard 0-30 m (mi^2)	0.49	0.76	0.29	0.25	0.14	1.17	0.61	0.55	1.35	0.78	0.27	0.11
hard 0-30 m proxy (mi)	1.84	1.85	1.06	1.06	0.23	2.45	4.57	2.05	1.97	2.36	0.65	0.36
hard 30-100 m (mi^2)	0.32	0.04	0	0	0.02	1.04	0.03	0.26	0.27	0.12	0.1	0.1
hard 100-200 m (mi^2)	0.1	0	0	0	0	0	0	0.01	0	0.13	0	0.02
hard 200-3000 m (mi^2)	0	0	0	0.03	0	0	0	0	0	0	0	0
unknown 0-30 m (mi^2)	0.2	0.26	0.41	0.02	0.03	0.01	0.45	0.06	0.16	0.09	0.01	0
unknown 30-100 m (mi^2)	0.01	0	0	0	0	3.73	2.16	0.01	0	0	0	0.07
unknown 100-200 m (mi^2)	0.19	0	0	0	0	4.84	1.58	0.25	0	0.21	1.48	1.28
unknown 200-3000 m (mi^2)	0	0	0	0	0	5.66	14.4	1.79	0	8.26	0.77	8.57
maximum kelp (linear) (mi)	1.79	2.51	1.34	1.23	0.86	2.96	5.47	3.67	3.68	3.29	1.46	0.76
kelp persistance (linear) (mi)	1.29	1.62	0.84	0.13	0.08	2.75	4.26	3.25	1.24	1.88	0.65	0.1

The bioeconomics of the proposed Palos Verdes MPAs may be compared to those of the other MPAs included in the IPA through an 'MPA Deletion' analysis in which each MPA is sequentially removed, one-at-a-time, and the biomass of the system is recalculated. These calculations were performed using two separate bioeconomic models (see model descriptions) and provide two values for each analysis. The 'effect on biomass' shown in Table 8 reflects the relative loss of biomass when each MPA is removed from the network. This effect is calculated as the difference between the biomass with the MPA and without it, divided by the biomass with the MPA and multiplied by 100 (a large value here indicates that MPA contributes greatly to the overall network, a small number means that it is less important). The 'efficiency of effect on biomass' value is the 'effect on biomass' value divided by the area of a specific habitat being protected (a measure of the efficiency of the MPA at increasing biomass). Large numbers here indicate places where protection of an additional unit of habitat is likely to result in the greatest increase in overall biomass. Results are averaged across all eight species used for analysis (ocean whitefish, black surfperch, opaleye, kelp bass, kelp rockfish, sheephead, red urchin, and halibut).

Removal of the proposed Point Vicente MPA, by comparison to values for other MPAs of similar size (Pt. Dume SMCA, Point Conception SMR, and Campus Point SMR), would have a smaller effect on the change in overall biomass of the system. However, the 'efficiency of effect on biomass' values for the proposed Point Vicente MPA are higher than those for other MPAs of similar size within the IPA, indicating that protecting additional habitat around this area (alongshore miles) would greatly increase the overall biomass. This seems counterintuitive based upon the relatively small amount of rocky habitat in this cluster. Thus, it appears that the assumed connectivity aspect of the bioeconomic models is driving this effect and therefore this metric is misleading due to the previously discussed gaps in critical habitat spacing in the array. The proposed MPAs offshore of the Palos Verdes Peninsula, the only rocky headland in the middle of the Southern California Bight, do not effectively connect the northern and southern MPAs as intended by the MLPA.

Table 8. Deletion results from the bioeconomic analyses.

MPA deletion results for IPA

PV cluster	effect on biomass (UCSB)	efficiency of effect on biomass (UCSB)	effect on biomass (UCD)	efficiency of effect on biomass (UCD)
Point Vicente SMCA	0.1882	0.3893	0.9499	2.0531
Abalone Cove SMCA	0.0885	0.1573	0.8433	2.0329
mainland MPAs of similar size				
Point Dume SMCA	0.3400	0.2359	2.1271	1.4862
Campus Point SMR	0.5173	0.2629	1.9725	0.8999
Point Conception SMR	0.1039	0.0502	1.1740	0.5941

Question 4: Is the document "MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options" comprehensive and accurate in describing the proposed Abalone Cove and Point Vicente MPAs?

The document,"MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options" incorrectly states that several goals and associated objectives specific to the SCSR are met by the proposed Pt. Vicente/Abalone Cove MPA cluster. The stated regional goals and objectives and a discussion of their compatibility with the proposed MPAs are set forth below. A number of statements describing the ''site-specific rationale' and 'other considerations' that the document purports support the designation of the proposed Point Vicente and Abalone Cove MPAs are also further analyzed below. A significant issue associated with the proposed Point Vicente and Abalone Cove MPAs is the lack of hard bottom and kelp persistence habitat types, which support nearly all the species of interest (species likely to benefit from MPAs) to be protected within the South Coast region. In view of the small amount of these habitat types protected within the proposed MPAs, it is unlikely that any heavily fished species along the Palos Verdes Peninsula would show associated biomass increases due to the presence of MPAs—one of the main goals of the entire statewide MLPA process.

The following regional goals and objectives are stated as being met by the Point Vicente and Abalone Point MPAs (IPA) in the document, 'MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options':

<u>Point Vicente SMCA:</u> Goal 1, objectives 1-5; Goal 2, objectives 1-3; Goal 4, objectives 1-3; Goal 5, objectives 2, 3, 5; Goal 6, objectives 1-4

<u>Abalone Cove SMCA:</u> Goal 1, objectives 1-5; Goal 2, objectives 1, 2, 4; Goal 3, objectives 1-2, Goal 4, objectives 1-2, Goal 6, objectives 1, 4.

In several instances, the goals and objectives stated as being met by the BRTF are incorrect as discussed below. These goals are first stated with specific aspects of the goals and objectives in question underlined prior to the discussion.

> Goal 1, Objective 1: 'Protect and maintain species diversity and abundance consistent with natural fluctuations, <u>including areas of high native species diversity and representative habitats.'</u>
>
> Goal 2, Objective 1: 'Help protect or rebuild populations of rare, threatened, endangered, depressed, depleted, or overfished species, and <u>the habitats and ecosystem functions upon which they rely.'</u>
>
> The majority of the habitat available in the proposed Point Vicente and Abalone Cove MPAs is deep sand habitat (soft 200-3000 m), which does not support high native species diversity. The majority of the species of interest in these MPAs live near or over rocky substrate, in much shallower regions than

200 m. Several depleted and overfished species of interest in the Palos Verdes shelf region (black sea bass, kelp bass, barred sand bass, white sea bass, red urchin, sheephead, spiny lobster, etc) occur within shallow rocky habitats, but the majority of the area of the proposed MPAs does not include this type of habitat. In addition, the proposed MPAs do not include sufficient persistent kelp to satisfy SAT habitat guidelines. Persistent kelp beds provide key habitat that supports a large percentage of the depressed and depleted species along Palos Verdes and in the Southern California Bight.

Goal 2, Objective 2: 'Sustain or increase reproduction by species likely to benefit from MPAs, with emphasis on those species identified as more likely to benefit from MPAs, and promote retention of large, mature individuals.'

Species 'more likely to benefit' from MPAs include bocaccio, giant sea bass, broomtail grouper, canary rockfish, pink/green/white/black abalone, and purple hydrocoral, all of which occur on or near shallow rock habitat within the south coast region. Since the proposed Point Vicente and Abalone Cove MPAs protect mostly deep sand habitat, the habitat for these species is mostly absent from these proposed MPAs. Therefore, the proposed MPAs are unlikely to increase or sustain these species or to promote retention of "large, mature individuals." In addition, due to the proposed MPA cluster including a smaller than recommended size of reef habitats, there is a reduced opportunity to protect these species within these boundaries because their adult home range is greater than the MPAs' boundaries.

Goal 4, Objective 1: 'Include within MPAs key and unique habitats identified by the MLPA Master Plan Science Advisory Team for this study region.'

Goal 4, Objective 2: 'Include and replicate to the extent possible [practicable], representatives of all marine habitats identified in the MLPA or the *California Marine Life Protection Act Master Plan for Marine Protected Areas* across a range of depths.'

Goal 1, Objective 2: 'Protect areas with diverse habitat types in close proximity to each other.' (also refer to Goal 6, Objective 3 below, with comments on MPA connectivity)

Goal 1, Objective 4: 'Protect biodiversity, natural trophic structure and food webs in representative habitats.'

One of the rarest habitats within the South Coast region, deep rock (hard bottom 30-100 m) will not be protected within the proposed Point Vicente and Abalone Cove MPAs. In addition, persistent kelp habitat, which has become increasingly rare in the SCSR over the past 50 years, is also not captured within these MPAs. Therefore, these proposed MPAs do not provide replication of

these key habitats within this region, nor is there a representation of such key habitats (hard bottom) across a range of depths.

Goal 1, Objective 4 is not met for hard bottom habitats within this cluster. By far the most biodiverse habitats within the south coast region occur within these habitats. The biodiversity, trophic structure, and food webs that occur within hard bottom and persistent kelp habitat will not be protected in sufficient amounts in the proposed Point Vicente and Abalone Cove MPAs to allow Goal 1, Objective 4 to be met. The diversity of food webs and trophic interactions within a kelp/hard bottom habitat far exceed those that exist over soft bottom habitats (Allen 1985; Bond et al. 1999; Allen 2006). In addition, soft bottom 200- 3000 m habitat, which encompasses the majority of this MPA cluster, is much less diverse than shallow rock habitat.

Goal 5, Objective 3: 'Effectively use scientific guidelines in the *California Marine Life Protection Act Master Plan for Marine Protected Areas*.'

None of the spacing guidelines have been met for the proposed MPAs themselves (31-62 sq miles apart) or for key habitat types in the region such as hard 0 – 30 m, hard 30- 100 m, and kelp persistence (see details of habitat replication and MPA spacing from #2 above). In addition, the size guidelines are barely met: "MPAs should have a minimum alongshore span of 3-6 statute miles (preferably 6-12.5 miles) and should extend offshore to deep waters." The proposed Point Vicente MPA has an alongshore span of 3.69 sq miles, and the proposed Abalone Cove MPA is only 1.23 sq miles alongshore.

Goal 6, Objective 3: 'Ensure ecological connectivity within and between regional components of the statewide network'

The proposed MPA cluster does not meet the minimum SAT guidelines for spacing at very high protection for any of the listed habitats. For rock 30-100 m, rock 100-3000 m, and kelp persistence, the spacing between these habitats in the IPA is more than three times larger than the suggested spacing guidelines set by the SAT. In addition, combined kelp and rock 0-30 m in the IPA have double the spacing distance between these MPAs that is set by the SAT guidelines. At the 'high protection' level in the IPA, rock 30-100 m, rock 100-3000 m, and kelp persistence all again have much greater gaps between MPAs than is suggested by the SAT. For rocky shores, kelp persistence, combined kelp, hard 0-30 m proxy, hard 0-30 m, hard 30-100 m, soft 0-30 m, soft 30-100 m, and soft 100-200 m, there is a spacing gap exceeding SAT guidelines that ranges from Campus Point (Santa Barbara County) to either Laguna, or the southern boundary of the SCSR. Therefore, the proposed Point Vicente MPA (which is located between these two locales) does not connect MPAs to the north or south for any of these key habitat types. Spacing between very high protection MPAs of 202 miles for kelp persistence, and 232 miles for hard 30-100 m habitat (IPA proposal) is

certainly greater than is suggested for the majority of species' larval duration and dispersal (see Fig 5.1 and Table 5.2d from 'SAT Evaluation of Final MPA Proposals from the South Coast Study Region: Habitat Representation, Habitat Replication, MPA Size, and MPA Spacing Analyses 12/7/2009' and question #2 for additional information).

Goal 6, Objective 4: 'Provide for protection and connectivity of habitat for those species that utilize different habitats over their lifetime.'

Since the proposed Point Vicente and Abalone Cove MPAs contain mostly sandy subtidal habitat, they do not protect diverse habitat types (e.g., the rock bottom habitat is poorly represented). Therefore, protection of species that utilize different habitat types over their lifetime, or those that utilize boundaries or edges between different types of habitat (i.e. sheephead with sand/rock interface) will not be promoted by the designation of these proposed MPAs. In addition, there is little connectivity of habitats between the proposed MPA cluster and other clusters because the gaps between such MPAs far exceed those that are suggested by the South Coast SAT.

The following excerpts from the "site-specific rationale" for inclusion of the proposed MPAs in the IPA also contain inaccuracies (underlined) which are discussed below.

Point Vicente MPA: "Located at the only true headland (Palos Verdes Peninsula) within the Southern Biogeographical Region and the South Coast Study Region, this Point Vicente SMCA/Abalone Cove SMCA cluster captures all but 3 key habitats across a broad range of depths. It provides a high level of protection, at larger than preferred size (19.85 sq statute miles) and solves the complex puzzle of accomplishing all of this within the most highly populated coastal county in all of California, while being mindful of the likelihood of extreme negative socioeconomic impacts to the surrounding ports, communities, and coastal dependant entities."

Although, the Palos Verdes Peninsula, in its entirety, is the only true headland in the South Coast region this does not constitute a convincing rationale for designating either of the proposed MPAs. The proposed Point Vicente MPA does not protect any of the unique habitat type along the Palos Verdes shelf that occurs in very limited areas within the region, deep rock habitat (hard 30-100 m). The proposed Abalone Cove MPA protects only 0.02 sq miles of this type of habitat. The proposed Point Vicente MPA is large in size (19.85 sq miles) only because the majority of it (12.24 sq miles) encompasses deep sand habitat (soft 200-3000 m) that does not protect the majority of

'species of concern' contained on the list of "species likely to benefit from MPAs".

Abalone Cove MPA: "This MPA cluster protects the only true headland in the study region. Species afforded protection are lobsters, sea urchins, rockfish, and rocky intertidal (tide pool) inhabitants. Together with Point Vicente SMCA a total area of 19.85sq statute miles is covered. For additional details refer to rationale for Point Vicente SMCA."

The irrelevance of the 'only rocky headland' and total area rationales are discussed above with respect to the proposed Point Vicente MPA. Lobster, urchins, and rockfish occur over hard bottom habitat (hard 0-30 m and 30-100 m mostly), which are present in only 0.14 sq mi. of the proposed Point Vicente MPA and in only 0.02 sq. mi. of the proposed Abalone Cove MPA. Within the entire proposed Point Vicente/Abalone Cove MPA cluster, only 0.39 and 0.02 sq miles of these respective habitat types are represented.

Inaccuracies associated with excerpts from "Other Considerations" for designation of the proposed Point Vicente MPA are similarly discussed below.

'This cluster along the Palos Verdes peninsula provides a unique opportunity in that numerous studies for water and sediment quality have been conducted for many years, providing baseline information. This MPA is lacking persistent kelp and hard 30-100 m habitat due to socioeconomic impacts and water/sediment quality issues.'

And from the Abalone Cove SMCA:

'Persistent kelp guideline is not met in this area due to requirement to stay ½ mile from major outfall, however this MPA cluster should meet maximum kelp guideline. This MPA contains nearly a third of the available deep rock in the study area, the rarest habitat in this region. In addition coupled with the Point Vicente SMCA, this MPA cluster achieves the preferred size in the most densely populated area of the south coast.'

Actually, this MPA cluster contains little, if any, deep rock habitat. The statement in the "Other Considerations" that "this MPA contains nearly a third of the available deep rock in the study area" is false whether it refers to either the proposed Point Vicente or Abalone Cove MPAs, or to both of them. Hard 200-3000 m habitat is represented in the proposed MPA cluster by a total of 0.03 sq miles. By contrast, Point Dume SMCA contains 0.84 sq miles of this habitat type. The proposed MPA cluster contains no hard 100-200 m habitat, and only 0.02 square miles of hard 30-100 m habitat is included in that cluster. The Point Conception SMR, Harris Point SMR, and Gull Island SMR, which are all MPAs of

similar size to the proposed MPA cluster, include 0.1, 0.25, and 0.13 sq miles of hard 100-200 m habitat, and 0.32, 2.4, and 0.12 sq miles of hard 30-100 m habitat, respectively.

Because the proposed Point Vicente/Abalone Cove MPA cluster contains mostly sandy subtidal habitat, it does not protect diverse habitat types (rock bottom habitat poorly represented). Therefore, creation of these proposed MPAs will do little to protect species that utilize different habitat types over their lifetime, or those that utilize boundaries/edges between different types of habitat (i.e. sheephead with sand/rock interface). Also, designation of the proposed MPAs will not promote connectivity of habitats with other clusters because the gaps between the proposed cluster and other MPAs far exceed those that are suggested by the South Coast SAT.

Designation of the proposed MPAs will also not advance the goals underlying the MLPA, MMAIA or the IPA because they do not meet the persistent kelp guideline because of the turbidity and sedimentation issues present there. The proposed Abalone Cove MPA also does not meet the maximum kelp guideline (1 mi) because there are only 0.86 miles of maximum kelp and 0.08 sq miles of persistent kelp present within it. In total, the proposed MPA cluster protects only 0.21 sq miles of persistent kelp, which is less than ¼ of the amount suggested in the guidelines for protection within this crucial habitat type.

As stated earlier, this MPA cluster is 19.85 sq miles, of which 14.56 sq miles represents soft 200- 3000 m habitat, and in which few if any species of concern, or species likely to benefit from MPAs, are present. If the Fish & Game Commission approves the proposed MPAs, the majority of habitat types (hard 0-30, 30-100, 100-200 meters) that support the diverse and unique assemblage of marine species found along Palos Verdes will not be protected in sufficient amounts to achieve regional goals.

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Appendix I. Density (per 100m^2) of invertebrates and algae by depth zone within the Point Vicente and Abalone Cove SMCAs, 2004-2010.

Station	Zone	*Anthopleura artemisia*	*Anthopleura elegantissima*	*Anthopleura sola*	*Anthopleura* sp	*Anthopleura xanthogrammica*	*Aplysia californica*	*Aplysia vaccaria*	*Asterina miniata*
120 Reef	Inner			4.2					40.0
120 Reef	Middle			0.8					36.7
Abalone Cove Kelp East	Inner			45.8			0.8		15.0
Abalone Cove Kelp East	Middle			0.8				0.8	0.8
Abalone Cove Kelp West	Inner	0.8		0.8			0.8		0.8
Abalone Cove Kelp West	Middle								5.8
Hawthorne Reef	Inner			21.7			0.8		
Hawthorne Reef	Middle			2.5					92.5
Hawthorne Reef	Outer			1.7					119.1
Hawthorne Reef	Deep								110.8
Long Point East	Inner			28.8			6.7		12.5
Long Point East	Middle			7.1			7.5		47.9
Long Point East	Outer			4.6			0.4		56.6
Long Point West	Inner			78.3			2.5		30.0
Long Point West	Middle			7.5					46.7
Point Vicente East	Inner								8.3
Point Vicente East	Middle								29.2
Point Vicente East	Outer		0.8				1.7		21.7
Point Vicente North	Middle			10.0			7.5		29.2
Point Vicente North	Outer			5.0			4.2		33.3
Point Vicente West	Inner		123.3	94.0			0.2		8.8
Point Vicente West	Middle		5.4	4.6	0.2	0.4	1.0		42.5
Point Vicente West	Outer		1.5	5.2					81.1
Point Vicente West	Deep		0.4						43.8
Portuguese Point	Inner			300.8					10.8
Portuguese Point	Middle			3.3					16.7

Appendix I. continued.

Station	Zone	*Boltenia villosa*	*Centrostephanus coronatus*	*Crassedoma giganteum*	*Cypraea spadicea*	*Cystoseira osmundacea*	*Dermasterias imbricata*	*Diaulula sandiegensis*	*Egregia menziesii*
120 Reef	Inner	0.8				4.2			0.8
120 Reef	Middle					0.8			0.8
Abalone Cove Kelp East	Inner					114.2			3.3
Abalone Cove Kelp East	Middle	2.5				42.5			
Abalone Cove Kelp West	Inner					11.7			4.2
Abalone Cove Kelp West	Middle				0.8	7.5			
Hawthorne Reef	Inner					3.3			
Hawthorne Reef	Middle					36.7			
Hawthorne Reef	Outer								
Hawthorne Reef	Deep					2.5		0.8	
Long Point East	Inner					36.5			26.3
Long Point East	Middle			0.8		12.5			3.3
Long Point East	Outer			0.8					
Long Point West	Inner								
Long Point West	Middle			0.8					
Point Vicente East	Inner		6.7						
Point Vicente East	Middle		41.7				0.8		
Point Vicente East	Outer		3.3						
Point Vicente North	Middle								
Point Vicente North	Outer								
Point Vicente West	Inner		7.5	1.5					3.5
Point Vicente West	Middle		14.6	1.3		2.3	0.8		
Point Vicente West	Outer	0.8	27.6	2.3	0.8		2.5		0.2
Point Vicente West	Deep			0.4	2.1	0.8			
Portuguese Point	Inner					9.2			
Portuguese Point	Middle	0.8				11.7			

Appendix I. continued.

Station	Zone	*Eisenia arborea*	*Eugorgia rubens*	*Flabellina iodinea*	*Henricia leviuscula*	*Kelletia kelletii*	*Lithopoma undosum*	*Lophogorgia chilensis*	*Lytechinus anamesus*
120 Reef	Inner					15.0			
120 Reef	Middle		6.7	4.2		9.2			
Abalone Cove Kelp East	Inner					10.8	1.7		
Abalone Cove Kelp East	Middle					3.3	0.8	0.8	
Abalone Cove Kelp West	Inner					0.8			
Abalone Cove Kelp West	Middle					28.3			
Hawthorne Reef	Inner					1.7			
Hawthorne Reef	Middle	0.8				0.8			
Hawthorne Reef	Outer	4.2				1.7	0.8		
Hawthorne Reef	Deep	5.8		4.2		8.3	0.8	23.3	
Long Point East	Inner	25.4				13.8	2.9		
Long Point East	Middle	3.3				9.2	3.3		
Long Point East	Outer					11.7	2.5		70.3
Long Point West	Inner	5.8				7.5	1.7		
Long Point West	Middle					25.8	0.8	1.7	
Point Vicente East	Inner					3.3	1.7		
Point Vicente East	Middle					2.5	4.2	0.8	
Point Vicente East	Outer					2.5	6.7		
Point Vicente North	Middle	0.8				31.7	1.7	17.5	
Point Vicente North	Outer					24.2	1.7	24.2	
Point Vicente West	Inner	12.7		1.0		11.3	0.8		
Point Vicente West	Middle	2.1		1.3		6.9	1.0		
Point Vicente West	Outer	0.6		2.7	0.4	5.6	1.9	1.3	0.2
Point Vicente West	Deep			5.0	0.4	2.5	0.4	16.3	
Portuguese Point	Inner					1.7			
Portuguese Point	Middle					8.3			

Appendix I. continued.

Station	Zone	*Macrocystis pyrifera*	*Megathura crenulata*	*Muricea californica*	*Muricea fruticosa*	*Navinax inermis*	*Norrisia norrisi*	*Octopus bimaculoides*	*Ophioderma panamensis*
120 Reef	Inner	34.2	0.8	22.5	0.8				15.8
120 Reef	Middle	31.7	0.8	48.3	1.7				2.5
Abalone Cove Kelp East	Inner	15.8	0.8	1.7					
Abalone Cove Kelp East	Middle	15.8	0.8	13.3	1.7				
Abalone Cove Kelp West	Inner	37.5	1.7	4.2					
Abalone Cove Kelp West	Middle	22.5	0.8	20.0					
Hawthorne Reef	Inner	5.8					0.8		
Hawthorne Reef	Middle	57.5		13.3	0.8				
Hawthorne Reef	Outer	32.5		34.2	3.3				
Hawthorne Reef	Deep	21.7		36.7	0.8				
Long Point East	Inner	49.6	30.8	0.4					
Long Point East	Middle	24.6	11.3	14.6	1.3	5.0			
Long Point East	Outer	39.6	8.3	40.8	2.1				
Long Point West	Inner		13.3						
Long Point West	Middle		5.0	14.2	1.7				
Point Vicente East	Inner			51.7					
Point Vicente East	Middle		0.8	57.5					
Point Vicente East	Outer								
Point Vicente North	Middle		0.8	27.5	3.3				
Point Vicente North	Outer	1.7		52.5	8.3				
Point Vicente West	Inner	27.9	7.3	0.2			0.2		
Point Vicente West	Middle	26.9	2.7	2.7	0.4				
Point Vicente West	Outer	42.5	2.5	14.0	2.1			0.2	
Point Vicente West	Deep	3.8	2.1	6.7	0.4				
Portuguese Point	Inner	24.2	5.0	0.8					
Portuguese Point	Middle	14.2		190.0	1.7				

Appendix I. continued.

Station	Zone	*Ophioplocus esmarki*	*Orthasterias koehleri*	*Pachycerianthus fimbriatus*	*Panulirus interruptus*	*Parastichopus californicus*	*Parastichopus parvimensis*	*Peltodoris nobilis*	*Pisaster brevispinus*
120 Reef	Inner			2.5			2.5	1.7	1.7
120 Reef	Middle			9.2			0.8	0.8	4.2
Abalone Cove Kelp East	Inner						6.7		
Abalone Cove Kelp East	Middle			3.3	0.8		4.2		
Abalone Cove Kelp West	Inner				5.0		5.0		0.8
Abalone Cove Kelp West	Middle			5.8			2.5		
Hawthorne Reef	Inner						0.8		
Hawthorne Reef	Middle				1.7				4.2
Hawthorne Reef	Outer			10.0					
Hawthorne Reef	Deep			0.8		0.8	2.5		2.5
Long Point East	Inner				0.4	0.4	2.5		0.4
Long Point East	Middle						3.8		0.4
Long Point East	Outer					3.8			0.8
Long Point West	Inner						1.7		0.8
Long Point West	Middle								
Point Vicente East	Inner								
Point Vicente East	Middle				2.5		0.8		
Point Vicente East	Outer				0.8		2.5		
Point Vicente North	Middle					0.8	1.7		
Point Vicente North	Outer					0.8	3.3		1.7
Point Vicente West	Inner				0.2		6.5		5.2
Point Vicente West	Middle						3.5		1.5
Point Vicente West	Outer	0.4				0.2	11.5		0.6
Point Vicente West	Deep		0.4				1.3		0.4
Portuguese Point	Inner						0.8		
Portuguese Point	Middle			6.7			5.0		

Appendix I. continued.

Station	Zone	*Pisaster giganteus*	*Pisaster giganteus*	*Pisaster ochraceus*	*Pterygophora californica*	*Pugettia producta*	*Pycnopodia helianthoides*	*Sargassum* sp	*Strongylocentrotus franciscanus*
120 Reef	Inner	44.2			7.5		1.7		29.2
120 Reef	Middle	20.8			9.2				6.7
Abalone Cove Kelp East	Inner	20.0		16.7	15.0				55.8
Abalone Cove Kelp East	Middle	5.8			91.7	1.7			114.2
Abalone Cove Kelp West	Inner	19.2			10.8		1.7		200.0
Abalone Cove Kelp West	Middle	13.3			2.5		0.8		99.2
Hawthorne Reef	Inner	14.2		18.3					86.7
Hawthorne Reef	Middle	17.5					0.8		148.3
Hawthorne Reef	Outer	6.7			6.7		0.8		23.3
Hawthorne Reef	Deep	11.7					0.8		6.7
Long Point East	Inner	19.2		28.3				7.5	134.6
Long Point East	Middle	34.6		7.5	0.8		0.4	0.4	92.9
Long Point East	Outer	22.9		0.4	5.0				50.6
Long Point West	Inner	28.3		32.5					115.8
Long Point West	Middle	22.5		4.2			1.7		141.5
Point Vicente East	Inner	18.3							1.7
Point Vicente East	Middle	16.7							2.5
Point Vicente East	Outer	10.0		29.2					16.7
Point Vicente North	Middle	33.3		7.5			0.8		90.8
Point Vicente North	Outer	11.7		1.7					44.2
Point Vicente West	Inner	17.5		29.2	0.8		0.4	4.0	22.7
Point Vicente West	Middle	41.9		13.8	0.6		0.4		36.7
Point Vicente West	Outer	65.2		6.0	0.6		0.2		63.8
Point Vicente West	Deep	14.2		2.9	0.4		0.8		51.3
Portuguese Point	Inner		49.2	43.3	2.5				216.7
Portuguese Point	Middle		8.3	0.8	8.3	1.7	0.8		46.7

Appendix I. continued.

Station	Zone	*Strongylocentrotus purpuratus*	*Styela montereyensis*	*Stylasterias forreri*	*Tethya californiana*	*Urticina crassicornis*	*Urticina mcpeaki*
120 Reef	Inner	71.7	5.0		5.0		
120 Reef	Middle		11.7		20.8		
Abalone Cove Kelp East	Inner	1125.0					
Abalone Cove Kelp East	Middle	128.3	1.7				
Abalone Cove Kelp West	Inner	435.0					
Abalone Cove Kelp West	Middle	197.5					
Hawthorne Reef	Inner	1500.0					
Hawthorne Reef	Middle	292.8	0.8		4.2		
Hawthorne Reef	Outer	5.0	3.3		19.2		
Hawthorne Reef	Deep		5.0		36.7		
Long Point East	Inner	516.3			0.4		
Long Point East	Middle	141.3			13.3		
Long Point East	Outer	28.8			20.0		
Long Point West	Inner	150.0					
Long Point West	Middle	233.3			1.7		
Point Vicente East	Inner	1083.3			8.3		
Point Vicente East	Middle	78.3			7.5		
Point Vicente East	Outer	1416.7					
Point Vicente North	Middle	56.7			49.2		
Point Vicente North	Outer	78.3			55.0		
Point Vicente West	Inner	745.2					
Point Vicente West	Middle	522.4	0.2		2.9		
Point Vicente West	Outer	71.9	1.7		4.0		0.2
Point Vicente West	Deep	32.1	2.1	0.4	17.5	0.8	
Portuguese Point	Inner	812.5					
Portuguese Point	Middle		20.8		11.7		

Appendix II. Substrate percent cover by depth zone within the Point Vicente and Abalone Cove SMCAs, 2004-2010.

Station	Zone	*brown algae - erect*	*brown algae - filamentous*	*coralline algae - crustose*	*coralline algae - erect*	*Cystoseira osmundacea*	*Eisenia arborea*	*green algae*	*Macrocystis holdfast*
120 Reef	Inner	3%		18%	6%				5%
120 Reef	Middle	2%		15%					3%
Abalone Cove Kelp East	Inner	2%		47%	8%	2%			
Abalone Cove Kelp East	Middle	3%		3%	24%				10%
Abalone Cove Kelp West	Inner		13%	45%	6%				2%
Abalone Cove Kelp West	Middle	2%	15%	26%					5%
Hawthorne Reef	Inner	5%		10%	2%		3%		5%
Hawthorne Reef	Middle	2%		61%	8%				
Hawthorne Reef	Outer	3%		35%	5%				13%
Hawthorne Reef	Deep	2%		34%	2%				11%
Long Point East	Inner	2%		38%	7%	2%			6%
Long Point East	Middle			41%	2%	2%			5%
Long Point East	Outer	3%		36%					4%
Long Point West	Inner	2%		50%	3%				
Long Point West	Middle			35%					
Point Vicente East	Inner			58%					
Point Vicente East	Middle	5%		32%					
Point Vicente East	Outer	2%		21%					
Point Vicente North	Middle			60%					
Point Vicente North	Outer			43%					
Point Vicente West	Inner	2%		28%					1%
Point Vicente West	Middle	1%		25%	1%	1%	1%		10%
Point Vicente West	Outer	2%		25%	2%			2%	2%
Point Vicente West	Deep			32%	0%				4%
Portuguese Point	Inner	3%		19%	32%				3%
Portuguese Point	Middle	10%		26%	2%				8%

Appendix II. continued.

Station	Zone	*Other holdfast*	*Pterygophora holdfast*	*red algae - erect*	*red algae - turf*	*Sargassum sp*	*anemone*	*Anthopleura elegantissima*	*Anthopleura sola*
120 Reef	Inner			10%					
120 Reef	Middle			8%					
Abalone Cove Kelp East	Inner			8%	8%				2%
Abalone Cove Kelp East	Middle		10%	13%					2%
Abalone Cove Kelp West	Inner			3%	3%				
Abalone Cove Kelp West	Middle			2%	2%				
Hawthorne Reef	Inner			16%	3%				
Hawthorne Reef	Middle				2%				
Hawthorne Reef	Outer			6%	18%				
Hawthorne Reef	Deep			5%	11%				
Long Point East	Inner	1%	2%	8%	20%				
Long Point East	Middle			2%	19%				
Long Point East	Outer			6%	19%				
Long Point West	Inner			2%	3%		6%		
Long Point West	Middle			3%	10%		2%		
Point Vicente East	Inner								
Point Vicente East	Middle				13%				
Point Vicente East	Outer			2%	37%		3%		
Point Vicente North	Middle								
Point Vicente North	Outer				25%				
Point Vicente West	Inner			11%	7%				
Point Vicente West	Middle			5%	17%	0%	6%	0%	2%
Point Vicente West	Outer		1%	11%	14%	1%	2%		
Point Vicente West	Deep			7%	10%		2%		
Portuguese Point	Inner			2%	19%				3%
Portuguese Point	Middle			3%					

Appendix II. continued.

Station	Zone	*bryozoan*	*Chaceia ovoidea*	*Corynactis californica*	*Crassedoma giganteum*	*Cup coral*	*Diopatra ornata*	*Eudistylia polymorpha*	*Hippodiplosia insculpta*
120 Reef	Inner	3%							
120 Reef	Middle	3%	2%	6%		5%	13%	2%	
Abalone Cove Kelp East	Inner	2%							
Abalone Cove Kelp East	Middle			2%			5%		
Abalone Cove Kelp West	Inner		5%			2%	2%		
Abalone Cove Kelp West	Middle					5%	13%		3%
Hawthorne Reef	Inner			3%		3%	3%		
Hawthorne Reef	Middle		2%						
Hawthorne Reef	Outer	2%				2%	2%		
Hawthorne Reef	Deep	3%					2%	3%	
Long Point East	Inner	1%	2%	2%		2%	2%		
Long Point East	Middle	6%	2%	5%		1%	1%		
Long Point East	Outer	1%		5%		1%			
Long Point West	Inner	2%	3%	2%		10%	2%		
Long Point West	Middle			10%		11%	6%		
Point Vicente East	Inner								
Point Vicente East	Middle		8%	2%		3%	5%		
Point Vicente East	Outer		2%	2%		2%			
Point Vicente North	Middle					3%			
Point Vicente North	Outer					3%			
Point Vicente West	Inner	5%		9%	1%	9%			
Point Vicente West	Middle	0%	2%	7%		2%	0%		
Point Vicente West	Outer	2%		2%		7%	1%		
Point Vicente West	Deep	7%		12%		2%			
Portuguese Point	Inner	6%							
Portuguese Point	Middle		16%						

Appendix II. continued.

Station	Zone	*Hydroid*	*Lophogorgia chilensis*	*Muricea californica*	*Muricea fruticosa*	*Pachycerianthus fimbratus*	*Phidolopora labiata*	*Phragmatopoma californica*	*Sabellid/Serpulid/Spirobranchus/Eudistylia*
120 Reef	Inner							2%	
120 Reef	Middle				3%				
Abalone Cove Kelp East	Inner								
Abalone Cove Kelp East	Middle			2%					
Abalone Cove Kelp West	Inner			2%			2%		
Abalone Cove Kelp West	Middle						2%		
Hawthorne Reef	Inner		2%	2%		2%			
Hawthorne Reef	Middle								
Hawthorne Reef	Outer			5%					
Hawthorne Reef	Deep			2%					
Long Point East	Inner								
Long Point East	Middle	1%		1%					
Long Point East	Outer			1%					
Long Point West	Inner								3%
Long Point West	Middle								
Point Vicente East	Inner								
Point Vicente East	Middle								
Point Vicente East	Outer								
Point Vicente North	Middle								
Point Vicente North	Outer	2%							
Point Vicente West	Inner		1%	1%	1%			1%	
Point Vicente West	Middle							0%	
Point Vicente West	Outer	2%							
Point Vicente West	Deep								
Portuguese Point	Inner								
Portuguese Point	Middle			19%				2%	

Appendix II. continued.

Station	Zone	*Salmacina tribranchiata*	*Serpulorbis squamigerus*	*Spirobranchus spinosus*	*sponge*	*Tethya californiana*	*Tetilla sp. B*	*Tubeworm*	*tunicate - colonial*
120 Reef	Inner	5%			5%				2%
120 Reef	Middle	5%			8%				3%
Abalone Cove Kelp East	Inner	2%	2%						
Abalone Cove Kelp East	Middle				2%				
Abalone Cove Kelp West	Inner								
Abalone Cove Kelp West	Middle				2%		2%		
Hawthorne Reef	Inner	5%			2%	2%			3%
Hawthorne Reef	Middle								
Hawthorne Reef	Outer	3%			2%				
Hawthorne Reef	Deep				5%				3%
Long Point East	Inner				1%				
Long Point East	Middle	2%			1%				
Long Point East	Outer							1%	
Long Point West	Inner							2%	
Long Point West	Middle	2%						5%	
Point Vicente East	Inner								
Point Vicente East	Middle				2%				
Point Vicente East	Outer							3%	
Point Vicente North	Middle							13%	
Point Vicente North	Outer								
Point Vicente West	Inner	1%		1%	6%	1%			
Point Vicente West	Middle		0%						
Point Vicente West	Outer				3%				
Point Vicente West	Deep				2%			0%	1%
Portuguese Point	Inner		3%					2%	
Portuguese Point	Middle				2%				3%

Appendix II. continued.

Station	Zone	*tunicate - solitary*	*bare rock*	*bare sand*	*Detritus*	*sediment/mud*	*shell debris*
120 Reef	Inner		21%	16%			5%
120 Reef	Middle		3%	8%			11%
Abalone Cove Kelp East	Inner		10%	10%			
Abalone Cove Kelp East	Middle	2%		24%			
Abalone Cove Kelp West	Inner		11%	2%			3%
Abalone Cove Kelp West	Middle	2%	10%	5%			8%
Hawthorne Reef	Inner			10%	10%		11%
Hawthorne Reef	Middle		18%	5%			3%
Hawthorne Reef	Outer				2%		3%
Hawthorne Reef	Deep	2%	8%	8%			
Long Point East	Inner		2%	2%	2%		
Long Point East	Middle		1%	3%			4%
Long Point East	Outer		3%	12%	5%		4%
Long Point West	Inner			3%	6%		2%
Long Point West	Middle		2%	6%	5%		3%
Point Vicente East	Inner		40%	2%			
Point Vicente East	Middle		2%	5%	6%	15%	3%
Point Vicente East	Outer			18%	2%	6%	2%
Point Vicente North	Middle			17%			7%
Point Vicente North	Outer			2%	5%		20%
Point Vicente West	Inner		8%	3%			5%
Point Vicente West	Middle	1%	16%	1%			1%
Point Vicente West	Outer		13%	3%	1%	0%	1%
Point Vicente West	Deep	2%	8%	5%	2%		1%
Portuguese Point	Inner		6%				
Portuguese Point	Middle		6%	3%			

Responses to Comment Letter A92_v

Responses to Comment A92_v: This document is listed as Attachment D. The document is an expert opinion by Dr. Daniel Pondella, containing an analysis of the proposed Point Vicente and Abalone Cove marine protected areas. The document does not contain comment on the adequacy of the Draft EIR. No response necessary.

Letter
A92_vi

Attachment E

An Evaluation of the Impacts of the Palos Verdes Shelf Superfund Site on Proposed Marine Protected Areas off the Palos Verdes Peninsula

An evaluation of the impacts of the Palos Verdes Shelf Superfund Site on Proposed Marine Protected Areas off the Palos Verdes Peninsula

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October 10, 2010

Author's Qualifications

Dr. Robert Spies has a Ph.D. in Biological Sciences from the University of Southern California and has 40 years of experience in marine pollution work, mainly in California and Alaska. He has over 40 articles in the peer-reviewed scientific literature addressing marine pollution issues. He has studied contaminants on the Palos Verdes Shelf including investigations of chlorinated hydrocarbons in fish and invertebrates and their effects on reproduction. Dr. Spies is Chief Editor of Marine Environmental Research, a scientific journal that deals with human effects on the marine environment. Dr. Spies was Chief Scientist for the Exxon Valdez Trustee Council, from 1990 to 2001. He now serves as Senior Environmental Advisor to the Presidential Commission on the Deep Horizon Oil Spill and Offshore Drilling.

SUMMARY

In the implementation of the Marine Life Protection Act (MLPA) in the Southern California Bight, the South Coast Study Region Blue Ribbon Task Force (BRTF) identified in its preferred alternative two Marine Protected Areas (MPAs) on the Palos Verdes Shelf, Point Vicente and Abalone Cove (both nominated as State Marine Conservation Areas) in the Palos Verdes Superfund Site. Among the most important functions of MPAs is to provide good biological habitat, protection from exploitation and good water quality so that stocks of depleted fishes and invertebrates can grow and reproduce and thereby act as sources for stock replenishment.

The Palos Verdes Shelf is contaminated with dichlorobiphenyltrichloroethane and its metabolites (DDTs) and polychlorinated biphenyls (PCBs), powerful reproductive toxins that biomagnify through the food web. These chemicals degrade slowly and pose a hazard to fish, birds and mammals. The water and sediment quality objectives for DDTs set by the US Environmental Protection Agency in 1980 are exceeded in the vicinity of the effluent outfalls of the Los Angeles County Sanitation Districts due to past discharges of DDTs. The US EPA has declared the Palos Verdes Shelf a superfund site and has selected a preferred alternative for remediation that involves placing a 40-cm thick coat of clean sediment on the seafloor at depths from 147-230 ft over the most contaminated portions. The capping procedure will inevitably suspend some of the buried contaminated sediments that will be carried down current in a northwesterly direction into the two designated MPA areas. In addition, the capping will affect the productivity and diversity of a portion of the shelf communities after burial, thereby compromising ecosystem function and production for as many as 9 years while the area recovers its bottom communities. The abilities of fish and invertebrates to grow and reproduce in the two proposed MPAs are at risk by locating them in a superfund site containing reproductive toxins. It is recommended that some other location be found for these MPAs where they have a better chance of achieving the goals of the MLPA.

Introduction

Applied Marine Sciences, Inc. (AMS) has prepared this report for the Los Angeles County Sanitation Districts. Its purpose is to evaluate the potential impact of the Palos Verdes Superfund Site (PVSS) on the establishment of effective MPAs off the southern portion of the Palos Verdes Peninsula. During the current effort to identify a series of Marine Protected areas in the South Coast region of California in order to implement the MLPA, an integrated preferred alternative has been identified by the BRTF. As part of the process to implement the MPLA the BRTF makes its recommendations to the State Fish and Game Commission and the Commission designates the MPAs. The BRTF selects the preferred alternative from the many different nominations made by the stakeholder groups during the regional studies. In this case the BRTF's preferred alternative includes the proposed Abalone Cove and Point Vicente MPAs, which are part of the PVSS (Fig. 1).

AMS has been asked to evaluate five questions in regard to this proposal, with particular attention to the consistency of these designations with the goals and objectives of the MPLA, the Marine Managed Areas Improvement Act (MMAIA), and the South Coast Regional Guidance (http://www.dfg.ca.gov/mlpa/southcoast.asp). These questions are:

1. Does the presence of the PVSS pose a significant heath risk to aquatic life, including those species likely to benefit from MPAs living within the proposed Palos Verdes MPAs?

2. Does the presence of the PVSS likely reduce ecosystem productivity and function within the proposed Palos Verdes MPAs?

3. Will the ongoing monitoring and proposed remediation activities within the PVSS negatively impact ecosystem productivity and function within the proposed Palos Verdes MPAs?

4. Was the South Coast Study Region (SCSR) Science Advisory Team's (SAT) guidance regarding water quality and the PVSS adequate to ensure that the PVSS would not negatively impact ecosystem productivity and function of MPAs placed in the Palos Verdes region?

5. Was the document "MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options" comprehensive and accurate in its characterization of the PVSS and potential negative impacts to ecosystem productivity and function associated with the proposed Abalone Cove and Point Vicente MPAs?

After review of the available literature and documents relating to marine life and existing marine communities on the Palos Verdes Shelf, the impacts of contaminants on that marine life, the establishment of the PVSS, and the MPLA process I present my evaluation based on the five questions above.

BACKGROUND

Habitats on the Palos Verdes Shelf

The relatively narrow Palos Verdes shelf (Fig. 1) is a unique habitat in southern California, an extension of Palos Verdes Peninsula, the only true headland in southern California. The inshore portion of the shelf is a combination of rocky bottom and sand, derived from the Palos Verdes Peninsula by slumping and erosion into the nearshore area. These unconsolidated materials are mixed with organic matter derived from anthropogenic inputs and *in situ* biological production. The rocky areas support seasonal growth of kelps and are prime habitats for marine life, including a variety of fishes. The benthic habitats of the Palos Verdes Shelf in the deeper areas (>20m water depth) consist mainly of fine sand and mud substrate.

The sandy areas of the Palos Verdes Shelf have an abundant infauna dominated by polychaete worms, bivalve mollusks and small crustaceans (Barnard and Hartman, 1959; Diener et al., 1995; Bergen et al., 2000). The benthic invertebrate megafauna in this habitat is dominated by echinoderms, crustaceans and mollusks (Thompson et al., 1993). A variety of fish species are also found in these soft sediment areas (Allen, 1977; Love et al., 1986; Stull and Tang, 1996) with flatfish such as turbot, halibut, sanddabs, and Dover sole predominant in deeper waters.

The rocky habitats of the inshore area support beds of large brown kelps and a diverse fauna dominated by echinoderms, coelenterates, sponges, mollusks, bryozoans, crustaceans, polychaete worms and fishes (e.g., Stull, 1995). These are also the habitats for numerous sport fish species including various kinds of rockfish, greenling, cabezon, kelp bass and lingcod. Many, if not most, of these species are expected to benefit from the establishment of MPAs in the Southern California Bight (CDFG, 2010).

A brief history of anthropogenic contamination of the Palos Verdes shelf

Domestic treated wastewater effluent from Los Angeles County has been discharged to the ocean off White's Point since 1937 (Rawn, 1965), initially at a water depth of 34 m and ultimately in deeper water as the volume of effluent increased. Currently, treated effluent is discharged through 2 outfalls centered at a depth of 61 m: a 90-inch diameter pipe at 64 m depth and a 120-inch diameter pipe at 58 m. There are two shallower outfalls that were formerly the main outfalls, which are now used only during emergencies. Prior to 1971 effluent discharged from the White's Point Outfall received only primary treatment. Starting in 1972 and throughout the 1980s implementation of various control measures and upgraded treatment greatly altered the nature of the discharges, decreasing the mass emission rates of nearly all effluent constituents, especially organic particulate material (Stein and Cadien, 2009). Secondary treatment was fully implemented in 2002. At present approximately 280 million gallons (average daily dry weather flow) of secondary-treated effluent is discharged to the ocean each day through the LACSD outfall system, with only a small fraction of the mass loading of particulates that occurred before implementation of full secondary treatment.

Contaminants in Palos Verdes Shelf

A large variety of chemicals have been discharged to the Palos Verdes Shelf over the years, including metals, various hydrocarbons, and other organic contaminants. The discharge to the Los Angeles County sewage system of as much as 1700 tons of DDTs and its metabolites and lesser quantities of polychlorinated biphenyls (PCBs) and their metabolites by chemical companies primarily in the period from 1947 to 1971 resulted in more than 200 tons of these persistent organic toxins being bound to sediments on the Palos Verdes shelf (CH2MHill, 2007). There are now an estimated 100 metric tons present due to diffusion into water that is carried off the shelf and *in situ* metabolism, that converts these compounds to more soluble and generally less toxic byproducts. The contaminated sediments form a layer up to 60 cm deep (http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/3dec8ba3252368428825742600743733/e61d5255780dd68288257007005e9422!OpenDocument&Start=1&Count=200&Collapse=2) and has an estimated volume of 9 million cubic meters. The area of elevated concentrations of these contaminants is about 20 km^2 (Stull et al., 1996). In addition to these toxins, effluent-influenced sediments contain large quantities of other organic contaminants and metals. These include polynuclear aromatic hydrocarbons (PAHs), phthalates, cadmium, chromium, copper, zinc and lead (Stull et al., 1986; Anderson and Gossett, 1987; Swartz et al., 1991).

This contaminated material is buried under more recently deposited sediments from the less contaminated effluent discharged from the late 1970s through 2002 as well as naturally eroded and slumped material from the Palos Verdes Peninsula and material from natural biological production. The contaminated sediments are located starting about 5 cm below the surface of the sediment (Lee et al., 2002). Maximum concentrations of contaminants are located approximately 30 cm below the sediment surface (CH2M Hill, 2009). The surface sediments in the area of the outfall are less dense than the nearby natural sediments at similar depths (CH2M Hill, 2009), making them more likely to be resuspended when disturbed by, for example, winter storms.

This layer of contaminated sediment is likely to stay in place (Sherwood et al., 2002) over the short to mid-term, with concomitant slow decreases in concentrations of DDTs. However, sediments may be disturbed by a variety of erosional and resuspension events until they eventually move off the shelf (Emery, 1960) and the DDTs and PCBs become more biologically available to animals in the water. In addition, the virtual elimination of hydrogen sulfide from the sediments in recent years (LACSD, 2010) also means that more deeply burrowing and bioturbating fauna will return to the area and their activities will also resuspend sediment-bound contaminants from at least the top of this contaminated layer in places (Niedoroda et al., 1996). Studies of sediment resuspension on the Palos Verdes shelf have identified sediment erosion near the southeast portion of the outfall (Sherwood et al., 2002). The lack of significant new particulate material from the outfalls since the shift to full secondary treatment in 2002 means that at least the upper layers of contaminated material will likely remain within 5-10 centimeters of the surface of the seabed for the foreseeable future, unless remediation through sediment capping, such as that proposed by the Environmental Protection Agency for implementation in the next several years, takes place.

The concentrations of sediment contaminants on the Palos Verdes Shelf have been decreasing due to natural processes. For example, between 1992 and 2002-2003 the seafloor covered by

sediments with concentrations of DDTs in excess of 1 mg/kg shrunk by 12% to 39.1 km^2 and that of sediment with greater than 10 mg/kg shrunk by 56% (CH2M Hill, 2009). Despite the reduction in ambient concentrations of sediment contaminants, current levels of contamination greatly exceed EPAs remediation targets for the protection of humans and wildlife and the proposed capping with thousands of tons of sand and silt carries its own risks of resuspending contaminated sediments.

The DDTs present in the contaminated layer still exchange with the ocean water as reflected in concentrations in the water and in the tissues of local marine animals. Water concentrations of DDTs were detected up to 0.29 ng/L over the Palos Verdes Shelf in 2003 (Zeng et al., 2005). Zeng et al (2005) estimated total fluxes of *p,p*-DDE to be in the range of 0.8 to 2.3 metric tons per year in the Southern California Bight with most of the material probably originating from the Palos Verdes Shelf . In contrast, measurements taken with in-situ sampling devices in 1997 revealed concentrations of DDTs up to about 16 ng/L (Zeng et al., 1998), indicating a decrease in water concentrations in recent years and suggesting a gradual decrease of DDTs fluxing from the sediment. Despite the reduction in ambient concentrations of sediment contaminants, current levels of contamination greatly exceed EPAs remediation targets for the protection of humans and wildlife, and the proposed capping with thousands of tons of sand and silt carries its own risk of resuspending contaminated sediments

Numerous studies over the last several decades have documented the accumulation of DDTs and PCBs in marine animals of the Palos Verdes Shelf (e.g., Young et al., 1978; Spies et al., 1989), particularly with fishes (e.g., McDermott-Ehrlich, 1978; Gosset et al., 1983; Schiff and Allen, 2000). In 1996 and 1997, horny head turbot (Zeng and Tran, 2002) contained liver concentrations of DDTs up to 203 ppm (lipid-normalized wet wt.), corresponding to a wet-weight concentration of approximately 1 – 4 ppm. (Since lipid weight concentrations are based on just the lipid present in a sample rather than the weight of all the constituents they are higher than wet concentrations, often by two orders of magnitude.) In the following discussion DDTs are expressed in wet-weight concentrations that are not lipid-normalized.

There have been declines in concentrations of contaminants in fishes over the past 20 years. As late as 1994, two species of sand dabs caught near municipal wastewater discharges in the Southern California Bight had mean liver concentrations of DDTs around 3-4 ppm (wet wt.) (Schiff and Allen, 2000). At about the same time, kelp bass collected along the Palos Verdes Shelf had mean liver concentrations of DDTs and PCBs of 3.4 ppm and about 1 ppm, respectively (Spies and Thomas, 1996). Monitoring of DDTs in the muscle of kelp bass has revealed a downward trend from the 1970s to the present. Muscle tissue concentrations of DDTs have decreased from a height of near 12 ppm DDT in the 1970s to less than 1 ppm as late as 2001 (Stein and Cadien, 2009).

Effects of effluent discharge and DDTs and PCBs on the marine ecology of the Palos Verdes Shelf

It should be emphasized that since 2002 when full secondary treatment of effluent was attained it is the legacy of past discharges that is the main concern and a potential problem on the Palos Verdes Shelf. This concern remains despite what seem to be decreases of 2-3 orders of

magnitude of DDTs in the livers of sanddabs and Dover sole from reference areas in the Southern California Bight (Schiff and Allen, 2000). Also, implementation of advanced primary treatment in the 1970s and partial secondary treatment in the mid 1980s resulted in great decreases in the amount of organic matter discharged to the ocean over the last 30+ years and therefore a strong recovery of the benthic communities which were formerly affected by organic enrichment (Stein and Cadien, 2009; LACSD, 2010). The following discussion will focus to a greater extent on results of recent studies after a brief review of older investigations that documented large effects of effluent discharges, particularly from chlorinated hydrocarbons, on the Palos Verdes Shelf.

The scope of the impact of treated domestic wastewater and industrial wastewater containing chemical wastes on the Palos Verdes shelf became apparent in the 1970s. The alteration of infaunal and epifaunal macrobenthic communities, including fish, birds, and marine mammals was documented in a series of studies around the LACD's White's Point outfalls.

Benthic communities--Bottom communities are traditionally defined to a large extent by the methods used to sample them: either sediment grabs at a fixed location, the infauna, or macrobenthos from trawls towed across the bottom (including bottom fish). Below we discuss the infauna communities as defined by grab sampling followed by the macrobenthos and bottom fish communites, defined from trawl catches.

Since hundreds of species are caught in grab samples in southern California and the presence and numbers of each of these species varies with a host of factors, an index that summarizes the main features of their environmental responses, such as effluent input, is useful. The effects of effluent discharges on the communities of animals on the sea bottom, both in severity and spatial extent, have been assessed and summarized by the use of various indices. In southern California the Benthic Response Index (BRI) first described by Smith et al. (2001) has been a useful tool for summarizing the historical changes observed in the infaunal benthos (species living on and in the sandy and muddy sea floor and captured by sediment grab devices and retained on 0.5 or 1-mm mesh screens after washing). Bergen et al. (2000) provide a synoptic overview of the changes of the benthos since the 1970s using the four levels of disturbance in the BRI. Those levels are: I. Minor alteration in the presence of species, II. Loss of biodiversity, III. Loss in community function, and IV. Defaunation. A fifth level in the index is the reference condition with no disturbance.

In 1973 the sea bottom within 2 kilometers of the White's Point outfalls had a nearly complete loss of infauna (Level IV) and most of the remainder of Palos Verdes Shelf showed loss of community function (Level III). By 1985, the area around the outfall had improved and the whole shelf was Level III or better with some areas of improving to "Loss of Diversity" status (Level II), particularly in the inshore areas. By 1994 the entire shelf except immediately around the outfall had improved to Level II, loss of biodiversity, with a few areas to the northwest and southeast improving to minor alteration (Level 1). By 2007 about half of the Palos Verdes Shelf was in the unaffected category and about half in the Level I condition of minor alteration. There was a small wedge of deeper sediments offshore of the outfall that was at a Level II condition, loss of biodiversity (Stein and Cadien, 2009). Sampling in 2008-2009 yielded similar results (LACSD, 2010)

As for infauna, multiple species of animals are caught in trawls in southern California shelf environments. A similar approach to that taken with the infauna using the BRI has been applied to fish caught in trawls, the Fish Response Index (FRI) (Allen et al., 2001), which produces values between 0 and 120. A value of 45 was considered the threshold for the reference condition in southern California, with values higher than that indicating loss of diversity. Values in the early 1970s at the outset of sampling had a FRI of about 80, revealing an altered fish community. The FRI values rapidly decreased through the next decade and crossed over the reference threshold value of 45 in about 1982, stabilized around mean values in the 30's by the late 1980s, and have remained relatively stable since that time (Stein and Cadien, 2009).

Parallel trends in the macrobenthic communities of large trawl-caught invertebrates were described by Thompson et al. (1993). Within 10 years of the initiation of monitoring in the 1970s and during a time of rapid improvement of effluent water quality, the macrobenthic community was very similar to reference areas distant from the outfall.

Fish health--Several past studies have documented changes in the demersal fish communities on the Palos Verdes Shelf (e.g., Allen et al., 1977), the occurrence of disease (Sherwood and Mearns, 1976; McDermott-Ehrlich et al., 1977) and reproductive function (Cross and Hose, 1988, 1989, Hose et al., 1989; Spies and Thomas, 1997) in response to effluent discharges. The occurrence of fin rot and epidermal papillomas were documented in Dover sole in the 1970s (Sherwood and Mearns, 1976), but those conditions returned to background rates of occurrence more than 20 years ago (Stein and Cadien, 2009). The negative effects were identified in white croaker, Dover sole and kelp bass, all species that are likely to benefit from MPAs.

There have been several documented changes in reproductive function in fishes living in the area influenced by the outfalls. White croaker collected from the Palos Verdes Shelf had fewer mature eggs in their ovaries than fish collected at Dana Point, a less contaminated environment, at the same time. Fewer of the more contaminated croaker could be spawned artificially, oocyte atresia (regression and absorption) was higher and fecundity was lower (Cross and Hose, 1988; Hose et al., 1989). These authors proposed that spawning of these species was inhibited at ovarian DDT concentrations of 4 ppm, which would correspond to approximately 8 ppm in the liver. A contemporary but less extensive study of kelp bass at these same two locations indicated less response to a hormone initiating spawning, poorer egg quality and poorer fertilization success compared to kelp bass from a less contaminated location, Dana Point (Hose et al., 1989).

Kelp bass reproductive impairment was studied in more depth in1992, contrasting fish from the Palos Verdes Shelf and Dana Point (Spies and Thomas, 1997). Maturational gonadotropin (Gth) is released from the pituitary gland of female fish into the blood, inducing the final stages of oocyte maturation in the ovary and spawning. Females collected from Palos Verdes during the spawning season that were without measurable Gth in their blood had higher concentrations of DDTs in liver (6 ppm) than those with measurable amounts of blood Gth (>2ppm), suggesting inhibition of spawning or alteration of spawn timing by DDTs. In addition, Palos Verdes females had lower concentrations of estradiol in the blood, but higher rates of testosterone production. Increased rates of testosterone production were correlated with increased gonadal concentrations of DDTs. These observations are consistent with the inhibition of testosterone

conversion to estradiol by DDTs, perhaps through inhibition of aromatase activity. Further evidence of hormonal interference with normal reproduction was the weaker binding of estradiol to its receptor in liver tissue of Palos Verdes females and that o,p'-DDE and o,p'-DDT were capable of displacing estradiol from its liver receptor. DDT compounds (especially o,p'-DDE) are known inhibitors of reproduction, capable of binding to various receptors and interfering with the normal cascade of hormonal events necessary for successful reproduction (Kimbrough, 1974).

These measures of abnormal hormonal control suggest that reproduction could be compromised by DDTs. Further studies are needed to determine if these findings apply to kelp bass currently living on the Palos Verdes Shelf and, if so, what the consequences are for reproductive success.

Marine Bird and Mammal Health

The DDTs are serious reproductive and metabolic toxins to birds and mammals (Bernacke and Kohler, 2009), as are PCBs (Ross et al., 2000). The risks to these higher-trophic-level predators are quite significant as DDTs and PCBs are biomagnified in marine food webs and reach much higher concentrations in top predators than in the organisms on which they feed. It has been well established that brown pelicans in southern California have accumulated high concentrations of DDTs with subsequent negative effects on reproduction (Keith, 1978; Risebrough, 1972). Egg shell thinning is one of the main effects of exposure to DDTs and was responsible for a decrease in the brown pelican population in southern California. DDTs have also been implicated in eggshell thinning in the bald eagles (Wiemeyer et al., 1984). There is also experimental evidence that exposure of developing sea gull embryos to DDTs skews sex ratios, producing more females in the population (Fry and Toone, 1981).

PCBs have also been found to be toxic to aquatic mammals, for example mink (Aulerich and Ringer, 1977) and killer whales (Hicke et al., 2007). Although PCB contamination occurs on the Palos Verdes Peninsula, the links to effects on fish, birds and mammals has not been as strong as for DDTs.

PROPOSED MANAGEMENT CHANGES TO THE PALOS VERDES SHELF

There are two proposed changes in the management of human uses on the Palos Verdes Shelf. The first of these is the further cleanup of the Palos Verdes Shelf under the Environmental Protection Agency's Superfund Program, and the second of these is the aforementioned establishment of MPAs to replenish marine life along the California coast. These efforts will be briefly summarized and the compatibility of the decisions made in each of these actions will be evaluated in the Discussion section.

The EPA Superfund Site on the Palos Verdes Shelf

In 1994, in response to the findings of a Natural Resource Damage Assessment action and report on the impact of DDTs and PCBs on the Palos Verdes Shelf, EPA initiated a Superfund investigation designed to identify possible remedial actions. In 2009 a preferred alternative of capping the affected areas with clean sediment was identified

(http://www.pvsfish.org/pdf/PVS_Proposed_Plan_6.11.09.pdf). This was based partly on findings from a pilot program that placed sediment caps on three 45-acre sites in 2000. The post-capping sampling program confirmed that the cap had covered the contaminated sediments but that there were some areas in which the contaminated sediments at depth were closer to the surface than before the capping operation. This may have been caused by natural erosion or turbulence from the capping process. Based on an evaluation of human health and ecological risks, EPA determined that existing conditions exceed ambient water quality objectives and pose a threat to human health and to the ecosystem. Consequently, EPA decided that allowing natural processes to remedy the threat of DDT and PCB to the local marine ecosystem and human health was not sufficient.

A food-web exposure model for estimating doses to fish, birds and mammals has been created that is coupled with screening level concentrations of DDT to estimate the risk to these fauna. Measured concentrations of DDTs in fish collected from the Southern California Bight exceeded screening levels in northern anchovy, Pacific sardine and Pacific chub mackerel (CH2M Hill, 2009). Concentrations of DDTs in sea lions and their pups were some of the highest in the world. The Remedial Action objectives outlined by EPA are to reduce DDTs sediment concentrations to 230 ppm with 1% total organic carbon and water concentration to below a mean of 0.22 ng/L. These targets were intended to protect human consumers of seafood, whereas the existing screening level for the protection of saltwater life is 1 ng/L DDTs in water (EPA, 1980).

From the modeling, it was estimated that the Preferred Alternative would achieve the targeted screening level much earlier than relying only on natural degradation and dispersion. The preferred alternative, Option 3 in the Proposed Plan, would cap cell 8C that is centered around the deepest of the outfalls at 61 m and covers an area approximately 1.3 km^2, about twice as long in the along-shore direction as in the onshore-offshore direction (Fig. 1). The estimated dates for achieving the objectives under the preferred alternative are 2023 for water and 2039 for sediment. The estimated dates for achieving these objectives with no action are 2037 to 2067, respectively.

The EPA activities in the area of the outfall will follow a staged approach. Although still under consideration, Alternative 3 is likely to be selected. This alternative involves capping cell 8C (Fig. 1). It is quite possible that once cell 8C is capped the area of capped sediments will be extended to cells 6C and 7C, immediately to the northwest of Cell 8C. These two cells are the sites identified for capping under Alternative 4. The execution of Alternative 3 will take about 2 years, which will be followed by a period of evaluation. Execution of extended capping identified under Alternative 4, and which may follow the work under Alternative 3, would likely take at least 2 or 3 additional years. In all perhaps 5 or 6 years of disturbance would occur, followed by some years of recovery of the bottom communities.

EPA acknowledges that successful capping of soft sediments at this depth (147 to 230 ft or 45-70 m) is challenging and carries risks of resuspension of contaminated sediments and moving some contaminated sediments closer to the sediment surface. The prevailing bottom currents could carry suspended sediments to the northwest of the capping activities towards and into the proposed MPAs. The projected cap thickness of 45 cm will smother the existing fauna and it will

require time for a normal benthic community of infauna, megafauna and demersal fish to re-colonize. Return to existing conditions after capping could take several years after the 5-6 year period of disturbance from capping and the possible resuspension of toxic compounds. In order to recover 9 or more years may be required to reach a fully diverse and functional ecosystem.

The MPLA process

As part of a state-wide effort to protect and restore marine habitats off the California Coast through the MPLA process, a series of sites have been designated in the Southern California Bight for MPA status. A variety of marine invertebrates and fishes have been identified as likely benefiting from the establishment of MPAs in southern California. Likely candidates for the greatest benefit have limited movement so that they would spend most or all of their lives within the designated MPAs. Most benthic invertebrates will benefit from protection from human disturbances, assuming good sediment and water quality. Among the many fish that are likely to benefit the kelp bass, a popular sport fish, is specifically named in the recently issued Draft Environmental Impact Report (DEIR) (p. 6-70; CDFG, 2010).

During the process of site selection, in which nominations were made by the South Coast Regional Stakeholders Group to the State Fish and Game Commission, the BRTF selected the proposed Point Vicente and Abalone Cove MPAs (Fig. 1) as part of their preferred alternative. The document transmitted to the BRTF, "MPA Options for consideration and review by BRTF: Description of Palos Verdes MPA options", (October 30, 2009) consisted of a spreadsheet with some brief text under "Site specific rationale" and "Other considerations" but did not include any meaningful analysis of water and sediment quality issues associated with legacy contaminant remediation. No mention was made of the capping activities at the PVSS. Before the BRTF made their selection, public concerns were raised about the contamination in the proposed MPAs. Subsequently the Science Advisory Team (SAT) drafted recommendations regarding use of these two areas as MPAs. The SAT concluded that because of the potential disturbance from capping near the outfalls the areas of capping should be avoided in MPA selection. In general the SAT considered the southern portion of the Palos Verdes Peninsula as not the best choice for location of MPAs (SAT, 2009). The DEIR for the South Coast Study Region MLPA implementation concluded that the preferred alternative had no impact or less than significant impact on water quality (Table ES-1, p. ES-6; CDFG, 2010).

DISCUSSION

The following is my professional opinion based on: 1. Study of the published literature and available reports, 2. Personal experience with and knowledge of contaminants and marine life, specifically on the Palos Verdes Shelf, from original research there (e.g., Spies et al., 1987; Spies and Thomas, 1997) and 3. Serving on the Consulting Board of the Southern California Coastal Water Research Project (1986-1989). I have also had experience with the MPLA process in the Central Coast and North Central Coast study areas.

The general purpose of the MPAs is to provide refugia where ecosystems can recover from human impacts (e.g., harvesting and contaminant effects) and ecosystem productivity can be improved such that a complement of species with normal ages and sizes can develop and act also

as a source of recruits to surrounding areas without such protections. A key feature of successful MPAs is the development of populations of large adult fish especially larger females, which usually contribute many more eggs or young than smaller, younger females, and thereby enhance the chances of maintaining their populations. Many fish populations are also key to the survival of larger predators such as birds and marine mammals, as well as other fish species. Moreover, some fish are bottom feeders and depend on a healthy benthic environment for food.

The establishment of MPAs in California is an important step in marine conservation and will be watched closely by other states. It is important that California select those areas that will provide the best opportunities for success, both for the long-term health of California's marine ecosystems and fisheries and to set an example for marine conservation initiatives elsewhere.

Although the ecosystem of the Palos Verdes Shelf area has been severely degraded with loss of biodiversity and ecosystem function due to past effluent discharges, improvements in treatment have brought about a remarkable recovery of the marine ecosystem in recent decades, mainly by reduced organic loading and burial of contaminated sediments under cleaner material. However, the recovery is not complete, and injury could still exist that was not uncovered in past studies. The system remains in jeopardy from buried contaminants. Screening level criteria for human and wildlife health are still exceeded for DDTs on the Palos Verdes Shelf. In addition the California Office of Environmental Health Assessment recommends limiting fish consumption for a variety of species caught between Santa Monica Pier and Seal Beach Pier in southern California, an area that includes the Palos Verdes Peninsula (http://www.oehha.ca.gov/fish/so_cal/pdf_zip/SoCalFactsheet61809.pdf.)

There are still lingering biological effects evident, for example the benthic communities in the deeper areas of the Palos Verdes Shelf have a reduced biodiversity/ecosystem function, and about half the shelf has a slight degradation of the benthic response index (Fig. 2). Also, indications of reproductive dysfunction in kelp bass and white croaker due to DDTs and possibly other contaminants found in the studies of the 1990s have not been thoroughly investigated with regard to their full consequences or thresholds of effect for successful reproduction. None of the work done in the 1990s has been repeated to determine if such effects still exist, whether in these species or others that should have been investigated. In addition, the screening level criteria for DDTs in fish for protection of higher-level predators (e.g. birds and marine mammals) established by EPA still indicates potential risk to such predators from consuming contaminated fish.

Given the above review of the literature on the marine life on the Palos Verdes Shelf, the effects of effluent discharge and contamination by DDTs and PCBs, and proposed changes in management of this area, I provide the following expert opinion in response to the five questions posed in the introduction.

1. Does the presence of the PVSS pose a significant health risk to aquatic life including species likely to benefit from MPAs ?

In the DEIR (CDFG, 2010) Goal 2 is, "Help sustain, conserve and protect marine life populations, including those of economic value, and rebuild those that are depleted". Two

relevant objectives are identified for this goal: "Sustain or increase reproduction by species likely to benefit from MPAs, with emphasis on those species that are more likely to benefit from MPAs, and promote retention of large, mature individuals." (Objective 2.2), and "Sustain or increase reproduction by species likely to benefit from MPAs with emphasis on those species identified as more likely to benefit from MPAs through protection of breeding, spawning foraging, rearing or nursery areas or other areas where species congregate" (Objective 2.3). To place MPAs in areas with still substantial amounts of biomagnifying reproductive toxins exceeding screening levels established by the USEPA compromises achieving this goal and these objectives.

The management of PVSS over the next 5-10 years likely will result in several increased risks to marine organisms within and down current from the PVSS. The pattern of effluent particle distribution on the Palos Verdes Shelf leaves little doubt that prevailing northwesterly currents will carry sediment with associated contaminants suspended from the capping operations into the proposed Abalone Cove and Point Vicente MPAs affecting water and sediment quality to an unknown degree. The present concentrations of DDTs in the surface sediments on the Palos Verdes Shelf in relation to these proposed MPAs is shown in Fig. 3. Disturbance from the capping will occur periodically over 5 or more years as hundreds of tons of sediments are dumped on the bottom 147 to 230 feet below the surface of the ocean. The timing and extent of these side effects of capping depends on the effectiveness of the operations and the adaptive management decisions made by EPA, both of which are unknown. These operations will have several potential effects on organism health in the area. First, there is a risk to the food sources for many animals, particularly bottom-feeding fish. Specifically, benthic communities will be greatly diminished in the area of capping from being smothered under 40 or more centimeters of sediment and there will be a depression of productivity in a larger area than the area of capping, due to the effects on fish that may spend part of their time in the MPAs but feed over a wider area. It is also possible that a reduction of infauna due to capping activities will mean less biological material, such as invertebrate larvae, will be carried down current from the capping area into the MPAs than is now the case. Consequently, food for an anticipated increased population of fish within the proposed MPAs could be diminished. Second, marine life on the Palos Verdes Shelf remains contaminated with unacceptable levels of DDTs that could be affecting vital life functions, such as reproductive fitness. There is strong evidence from past studies that DDTs negatively affects fish reproduction and such effects could still be occurring. In addition there are risks to wildlife and humans from eating contaminated fish from the PVSS. So, it seems prudent to take a cautious approach to establishing MPAs where it is recognized that a massive amount of toxic contaminants remain buried in sediments. Further, if these MPAs succeed in attracting many kelp bass, one of the species proposed to be helped by MPAs because of the limited movements of adults, then the proportion of the population exposed to DDT will actually shift upwards and further increase the risk to the health of the population. Third, additional particulate matter in water might increase water turbidity and add to the already turbid conditions of the southern Palos Verdes Shelf due to slumping of sediments in the Portuguese Bend area into the ocean. Kelp in the area of Palos Verdes, including the two proposed MPAs, has been under stress from this turbidity with documented diminished health, and the capping operations will only increase the stress on these plants that support an important nearshore habitat in coastal southern California.

2. Does the presence of the PVSS likely reduce ecosystem productivity and function within the proposed Palos Verdes MPAs?

One of the main specific goals for the South Coast Study Region was to "Protect and maintain species diversity and abundance consistent with natural fluctuations, including areas of high native species diversity" (Goal 1). Two of the main objectives under this goal were to ""Protect biodiversity, natural trophic structure and food webs in representative habitats" (Objective 1.4) and to "Promote recovery of natural communities from disturbances, both natural and human-induced, including water quality" (Objective 1.5). The location of the MPAs within a superfund site puts achievement of these goals and objectives at risk. In practical terms reduced abundances of marine organisms will result in lower productivity in the ecosystem and reduced species diversity will result in reduced ecosystem function.

So what about ecosystem function? If the diversity of the fauna is impaired one could infer that "ecosystem function" could be impaired. For example, if deep burrowing deposit feeders, such as maldanid polychaetes (which feed below the surface on sediment and expel processed sediment on the ocean floor), are missing from the benthos of an organically enriched area because of the presence of reducing chemical conditions (e.g., hydrogen sulfide and ammonia), then one can infer that a vital ecosystem function is lacking. The BRI is an example of an indirect measure of "ecosystem function" as it reflects the deviation of the infaunal community from a fully diverse state (i.e. the reference condition). Because the BRI reflects loss of diversity in the benthos as late as 2009, it is likely that some ecosystem function has been lost in the deeper parts of the two proposed MPAs (see Figs. 1 and 2).

3. Will the ongoing monitoring and proposed remediation activities within the PVSS negatively impact ecosystem productivity and function within the proposed Palos Verdes MPAs?

The dumping of hundreds of tons of sand on the ocean bottom at a depth of 147-230 feet during remediation of the PVSS will likely resuspend sediments with legacy DDTs and other contaminants. This suspended material will then will be carried into the adjacent MPAs. This activity will go on for several years and increase the risk of reduced productivity of marine life on the shelf in and around the two proposed MPAs. There is already reduced biodiversity in bottom communities in the area and the capping operations will increase the chances of further reductions in diversity in the next decade, certainly in parts of the PVSS and quite possibly including the two proposed MPAs.

Reducing benthic productivity in the area of the capping could well effect down current areas including the proposed MPAs on the Palos Verdes Shelf, reducing ecosystem productivity in two ways. First, as mentioned above, benthic productivity of the shelf will be reduced from the smothering effects of the capping itself. Second, decreased health of individuals from contaminant exposure, such as reproductive dysfunction caused by DDT, reduces productivity in the ecosystem.

In my opinion there is an increased risk of reduced productivity in the two proposed MPAs on the Palos Verdes Shelf as a result of capping activities. There is no doubt that there is reduced biodiversity there now and there will likely be an increased risk of biodiversity loss, hence a reduction in ecosystem function, in the future from the PVSS management.

4. Was the South Coast Study Region (SCSR) Science Advisory Team's (SAT) guidance regarding water quality and the PVSS adequate to ensure that the PVSS would not negatively impact ecosystem productivity and function of the MPAs placed in the Palos Verdes region?

The SAT correctly identified the risks to marine life from the legacy contaminants and the capping operations at the PVSS, but in my opinion did not fully consider the potential down-current effects of these legacy contaminants. In particular, EPA has found that the water quality criterion for DDT is being exceeded on the Palos Verdes Shelf and that there is continuing elevated risk to marine birds and mammals from DDTs. These risks are not limited to the capping area and the SAT guidance was not sufficiently strong on negative effects in adjacent areas. The SAT did not fully consider or explain increased risk to marine life of placing the proposed Abalone cove and Point Vicente MPAs in the areas designated by the BRTF.

5. Was the document "MPA Options for Consideration and Review by the BRT: Description of Palos Verdes MPA Options" comprehensive and accurate in its characterizations of the PVSS and potential negative impacts to ecosystem productivity and function associated with the proposed Abalone Cove and Point Vicente MPAs?

This document mentions that the proposed PVSS remediation as being adjacent to the proposed MPAs for the Palos Verdes Shelf, but does not discuss the risks or potential negative impacts of locating the MPAs in that location. The only activity mentioned in the MPAs is "collection for monitoring"; capping operations are not mentioned.

The history of marine contamination and its effects suggest that we should err on the side of caution in our management of ocean ecosystems. The exact future conditions for the Palos Verdes Shelf cannot be known and there are identified potential and likely unknown threats to marine life from remediation of sediments in the PVSS. Therefore the location of these two MPAs must be reconsidered.

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Figure Captions:

Fig. 1. The Palos Verdes Peninsula and shelf showing the BRTF-nominated MPAs (blue, red), the outline of the Palos Verdes Superfund Site (black line), Cell 8C (dark green)(to be capped under EPA's preferred alternative, 3) and cells 7C and 6C (light green) (slated for capping under alternative 4). Lines radiating from near White's Point are the 4 wastewater outfalls.

Fig. 2. The Benthic Response Index categories for infauna of the Palos Verdes Shelf in 2009 (after LACSD, 2010). Lines radiating from near White's Point are the 4 wastewater outfalls.

Fig. 3. The Palos Verdes Peninsula and Shelf showing the BRTF-nominated MPAs (outlined in dashed lines), the Palos Verdes Superfund Site (outlined in a solid black line), and the sediment concentrations of DDT.

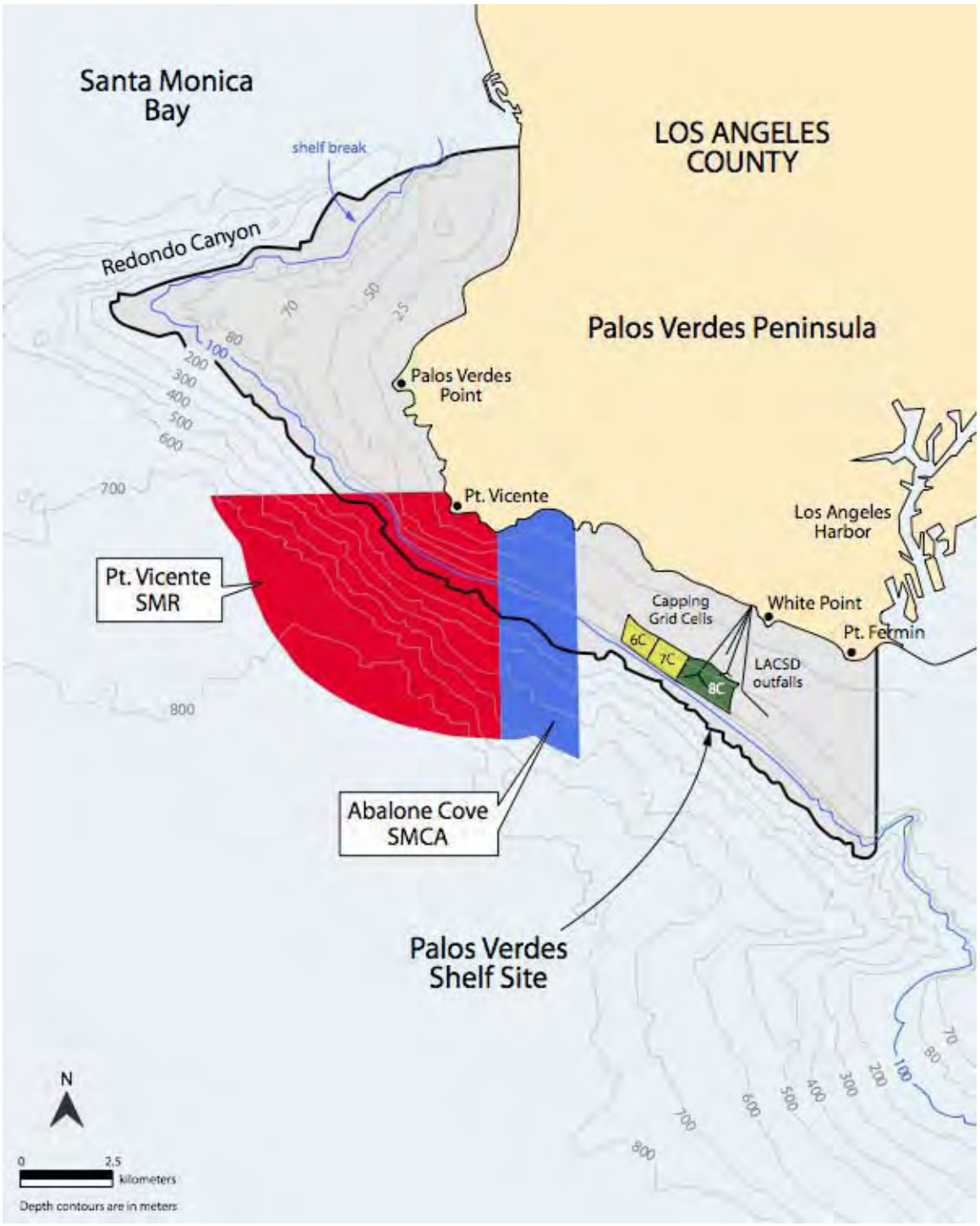
Santa Monica Bay
shelf break
Redondo Canyon
LOS ANGELES COUNTY
Palos Verdes Peninsula
Palos Verdes Point
Pt. Vicente
Los Angeles Harbor
Pt. Vicente SMR
Capping Grid Cells
6C
7C
8C
White Point
Pt. Fermin
LACSD outfalls
Abalone Cove SMCA
Palos Verdes Shelf Site
N
0
2.5
kilometers
Depth contours are in meters

Fig. 1

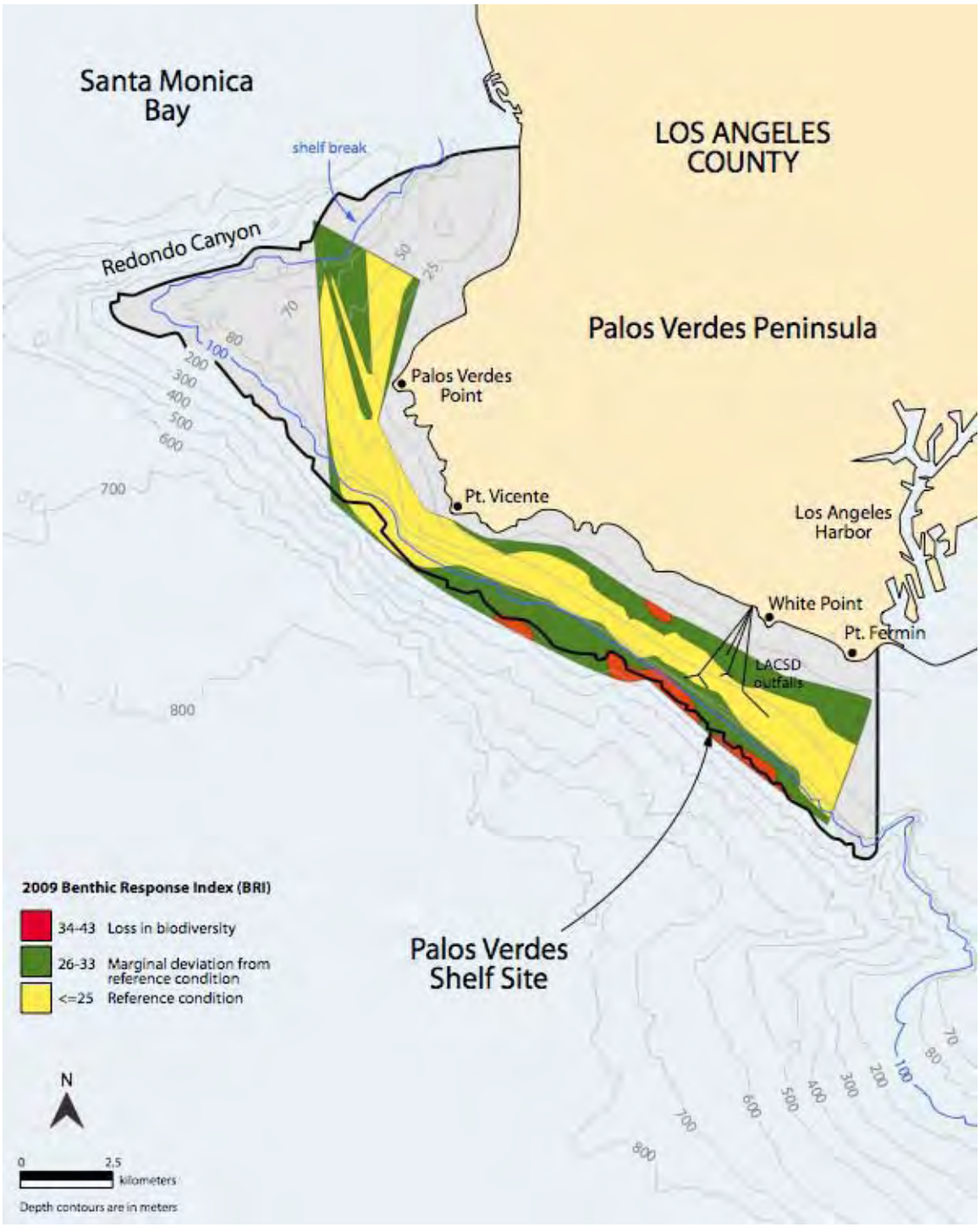
Santa Monica Bay
shelf break
LOS ANGELES COUNTY
Redondo Canyon
Palos Verdes Peninsula
Palos Verdes Point
Pt. Vicente
Los Angeles Harbor
White Point
Pt. Fermin
LACSD outfalls
Palos Verdes Shelf Site
2009 Benthic Response Index (BRI)
34-43 Loss in biodiversity
26-33 Marginal deviation from reference condition
<=25 Reference condition
N
0
2.5
kilometers
Depth contours are in meters

Fig. 2

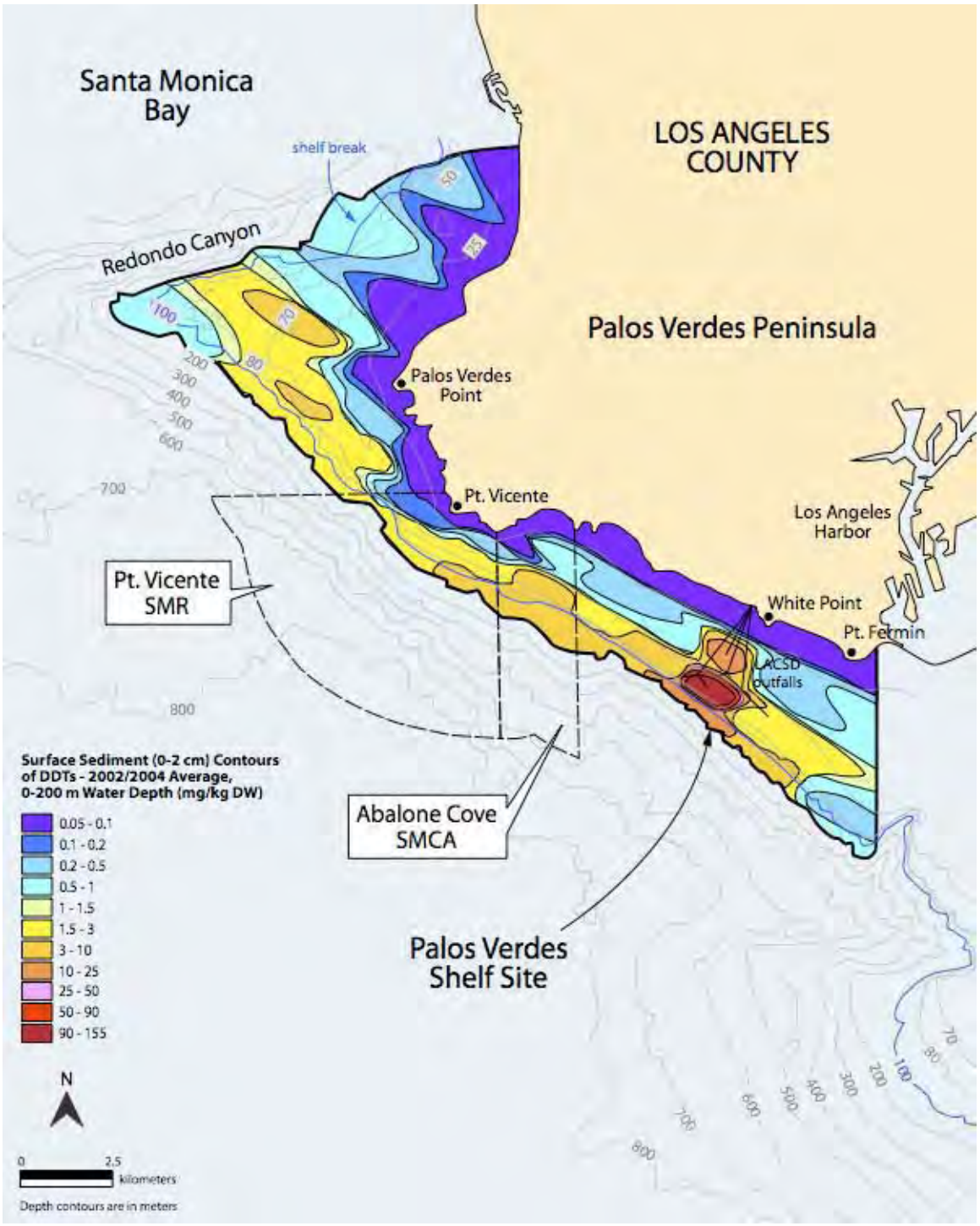
Santa Monica Bay
LOS ANGELES COUNTY
shelf break
Redondo Canyon
Palos Verdes Peninsula
Palos Verdes Point
Pt. Vicente
Los Angeles Harbor
Pt. Vicente SMR
White Point
Pt. Fermin
LACSD outfalls
Abalone Cove SMCA
Palos Verdes Shelf Site
Surface Sediment (0-2 cm) Contours of DDTs - 2002/2004 Average, 0-200 m Water Depth (mg/kg DW)
0.05 - 0.1
0.1 - 0.2
0.2 - 0.5
0.5 - 1
1 - 1.5
1.5 - 3
3 - 10
10 - 25
25 - 50
50 - 90
90 - 155
N
0
2.5
kilometers
Depth contours are in meters

Fig. 3

Responses to Comment Letter A92_vi

This comment letter poses the following questions, addressed below:

Responses to Comment A92_vi-1: *Does the presence of the Palos Verdes Shelf Superfund site pose a significant heath risk to aquatic life, including those species likely to benefit from MPAs living within the proposed Palos Verdes MPAs?*

Though this question and its answers are relevant to a determination of the wisdom of placing an MPA near the Palos Verdes Shelf Superfund site, for CEQA purposes the existing environmental risks to the proposed Project are not subject to CEQA review where the proposed Project does not substantially alter or increase the risk to the environment from this existing condition**.** The commission does not believe that placement of MPAs along the Palos Verdes headland would produce significant adverse physical environmental effects that are not offset by the functioning of the network as a whole. See also responses to comments A92_i-6 and A92_iv-14.

Responses to Comment A92_vi-2: *Does the presence of the Palos Verdes Shelf Superfund site likely reduce ecosystem productivity and function within the proposed Palos Verdes MPAs?*

Information relevant to ecosystem productivity and function was assessed in the design process leading up to the environmental review (described in Section 2.0 of this Draft EIR). Impacts of the existing environment on the proposed Project are not subject to CEQA review.

Responses to Comment A92_vi-3: *Will the ongoing monitoring and proposed remediation activities within the Palos Verdes Shelf Superfund site negatively impact ecosystem productivity and function within the proposed Palos Verdes MPAs?*

Though this comment is relevant to the issue of MPA network design and function, impacts of the existing environment on the proposed Project are not subject to CEQA review.

Responses to Comment A92_vi-4: *Was the South Coast Study Region (SCSR) Science Advisory Team's (SAT) guidance regarding water quality and the Palos Verdes Shelf Superfund site adequate to ensure that the Palos Verdes Shelf Superfund site would not negatively impact ecosystem productivity and function of MPAs placed in the Palos Verdes region?*

Extensive review of the Palos Verdes Shelf Superfund site was conducted prior to the placement of MPAs in the vicinity of the Palos Verdes Shelf Superfund site. The placement of MPAs on the Palos Verdes headland was thought essential for larval conductivity throughout the MPA network. Again, though this comment is relevant to the issue of MPA

network design and function, impacts of the existing environment on the proposed Project are not subject to CEQA review.

Responses to Comment A92_vi-5: *Was the document "MPA Options for Consideration and Review by BRTF: Description of Palos Verdes MPA Options" comprehensive and accurate in its characterization of the Palos Verdes Shelf Superfund site and potential negative impacts to ecosystem productivity and function associated with the proposed Abalone Cove and Point Vicente MPAs?*

This comment questions the scientific information used by the SAT, Regional Stakeholder Group, and BRTF in the process that led to the designation of MPAs on the Palos Verdes headland. The deliberation and decisions made by these groups on how to best achieve the goals and objectives of the MLPA were not reevaluated in this Draft EIR. See also Master Response 2.

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1933 Cliff Drive, Suite 9
Santa Barbara, California 93109

Dear Ms. Vojkovich:

REVIEW COMMENTS
DRAFT ENVIRONMENTAL IMPACT REPORT REGARDING MARINE PROTECTED AREAS IN THE CALIFORNIA SOUTH COAST STUDY REGION PURSUANT TO THE MARINE LIFE PROTECTION ACT (STATE CLEARINGHOUSE NO. 2010071012)

This letter is transmitted in response to your Notice of Availability (NOA), dated August 18, 2010, for a Draft Environmental Impact Report (Draft EIR), for the proposed adoption of regulatory measures in Marine Protected Areas (MPA), in the South Coast Study Region (SCSR), pursuant to the Marine Life Protection Act (MLPA).

The SCSR is defined as State waters between Point Conception (Santa Barbara County) and the U.S./Mexico border (San Diego County), and includes approximately 72 miles of Los Angeles County coastline. County waters are patrolled, in part, by the Marina del Rey Station, Avalon Station and Avalon/Isthmus Sub-Station of the Los Angeles County Sheriff's Department (LASD). As such, LASD's review comments on the NOA for the Draft EIR are provided by Lieutenant Jeff Donahue of the Avalon Station, and Captain Oceal Victory of the Marina del Rey Station (see attached correspondence, dated August 5, 2010, and August 23, 2010, respectively).

Additional review comments from LASD on the NOA for the Draft EIR are provided by Captain Joseph H. Stephen, Jr. of the Malibu/Lost Hills Station, and Captain Ronene M. Anada of the Lomita Station (see attached correspondence, dated July 19, 2010, and July 21, 2010, respectively).

In summary, the Malibu/Lost Hills and Lomita Stations do not anticipate any impacts to their current operations following the adoption and implementation of the proposed project. Although these Stations do not have any further comment at this time, they reserve the right to address this matter in subsequent reviews of the proposed project. B01_i-1

Conversely, the Avalon and Marina del Rey Stations express concerns over water-borne law enforcement services to MPAs within their patrol areas. The Stations note that multiple MPAs fall within their patrol areas, and are concerned with the Department of Fish and Game's (DFG) ability to patrol these areas in order to enforce the restrictions that represent the fundamental basis of the proposed project. Absent DFG's enforcement of MPA boundary restrictions, the Stations are concerned that this responsibility would fall upon their already-stretched law enforcement resources. This, in turn, would hamper their ability to continue to provide an adequate level of service to the remainder of their patrol areas, and manage other responsibilities, including homeland security, for a target-rich area such as Los Angeles. Lastly, the Stations are concerned with potential restrictions to emergency access within portions of the SCSR. As such, the Stations recommend that the adoption and implementation of the proposed project be accompanied by a timely and comparable increase in law enforcement assets. B01_i-2

The Stations have no further comment at this time, but reserve the right to address these and other matters in subsequent reviews of the proposed project.

Thank you for including LASD in the environmental review process for the proposed project. Should you have any questions of LASD on this matter, please contact Mr. Lester Miyoshi, of my staff, at (310) 300-3012, and refer to Facilities Planning Tracking No. 10-050. Mr. Miyoshi may also be contacted via e-mail, at lhmiyosh@lasd.org.

Sincerely,

LEROY D. BACA, SHERIFF

Gary T. K. Tse, Director
Facilities Planning Bureau

Responses to Comment Letter B01_i

Response to Comment B01_i-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment B01_i-2: Regarding concerns about enforcement assets, please see response to Comment A13-31 and Master Response 9. Regarding concerns about potential restrictions to emergency access, please see response A72_ii-1. *No changes to the Draft EIR are required.*

Letter B01_ii

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: AUGUST 05, 2010

FROM: JEFF DONAHUE, LIEUTENANT
AVALON STATION

TO: GARY T.K. TSE, DIRECTOR
FACILITIES PLANNING BUREAU

SUBJECT: **AVALON SHERIFF'S STATION COMMENTS TO THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME'S DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) REGARDING MARINE PROTECTED AREAS IN THE CALIFORNIA SOUTH COAST STUDY REGION (LASD-FPB TRACKING 10-050)**

This memo is in response to the State of California Department of Fish an Game's Draft Environmental Impact Report, (DEIR) regarding changes to the Southern California Marine Protected Areas. Upon review of the listed areas around Santa Catalina Island, four are areas that have already been restricted or closed. Five are new closures.

Overall, the Department of Fish and Game, (DFG) are the primary enforcement entity for Fish and Game violations in these areas, but with the lack of resources due to budget cuts over the last few years, the DFG is not able to give the attention needed. Due to this, the majority of enforcement in these areas will be the responsibility of Avalon Station and our Isthmus sub-station if any enforcement is to be done. Adding five more MPA's will impact our enforcement of our normal assigned areas. B01_ii-1

The Isthmus Sheriff's Sub-Station is only manned by two deputies who are responsible for patroling 88% of Santa Catalina Island and are the only boat operators for Avalon Station on the island. These Deputies split the week of duty, which puts only one of them on duty at a time during most of the week. Three of the existing MPA's are part of their patrol area. With the addition of the new MPA's, the Isthmus deputies will be responsible for seven of the MPA's. All seven areas the Isthmus deputies would be responsible for, are primarily accessible via boat. Avalon deputies patrolling the City of Avalon would be responsible for one existing MPA with Lover's Cove and would have one new MPA added with Casino Point. Avalon Station also has one deputy on duty all the time and is responsible for fielding all calls for service in the City of Avalon.

These additional MPA's will strain the already stretched enforcement resources on Santa Catalina Island, unless the state is able to provide their own enforcement.

JSD:bel

RECEIVED
VIA E-MAIL
8/5/10

Responses to Comment Letter B01_ii

Response to Comment B01_ii-1: Comment noted. See Response to Comment B01_i-2. *No changes to the Draft EIR are required.*

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

Leroy D. Baca, Sheriff

August 23, 2010

RECEIVED
AUG 26 2010
#500
FACILITIES PLANNING BUREAU
ADMINISTRATIVE SERVICES DIVISION

Gary T.K. Tse, Director
Facilities Planning Bureau
Los Angeles County Sheriff's Department
1000 South Fremont Avenue
Building A-9 East, 5th Floor, North
Alhambra, California 91803

Dear Director Tse:

REQUEST FOR COMMENTS ON THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME'S PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)REGARDING MARINE PROTECTED AREAS IN CALIFORNIA SOUTH COAST STUDY REGION (LASD - FPB TRACKING 10- 050)

The following is a response to a July 16, 2010, request for information by the Commission regarding the Fish and Game (DEIR) for the Marine Protected Areas (MPA in state waters within the Southern California Coast Region from Santa Barbara County to San Diego County.

Marina del Rey Sheriff Station

Marine Patrol Unit - The patrol coverage area of the MDR Marine Unit is both wide and varied. Marina del Rey Station is the only 24 hour law enforcement patrolling the waters of Los Angeles County, (72 miles of Los Angeles County Coastline). The primary patrol area is Marina del Rey Harbor and the waters of Santa Monica Bay, but we are often called for assistance in Malibu and Catalina Island. Marina del Rey itself is bordered by multiple critical facilities (LAX and Department of Water and Power / Water Treatment Plant, and Santa Monica Pier).

The Los Angeles International Airport continues to be a major target for terrorists. Although significant contingencies and precautions are taken on land, the waterside remains dangerously vulnerable. Commercial airliners take-off over the ocean every few minutes, with some of their runways ending within a ½ mile of the beach. These planes are low on take-off and even lower when landing at night. Homeland Security is one of our most important responsibilities related to our Marine Operation's Unit.

Marina del Rey Station is unable to comment at this time, due to lack of, or limited information regarding the full extent of the impact of this project of Public Services. However, once additional information becomes available, we reserved the right to review the project information for possible public safety concerns; such as, travel restrictions that would inhibit law enforcement personnel's ability to respond to emergencies, and/or, conduct routine patrol of the marina and the surrounding harbor areas. B01_iii-1

If you have any additional questions, please contact my Operations Lieutenant, Reginald Gautt, at (310) 482-6000.

Sincerely,

LEROY D. BACA, SHERIFF

Oceal Victory, Captain
Unit Commander
Marina del Rey Station

Responses to Comment Letter B01_iii

Response to Comment B01_iii-1: Regarding concerns about enforcement, see response to Comment A13-31 and Master Response 9. The Commission disagrees with the commenter's assertion that travel restrictions would inhibit law enforcement personnel's ability to respond to emergencies and/or conduct routine patrols, as such travel restrictions are not proposed. For more information regarding concerns about potential restrictions to emergency access, please see response to Comment A80_ii-5. *No changes to the Draft EIR are required.*

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

DATE: July 19, 2010

OFFICE CORRESPONDENCE

FROM: JOSEPH H. STEPHEN JR., CAPTAIN
MALIBU/LOST HILLS STATION

TO: GARY T. K. TSE, DIRECTOR
FACILITIES PLANNING BUREAU

SUBJECT: **STATE DEPARTMENT OF FISH AND GAME DRAFT ENVIRONMENTAL IMPACT REPORT FOR MARINE PROTECTED AREAS IN CALIFORNIA SOUTH COAST STUDY REGION**

In response to your memo dated July 13, 2010 regarding to the subject mentioned above. Our Traffic Sergeant has reviewed the most recent revision of the Environmental Impact Report and concurs with the modifications. The proposed project would thus not result in significant unavoidable impacts. B01_iv-1

Should you have any additional questions regarding this matter, please contact Sergeant Philip D. Brooks at (818) 878-5555.

JHS:pb

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JUL 26 2010
#464
FACILITIES PLANNING BUREAU
ADMINISTRATIVE SERVICES DIVISION

ng Sub: Fire
: Gary Gaher

Responses to Comment Letter B01_iv

Response to Comment B01_iv-1: Comment noted. *No changes to the Draft EIR are required.*

761551N25A - SH - AD - 32A (2/72)

Letter B01_v

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: July 21, 2010
FILE NO.

FROM: RONENE M. ANADA, CAPTAIN
LOMITA STATION

TO: GARY TSE, DIRECTOR
FACILITIES PLANNING BUREAU

SUBJECT: Draft Environmental Impact Report (DEIR) for Marine Protected Areas

Lomita Sheriff's Station provides law enforcement services for the city of Rancho Palos Verdes, which includes shoreline in the proposed Marine Protected Areas covered in the Draft Environmental Impact Report (DEIR) from the California Department of Fish and Game. After careful review of the proposed changes and/or improvements, we do not anticipate these changes will have any impact on our current operation in any significant way. B01_v-1

If you should have further questions, please contact Sergeant David Rozas at (310) 539-1661 or dtrozas@lasd.org.

RECEIVED
VIA E-MAIL
8/12/10

Responses to Comment Letter B01_v

Response to Comment B01_v-1: Comment noted. *No changes to the Draft EIR are required.*

Letter B02

SANDAG

401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 699-1900
Fax (619) 699-1905
www.sandag.org

September 23, 2010

3330300

Mr. Thomas Napoli
Staff Environmental Scientist
Marine Region
4665 Lampson Avenue, Suite C
Los Alamitos, CA 90720

MEMBER AGENCIES
Cities of
Carlsbad
Chula Vista
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Encinitas
Escondido
Imperial Beach
La Mesa
Lemon Grove
National City
Oceanside
Poway
San Diego
San Marcos
Santee
Solana Beach
Vista
and
County of San Diego

ADVISORY MEMBERS
Imperial County
California Department of Transportation
Metropolitan Transit System
North County Transit District
United States Department of Defense
San Diego Unified Port District
San Diego County Water Authority
Southern California Tribal Chairmen's Association
Mexico

Dear Mr. Napoli:

SUBJECT: Time Extension Request to Review the Draft Environmental Impact Report on Marine Protected Areas in the California South Coast Study Region

The San Diego Association of Governments (SANDAG) respectfully requests a 30-day time extension of the public comment period to review the Draft Environmental Impact Report on Marine Protected areas in the California South Coast Study region. Due to the size of the document and the broad scope of issues discussed, more time is needed to review and prepare comments. B02-1

Please respond in writing to this request and confirm the revised comment deadline. If you have any questions or concerns regarding SANDAG's request, please contact me at (619) 699-1943 or sba@sandag.org.

Sincerely,

for SUSAN BALDWIN
Senior Regional Planner

SBA/RSA/cd

Responses to Comment Letter B02

Response to Comment B02-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission *No changes to the Draft EIR are required.*

Letter B04

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

Street Address:
18700 Ward Street
Fountain Valley, California 92708

Mailing Address:
P.O. Box 20895
Fountain Valley, CA 92728-0895

(714) 963-3058
Fax: (714) 964-9389
www.mwdoc.com

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City of Buena Park
East Orange County Water District
El Toro Water District
Emerald Bay Service District
City of Fountain Valley
City of Garden Grove
Golden State Water Co.
City of Huntington Beach
Irvine Ranch Water District
Laguna Beach County Water District
City of La Habra
City of La Palma
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City of Newport Beach
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City of San Juan Capistrano
Santa Margarita Water District
City of Seal Beach
Serrano Water District
South Coast Water District
Trabuco Canyon Water District
City of Tustin
City of Westminster
Yorba Linda Water District

September 24, 2010

Transmitted via US Postal Service and via email to MLPAComments@dfg.ca.gov
tnapoli@dfg.ca.gov

MLPA South Coast CEQA
California Department of Fish and Game
Attn: Mr. Thomas Napoli
4665 Lampson, Suite C
Los Alamitos, CA 90720

RE: Request for a 45-Day Time Extension to the Review Period for the Draft Environmental Impact Report – MLPA South Coast Region

Dear Mr. Napoli:

On behalf of Municipal Water District of Orange County and the South Orange Coastal Ocean Desalination (SOCOD) Project and its five Project Participating Agencies (City of San Clemente, Laguna Beach, South Coast Water District, City of San Juan Capistrano, and Moulton Niguel Water District) we are requesting a 45-day extension for the review period for the DEIR.

Additional time is requested to allow sufficient time for analysis and comment The DEIR fails to recognize the SOCOD Project existing slant well and pilot facilities, as well as the existing SOCWA wastewater outfall, as pointed out in our comment letter to the NOP Scoping process, dated Aug 3, 2010. B04-1

The SOCOD Project enjoys wide environmental community and regulatory/resource agency support for its use of slant wells avoid impact on the marine environment, but the consequence of the DEIR and proposed Title 14 regulations would prohibit this innovative and environmentally responsible project. Adequate review time should be provided and is requested.

Sincerely,

Richard B. Bell, PE
Manager, Water Resources and Facility Planning

Cc: Tom Rosales, SOCWA
Ken Kramer and Dave Pryor, CDPR

Responses to Comment Letter B04

Response to Comment B04-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Unified Port
of San Diego

3165 Pacific Highway, San Diego, CA 92
P.O. Box 120488, San Diego, CA 92112-0
619.686.6200 • www.portofsandiego

October 8, 2010

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE MARINE LIFE PROTECTION ACT SOUTH COAST STUDY REGION MARINE PROTECTED AREAS PROJECT

Dear Sir or Madam:

Thank you for the opportunity to comment upon the Draft Environmental Impact Report (EIR) for the Marine Life Protection Act South Coast Study Region Marine Protected Areas (MPAs) Project. Unified Port of San Diego (District) staff has reviewed the Draft EIR dated August 2010, and provide the following comments:

The District has been managing the natural resources in the Bay with great success for a number of years. The abundance and diversity of eelgrass, fish and bird populations have increased over time, therefore, eliminating the need to add any additional protection.

The District is currently engaged in Grant partnership with the California Coastal Conservancy and local commercial fishermen in developing a commercial fishing revitalization project. The Tidelands Trust Act and the Coastal Act requires the District to promote commerce, navigation, fisheries, and recreation for all the people of California. Our objective is to preserve and encourage the economic viability of commercial fisheries in the San Diego region by developing and improving facilities that will support the needs of the commercial fishermen. Implementation of the commercial fishing revitalization project will also provide public access, environmental stewardship, and commercial benefit to the region.

District staff believes the establishment of MPAs may adversely affect the economies of both our local commercial fisheries and our recreational sportfishing industry. The MLPA process must balance the environmental interests with the socioeconomic needs of our region to provide for a successful plan for both the use and protection of our precious coastal resources and should not provide an unnecessary additional layer of regulatory oversight. B06-1

Thank you for your consideration on this vitally important issue for the region.

If you have any questions or need additional information from the District, please contact me at (619) 686-6468, or Associate Redevelopment Planner Candice D. Magnus at (619) 686-6583.

Sincerely,

John W. Hemler
Director of Land Use Planning

cc: Wayne K. Darbeau

Responses to Comment Letter B06

Response to Comment B06-1: Comment noted. See Master Response 3. *No changes to the Draft EIR are required.*

San Dieguito River Valley
Regional Open Space Park
14103 Highland Valley Road
Escondido, CA 92025
(858) 674-2270 Fax (858) 674-2280
www.sdrp.org

Letter B07

JOINT POWERS AUTHORITY
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Becky Bartling, Ex Officio
22nd District Agricultural Assoc.

Dick Bobertz
Executive Director

September 29, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Subject: Comments on MLPA Initiative South Coast Draft EIR

The San Dieguito River Park Joint Powers Authority (JPA) Board of Directors considered the MLPA Initiative South Coast Draft EIR at their meeting of September 17, 2010. The JPA is concerned that the proposed Integrated Preferred Alternative not only avoids any MPA designation for the San Dieguito Lagoon but completely eliminates the existing MPA designation as a state marine park. The JPA has always supported marine protection of the San Dieguito Lagoon under the MLPA and was involved in the MLPA process (see attached letter dated November 24, 2009). Sometime between October 2009 and December 2009, when the MLPA Initiative's blue ribbon task force and stakeholders group were still considering a state marine reserve designation for the San Dieguito Lagoon, the "integrated preferred alternative" was selected, which completely removed MLPA status at the San Dieguito Lagoon. The JPA was not aware that this decision was made and is disappointed that no explanation is given as to the rationale for this decision. B07-1

As you know, the San Dieguito Lagoon is currently undergoing an $86 million wetland restoration mitigation project by Southern California Edison that will establish 150 new acres of tidal wetlands and preserve 350 additional acres as protected wildlife habitat. In our November 2009 letter we expressed concern about SCE's ability to finish the wetland restoration project as permitted and conduct maintenance operations including periodic maintenance dredging over the next 40 years, if designated a state marine reserve. Southern California Edison and the City of Del Mar expressed these same concerns. However, it appears that MPAs have been recommended for other San Diego coastal lagoons that have undergone similar restoration efforts with allowances for similar dredging and maintenance obligations (San Elijo Lagoon for example). Most California lagoons/estuaries, in fact, have and will continue to undergo some level of restoration in

the future. The MLPA process is flawed if it does not afford protection to our coastal lagoons while allowing restoration efforts to continue. B07-2

The Draft EIR fails to address several aspects of the proposed project and its affect on the San Dieguito Lagoon including:

- The rationale for eliminating marine protection area status for the entire San Dieguito Lagoon. B07-3
- The effect of removing the current MPA status of a state marine park. The Draft EIR does not document the impact of eliminating commercial and recreational fishing restrictions at the lagoon.
- How the MLPA designations would be implemented particularly in coastal areas that are undergoing restoration.

In addition, the project alternatives in the DEIR expand the San Dieguito Lagoon MPA to a state marine reserve, but no explanation or analysis is provided that compares the impacts of the preferred project to the alternatives. B07-4 The proposed project strips the San Dieguito Lagoon of its existing state marine protection status yet fails to address the impacts of such a measure. The Draft EIR is therefore inadequate and should be revised to include this information. B07-3

Thank you for considering our comments. We look forward to communication with your staff.

Sincerely,

Richard Earnest
JPA Board Chair

Cc: Senator Christine Kehoe, 39th District
Assemblymember Mark Wyland, 74th District
David Asti, Southern California Edison
Patrick Tennant, Southern California Edison

Attachments

San Dieguito River Valley
Regional Open Space Park
14103 Highland Valley Road
Escondido, CA 92025
(858) 674-2270 Fax (858) 674-2280
www.sdrp.org

JOINT POWERS AUTHORITY
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Poway City Council

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Sherri Lightner
San Diego City Council

Carl DeMaio
San Diego City Council

Dianne Jacob
Supervisor, County of San Diego

Dave Roberts
Solana Beach City Council

Dr. Philip Pryde
Citizens Advisory Committee

Becky Bartling, Ex Officio
22nd District Agricultural Assoc.

Dick Bobertz
Executive Director

November 24, 2009

Ken Wiseman, Executive Director, MLPA Initiative
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Re: **Letter of Support for State Marine Reserve or State Marine Conservation Area for the San Dieguito Lagoon**

Dear Mr. Wiseman:

The San Dieguito River Park Joint Powers Authority was very surprised that the SMR designation for the San Dieguito Lagoon that was supported at the local level and proposed during the entire MLPA process was dropped at the last minute resulting in no recommended designation change. B07-1

Over the last twenty years the San Dieguito River Park JPA has been working to restore the San Dieguito Lagoon, associated wetlands and upland habitat in an area of over 700 acres now owned by the River Park and partners. Full restoration to create a functioning ecological habitat that will provide for tidal flushing, open water, wetlands, grassland and other upland habitat is now almost complete. B07-5

Our support of the SMR designation depended on the continued ability to carry out and potentially expand the San Dieguito Lagoon Restoration Project including the Coastal Commission approved, periodic dredging of the San Dieguito River mouth to maintain sufficient tidal flow necessary for habitat health. Sand from that dredging program is deposited on the Del Mar Beach in coordination with the SANDAG/City of Del Mar Beach Replenishment Program.

We had been assured during the MLPA process that would be the case. However, if there are doubts that those previous assurances cannot be guaranteed we request designation as a SMCA to provide support for ongoing and future conservation efforts in the San Dieguito Lagoon.

Sincerely,

Dick Bobertz

Dick Bobertz
Executive Director

Responses to Comment Letter B07

Response to Comment B07-1: Comment noted. San Dieguito Lagoon SMR is proposed under alternatives 1, 2, and 3, and as the commenter correctly indicated, not under the IPA. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010. *No changes to the Draft EIR are required.*

Response to Comment B07-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment B07-3: The comment claims that the Draft EIR failed to disclose the rationale for eliminating the existing San Dieguito SMP; the effects of eliminating recreational and commercial fishing restrictions at this location; and the way in which MLPA designations would be implemented, particularly in coastal areas undergoing restoration. As stated in Section 3.2 of the Draft EIR, the objective of the proposed Project is to achieve the goals of the MLPA, including protection of marine life and ensuring that the State's MPAs are designed and managed as a network.

The San Dieguito SMP is proposed for removal due to concerns related to the existing Ecological Reserve at this location. Regarding the impacts of removing the SMP designation from San Dieguito Lagoon, the Commission notes that the regulatory changes under consideration were developed in an effort to create an improved, cohesive network of MPAs that would protect, restore, and rebuild marine ecosystems. The Draft EIR evaluated the proposed regulations as a network, considering the overall effect of the MPA designations to be added, modified, and vacated. Except where necessitated by unique circumstances, effects of individual pieces of the proposed regulations pertaining to specific MPAs were not evaluated on a stand-alone basis. While removing the existing SMP designation from San Dieguito Lagoon would increase the extent of allowed consumptive uses in this area, information considered by the Commission during development of the IPA, including the Science Advisory Team's evaluations of the MPA proposals, indicated that inclusion of an MPA at San Dieguito Lagoon was not needed to achieve the goals of the MLPA. Effects of the regulatory changes on this area would be lessened by the fact that the San Dieguito Lagoon is also designated as an Ecological Reserve under regulations at 14 CCR Part 630(b)(105), and the protections extended by those regulations would remain effective if the IPA is adopted.

Regarding implementation of the proposed MPA designations in locations where coastal restoration is occurring, the Department disagrees with the assertion that the Draft EIR did not address this topic. As described throughout the proposed MPA descriptions in Section 3.5 of the Draft EIR, restoration activities would be allowed within many of the proposed MPAs,

through explicit regulatory language authorizing these activities. Additionally, where restoration activities are not specifically allowed by the proposed regulations, take authorization for these activities could be granted by the Department on a case-by-case basis.

The Commission disagrees with the commenter's assertion that the Draft EIR fails to address how MPA designations would be implemented in coastal areas undergoing restoration. Text throughout sec. 3 describing the Proposed Project explains which MPAs would allow for restoration activities.

Response to Comment B07-4: The comment states that the alternatives evaluated in the Draft EIR would expand the San Dieguito Lagoon SMP into an SMR, but that the impacts of this change are not compared to impacts of the IPA. The commenter's understanding of the proposed regulatory changes is correct; this existing SMP would be vacated under the IPA, but would be geographically expanded and designated as an SMR under Alternatives 1, 2, and 3. As described in Response B07-3 above, the Draft EIR evaluated the proposed IPA and alternatives as complete networks, rather than as individual parts. Thus, while the various regulatory possibilities at San Dieguito Lagoon were not explicitly compared, the Draft EIR compared the environmental impacts of the proposed IPA to those of the alternatives, as required by CEQA.

Response to Comment B07-5: Comment noted. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010. *No changes to the Draft EIR are required.*

Subject: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Region
From: Saenz, Ronald
Date: Wed, 20 Oct 2010 11:43:00
To: MLPAComments, 'MLPAComments@dfg.ca.gov'
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Good morning, please find SANDAG's comments attached. Hardcopy to arrive via mail.

Thank you.-Ron

From: Saenz, Ronald
Sent: Tuesday, October 19, 2010 3:52 PM
To: 'MLPAComments@dfg.ca.gov'; 'tnapoli@dfg.ca.gov'
Subject: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas in California's South Coast Study Region

Hello Thomas, this email is to notify you that SANDAG's comments will arrive tomorrow.

Sincerely,

Ron Saenz
San Diego Association of Governments (SANDAG)
401 B Street, Suite 800
San Diego, CA 92101-4231

Tel. (619) 699-1922
Fax. (619) 699-1905
www.sandag.org<http://www.sandag.org>

Attachment: TEXT37.htm
Attachment: L-48305 Signed.pdf
Attachment: Mime48.822

Responses to Comment Letter C01_i

Response to Comment C01_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

SANDAG

401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 699-1900
Fax (619) 699-1905
www.sandag.org

October 19, 2010

File Number 3200200

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

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San Diego Unified Port District
San Diego County Water Authority
Southern California Tribal Chairmen's Association
Mexico

Dear Staff:

SUBJECT: Marine Life Protection Act (MLPA) Draft Environmental Impact Report (DEIR) for Marine Protected Area (MPA) Proposals Covering the South Coast Study Region

The San Diego Association of Governments (SANDAG) has reviewed the DEIR and respectfully submits the following comments. Recommended changes to language in the DEIR are underlined for your convenience. In addition, other recommendations are found in the body of this letter.

In Sections 3.5.40 (Swami's SMCA) and 3.5.48 (Tijuana River Mouth SMCA) of the DEIR, there is mention of beach nourishment and other sediment management activities being allowable. The DEIR states:

> **Proposed Modification of Other Regulated Activities:** The proposed regulations would allow beach nourishment or other sediment management activities and operation and maintenance of artificial structures inside the conservation area pursuant to any required permits or as otherwise authorized by the Department (pages 3-39 and 3-44).

C01_ii-1

SANDAG believes it is imperative for these sections and the DEIR as a whole to state that beach replenishment, dredging for beach replenishment, maintenance dredging of lagoon/wetland inlet flood shoal areas and associated beach/nearshore disposal, and ancillary activities associated with beach replenishment (including ongoing beach maintenance) are considered consistent with the goals of the MLPA designation (be it State Marine Reserve, State Marine Conservation Area, or State Marine Park).

The current language does not make it clear that these other activities, most notably dredging, are allowed and does not make clear that projects could occur in the future, as opposed to allowing projects with existing permits to continue. An example of sample language could be, "...would allow beach nourishment, <u>including the dredging and placement of sediment</u>, or other sediment management activities .... pursuant to any required permits <u>for projects now and in the future</u>, or as otherwise authorized by the Department."

Similarly, in the Beach Nourishment section (Section 6.4.2.2.1), beach nourishment activities could be clarified to ensure that the activities mentioned above are included, specifically dredging. The DEIR states:

6.4.2.2.1 Beach Nourishment. (final paragraph) C01_ii-2

The California Fish and Game Commission (Commission) does not have authority to permit or prohibit beach nourishment in the marine or estuarine environment and the MLPA cannot supersede otherwise lawful activities that are not within the authority of the Commission to regulate (Department 2009b) (page 6.4-10).

The DEIR could be amended to state "... beach nourishment, <u>including the dredging and placement of sediment</u>, in the marine or estuarine environment ..." This will ensure that it is understood that dredging activities will likely occur with beach nourishment activities.

Additionally, the DEIR should make it clear that agencies with permitting authority will continue now and in the future to issue permits under existing laws. One example of where this issue is unclear is Section 6.3.1 listed below. C01_ii-3

6.3.1 Regulatory Framework (page 6.3-1)

... there are existing activities and artificial structures such as wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment that occur throughout the south coast study region (SCSR). These activities are regulated by other federal, state, and local agencies, whose jurisdiction cannot be pre-empted through designation of Marine Protected Areas (MPAs) under the Marine Life Protection Act (MLPA) of 1999. Of the 35 MPAs in the proposed Project IPA regulation, 23 have been identified as having various existing activities regulated by other agencies. These activities are addressed within the proposed Project IPA regulations to explicitly allow these regulated activities to continue under current permits.

The questionable language is listed at the end of the paragraph above. An example of sample language could be, "... to explicitly allow these regulated activities to continue under <u>existing permitting authority for projects now and in the future</u>."

Finally, in Section 3.5.40 (Swami's SMCA), the DEIR lays out four boundary options and two take options (page 3-39). The scope of the boundary options being considered varies significantly, particularly between options one and four. Understanding that option four could have significant impacts on public safety and public access to the beach, and option one is more stringent than that requested by the City of Encinitas, SANDAG requests that, at a minimum, boundary option one be included in the Integrated Preferred Alternative. Furthermore, to ensure that recreational activities can continue, SANDAG requests that take option two be included in the Integrated Preferred Alternative. C01_ii-4

Los Angeles to San Diego (LOSSAN) Rail Corridor

SANDAG is the agency responsible for planning and construction of capital projects along a 60-mile stretch of the Los Angeles to San Diego (LOSSAN) rail corridor from the Orange County Line in the north to Downtown San Diego in the south. The existing rail track follows the coastline within its historic right-of-way, running somewhat parallel to Interstate 5. The corridor is utilized by three passenger rail operators – the North County Transit District (NCTD), Metrolink, and Amtrak. Burlington Northern Santa Fe Railroad (BNSF) is the freight rail operator in the corridor.

Deficiencies and proposed rail improvement projects in the LOSSAN corridor have been documented in previous LOSSAN reports and studies, including but not limited to the SANDAG 2030 Regional Transportation Plan (RTP); SANDAG Regional Transportation Improvement Plan (RTIP); LOSSAN Program Environmental Impact Report/Statement (PEIR/EIS); LOSSAN Strategic Plan; and LOSSAN Corridor Strategic Business Plan. Although the level of detail and information provided varies, a number of key issues are consistently raised in these reports, including:

- **Existing Infrastructure.** A large portion of the corridor (30.7 miles or 51 percent) is single-track, creating chokepoints when trains in opposing directions meet near a single-track section. These "meet-pass" conflicts are the source of most of the existing rail delay in the corridor. The portions of single-track are interspersed throughout the corridor, creating multiple bottlenecks. These bottlenecks along with other deficiencies tend to reduce service reliability, especially for commuters, and are viewed as a major constraint to increasing rail commuter ridership.

- **Environmentally Sensitive Areas.** Sections of the corridor pass through environmentally sensitive areas, including multiple lagoons, endangered species habitat, and the Del Mar Bluffs. In particular, it appears from the Draft EIR for the California Marine Life Protection Act Initiative South Coast Study Region – SCH No. 201007012 (MPLA EIR), that the railroad ROW crosses through the proposed Batiquitos Lagoon SMCA and San Elijo Lagoon SMCA. The railroad ROW also passes through the current Aqua Hedionda SMR, Batiquitos Lagoon SMP, San Elijo Lagoon SMP, and the San Dieguito SMP. There are future double-track projects and new railroad bridges proposed for all of these areas.

- **Importance for Goods Movement.** The corridor provides a critical goods movement link that serves domestic freight needs, along with serving the Port of San Diego and the cross-border freight in Baja. This line moves over 30,000 carloads per year, which eliminates over 100,000 annual truck trips, many of which would be heavy trucks on I-5. Using rail for the movement of heavy bulk products reduces regional fuel consumption and lowers greenhouse gas emissions from transportation.

The LOSSAN reports and studies cited above describe current and future improvements to the LOSSAN Corridor in San Diego County, including new double-track sections and new railroad bridges through the proposed SMCAs and existing SMR/SMPs listed above. Collectively, the LOSSAN reports and studies comprise the adopted policies, plans, and programs for the LOSSAN corridor in San Diego County. State CEQA Guidelines, Appendix G: Environmental Checklist Form, XVI. Transportation/Traffic, f), requires DFG to address whether the MLPA would: *Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.* As such, the MLPA EIR must clearly describe any conflicts between the MLPA and its various alternatives, and the adopted plans for the LOSSAN Corridor in San Diego County. C01_ii-5

SANDAG does not believe the MLPA is intended to limit future improvements along the LOSSAN Corridor in San Diego County or to impose new permitting requirements. Therefore, we recommend the MLPA EIR be revised to include a clear statement in the Project Description that confirms that the MLPA does not impose any new restrictions or permitting requirements on double-track projects and/or new railroad bridges within the MLPA proposed and alternative SMPAs. Furthermore, Section 4 of the MLPA EIR should be revised to include an acknowledgement of the adopted policies, plans, and programs for the LOSSAN Corridor in San Diego County and clearly state that the MLPA would not conflict with these adopted policies, plans, or programs. C01_ii-6 C01_ii-7

In the event the MLPA will conflict with the LOSSAN Corridor's adopted policies, plans, or programs, CEQA requires the DEIR be revised to describe the conflicts, determine the significance of the conflicts, and identify and address alternatives and mitigation measures capable of avoiding or substantially reducing the conflicts. Also, in the event the MLPA does conflict with the LOSSAN Corridor's adopted policies, plans, or programs, CEQA requires the MLPA EIR examine the cumulative effects such conflicts would have on future traffic along the I-5 corridor, coastal access issues related to the future traffic along the I-5 corridor, regional emissions of air pollutants and greenhouse gasses, and any other cumulative effects. Should these discussions constitute substantial new information as defined by CEQA, the DEIR would have to be recirculated for an additional 45-day public review period. C01_ii-8

We appreciate the opportunity to comment on the Marine Life Protection Act Draft Environmental Impact Report for Marine Protected Area proposals covering the South Coast Study Region. If you have any questions or concerns regarding SANDAG's comments on this project, please contact Shelby Tucker at (619) 699-1916 or stu@sandag.org.

Thank you for your consideration of our comments.

Sincerely,

COLEEN CLEMENTSON
Principal Planner

RSA/STU/CCl/cd

Responses to Comment Letter C01_ii

Response to Comment C01_ii-1: See response to comment A69_ii-2.

Response to Comment C01_ii-2: See response to comment A69_ii-4.

Response to Comment C01_ii-3: See response to comment A69_ii-6.

Response to Comment C01_ii-4: See response to comment A72_ii-1. The commenter's assertion that Swami's SMCA boundary option four could have significant impacts on public safety and public access to the beach is unsubstantiated. Furthermore, regardless of which boundary option is selected for this SMCA, public access would not be restricted by any of the MPAs in the proposed Project.

Regarding the commenter's stated request that Swami's SMCA boundary option one be included in the IPA, and that take option two be included in the IPA, these comments are noted. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010. *No changes to the Draft EIR are required.*

Response to Comment C01_ii-5: See response to comment A91_ii-2.

Response to Comment C01_ii-6: See response to comment A91_ii-2. The commenter asserted that the MLPA is not intended to limit future improvements along the LOSSAN Corridor or to impose new permitting requirements. The MLPA is intended to help conserve and rebuild California's marine ecosystems.

The commenter also recommended that the EIR include a statement that the MLPA does not impose new restrictions or permitting requirements on double-track projects and/or new railroad bridges within the proposed Project and alternatives. The Commission does not intend to impair existing lawful uses that have incidental take as a result of the operation or maintenance of existing facilities. For example, the regulations for San Elijo and Batiquitos Lagoon SMCAs include language that would allow for maintenance of artificial structures pursuant to required permits, Section 630, or as otherwise authorized by the Department. The commenter also raised concerns about Agua Hedionda SMR, which is proposed to be removed under the IPA, and about San Dieguito Lagoon SMR which is proposed under alternatives 1, 2, and 3, but not under the IPA. Should an alternative be selected for adoption instead of the proposed Project IPA, it is expected that additional analysis (similar to what was performed for the proposed Project IPA) will be conducted for the adopted alternative. Should the Commission adopt an MPA analyzed by the SAT under an alternative other than the IPA then the Commission would adopt exemption language similar to what it issued throughout the proposed Project IPA, allowing the continued operation and maintenance of

existing faculties, allowing habitat restoration activities as well as specifically allowing other existing activities that may result in incidental take. The Commission would analyze new structures proposed through the existing permit process and may consider issuing new authorizations for such structures as necessary and appropriate. *No changes to the Draft EIR are required.*

Response to Comment C01_ii-7: See response to comment A91_ii-2. The commenter suggested that EIR sec. 4 be revised to acknowledge the LOSSAN Corridor in San Diego County. Rather than adding this information to sec. 4, which focuses on disciplines excluded from detailed environmental analysis, the Commission has added information on the LOSSAN Corridor project elsewhere in the EIR. See response to comment A91_ii-2.

Response to Comment C01_ii-8: See response to comment A91_ii-2.

Subject: Fwd: status of environmental review
From: Melissa Miller-Henson
Date: Mon, 07 Jun 2010 11:35:00
cc: "Erickson, Matt" <MERICKSON@dfg.ca.gov>
cc: "Ashcraft, Susan" <SAshcraft@dfg.ca.gov>
cc: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
To: "FGC" <FGC@fgc.ca.gov>
cc: "MLPAComments" <MLPAComments@resources.ca.gov>

Please see request below for information about the south coast MPAs CEQA process.

Thanks,

MMH

From: MLPAComments
Sent: Monday, June 07, 2010 11:33 AM
To: Melissa Miller-Henson
Subject: FW: status of environmental review

From: Boehmke, Chuck [mailto:CBoehmke@lacsd.org]
Sent: Friday, June 04, 2010 3:16 PM
To: MLPAComments
Subject: status of environmental review

Could you please tell me the status of the environmental review process for the recommended proposal for the South Coast Study Region. I heard that a draft EIR was being prepared similar to the other completed study regions and will be released soon for public review, but I cannot find information on this on your website. If possible, could you also direct me to the Notice of Preparation for the draft EIR. C09-1

Thank you in advance,

Charles Boehmke, P.E.

Assistant Department Head

Facilities Planning Department

Los Angeles County Sanitation Districts

(562) 908-4288 ext. 2761

cboehmke@lacsd.org <mailto:cboehmke@lacsd.org>

Attachment: TEXT.htm
Attachment: Mime2.822

Responses to Comment Letter C09

Response to Comment C09-1: No response required.

R2.2.5 Comments from Local Governments

The following group of comment letters is those received from local governments. Table R2-5 lists the comment letters received from local governments, along with the unique number assigned to each comment letter, the name of the commenter, and the page number of the comment letter. Responses to each letter immediately follow the letter.

TABLE R2-5
LOCAL GOVERNMENT COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A01_i	Carolynn	Petru	City of Rancho Palos Verdes	Local Government	727
A01_ii	Carolynn	Petru	City of Rancho Palos Verdes	Local Government	731
A06_i	Matthew	Kilroy	City of Redondo Beach	Local Government	735
A06_ii	Matthew	Kilroy	City of Redondo Beach	Local Government	739
A26	Sherri	Lightner	San Diego City Council, 1st District	Local Government	743
A60_i	Daniel	Dalager	City of Encinitas	Local Government	747
A60_ii	Daniel	Dalager	City of Encinitas	Local Government	751
A72_i	Peter	Cota-Robles	City of Encinitas	Local Government	755
A72_ii	Peter	Cota-Robles	City of Encinitas	Local Government	759
A75_i	David	Ott	City of Solana Beach	Local Government	777
A75_ii	David	Ott	City of Solana Beach	Local Government	781
A85_ii	Michael	Gin	City of Redondo Beach	Local Government	807
A90_ii	Ken	Gensor	Santa Monica City Council	Local Government	811
A94_ii	Antonio	Villaragosa	City of Los Angeles	Local Government	817
A94_iii	Bill	Rosendahl	City of Los Angeles	Local Government	821
A96_ii	Andy	Stern	City of Malibu	Local Government	825
A96_iii	Andy	Stern	City of Malibu	Local Government	829
A96_iv	Andy	Stern	City of Malibu	Local Government	835
A97_i	Greg	Wade	City of Imperial Beach	Local Government	839
A97_ii	Greg	Wade	City of Imperial Beach	Local Government	847
A98_ii	Andrew	Weissman	City of Culver City	Local Government	851
B05	Mark	Denny	OC Parks	Local Government	857

Subject: Comments on MPLA DEIR
From: Carolynn Petru
Date: Mon, 27 Sep 2010 10:31:00
cc: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
To: "" <MPLAComments@dfg.ca.gov>
cc: "" <lezam@rpv.com>
cc: "Singer', 'Sara" <saras@rpv.com>

Dear California Fish and Game Department -

The City of Rancho Palos Verdes respectfully submits the attached comments on the Draft Environmental Impact Report for the California Maine Life Protection Act Initiative - South Coast Study Region. Please let me know if you have any questions or require further information.

Sincerely

Carolynn Petru

Deputy City Manager

(310) 544-5203

Attachment: TEXT23.htm
Attachment: 20100927 MLPA DEIR Comments_cp.doc
Attachment: Mime24.822

Responses to Comment Letter A01_i

Response to Comment A01_i: This email serves to notify the Commission of an attachment to the email, and does not comment on the content or adequacy of the Draft EIR. Comment noted.

September 27, 2010

MLPA South Coast CEQA
Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

Electronic Mail Delivery via: MLPAComments@dfg.ca.gov

SUBJECT Comments on the Draft Environmental Impact Report for the Proposed California Marine Life Protection Act Initiative South Coast Study Region

To Whom It May Concern:

The City of Rancho Palos Verdes appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the above-mentioned project. We respectfully offer the following comments on this initiative:

1) The discussion of the proposed addition of the Point Vicente SMCA (page 3-20) notes that the proposed regulations would prohibit take of all living marine resources. Currently, the City's Point Vicente Fishing Access is located within the proposed SMCA. This 10.5 acre park has a long history of recreational fishing which pre-dates the City's incorporation 37 years ago. The Urban Environment Element – Public Activity Areas section of the City's General Plan (adopted in 1975) identifies this use on page 96:

   Point Vicente Fishing Access lies on the ocean side of Palos Verdes Drive South, between Point Vicente Lighthouse and Marineland (note: now Terranea Resort)*. The fishing access is a fully developed 11 acre site which provides access to the shoreline for fishing and scuba diving purposes).* A01_ii-1

   Further, the City's Coastal Specific Plan (adopted in 1978), which is also the City's certified Local Coastal Plan, states on pages S2-6 and S2-7, as part of the description of Subregion 2 where the subject park is located:

   The only real access, within this subregion, to the shoreline is located at the fishing access. The trail down the bluffs (referred to by local users as "Cardiac Hill") services divers, fishermen, picnickers, beachcombers and sightseers. Due

to the difficultly negotiating the rocky headland, which is typical of this area, this access point has only localized impact on the shoreline.

To further accommodate and enhance the public recreational opportunities at Point Vicente Fishing Access, the existing parking lot, restrooms, signage and furnishings were recently improved conjunction with the adjacent Terranea Resort, which opened in June 2009. The Palos Verdes Land Conservancy, which manages the City's 1,400 acre Palos Verdes Nature Preserve (which this property is a part), also recently completed improvements to the beach access trail and restoration of the coastal bluff scrub habitat. A01_ii-1

Based on the historical use and recent improvements made to the park, the City of Rancho Palos Verdes respectfully requests that recreational shore-based hook and line fishing, as well as recreational spear fishing of Pelagic finfish, continue to be allowed from the Point Vicente Fishing Access for the continued benefit and enjoyment of the public.

2) The proposed replacement of the Abalone Cove SMP with a larger Abalone Cove SMCA (page 3-21) is supported by the City of Rancho Palos Verdes. Abalone Cove is a very popular site for school tours and docent led hikes to the tide pools. In particular, prohibiting shore based hook and line fishing here will further protect the marine environment and preserve the area for nature study and education, which are popular activities at Abalone Cove. Therefore, the City strongly supports increased regulation in this area to protect the delicate tide pool areas and the marine life which provide a rich educational experience for the visitors of the Abalone Cove Shoreline Park and State Ecological Preserve. A01_ii-2

Again, thank you for the opportunity to provide comments on this important initiative. If you have any questions or need additional information, please feel free to contact me at (310) 544-5203 or via e-mail at *carolynn@rpv.com*.

Sincerely,

Carolynn Petru
Deputy City Manager

cc: Mayor and City Council
Carolyn Lehr, City Manager
Sara Singer, Senior Administrative Analyst

Responses to Comment Letter A01_ii

Response to Comment A01_ii-1: Allowing additional uses, such as hook and line fishing, as well as recreational spear fishing of pelagic finfish, would reduce the level of protection and thus the expected ecological benefits from the Point Vicente SMCA. *No changes to the Draft EIR are required.*

Response to Comment A01_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Subject: Fwd: DEIR Comment Period Request for Extension
From: Susan Ashcraft
Date: Tue, 28 Sep 2010 16:40:00
To: "Horeczko, Michelle" <MHoreczk@dfg.ca.gov>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
To: "FGC" <FGC@fgc.ca.gov>

****NOTE NEW CONTACT INFORMATION*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
sashcraft@dfg.ca.gov | www.dfg.ca.gov

"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of each month

>>> Renee Chaves < Renee.Chaves@redondo.org > Thu, 23 Sep 10, 4:41 PM >>>
Please see the attached City of Redondo Beach letter.

Renee Chaves
Executive Assistant
Office of the Mayor, Council, and City Manager
City of Redondo Beach
Tel: (310) 372-1171 ext 2404
Fax: (310) 379-9268

Attachment: 2010 Sept 23 MLPA DEIR Comment Period.pdf

Responses to Comment Letter A06_i

Response to Comment A06_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A06_ii

redondo BEACH

Matthew J. Kilroy
Council Member, District 5

415 Diamond Street, P.O. Box 270
Redondo Beach, California 90277-0270
www.redondo.org

tel 310 372-1171
ext. 2769
fax 310 379-9268

September 23, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson Avenue, Suite C
Los Alamitos, CA 90720

RE: Draft Environmental Impact Report (DEIR) Comment Period - Marine Life Protection Act South Coast Study Region Marina Protected Areas Project

To Whom It May Concern:

The City of Redondo Beach has participated in the MLPA process and has contributed feedback when necessary. In late August, we received notification of the DEIR comment period, and began analysis of the DEIR to provide feedback by the October 4, 2010, deadline for comments. A06_ii-1

We understand a special meeting will occur on Wednesday, September 29, to consider additional time for DEIR comments. Considering the many impacts of the MLPA within our region, additional time is essential to adequately analyze the DEIR, and formulate valuable feedback to improve the MLPA process. Therefore, the City of Redondo Beach is in favor of an extension and believes the additional time will allow for better understanding of potential MLPA impacts and increased stakeholder participation. A06_ii-2 A06_ii-3

We urge you to consider an extension of the DEIR comment period for the MLPA South Coast Region Marine Protected Areas Project at the special meeting of September 29.

Sincerely,

Matt Kilroy

Matt Kilroy
Mayor Pro Tem

Responses to Comment Letter A06_ii

Response to Comment A06_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A06_ii-2: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A06_ii-3: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Letter A26

Subject: Fwd: Request for extension of comment period for MLPA Initiative SouthCoast Marine Protected Areas
From: Susan Ashcraft
Date: Tue, 28 Sep 2010 16:44:00
To: "Horeczko, Michelle" <MHoreczk@dfg.ca.gov>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>
To: "FGC" <FGC@fgc.ca.gov>

****NOTE NEW CONTACT INFORMATION*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
sashcraft@dfg.ca.gov | www.dfg.ca.gov

"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of each month

>>> MLPAComments Tue, 28 Sep 10, 1:32 PM >>>
From MLPA Comments - DFG

---- Forwarded message ----
Subject: Request for extension of comment period for MLPA Initiative SouthCoast Marine Protected Areas Project DEIR
From: "Lightner, Councilmember Sherri" <SherriLightner@sandiego.gov>
Date: Tue, 28 Sep 2010 13:32:00
September 28, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suit C
Los Alamitos, CA 90720

Via email: mlpacomments@dfg.ca.gov

Dear Department of Fish and Game,

I represent the community of La Jolla in the City of San Diego which will be impacted by the proposed Marine Protected Area for the South Coast Study Region. A26-1

I respectfully request a forty-five day extension of the public review period for the draft Environmental Impact Report for the MLPA Initiative South Coast A26-2

Marine Protected Areas Project pursuant to CCR §15088, §15203, and §15207. A26-2 (cont.)

Given the considerable volume of the document, it has not been possible for me or the community I represent to give this document the attention it deserves in the 45 day time period. It is our understanding that such an extension will not significantly affect the proposal's timeline. A26-3

If I can be of further assistance, please contact me or my staff.

Sincerely,
[cid:image001.jpg@01CB5F11.93458280]
Sherri S. Lightner
Councilmember, First District
City of San Diego
202 C Street, MS10A
San Diego, CA 92101
Phone: (619) 236-6611
sherrilightner@sandiego.gov<mailto:sherrilightner@sandiego.gov>
www.sandiego.gov/cd1<http://www.sandiego.gov/cd1>

---- End forwarded message ----

Attachment: TEXT31.htm
Attachment: image0012.jpg
Attachment: Mime32.822

Responses to Comment Letter A26

Response to Comment A26-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A26-2: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A26-3: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Letter A60_i

FGC - Extension Request for Draft EIR

From: Brandi Lewis <BLewis@ci.encinitas.ca.us>
To: <fgc@fgc.ca.gov>
Date: 9/27/2010 3:54 PM
Subject: Extension Request for Draft EIR
CC: "Katherine Weldon" <KWeldon@ci.encinitas.ca.us>, "Bob McSeveney" <bmcseveney@ci.encinitas.ca.us>
Attachments: 09-27-10_CFGC_MLPA EIR Extension rqst.pdf

Please see the attached letter from the City of Encinitas regarding a request for an extension to comment on the Draft Environmental Impact Report for the California Marine Life Protection Act, South Coast Study Region.

Sincerely,

Brandi L. Lewis
City Council's Office
City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024
P. 760.633.2618 F. 760.633.2627
blewis@cityofencinitas.org

Correspondents should be aware that all communications to or from this address are subject to public disclosure and may be reviewed by third parties.

Responses to Comment Letter A60_i

Response to Comment A60_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

City of Encinitas

Office of
The Mayor

Dan Dalager
Mayor

Maggie Houlihan
Deputy Mayor

Teresa Barth
Council Member

James Bond
Council Member

Jerome Stocks
Council Member

Phil Cotton
City Manager

September 27, 2010

Marine Life Protection Act Initiative South Coast
California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

RE: EXTENSION REQUEST FOR THE DRAFT EIR

Dear Commissioners:

The City of Encinitas respectfully requests a time extension for commenting on the Draft Environmental Impact Report for the California Marine Life Protection Act Initiative South Coast Study Region. A60_ii-1

The Draft EIR includes new options that expand the SMCA boundary in the City of Encinitas which were not evaluated in the initial development of the Integrated Preferred Alternative. The City of Encinitas and the local State Parks Department have not had adequate time to assess the effects these boundary changes will have on public safety response, public access and enforcement and we need the extra time to do so. A60_ii-2

Sincerely,

Dan Dalager

Dan Dalager
Mayor of Encinitas

CC: City Council
City Manager

Tel 760/633-2600 FAX 760/633-2627, 505 South Vulcan Avenue, Encinitas, CA 92024 TDD 760/633-2700

Responses to Comment Letter A60_ii

Response to Comment A60_ii-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Response to Comment A60_ii-2: The draft Initial Statement of Reasons for Regulatory Change detailing the proposed boundary changes to the proposed Swami's MPA has been publicly available since April 6, 2010. This information was subsequently presented to the Commission as part of the Agenda, on April 7, 2010. *No changes to the Draft EIR are required.*

Subject: MLPA DEIR Comments - City of Encinitas
From: Sharon Scott
Date: Mon, 18 Oct 2010 16:15:00
cc: "Weldon, Katherine" <KWeldon@ci.encinitas.ca.us>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Please find attached the City of Encinitas' comments on the Marine Life Protection Act Draft Environmental Report for the South Coast Region (State Clearinghouse #2010071012).

A hard copy will follow via USPS.

Sharon Scott

Management Analyst

Engineering Services Department

City of Encinitas

505 S Vulcan Avenue

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sscott@cityofencinitas.org

Attachment: TEXT4.htm
Attachment: Encinitas_MLPA_DEIR_Comments_101810.PDF
Attachment: Mime9.822

Responses to Comment Letter A72_i

Response to Comment A72_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

City of Encinitas

October 18th, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

RE: COMMENTS ON THE MARINE LIFE PROTECTION ACT DRAFT ENVIRONMENTAL REPORT (DEIR) FOR THE SOUTH COAST REGION – STATE CLEARINGHOUSE #: 2010071012

Dear Fish and Game Commissioners:

The City of Encinitas appreciates the opportunity to review and comment on the DEIR for the marine protected areas in the California South Coast Study Region (SCSR) pursuant to the Marine Life Protection Act (MLPA).

The City of Encinitas concurs with the City of Solana Beach comments on the California Marine Life Protection Act Initiative South Coast Study Region EIR. In addition, the City of Encinitas has concerns the MLPA South Coast Study Region EIR has not adequately addressed potential impacts on existing services such as public safety, recreation, transportation and lagoon restoration projects.

The City of Encinitas's comments are specific to the Swami's State Marine Conservation Area (SMCA) and the boundary options 1-4. The Integrated Preferred Alternative (IPA) initially specified the areas between D Street to the middle of the San Elijo Lagoon. The boundary options outlined in the MLPA DEIR and the California Code of Regulations include changes that were not analyzed through the MLPA process. In addition, the City of Encinitas sent a letter to the MLPA Blue Ribbon Task Force on October 8, 2009 supporting Map 3 requesting a reduction of the boundaries to accommodate existing infrastructure while maintaining the boundaries of critical habitat (Exhibit 1). The letter signed by the Mayor has not been addressed or analyzed by the Department of Fish and Game (DFG). The City of Solana Beach refers to the letter in the NOP which was not included in the EIR analysis. A72_ii-1

The City of Encinitas objects to the boundary expansion for the following reasons:

- Expansion includes the most popular family beach in Encinitas
- Expansion includes the economic engine for the City of Encinitas
- Expansion includes the Main Lifeguard Tower and all vehicle access
- Expansion potentially eliminates Sheriff's vehicles from accessing the beach
- Expansion potentially eliminates Homeland Security access to the beach
- Expansion potentially eliminates access for vehicle traffic for permitted activity and special events

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- Expansion hinders the repair or replacement of the Highway 101 bridge along the San Elijo Lagoon
- Expansion impacts lifeguards emergency response time for patrol and rescue
- Expansion potentially limits annual maintenance activities including beach protection and sand replenishment

A72_ii-1

On December 17, 2008 the MLPA Science Advisory Committee produced Briefing Document K-1 titled, "California MLPA Master Plan Science Advisory Team Draft Background Information Regarding Beach Manipulation Activities in the MLPA South Coast Study Region." The briefing document specifically lists activities that have the potential to cause impacts, such as safety patrols, annual winter berming, sand import, beach grooming and beach nourishment. The MLPA DEIR focuses primarily on the offshore resources although the jurisdictional boundary line begins at the mean high tide line. The MLPA DEIR fails to mention or analyze the public service impacts and other routine activities that may be impacted.

A72_ii-2 (A)

Existing MPA and Habitat

There is an existing Marine Protected Area (MPA) in the City of Encinitas from D Street to Swamis. The entire Encinitas coastline consists of steep coastal bluffs ranging in height from 40 ft to 120 ft with limited access points. The existing MPA boundary at D Street is a controlled access point and the City of Encinitas has posted a MPA sign at the D Street entrance warning all users not to disturb the habitat. (Exhibit 2) The community has been aware of this restriction for over 20 years. Moonlight Beach has multiple uncontrolled access points therefore the proposal to move the boundary to Cottonwood Creek will make it difficult to facilitate public understanding. Also, habitat maps in this region provided by seafloor mapping programs (Exhibit 3) display the area between D Street and Cottonwood Creek outlet as sandy bottom and therefore is not considered critical habitat, yet Boundary Adjustment Options 2 & 4 expand the proposed Swami's SMCA to Cottonwood Creek. In a letter dated, October 8, 2009 the City of Encinitas requested the MPA be reduced to match the resources offshore. The DFG has disregarded the City's request to reduce or analyze the boundaries based on habitat maps and the options presented in the DEIR are unacceptable to the City of Encinitas.

A72_ii-3

8.2 PUBLIC SERVICES AND UTILITIES

8.2.1 Regulatory Framework

Primarily federal, state and local regulations related to offshore public services and utilities are described below.

The MLPA designations include lagoons which are not offshore. The MLPA DEIR focuses primarily on offshore services yet the MLPA jurisdiction crosses boundaries to the upper watersheds and crosses over major public utilities that have not been adequately addressed in the DEIR. For instance, San Elijo Lagoon has hazardous liquid and gas transmission pipelines crossing through the lagoon. The MLPA DEIR fails to recognize or address how the MLPA designation will impact the emergency response, repair, maintenance or restoration of these national pipelines.

A72_ii-2 (B)

The definition of Public Utility and Public Services includes the following:

- Electricity
- Natural Gas

- Water and Sewage
- Telephone
- Transportation
- Fire/Ambulance
- Police Protection
- Parks
- Schools

A72_ii-2 (B)

In Southern California, massive transportation infrastructure systems such as the Interstate 5 Freeway, Railroad Corridor and Coast Highway 101 all intersect the San Elijo Lagoon. Public utility lines are within the San Elijo Lagoon SMCA and have not been addressed in the MLPA DEIR. Caltrans has a Draft Environmental Impact Report for the I-5 corridor plus the LOSSAN (Los Angeles San Diego Rail Corridor Agency) has a Strategic Plan that has not been addressed in this MLPA DEIR.

8.2.2 Environmental Setting

The MLPA DEIR fails to analyze or acknowledge the inland MLPA jurisdictions especially as they impact the lagoons. The DEIR only discusses the offshore areas for underwater habitat. In Table 8.2-1 the San Elijo Joint Powers Authority's Water Reclamation Facility is recognized but in the description it does not mention the Swami's SMCA. The San Elijo Joint Powers Association (SEJPA) is directly affected by the Swami's SMCA especially if the boundaries are expanded to the south.

8.2.2.1 Law Enforcement Assets

The MLPA DEIR refers to the 2008 Master Plan for Marine Protected Areas which states that a lack of law enforcement resources is one of the reasons existing MPAs fall short of their potential to protect resources. This document advocated the use of cooperative agreements between agencies and the clear need for increased enforcement resources. As part of seeking new cooperative agreements as outlined by the 2008 Master Plan for Marine Protected Areas, the DFG is directed to make efforts to acquire more direct assistance from appropriate agencies. Encinitas lifeguards have worked cooperatively with the DFG and the public in the existing MPA but have not provided enforcement. Any additional requests for assistance for enforcement will require additional funding from the DFG. This has potential significant impacts to services and has not been analyzed in the MLPA DEIR. A72_ii-4

8.2.2.2 MPA Enforcement Considerations

Boundary adjustments have been justified in the City of Encinitas based on enforcement considerations such as "Adjacent to onshore feature and facilities – existing staff (e.g., river mouths or state parks and state park ranger stations) can assist in enforcement and monitoring." In the City of Encinitas the existing MPA has been well established and recognized by the DFG and the community. Due to the steep cliffs in the region it is also the best location for public education and signage. From offshore, the D Street staircase is easily identifiable. A72_ii-3

Following this line of reasoning, the southern boundary should be moved to the San Elijo lagoon inlet as was requested by the City of Encinitas in the October 8, 2009 letter to the Blue Ribbon Task Force. Instead Option 3 is introduced which expands the boundary to Solana Beach while encompassing the entirety of the outfall pipe from SEJPA. Expanding the boundary in Option 3 does not enhance protected habitat in the IPA (seafloor map). The MLPA DEIR does not A72_ii-5 A72_ii-6

address the impacts of hindering repairs on the outfall pipe or the environmental impact of leaks from an ill-maintained pipe. A72_ii-6

8.2.2.3 Emergency Response Services

Numerous agencies utilize Moonlight Beach (below the Mean High Tide Line) to access the beach area for emergency response:

- Encinitas Lifeguard Services
- State Parks Lifeguard Services
- Sheriffs Department
- Homeland Security
- Coast Guard A72_ii-2(C)
- Fire
- National Response Clean up (NRC)
- Border Patrol
- National Guard
- County HazMat
- Department of Fish and Game

The MLPA DEIR does not acknowledge or analyze the restrictive impact the Swami's SMCA will have on emergency response along the shoreline.

8.2.3 IMPACT ANALYSIS

8.2.3.2 Criteria for Determining Significance

The MLPA DEIR should address the indirect effects, not only the direct effects of a project, therefore all secondary or offsite features are required to be analyzed. While the direct impacts related to a SMCA are offshore the jurisdictional boundaries include the shoreline and the lagoons. While this may be considered secondary or offsite there are impacts related to public service and utilities that have not been considered or analyzed and they must be according to CEQA specifically:

- San Elijo Joint Powers Authority Wastewater Outfall Pipe
- Law Enforcement Access
- Emergency Response Access A72_ii-4
- Additional funding for Enforcement
- Lifeguard Patrols

8.2.3.3 Environmental Impacts

Criterion PS-1: Significantly increase the need for enforcement of federal, state, and/or local laws and regulations.

Based on the 2008 Master Plan for Marine Protected Areas additional assets are required. The Master Plan discusses the Central Coast and the additional operational costs expected. The average cost to implement the Central Coast MLPA is $12.9 million which is significant to the taxpayers. The South Coast is highly urbanized and complex which will require enhanced enforcement and/or partnerships therefore the costs will be even higher than the Central Coast. A72_ii-7 Any additional agreements with the local enforcement agencies will require additional funding for additional enforcement. The MLPA DEIR statement that impacts relative to enforcement of laws and regulations would be less than significant is not substantiated with facts and counter to the 2008 Master Plan for Marine Protected Areas.

The MLPA DEIR fails to analyze the significant and restrictive impacts to existing public services and enforcement. The City of Encinitas has noted numerous agencies and services that will be significantly impacted without any analysis completed in this document. A72_ii-2 (C)

Criterion PS-2: Result in the need for new or physically altered governmental facilities, in order to maintain acceptable service ratios, response times, or other performance objectives for police, fire, or emergency response.

The Public Service and Utilities section of the MLPA DEIR fails to recognize the numerous public services and emergency response agencies that will be significantly impacted by the Swamis and San Elijo Lagoon SMCA. The Encinitas and State Lifeguards patrol by vehicle due to the high cliffs surrounding the beaches. The Mean High Tide Line is along the base of the bluff which is within the DFG jurisdiction. The Science and Advisory Committee reported that driving on the beach is an impact to habitat. This MLPA DEIR does not analyze or acknowledge the significant impacts this will have on emergency response, fire, police and lifeguards.

8.3 LAND USE AND RECREATIONAL RESOURCES

8.3.1.3 Local

The City of Encinitas has General Plan for land use policies that call for the preparation of specific plans for certain areas of the City. The Local Coastal Program (LCP) prepared as part of this General Plan contains numerous policies concerned with beach/coastal access and the maintenance and preservation of coastal resources. A number of these policies also serve to implement the Coastal Act. The MLPA DEIR does not analyze or acknowledge the significant impact on the City of Encinitas General Plan or the Local Coastal Program. A72_ii-8

8.3.2 Environmental Setting

8.3.2.1 Land Uses

The City and State Parks recognize Moonlight Beach as the major visitor destination beach in the Encinitas area. For the City's residents and year-round visitors, the beach and coastal environment provides a place to play, surf, swim, watch wildlife and enjoy the weather. For the FY 20009/10 an estimated 2,072,942 people visited Encinitas beaches. Over 1,600,000 visit Moonlight Beach alone. The MLPA DEIR does not analyze or acknowledge the significant impact on recreation, tourism and the economy within the City of Encinitas. A72_ii-9

8.3.3.3 Environmental Impacts

Criterion LAND-1: Physically divide an established community?

The existing MPA and IPA proposed for the southern boundary of the Swami's SMCA physically divides a beach and community. The 2008 Master Plan for Marine Protected Areas suggests placing the boundaries at visible and permanent landmarks such as outlets which the City of Encinitas suggested in the October 8, 2009 letter and coincides with the Seafloor map and critical habitat. The most obvious landmark in this reach is the San Elijo Lagoon outlet. The MLPA DEIR never analyzes or provides an alternative that reduces the boundary to the San Elijo Lagoon inlet which is the most obvious landmark in the region. A72_ii-5

Criterion LAND-2: Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific A72_ii-10

plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. A72_ii-10

State Parks

The State Parks requested an allowance to add shore fishing as illustrated in Take Option B. State Parks mission is to provide recreational activities such as shore fishing at State Parks therefore this requirement is in direct conflict with the State Parks Recreational Element or General Plan. The boundary adjustments presented in this MLPA DEIR only suggested Options to expand the boundaries. The MLPA DEIR does not present any options that reduce the boundaries as suggested in the letter from the City of Encinitas to the Blue Ribbon Task Force on October 8, 2009. A72_ii-11

County and City Governments

This MLPA DEIR completely dismisses the City government from any evaluation in this document. The City of Encinitas has jurisdiction and management responsibilities along the shoreline and within the San Elijo Lagoon. The City of Encinitas' General Plan, Recreational Elements and Land Use Plans include Moonlight Beach and the entire shoreline in Encinitas. The Local Coastal Program (LCP) prepared as part of this General Plan contains numerous policies concerned with beach/coastal access and the maintenance and preservation of coastal resources. A number of these policies also serve to implement in the Coastal Act. Relevant General Plan and/or LCP policies are identified below: A72_ii-8

General Plan - Recreational Element

Policy 2.8: Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs except a reasonable number of access public stairways, lifeguard towers, and similar public beach facilities

Policy 3.2: the City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas.

Page RE-8, Coastal Resources: The beaches have been and will continue to be a major recreational resource to the City. A number of policies included in the Resource Management Element are concerned with the preservation and maintenance of beaches and the coastline so that future generations may also enjoy beach recreation. The following policies indicate ways access to and from the beaches can be expanded and establish standards concerning the intensity of use for individual beaches under the City's jurisdiction.

GOAL 5: The City will continue to provide or coordinate with the State to provide for coastal/shoreline recreation areas, with effective access, including signing; and will designate various beach areas for high, medium and low intensity levels of use based upon the characteristics of the beach resource and support facilities, and character of adjacent neighborhood.

Policy 5.1: The City recognizes Cardiff State Beach Park, San Elijo State Beach Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beaches in the Encinitas area. The City will work with the State to upgrade and promote access to Moonlight beach, in order that they may receive an increased proportion of visitor uses.

Policy 5.3: The areas of South Carlsbad State Beach Park, Moonlight State Beach (future City) Park, Cardiff State Beach Park and San Elijo State Beach Park shall be designated as high intensity beach recreational use areas.

The MLPA DEIR fails to document how the Swamis and San Elijo Lagoon SMCA are in conflict with existing City of Encinitas land use policies and regulations.

POTENTIALLY SIGNIFICANT IMPACT THAT WAS NOT CONSIDERED

TRANSPORTATION/TRAFFIC

The jurisdictional boundaries of the Swami's SMCA and the San Elijo Lagoon SMCA impact transportation corridors such as Coast Highway 101, Interstate 5 Freeway and Manchester Avenue. The MLPA DEIR does not acknowledge or analyze the significant impact to major transportation infrastructure. Coast Highway 101 experiences wave overtopping and lane closures routinely throughout the winter months. According to Executive Order S-13-08, Sea Level Rise analysis is a requirement for every EIR. Coast Highway 101 is designated as a Department of Defense Highway and critical to Homeland Security. Caltrans has a DEIR out for review for the I-5 Freeway expansion that includes the San Elijo Lagoon Restoration Project. Manchester Avenue experiences flooding during heavy rain and high tide events. The MLPA DEIR does not acknowledge jurisdictional boundaries and how this SMCA will affect existing projects and infrastructure. The MLPA DEIR has the potential to significantly impact transportation corridors due to the restrictions and authority the DFG will have on projects such as deferring or not allowing construction and/or maintenance. A72_ii-2 (D)

Conclusion:

While the City of Encinitas appreciates the chance to comment on the MLPA DEIR the additional boundary adjustments were not considered during the IPA development and will directly impact services provided to the community. As detailed in the comments above, the MLPA DEIR does not analyze secondary impacts to existing services or how restrictive elements could impact coastal access for lifeguards and other critical services. The City of Encinitas requests that the MLPA DEIR be revised to address the potentially significant impacts outlined in this comment letter.

Sincerely,

Peter Cota-Robles
Director of Engineering Services

KLW/ss

Attachments
Exhibit 1 – Letter to the MLPA Blue Ribbon Task Force on October 8, 2009
Exhibit 2 - Photo – D Street Marine Reserve Sign
Exhibit 3 – Habitat Type – Seafloor Mapping for Encinitas

City of Encinitas

COPY

Office of
The Mayor

Maggie Houlihan
Mayor

Dan Dalager
Deputy Mayor

Teresa Barth
Council Member

James Bond
Council Member

Jerome Stocks
Council Member

Phil Cotton
City Manager

October 8, 2009

MLPA Blue Ribbon Task Force
MLPA Initiative
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

SUBJECT: FINAL ROUND OF MARINE LIFE PROTECTION ACT INITIATIVE MAPS AND DESIGNATIONS IN THE NORTH SAN DIEGO COUNTY REGION

Dear MLPA Blue Ribbon Task Force Members:

The City of Encinitas continues to support the detailed and involved work produced by the MLPA staff, stakeholders, Science Advisory Team and the Blue Ribbon Task Force. Having established the Encinitas Marine Life Refuge in 1990, via Assembly Bill 612, the City of Encinitas has long recognized and supported the need for Marine Life Protection. With the latest version of maps for your consideration, this is the second support letter from the City of Encinitas and serves as a follow-up to the presentation our staff made at the October 6, 2009, Science Advisory Team meeting in Los Angeles.

Encinitas and the coastal communities in San Diego County have been watching the MLPA process with regard to beach nourishment very closely from the beginning. We have received a memo from the Attorney General's office stating a State Marine Reserve (SMR) is incompatible with beach nourishment activities. The City Council's goals are to ensure ongoing beach nourishment projects and preservation of our existing State Marine Conservation Area (SMCA). After analyzing the three maps, Map 3 with minor modifications accomplishes both goals. The following identifies our concerns and suggestions on each of the maps:

Map 3

As stated in a previous letter to the MLPA our City is supportive of the existing SMCA in Encinitas, and an amended Map 3. Due to environmental considerations for beach nourishment projects, the City has spent over $100,000 on mapping and diving the nearshore habitat in Encinitas (Attachment 1). Based on the nearshore mapping the City has the following suggestions for Map 3:

- Reduce the Northerly boundary 0.5 miles from D Street to J Street. The area from D Street to J Street is predominately sandy bottom and does not support any unique habitat in this region.

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- Reduce the Southerly boundary 0.5 miles from the middle of the San Elijo Lagoon to the northern San Elijo Lagoon inlet. The area in front of the lagoon is predominately sandy bottom and does not support any unique habitat in this zone. By adjusting the boundary lines this will alleviate any overlapping with a sand receiver, borrow sites and the San Elijo Joint Powers Authority Wastewater Outfall pipe.

Maps 1 & 2

SANDAG and the US Army Corps of Engineers have identified potential borrow sites offshore in Del Mar and Cardiff by the Sea (Attachment 2). SANDAG, along with coastal communities from Oceanside to Imperial Beach, are in the process of completing an Environmental Impact Report on the next Regional Beach Sand Project II to replace 2-3 million cy of sand along the shoreline. The Del Mar and Cardiff borrow sites are considered to have excellent sand quality and provide ample sand supply for all of San Diego County. All beach nourishment projects must receive permits from the US Army Corps of Engineers, California Coastal Commission, US Fish and Wildlife Service, EPA, State Lands, State Parks, Department of Fish and Game and the Regional Water Quality Control Board. According to the memo from the Attorney General's office the SMR designation is incompatible with beach nourishment activities; therefore, the City of Encinitas has the following requests for Maps 1 & 2:

- Redesignate the Del Mar SMR to a SMCA to allow beach nourishment activities to continue, or
- Rezone the Del Mar SMR to include a "carve out" within the SMR to include a SMCA within the SMR, and
- Reestablish the existing SMCA at Swami's in Encinitas

The City of Encinitas relies on sandy beaches and healthy marine life preserves for education, eco-tourism as well as shoreline protection. Toward the accomplishment of those objectives, the City continues to look forward to working with the Blue Ribbon Task Force in the development of a mutually beneficial and dynamic marine life protection process.

Sincerely,

Maggie Houlihan

Maggie Houlihan
Mayor, City of Encinitas

Attachments:
1 – Nearshore Maps
2 - Borrow Site Maps
3 – Encinitas Marine Refuge/1990 AB612

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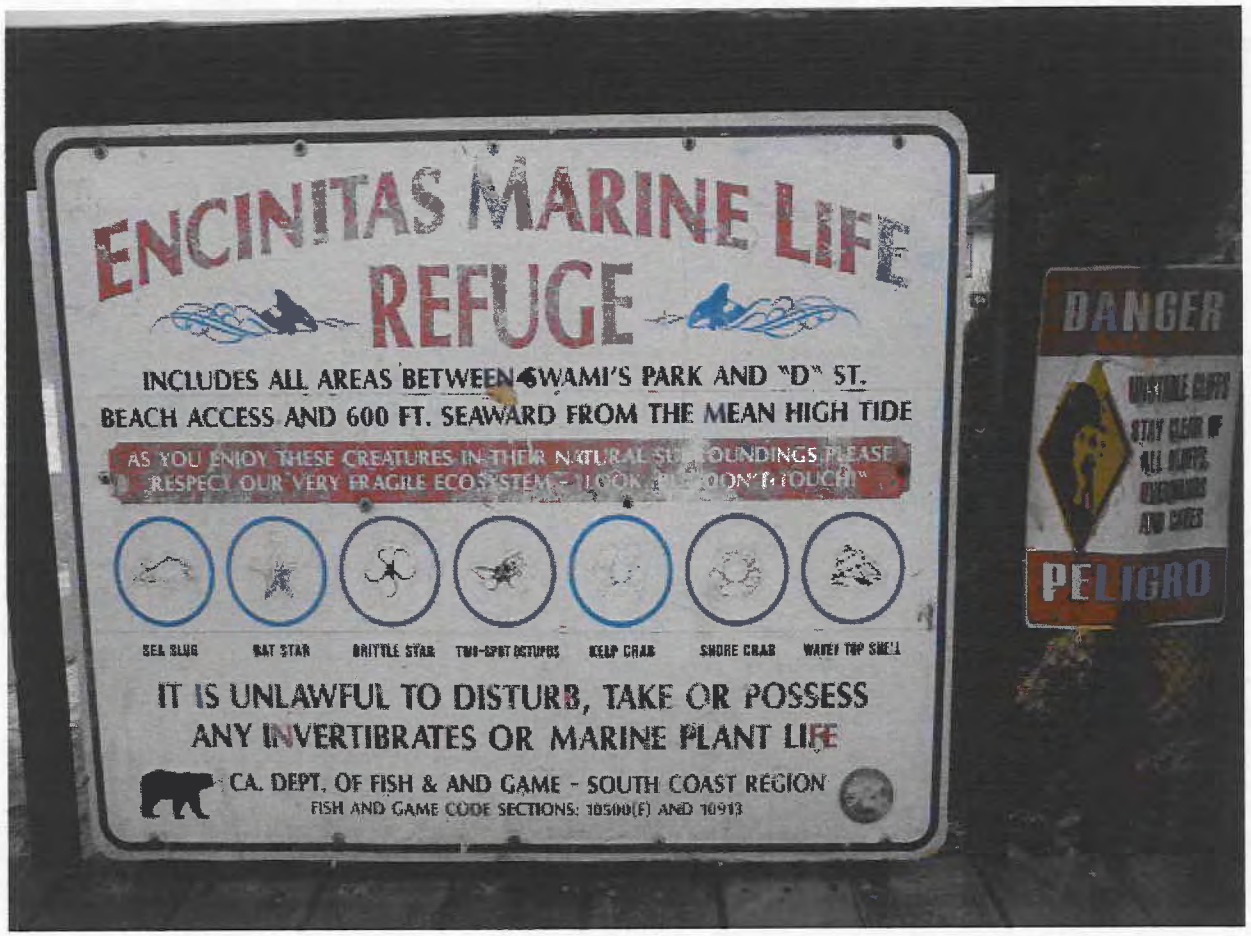
D Street
Marine Reserve Sign



Habitat Type
kelp canopy
surfgrass
understory algae
N
Moonlight Beach
San Elijo Lagoon
Del Mar Fairgrounds
0 250 500 1,000 1,500 2,000
Meters

Responses to Comment Letter A72_ii

Response to Comment A72_ii-1: Comment noted. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010. See also response to Comment A13-31 and Master Response 9. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-2a: The comment asserts the Draft EIR fails to analyze the public service and other routine activities which include safety patrols, annual winter berming, sand import, and beach grooming and beach nourishment. Regarding allowable use changes, the description of each MPA provided in Section 3.5 of the Draft EIR contains the proposed MPA boundaries, take regulations, and restrictions on other activities. Unless prohibited by the regulations, all lawful activities would be permitted within MPAs.

Response to Comment A72_ii-2b: The comment asserts the Draft EIR fails to adequately address existing public utilities and rights-of-way located below and above the San Elijo Lagoon with regard to emergency response, repair, and maintenance or existing and pending infrastructure facilities which include pipelines, Caltrans (I-5) rights-of-way and Los Angeles San Diego Rail Corridor Agency (LOSSAN). As mentioned in response A72_ii_2a above, unless prohibited by the proposed regulations, all lawful activities would be permitted within MPAs. With respect to I-5, LOSSAN, and other infrastructure improvements, it is anticipated that, if the proposed regulations are adopted, the planned bridge and highway improvements would be reviewed and authorized by the Department on a case-by-case basis once design details are known and projects formally proposed. Also, refer to Responses to Comments A91_ii_4 and A91_ii_5.

Response to Comment A72_ii-2c: The comment asserts the Draft EIR fails to analyze restricted first responder (emergency services and enforcement) access to the proposed Swami's and San Elijo Lagoon SMCAs. Unless prohibited by the regulations, all lawful activities would be permitted within proposed MPAs. As described in Section 3.5.40 of the Draft EIR, regulations at the proposed Swami's SMCA would allow recreational take of pelagic finfish and white seabass by spearfishing, and no other regulations or modifications are proposed for this MPA. As described in Section 3.5.41 of the Draft EIR, the San Elijo SMCA (which is proposed to replace the existing San Elijo Lagoon SMP) would retain existing provisions restricting boating, swimming, wading, and diving. The proposed regulations prohibit the take of all living marine resources, but would not affect first responder activities.

Response to comment A72_ii-2d: The comment asserts the Draft EIR fails to analyze Sea Level Rise per Executive Order S-13-08 as signed by Governor Schwarzenegger on November 14, 2008. This order is applicable to "all state agencies…that are planning

construction projects". As the proposed Project IPA and alternatives would not result in construction this order is not applicable therefore inclusion of Sea Level Rise consideration is not be required.

Response to Comment A72_ii-3: Comment noted. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-4: See response to Comment A13-31 and Master Response 9. See also response to Comment A66_ii-5. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-5: Comment noted. Comments suggesting changes to the proposed MPA network, rather than resulting environmental impacts of such changes, are addressed through the public comment and review period of the Initial Statement of Reasons for Regulatory Action, proposed for adoption December 15, 2010.

The Commission disagrees with the commenter's assertion that the southern boundary of the Swami's SMCA exceeds Criterions Land-1. As noted on Draft EIR p. 8.3-21, the proposed Project IPA would not physically divide an established community because these are terrestrial-based considerations that do not apply to state waters in the SCSR. Note also that the criterion does not include physical division of a beach. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-6: The comment asserts that the Draft EIR does not address the loss of ability to maintain an existing effluent pipe under Swami's SMCA Boundary Option 3. However, because the Commission does not have the authority to supersede the regulations of other agencies with statutory authority to regulate activities in the marine environment, maintenance of the effluent outfall (permitted under the NPDES program) would not be bound by the restrictions in the Commission's proposed regulations. Thus, the pipe could legally be maintained, and the impact identified by the commenter would not occur.

Response to Comment A72_ii-7: The comment states that impacts relative to enforcement of laws and regulations would be less than significant if not substantiated. The Commission disagrees; the expected less than significant impact is substantiated and consistent with the Master Plan. See response to comment A13-31 and Master Response 9. *No changes to the Draft EIR are required.*

Response to comment A72_ii-8: Comment asserts the Draft EIR fails to analyze impacts to the City of Encinitas General Plan (GP) and Local Coastal Land Use Plan (LUP);

these are combined documents. In the preparation of the EIR, selected representative Coastal Land Use Plans and General Plans with terrestrial jurisdiction adjacent to the SCSR were reviewed for consistency with the proposed regulatory changes. The City of Encinitas was not initially included in the selected list. At the commenter's request, the General Plan of the City of Encinitas has been reviewed for consistency with the proposed Project IPA.

Of primary concern is the San Elijo Lagoon, a costal zone ecological resource included under the City's Land Use Element's Ecological Resource/Open Space/Parks. Under existing regulations, no private or commercial uses are permitted in these areas, with the exception of small concessions associated with interpretative or nature centers. The City cited various goals and policies needing further review per the proposed Project IPA including:

- Recreation Element Policy 2.8: Encourage the maintenance of the bluffs, beach, shorelines, reefs and ocean and discourage any use that would adversely affect the beach and bluffs except a reasonable number of access public stairways, lifeguard towers, and similar public beach facilities (Coastal Act 30211 and 30213).
- Recreation Element Policy 3.2: The City will designate as "visitor-serving Commercial" use areas land in the vicinity in proximity to higher intensity beach use areas. (Coastal Act 30221, 30222, 30223).
- Recreation Element GOAL 5: The City will continue to provide or coordinate with the State to provide for costal/shoreline recreation areas, with effective access, including signing; and will designate various beach areas for high, medium, and low intensity levels of use based upon the character of the beach resource and support facilities, and character of adjacent neighborhood. (Coastal Act 30211, 30212, 30212.5 and 30214).
- Recreation Element Policy 5.1: The City recognizes Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Beach, as the major visitor serving destination beaches in the Encinitas area. The city will work with the State to upgrade and promote access to these State beaches, and will act to upgrade and promote access to Moonlight Beach, in order that they may receive increased proportion of visitor uses. (Coastal Act 30214).
- Recreation Element Policy 5.3: The areas south of Carlsbad Beach State Park, Moonlight Beach State (future City) Park, Cardiff Beach State Park and San Eljio Beach State Park shall be designated as high intensity beach recreational use areas. (Coastal Act 30212.5 and 30221).

The City of Encinitas GP introduction states "Where any policy or provision of the General Plan that is a part of the Local Coastal Program Land Use Plan (LUP) conflicts with an policy or provision of the General Plan that is not a part of the LUP, the LUP policy or provision shall take precedence in the area of the City within the Costal Zone." Additionally, "Where two or more policies or provisions conflict with each other, the conflict shall be

resolved in a manner which on balance is the most protective of significant coastal resources." Other policies found in the city's adopted General Plan that may be considered consistent with the intent of the proposed Project IPA include:

- Recreation Element Goal 2: The City will make every effort to preserve open space areas that represent a significant environmental resource in the community. (Coastal Act 30240).
- Recreation Element Goal 3: The Coastal Areas will continue to play a dominant role in providing residents with open spaces for recreation. (Coastal Act 30220).
- Recreation Element Policy 3.3: The City will not provide for major boating facilities, such as marinas or piers for commercial fishing and recreational boating, within the City Costal Zone. No recreational water craft facilities will be permitted in the wetland areas. (Coastal Act 30231).
- Recreation Element Policy 4.4: The City will work to establish and protect a marine reserve within the costal waters. (Coastal Act 30230).
- Land Use Element Goal 8: Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas. (Coastal Act 30240 and 30252).
- Land Use Element Policy 8.10: Ecological Resource/Open Space/Parks is a category intended to be applied to both active and passive parklands; lagoons; wetlands habitat areas and their adjacent buffers; and other areas of significant environmental quality or public resource value.

No physical changes are proposed under the proposed Project IPA. The proposed MPAs would both conserve the San Elijo Lagoon, a significant environmental resource recognized by the City of Encinitas, and further the goals laid out in the City's GP. Therefore, there would be conflict with the GP and LUP, and thus no significant impact. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-9: Comment noted. Designation of Swami's SMR will not interfere with non-consumptive recreational activities. See also Master Response 3. *No changes to the Draft EIR are required.*

Response to Comment A72_ii-10: Under the existing condition the Encinitas and Cardiff-San Elijo SMCAs restrict certain fishing efforts within the alongshore footprint of the Swami's SMCA of the proposed Project IPA. The existing Encinitas SMCA regulation allows only take of finfish, while Cardiff-San Elijo SMCA regulation allows for take of all living marine resources is prohibited except for select species of invertebrates and finfish. It is true that State Parks and the Commission are considering two take options, Option 1 and

Option 2. Option 2 presented in the Draft EIR requests shore fishing to be considered within any of the four Swami's SMCA boundary options presented in the Draft EIR. The Moonlight State Beach General Plan is the State Parks Department planning and implementation document applicable to Swami's SMCA beach component. The General Plan, as adopted in November 1983, lists surf fishing as an occurring active recreational activity. Additionally, the Plan's Interpretative Element recommends a "Catching Fish at the Beach" interpretative theme. No explicit policies were found protecting shore fishing as an active recreational activity. No concessions providing fishing tackle or gear were listed in the Plan. The existing and planned recreational surf (shore) fishing at Swami's SMCA will be considered by when by the Commission when selecting between the two take Options for the SMCA.

Response to Comment A72_ii-11: Comment noted.

Subject: Fwd: MLPA Draft EIR
From: Susan Ashcraft
Date: Mon, 18 Oct 2010 20:07:00
To: "Im, Angie" <AIM@dfg.ca.gov>
To: "Napoli, Thomas" <TNapoli@dfg.ca.gov>

Another...

****NOTE NEW PHONE NUMBER & ADDRESS*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
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"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of October

---- Forwarded message ----
Subject: MLPA Draft EIR
From: Tina Estell <testell@cosb.org>
Date: Mon, 18 Oct 2010 17:36:00
Good Evening Mr. Napoli:

The attached letter and comments are submitted on behalf of City Manager David Ott. Please address any questions you may have to David Ott at 858-720-2431.

Regards,
Tina Estell
City Manager's Office
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075
P:858-720-2431
F:858-720-2437

P Be Green. Please don't print
this e-mail unless you really need to

---- End forwarded message ----

Attachment: TEXT7.htm

Attachment: MLPA Draft EIR Comment LTR.pdf
Attachment: Mime12.822

Responses to Comment Letter A75_i

Response to Comment A75_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

CITY OF SOLANA BEACH
635 SOUTH HIGHWAY 101 • SOLANA BEACH, CALIFORNIA 92075-2215 • (858) 720-2400
www.ci.solana-beach.ca.us FAX (858) 792-6513 / (858) 755-1782

October 18, 2010

Mr. Thomas Napoli, Staff Environmental Scientist
MLPA SCSR DEIR
California Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, California 92679

RE: Draft Environmental Impact Report (DEIR) for the Marine Protected Area (MPA) proposals in the California South Coast Study Region (SCSR)

Dear Mr. Napoli:

The City of Solana Beach (City) appreciates the opportunity to review and provide comments on the Draft Environmental Impact Report (DEIR) for the marine protected areas in the California South Coast Study Region (SCSR) pursuant to the Marine Life Protection Act Initiative (MLPA). We respectfully submit these comments to help ensure that the State fully complies with the California Environmental Quality Act (CEQA) Public Resources Code §21000 et seq with respect to the proposed project.

We have reviewed http://ceqanet.ca.gov/projectlist/asp and were unable to locate either a Notice of Completion (NOC) or a Notice of Availability (NOA) filed with the State Clearinghouse. Because neither of these required public notices have been filed with the State Clearinghouse (CEQA Guidelines §15085), the public review period has effectively not been started on the DEIR. A75_ii-1

Our general comments are provided below. Our detailed comments are provided in a table format, with references to specific pages of the DEIR, and are included as an attachment to this letter. Our comments are focused on the numerous deficiencies in the DEIR that trigger the requirement for the CDFG revise and recirculate the DEIR pursuant to CEQA Guidelines §15088.5. A75_ii-2

The Draft EIR was issued for public review within weeks after the close of the Notice of Preparation (NOP) public comment period. As raised in our NOP comment letter (attached for reference), the City expressed concern that this exceptionally abbreviated process for a regionally significant project would preclude the CDFG from adequately reviewing and considering the many substantive comments of stakeholders in response to the NOP.

Based on our now completed review of the DEIR, it is apparent that our concerns were well founded and that in fact the CDFG failed to give meaningful consideration to NOP comments on the scope and content of the DEIR and project alternatives. Further, the DEIR fails to include a list of the Project Objectives which are fundamental to the establishment of a range of reasonable alternatives to a project (CEQA Guidelines §15126.6).

For instance, our comments requesting that the CDFG consider a range of reasonable alternatives to the project that avoided historic beach restoration locations have been ignored in the DEIR. No reason is provided and in fact the DEIR describes a project with expanded potential for significant adverse impacts to planned beach restoration projects now being contemplated by SANDAG and its member coastal cities. A75_ii-2

It is apparent that the bulk of the EIR was already written and conclusions already reached by the CDFG when the NOP was released. This is the only conclusion that can be reached that would enable the CDFG to meet the aggressive schedule it created for itself. As a result, the public was misled into thinking that comments on the NOP and those made at the public scoping meetings were going to be considered by the CDFG as required by CEQA. In addition, a single public scoping meeting was held in Long Beach with no formal EIR scoping meetings held anywhere in San Diego County.

For an exceptionally complex project that encompasses an area that is greater than 2,500 square miles in size, it is difficult to understand how such an abbreviated CEQA processing schedule could be anything but ceremonial and not intended to inform the scope and content of the Draft EIR as required by CEQA Guidelines §15082. Pursuant to CEQA §21005 the CDFG may have abused its discretion with respect to the full disclosure requirements of CEQA. A75_ii-3

The City of Solana Beach has been an active public agency participant in the MLPA process for the South Coast Study Region from the beginning and has closely monitored the development of various proposals resulting in the Integrated Preferred Alternative (IPA). The City, as well as, the San Diego Association of Governments (SANDAG), and all of the other coastal cities in San Diego County have been closely watching the process with interest in beach restoration, shoreline management, and lagoon restoration goals from the beginning. A75_ii-4

The City has previously sent three letters during the MLPA planning process for the SCSR and has also provided oral testimony at various public meetings throughout the two year process. To date, it appears that the written comments and oral comments have been ignored as our valid concerns have not been addressed in the IPA or the alternatives. Therefore, at this time, neither the IPA nor the alternatives can be supported by the City of Solana Beach unless specific language is added to the description of the Swami's State Marine Conservation Area and San Elijo State Marine Reserve that ensure beach restoration activities and lagoon restoration efforts would be permitted and that ongoing and future access to existing infrastructure for operation, maintenance, replacement, and upgrading activities would be allowed.

As the California Department of Fish and Game (CDFG) and the California Coastal Commission (Commission) have been made aware, beach erosion and loss of beach habitat are serious problems in the San Diego region. SANDAG is planning to renourish the region's beaches in 2012. The cities of Encinitas and Solana Beach are working on a 50-year beach restoration project with the U.S. Army Corps of Engineers. Sandy beaches are essential to the state's quality of life and its economy. Beach nourishment projects restore sediment that has been prevented from reaching the shore by human activities, such as dams, harbors, and urbanization. A75_ii-5

Beach restoration efforts relying on beach sand placement are considered "soft" solutions which are more preferable to many than "hard" solutions like shoreline protective devices. We feel it is

critically important to all cities and public beaches in the San Diego region that no additional obstacles to beach restoration be created. Our comments below are focused on the three proposals and modifications that would ensure beach restoration projects continue into the future. A75_ii-5

While the City of Solana Beach remains a leader and steadfast supporter of natural resource protection and sound ocean management practices, the needs of other entities dependent on marine resources must be given the appropriate consideration and the interests balanced when competing for resource access. It appears that the CDFG MLPA process still has more work to do to ensure the rights of all users are considered and protected.

Based on our review of the DEIR, it does not appear that the CDFG has initiated the required federal environmental review process under the National Environmental Policy Act (NEPA). Environmental review under NEPA will be required to satisfy the regulatory permitting and approval requirements of the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and the National Marine Fisheries Service. A recirculated Draft EIR needs to include a description regarding how the CDFG will ensure compliance with NEPA. A75_ii-6

Wholesale dismissal of the resource analysis of "Geology and Soils" impacts is inappropriate in this DEIR because implementation of the project and/or alternatives will have a direct effect on these resources and the CDFG has substantiated in the Administrative Record or included any evidence supporting their exclusion from analysis in the DEIR. A75_ii-7

As we and other cities and SANDAG have advised repeatedly, implementation of the MPA's in the South Coast Study Region will likely result in significant adverse effects on the ability of various government agencies (federal, state, regional and local) to replenish beaches with offshore sources of sand. The significant environment impacts would result in the loss of availability of offshore borrow sites for use in existing and future planned beach restoration projects; whereas, the loss of availability and value of these resources would be considered a significant adverse environmental impact and any such impacts are required to be described in the DEIR (CEQA Guidelines §15126.2). In addition, without the ability to restore local beaches to provide both recreational benefit as well as shoreline protective benefits, seawalls may become more popular as they will be the easiest and maybe only option to protect eroding bluffs along the coastline. A75_ii-8

The City has significant concerns with the proposed MPA boundaries and designations associated with the Swami's State Marine Conservation Area and San Elijo State Marine Reserve. While the IPA text states that "Designation is not intended to impede beach nourishment borrowing and receiving activities. "This language is not satisfactory and must be strengthened by substituting the words "shall not" in place of "is not intended to" so that the language reads as follows: A75_ii-9

- "Designation *shall not* impede beach nourishment borrowing and receiving activities."

We formally made this same request in our NOP comment letter and are again requesting that the IPA and all alternatives incorporate this specific language protecting ongoing and future planned (but as yet may be unpermitted) beach restoration activities including offshore borrow site dredging and placement of sand on the beaches. Because of current linguistic ambiguity contained in the IPA, substantial concern remains as to whether the region will be able to implement planned replenishment and restoration activities. Since so much of the concern over the designation of

MPAs is rooted in the unknown and undisclosed impacts to our regional and local shoreline management efforts, this suggested language changes must be included as a part of the proposed take regulations in the final IPA for the South Coast Study Region. A75_ii-9

The City of Solana Beach would consider support for the IPA or one of the other "action" alternatives if it can be provided in writing that ongoing permitted and planned future (but currently unpermitted) beach restoration activities, and ongoing and planned future maintenance of the San Elijo Joint Powers Authority (JPA) wastewater outfall, will not be precluded by implementation of the MLPA and establishment of the Swami's SMCA or San Elijo Lagoon SMR. The City again reiterates its suggestion that the following modifications be made to the IPA and alternatives:

- Revise the proposed southern boundary of the Swami's SMCA to 0.5 miles north of the existing San Elijo Lagoon mouth to ensure the southern boundary excludes the Cardiff borrow site, Cardiff receiver site and the San Elijo JPA wastewater outfall pipe.

The City of Solana Beach strongly supports efforts to protect natural resources and believes that MLPA Initiative objectives can be balanced with local and regional needs provided assurances made in writing. Beach erosion, as well as environmental protection are great concerns to our region. It is our desire that MPA designations not preclude or adversely impact ongoing and future shoreline management activities. The City respectfully requests that the CDFG, Commission and all decision makers involved in the MLPA Initiative give careful consideration to the impacts MLPA designations and expansions may have on the San Diego region. Thank you for your consideration of this matter.

Sincerely,

David Ott, City Manager
City of Solana Beach

CC: U.S. Senator Diane Feinstein
U.S. Congressman Brian Bilbray
State Senator Barbara Boxer
Assemblymember Martin Garrick
Mayor Thomas M Campbell, City of Solana Beach
Mayor Jim Wood, City of Oceanside
Mayor Claude A Lewis, City of Carlsbad
Mayor Dan Dalager, City of Encinitas
Mayor Richard Earnest, City of Del Mar
Mayor Jerry Sanders, City of San Diego
Gary Gallegos, SANDAG

Attachments: August 2010 NOP Comment letter to CDFG re: MLPA EIR
Matrix of comments on the MLPA DEIR

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
General Comment		The DEIR is silent on the status of National Environmental Policy Act (NEPA) compliance efforts. Federal regulatory permitting and approvals will be required from the U.S. Army Corp of Engineers, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. Please describe the status of NEPA coordination in a revised and recirculated DEIR.	A75_ii-10
General Comment	Notice of Preparation	The Notice of Preparation (NOP) was received received/stamped at the Governor's Office of Planning and Research, State Clearinghouse (SCH) on July 2, 2010 http://www.ceqanet.ca.gov/ProjectList.asp Per the SCH, the NOP was available for public review from July 2, 2010 to August 2, 2010; and yet the DEIR was released just 16 days later on August 18, 2010. This is a remarkable timeframe in which to complete a DEIR on a regionally significant project. The City believes that the CDFG has failed to fully review and consider the comments/concerns from the public and resource agencies as is evidenced in the DEIR.	A75_ii-11
General Comment	Project Scoping	The DEIR states that one scoping meeting was held on July 23, 2010 in the City of Long Beach. One of the purposes of project scoping is to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons. One scoping meeting for a statewide and regional project which will affect more than 30+ coastal communities in the south coast is not sufficient for introducing the project to the communities and to receive public opinion which assists in determining the scope of the EIR. Additional public scoping meetings need to be conducted by the CDFG as part of the process of recirculating the DEIR.	A75_ii-12
General Comment	Notice of Completion	No Notice of Completion (NOC) has yet been received by the City, nor has one been received by the State Office of Planning and Research (as of September 28, 2010) according to our online review of the State database. Please provide a copy of the NOC as stamped and received by the State OPR.	A75_ii-13

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
		Pursuant to the California Environmental Quality Act Guidelines §15085(a): *As soon as the draft EIR is completed, a notice of completion must be filed with the Office of Planning and Research in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.* This fundamental procedural action required by CEQA starts the public review process, thereby rendering the "review period" not started.	
Overall comment	City of Solana Beach NOP comment letter	In our NOP comment letter, the City requested consideration of an alternative to the project that moved the southern boundary of the proposed Swami's SMCA boundary one half mile or more to the north of the San Elijo Lagoon. This alternative is not evaluated in the DEIR nor is an explanation given in the DEIR as to why this alternative was not given due consideration within a range of reasonable alternatives to the project (CEQA Guidelines §15126.6).	A75_ii-14
Overall comment	Program EIR should have been prepared. Project EIR is – inappropriate.	The project area includes approximately 2,351 square miles of coastal state waters (DEIR Page 3-1). The City of Solana Beach is located within subregion 5 of the South Coast Study Region. In total there are 7 subregions within the study area. Based on this enormous geographic scope and due in part to the complexity of proposed boundary changes, modifications, removals, and MPA regulations covering 4 separate MPA designations, the DEIR would have been better organized and analyzed if the resource assessment was discussed and analyzed per subregion area. As written, the document lacks sufficient analytical detail to allow the public to understand how each of the various MPA's will affect local resources and existing activities and come to the conclusions drawn by the CDFG. The CDFG needs to prepare a Program EIR for the South Coast Study Region with project specific (MPA-specific) CEQA and NEPA analyses for each individual MPA under consideration.	A75_ii-15
Overall comment	No identified mitigation measures in the DEIR	The resource analysis sections of the DEIR do not appear to list any mitigation measures. Although we disagree with the conclusory statements included in the DEIR, and that the project does have the	A75_ii-16

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
		potential to result in significant adverse environmental impacts, why wasn't a Negative Declaration prepared by the CDFG? A few of the resource areas offer the subheading "Mitigation", and then state "No mitigation is required because there would be no adverse impact." [Page 8.1-13]; yet the majority of resource chapters do not. For document consistency and to adhere to the guidelines of CEQA, all proposed mitigation measures need to be fully enforceable and roughly proportional (State CEQA Guidelines §15126.4). In addition, the accepted and standard method for EIR preparers, when drafting an EIR, is to identify potential impact(s) with corresponding mitigation measure(s) designed to offset, reduce, minimize or compensate.	
Table of Contents	Lack of Technical Studies	Appendices A-F only provides for air quality and cultural resource technical studies. Special studies for the remaining resource areas have not been included with the circulation of the EIR. What studies were drafted or relied upon for the environmental analysis? Reference and availability to supporting documents is required for full public disclosure and to provide for meaningful public review. Please provide in a revised DEIR.	A75_ii-17
Executive Summary	Summary Requirements	The California Environmental Quality Act (CEQA) requires the Summary section to include a brief summary of the proposed actions and consequences (State CEQA Guidelines §15123(a)). However, this section disregards any discussion on the consequences of the project. Please revise and recirculate the DEIR.	A75_ii-18
Executive Summary	Summary Requirements	CEQA also requires the Summary section to include each significant effect with proposed mitigation measures (§15123 (b)(1)), Areas of Controversy (§15123 (b)(2)), and Issues to be Resolved, including the choice among alternatives and how to mitigate the significant impacts(§15123)(b)(3)). As written, the DEIR does not identify these basic CEQA requirements. Please revise and recirculate the DEIR.	A75_ii-19

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
Executive Summary	Summary Requirements	The Summary chapter is intended to be a standalone document. Yet, this chapter does not include any tables or figures to support the text. Rather, the reader is referred to multiple places in the DEIR find to locate information regarding the alternatives IPA boundaries, configurations, existing/proposed areas, and MPA protection. Please correct and revise the DEIR.	A75_ii-20
Page ES-3 Paragraph 5	Under the proposed Project IPA, MPAs would be designated as shown on Figure 3-2, and in Tables 3-2 and 3-3 (located in Section 3.0 of the DEIR).	These figures are not located in Chapter 3.0. Rather, these figures are on the project website http://www.dfg.ca.gov/mlpa/impact_sc.asp which impedes public review of the entire document. These documents contain essential information and must be included in a recirculated DEIR.	A75_ii-21
Section S.7	Avoidance, Minimization, and/or Mitigation Measures	The organization of this section and subsequent subsections does not explain which bullet points are mitigation measures and for what impacts are they are intended to offset or avoid. The listed subsection titles (i.e., Relocations and Natural Communities) do not exist in the Table of Contents, while other subsections (i.e., Hydrology and Floodplains) are analyzed and described under different subsection categories throughout the DEIR. This section must be re-written to describe the specific impact followed by mitigation and/or project design features.	A75_ii-22
Section S.8	Other Projects and Considerations	The DEIR is unclear if the four (4) listed projects are provided as the basis for baseline environmental analysis or cumulative projects. Please provide a resonse explanation.	A75_ii-23
Chapter 1 – Overall comment	DEIR public review period not started until NOC/NOA received by the State Clearinghouse.	Pursuant to CEQA Guidelines §15087, an NOA should be issued at the same time the NOC is sent to the State Clearinghouse. A review of the http://ceqanet.ca.gov/projectlist/asp indicates that neither a NOA nor a NOC have been filed to date by the CDFG. Because neither of these required public notices have been filed with the State Clearinghouse (CEQA §15085), the public review period has effectively not been started on the DEIR.	A75_ii-24
Chapter 1 – Overall comment	NOP Comments not summarized or included in DEIR	No mention of the NOP comments received, nor are they included with the DEIR. It is standard practice to summarize the comments received, which then assists to provide scope for the EIR, and demonstrates to the	A75_ii-25

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
		reader and decision makers that public comment and opinion was addressed. The City requests that a summary NOP comments be provided in a revised and recirculated DEIR.	
Page 1-4 & 1-5	The NOP was circulated to 34 coastal cities. One scoping meeting was held in Long Beach; none were held in San Diego County	One public scoping meeting for a project that has the potential to impact 34 coastal cities is inadequate to allow for meaningful project scoping input by affected stakeholders. The City requests that at least one public scoping meeting be held in San Diego County when the CDFG issues a new NOP for the recirculated DEIR.	A75_ii-26
Page 1-5 1st paragraph	Comments submitted in response to the NOP and during the public scoping process are available upon request by contacting CDFG at the address provided in Section 1.5 below.	The standard of professional practice among EIR preparers is to include all comments on the NOP and those from the scoping meeting, as to ensure the DEIR addresses public concern and potential impacts. These may be provided electronically or in hard copy but must be made available for the public to review given the high profile nature of this project and the level of public interest CDFG's proposals have generated.	A75_ii-27
Page 1-5 1st paragraph	All oral and written comments received in response to the NOP and during the public scoping process were considered during preparation of this Draft EIR.	CEQA requires the identification of issues to be resolved (State CEQA Guidelines §15123). Please rewrite this section to expand on this topic and to include a summary of all comments received on the NOP and during project scoping meeting.	A75_ii-28
Page 1-6	Bullet points referring to Project Objectives.	What are the project objectives? They are not included in the chapter. Project Objectives are fundamental to the establishment of a range of reasonable alternatives to a project (CEQA Guidelines §15126.6) and must be disclosed in the DEIR in order to allow for a meaningful review and assessment of the project description and proposed alternatives. This information must be included by the CDFG in a recirculated DEIR.	A75_ii-29
Page 1-16	The NOP is stated to have been sent to various recipients on June 29, 2010.	Per the SCH, the NOP was not received until July 2, 2010 which would have commenced the official 30-day public scoping period. Please revise the DEIR accordingly to correct this error.	A75_ii-30
Chapter 3 – Overall comment	Lack of Intended Uses of the DEIR	The DEIR fails to provide a statement describing the intended uses of the document (State CEQA Guidelines §15124 (d)). The DEIR must be revised and recirculated accordingly.	A75_ii-31

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
Page 3-1 1st paragraph	Overview maps are included in this section.	This statement is incorrect. No such maps are included in this section of the DEIR. The DEIR must be revised and recirculated accordingly.	A75_ii-32
Page 3-8	Table 3-1 MPA Definitions, Restrictions, And Allowable Uses	This table does not include any information on the remaining MPA designation of state marine recreational management areas as mentioned on Page 3-7. The DEIR must be revised and recirculated accordingly.	A75_ii-33
Page 3-12 1st paragraph	A comparative description of each sub-option, illustrating the changes among is provided.	Where is this information located? We cannot find this information. The DEIR must be revised and recirculated accordingly.	A75_ii-34
Page 3-39 1st paragraph	*Four boundary options for the Swami's SMCA are presented in the proposed Project IPA, as shown on Figure 3-7.*	It is unclear how and when the final boundary will be determined. Please clearly explain the process and the next steps that the CDFG will undertake including required NEPA compliance. The DEIR must be revised to include this information and recirculated accordingly.	A75_ii-35
Page 3-39	Proposed Modification of Take Regulations: Take Option 1: Allow recreational take of pelagic finfish including Pacific bonito and white sea bass by spearfishing. Take Option 2: Same as Option 1, with the additional provision allowing recreational take by hook and line from shore, as requested by the Department of Parks and Recreation.	How and when will the project proponent make a determination on the two options and how these statutorial changes relate to the CEQA processes. This information needs to be clearly articulated in the revised DEIR.	A75_ii-36
Page 3-39 3rd paragraph	3.5.41 San Elijo Lagoon SMP and San Elijo Lagoon SMCA	Per the City's NOP comment letter, the referenced proposed modifications to the San Elijo Lagoon SMP and San Elijo Lagoon SMCA should be revised to state:	A75_ii-37

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment
	Proposed Modification of Other Regulated Activities: *Existing provisions restricting boating, swimming, wading, and diving would be retained under the proposed regulations. However, existing regulations outlined in 14 CCR 632(b)(115)(D) and (E) pertaining to management activities would be modified and replaced by new regulations allowing:* *operation and maintenance, maintenance dredging, habitat restoration including sediment deposition, research and education, and maintenance of artificial structures inside the conservation area pursuant to any required federal, state, and local permits, or activities pursuant to 14 CCR 630, or as otherwise authorized by the Department.*	*Existing provisions restricting boating, swimming, wading, and diving would be retained under the proposed regulations. However, existing regulations outlined in 14 CCR 632(b)(115)(D) and (E) pertaining to management activities would be modified and replaced by new regulations allowing: beach restoration activities and lagoon restoration efforts including ongoing and future access to existing infrastructure for operation, maintenance, replacement, and upgrading, habitat restoration including sediment deposition, research and education, and maintenance of artificial structures inside the conservation area pursuant to any required federal, state, and local permits, or activities pursuant to 14 CCR 630, or as otherwise authorized by the Department.*
Page 3-47 1st paragraph	*Should the performance of the MPA network (or of individual MPAs) be significantly different than expected (not realizing expected conservation and rebuilding of important fish populations,*	What adaptive management strategies will be employed? Will these strategies be built into the mitigation measures? How often will the performance be reviewed? In addition, it is difficult to understand how exclusion of three key San Diego coastal lagoons from the MPA process furthers the goals of the CDFG with respect the MLPA. This should be clearly articulated in a revised DEIR.

A75_ii-38

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
	not lessening negative impact while maintaining value, etc.), the Act and the Master Plan provide the process and regulatory framework for adaptive management, allowing changes in the design or restrictions of the MPAs to meet the goals of the MLPA and Master Plan guidelines.		
Chapter 4.0 Disciplines Excluded from Detailed Environmental Analysis	4.3 Geology and Soils	Dismissal of the resource analysis for Geology and Soils in the DEIR is inappropriate and not supported by evidence in the record. On the contrary, as our City and other public agencies including SANDAG have advised repeatedly, implementation of the MPA's in the South Coast Study Region is expected to cause significant adverse effects on the ability of various government agencies (federal, state, regional and local) to replenish beaches with offshore sources of sand – effectively rendering these important mineral resource deposits unavailable for planned beach restoration programs. The significant environmental impacts would result in the loss of availability of offshore borrow sites for use in existing and future planned beach restoration projects; whereas, the loss of availability and value of these resources would be considered a significant adverse environmental impact and any such impacts are required to be reviewed in the DEIR (State CEQA Guidelines §15126.2). Likely indirect impacts associated with the implementation of the MLPA would include a proliferation of seawalls and other hard solutions for shoreline protection. These impacts need to be described in the revised and recirculated DEIR.	A75_ii-39
Chapter 5.0 Consumptive Uses of Living Marine	General Comment	CEQA Guidelines §15131(b) states that: "Economic or social effects of a project may be used to determine the significance of physical changes caused by the project." As such, this section should be reviewed and re-	A75_ii-40

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
Resources Products		written to include this threshold and re-assessed for the potential physical impact on commercial fisheries displacement.	
Pages 6.1-18 and 6.1-19	Criterion AIR-2	This section states the effect of the project would be to increase transit distances for commercial fishing vessels, which results in a corresponding increase in combustion emissions. Yet, then concludes the project would not contribute substantially to an air standard violation or impact. What study or modeling was referenced to substantial this conclusion. This information needs to be included in the revised DEIR. The last paragraph in this section prefers to SCAQMD's RECLAIM program as another option to *further reduce this impact*. Please clarify if there is an impact. CEQA dictates that mitigation measures are intended to reduce or avoid an impact. Mitigation measures are not required for effects which are not found to be significant. (Refer to CEQA Guidelines §15126.4 for guidance on consideration and discussion of mitigation)	A75_ii-41
Page 7-54	7.1.2.6 Species Likely to Benefit from MPAs	This section refers us to Appendix C for the list. Appendix E should be referenced instead. This needs to be clarified by CDFG in the revised DEIR.	A75_ii-42
Page 7-66	7.1.3 Impact Analysis *Adaptive management is a part of the MLPA. The MLPA requires monitoring to determine whether its goals related to biological resources are being met. If the goals of the MPAs (see Section 2.4.1) and MLPA (see Section 3.2) are not being met, then either regulatory or management changes could occur to try and meet the goals.*	Global comment for all resource chapters: Rather than just including a statement that "adaptive management" measures would occur with project implementation, the DEIR must clearly articulate the adaptive management program that CDFG will implement. For example, the revised DEIR must include objective and measureable performance standards in the mitigation program and include specific monitoring strategies and monitoring periods that will be employed by CDFG to verify effectiveness of the adaptive management. The revised DEIR must also include a detailed description of how the CDFG would modify or adapt the MPA program as needed and what tools the CDFG would use to isolate system changes from those that are naturally occurring, associated with sea level rise or are related to weather or the wave climate extremes.	A75_ii-43

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
Page 7-69 3rd paragraph	*Although impacts would be less than significant, it should be noted that implementation of the Marine Protected Areas Monitoring Enterprise, an effort aimed at efficient, cost-effective MPA monitoring that meets MLPA requirements, would further lessen these impacts. The California Department of Fish and Game and other partners would engage resource managers, policy makers, researchers, stakeholders and the public in planning and implementing MPA monitoring of the emerging statewide MPA network.*	It is unclear why mitigation is proposed if there is no significant impact. Rather, if this statement refers to project design features, than the DEIR should appropriately state so. Regardless, the City of Solana Beach requests to be involved in the preparation of the draft MPA monitoring program.	A75_ii-44
Page 8.2-1	*This section describes the existing setting and potential public services and utilities impacts of the proposed Integrated Preferred Alternative (IPA) and its alternatives.*	Lifeguard access for public safety purposes and beach cleanup would be precluded under the Preferred Alternative. This would be a significant adverse environmental impact of the project that must be fully evaluated and disclosed in a recirculated DEIR. This chapter does not include any discussion of potential impacts associated with implementation of the alternatives. This information needs be included in the revised and recirculated DEIR.	A75_ii-45
Page 8.2-19	Criterion PS:1: Significantly increase the need for law enforcement of federal, state, and/or local laws and regulations.	The analysis provided here is contradictory to earlier statements in the chapter; whereas Section 8.2.2.1 Law Enforcement Assets states: "The 2008 *Master Plan for Marine Protected Areas* notes that a lack of law enforcement resources is one of the reasons existing MPAs fall short of their potential to protect resources. (Fish and Game Code Section 2851 (a))." (Page 8.2-10 emphasis added)	A75_ii-46

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
		As written, it is unclear whether or not there is sufficient law enforcement of the MPA Master Plan or proposed with the IPA. Please revise accordingly inconsideration of the State of California budget situation – it seems unlikely that more resources would realistically be allocated to this effort which would not have a positive economic effect on State coffers. The proposed boundary change designations and enforcement considerations (i.e., points of access would be minimized and others as mentioned I Section 8.2.2.2) need to be included as mitigation measures to offset the potential impact to an increased need for enforcement personnel. With the increase in protected area, the increase of law enforcement personnel is reasonably expected. "Increased public understanding" is not a guarantee that will "increase voluntary compliance" nor is it enough to offset potential impacts. These "considerations" will need to be built in to the project design and articulated in the revised DEIR.	
Page 8.3-21	Criterion LAND-2: Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding/mitigating impacts	Without a supporting analysis or comparative table analysis is unsupported. In addition, there is no mention or analysis of land use plans relevant to the City of Solana Beach including the September 2009 Local Coastal Program Land Use Plan. This document needs to be revised by CDFG and referenced in the revised and recirculated DEIR.	A75_ii-47
Page 9-1	Overall comments	This section omits planned or reasonably foreseeable beach nourishment projects and must be revised accordingly. The MPA project will have a cumulatively considerable adverse impact on the ability of the local cities, SANDAG and the USACE to implement planned near term and long-term beach restoration projects. These cumulative effects must be articulated by CDFG in a revised and recirculated DEIR.	A75_ii-48

DEIR Section / Page	California MLPA South Coast Study Region DEIR Comment	City of Solana Beach Comment	
Page 9-18	*Section 9.4.8.1 Summary of Project-specific Impacts Related to Land Use and Recreation.*	This summary is not complete as it makes no mention of land use impacts and must be revised in a recirculated DEIR.	A75_ii-49

Responses to Comment Letter A75_ii

Response to Comment A75_ii-1: Notice of Completion forms were completed and submitted to the State Clearinghouse along with the Notice of Preparation of an Environmental Impacts Report and the Notice of Availability of the Draft EIR for public review and comment. The link provided by the commenter is not valid. To view copies of the proposed Project's Notice of Preparation and Notice of Availability of the Draft EIR, visit, http://www.ceqanet.ca.gov/QueryForm.asp, and search for State Clearinghouse number 2010071012 (provided on the cover of the Draft EIR). As evidenced by the Notice of Availability, the start of the public review period for this effectively began on August 18, 2010. *No changes to the Draft EIR are required.*

Response to Comment A75_ii-2: The commenter is correct in noting that the Draft EIR was under preparation at the time that the scoping hearing was conducted and before the end of the scoping period. The Commission contractor and Department staff used the issues that were raised during the design phase of the document as well as professional experience in writing and reviewing CEQA documents to address issues that may result in significant impacts from implementation of the proposed Project IPA. Substantial work on the Draft EIR had been completed at the time the scoping comments were received and reviewed.

Response to Comment A75_ii-3: The commenter is citing the total area of the SCSP; the actual area over which the Commission is adding take restriction is substantially less than the 2,500 square miles cited by the commenter. Further, the project being analyzed under CEQA is fairly simple. It is the promulgation of amendments to the state's MPA regulations intended to create a network of MPAs consistent with goals and objectives of the MLPA. The Commission notes that the process of designing the proposed Project IPA and alternatives was a long and complex process; however, the resulting regulatory changes being proposed are again fairly straightforward.

Response to Comment A75_ii-4: The proposed Swami's and San Elijo MPAs include regulatory language allowing the continuation of beach nourishment and sediment management activities. See section 3.5.40 and 3.5.41 for further information. *No changes to the Draft EIR are required.*

Response to Comment A75_ii-5: Comment noted.

Response to Comment A75_ii-6: No Federal government discretion is required for the Commission's designation of Marine Protected Areas within State Waters. No NEPA analysis is required for this regulatory action by the Commission.

Response to Comment A75_ii-7: The proposed Project IPA is not expected to produce impacts to geological resources or to expose humans to increased safety risks due to the placement of fishing restrictions in areas near or on known fault lines or landslide areas.

Also since the proposed Project IPA does not involve construction, erosion from construction activities is not of concern. The issue of beach nourishment has been analyzed in the Draft EIR under mineral resources section 6.4.2.2.1.

Response to Comment A75_ii-8: The Commission understands the concern of local governments to keep sand on their beaches and maintain their real property interests in their lands adjacent to MPAs. However, where beach nourishment has been identified as currently ongoing or permitted, language exempting these existing activities from the take restrictions within specific MPAs has been added. The Commission does not agree that implementation of the proposed Project IPA will significantly adversely affect the ability of various government agencies to replenish beaches with offshore sources of sand.

Response to Comment A75_ii-9: This comment is being forwarded to the Commission for consideration but is not relevant to CEQA or the purposes of public disclosure of possible environmental impacts of the proposed Project IPA as detailed in the Draft EIR.

Response to Comment A75_ii-10: See response to Comment A75_ii-6.

Response to Comment A75_ii-11: See response to Comment A75_ii-2.

Response to Comment A75_ii-12: Extensive public meetings were held during the study and design of the proposed Project IPA and alternatives (See http://www.dfg.ca.gov/mlpa/meetings_sc.asp). Though public scoping meetings are allowed under CEQA, they are not generally mandated. Most of the issues that were analyzed under the Draft EIR had originally been brought up in some form during these design related public meetings. Also many commenters misunderstand the purpose of CEQA, which is intended to analyze the impacts of the proposed Project IPA on the environment, and not the impact of the environment on the IPA. Furthermore, CEQA is not intended to allow commenters another opportunity to debate the relative environmental and economic benefits versus the expected environmental and economic costs. CEQA is intended to identify the direct and indirect adverse physical environmental impacts of the proposed Project IPA.

Response to Comment A75_ii-13: See response to Comment A75_ii-1.

Response to Comment A75_ii-14: Comment noted.

Response to Comment A75_ii-15: Though use of programmatic EIRs can be advantageous in certain circumstances, in this case project specific information and design criteria were established, and the use of a project specific EIR is appropriate. The MLPA mandates and the Commission has implemented a phased approach to the development of MPAs projects over the entire coast. The guiding document coordinating this Statewide MPA

development is the Master Plan for Marine Protected Areas adopted by the Commission (approved February 2008).

Response to Comment A75_ii-16: The MLPA requires that environmental impacts from implementation of the MLPA be avoided or mitigated. This includes those impacts identified in this Draft EIR as less than significant. The MLPA lays out an adaptive strategy for monitoring the functioning of the adopted MPA network and mitigating impacts. The process of creating this monitoring program is underway within the SCSR (See http://www.calost.org/South_Coast.html). A similar program has been developed for North Central Coast MPA project, (http://www.calost.org/North_Central.html) and will be used as a model for the development of the South Coast MPA project that is the subject of the current regulatory action to adopt the proposed Project IPA or alternatives.

Response to Comment A75_ii-17: Where available, web links to the references used were included in the Draft EIR. A complete list of the location and availability of reference documents used in the preparation of the Draft EIR is available on request.

Response to Comment A75_ii-18: Comment noted.

Response to Comment A75_ii-19: Comment noted.

Response to Comment A75_ii-20: The summary chapter is intended to summarize the contents of the EIR and not present them in full. The Executive Summary is adequate.

Response to Comment A75_ii-21: All figures not included in the main body of the Draft EIR are included in the Figures appendix included as part of the Draft EIR.

Response to Comment A75_ii-22: The Draft EIR does not have a Section S.7, however, the commenter may be referring to Section 7 of the Draft EIR. As noted in response to Comment A75_ii-16, the MLPA requires that environmental impacts from implementation of the MLPA be avoided or mitigated. This includes those impacts identified in this DEIR as less than significant. In this case, identification of mitigation measures is not required by CEQA because significant impacts are not expected to occur. As such, the modifications suggested by the commenter are not. Should significant adverse impacts be identified through monitoring and adaptive management, further mitigation will be required. No changes to the DEIR are required.

Response to Comment A75_ii-23: The current regulatory setting, existing regulations and environmental setting are contained within sections 5.0 through 9.0 as appropriate to the subject being discussed in each of these sections. For instance, in Section 3.0 the existing regulations for each proposed MPA under the IPA and the three alternatives are present. In addition the regulations for the existing MPAs are listed under the No Action

alternative. The information on the environmental setting relevant to the environmental impacts that are analyzed and discussed are included within each section.

Response to Comment A75_ii-24: See response to Comment A75_ii-1.

Response to Comment A75_ii-25: Replication of the comments received during the public comment period in the Draft EIR is not required by CEQA. However, copies of these comments are available upon request (see Draft EIR Section 1.4 at page 1-5).

Response to Comment A75_ii-26: Comment noted.

Response to Comment A75_ii-27: See response to Comment A75_ii-25.

Response to Comment A75_ii-28: Comment noted. Oral and written comments received in response to the NOP and during the public comment scoping process were considered during the preparation of the Draft EIR.

Response to Comment A75_ii-29: Project objectives are contained within Sections 2.0 and 3.0 of the Draft EIR.

Response to Comment A75_ii-30: Comment noted.

Response to Comment A75_ii-31: The comment contends that the Draft EIR did not provide a statement describing the intended uses of the EIR, and must therefore be revised and recirculated. The Commission disagrees. Intended uses of the EIR are stated in Section 1.3 of the Draft EIR. This section clearly states: "The Commission's proposed adoption of the regulatory changes comprising the proposed Project IPA constitutes a 'project' under CEQA. The EIR is an informational document used in the planning and decision-making process. The EIR is not intended to recommend either approval or denial of the proposed Project IPA or alternatives." The Draft EIR also states that it is "intended to supply the information necessary to allow the Commission to employ adaptive management measures and make periodic revisions to the MPA network, consistent with the review process prescribed by the MLPA." For further information, please refer to Section 1.3 of the Draft EIR.

Response to Comment A75_ii-32: Please see the Figures volume for a listing of all figures referenced in the Draft EIR.

Response to Comment A75_ii-33: Comment noted.

Response to Comment A75_ii-34: Please see the Figures volume for a listing of all figures referenced in the Draft EIR.

Response to Comment A75_ii-35: See response to Comment A75_ii-6 regarding NEPA. The Commission will evaluate the information contained in the Final EIR along with information obtained from the public during the regulatory comment period and in compliance with the requirements of the California Administrative Procedures Act and will then decide on which option to select for adoption.

Response to Comment A75_ii-35: See response to Comment A75_ii-35.

Response to Comment A75_ii-37: Comment noted.

Response to Comment A75_ii-38: For information on the development of the monitoring program for the SCSR MPA program see http://www.calost.org/South_Coast.html.

Response to Comment A75_ii-39: Impacts to beach nourishment and sediment management activities are discussed in Section 6.4, Mineral Resources. No impacts to these activities are expected to occur due to the incorporation of regulatory language that exempts these types of activities from the take restriction within specific MPAs.

Response to Comment A75_ii-40: Section 5.0 has been revised to clarify the information present and the analysis required under CEQA.

Response to Comment A75_ii-41: See Air Quality analysis information contained in the appendix volume.

Response to Comment A75_ii-42: Comment noted. The commenter presents an editing revision that would not fundamentally alter the analysis presented in the Draft EIR. The Draft EIR has been revised to reflect this change.

Response to Comment A75_ii-43: Comment noted. The adaptive management program referred to in this Draft EIR is mandated by the MLPA and not CEQA.

Response to Comment A75_ii-44: The MLPA requires that attempts be made to avoid or mitigate all environmental impacts, not just impacts found to be significant pursuant to CEQA. Also the MLPA requires a periodic review which, in part, is intended to identify unanticipated environmental or other impacts and to allow a management or regulatory response to any such impacts.

Response to Comment A75_ii-45: Activity by cities on city owned property adjacent to but outside of the MPAs within the SCSR will not be affected by the MPA regulations being proposed, as these regulations only apply to areas inside of the SCSR.

Response to Comment A75_ii-46: See response to Comment A13-31 and Master Response 9.

Response to Comment A75_ii-47: Comment requests consideration of the City of Solana Beach's Local Coastal Program (LCP) Land Use Plan (LUP)[1]. The City's LCP LUP is currently not certified by the California Coastal Commission (CCC), per the CCC's LCP Status Summary Chart.[2] As the LCP remains uncertified, the proposed actions within the coastal zone would be permitted by the CCC prior to the LCP LUPs certification. Additionally, following certification of the LCP (Land Use Plan and Local Implementation Plan), the review authority for new development within the City of Solana Beach, including most state and federal government proposals, transfers from the Coastal Commission to the City except for certain geographic areas such as submerged lands, tidelands, and public trust lands where the Commission retains original permit jurisdiction (PRC Section 30519). Potentially relevant policies from the City of Solana Beach LCP LUP include the following:

- **"Policy 2.2:** To maintain a safe, wide sandy beach to the extent feasible to increase the general quality of life for the citizens of Solana Beach. A safe, wide sandy beach augments and enhances recreational opportunities such as surfing, sunbathing, fishing, volleyball, and other such activities, all of which have beneficial economic impacts to the City, its residents, and businesses by resulting in increased business income, sales taxes, transient occupancy taxes, and public and private property values." (City of Solana Beach: 15[3]).
- "**Policy 2.6:** Public access-ways and trails may be an allowed use in Environmentally Sensitive Habitat Areas. Where determined to be desirable (by consideration of supporting evidence), limited or controlled methods of access and/or mitigation designed to eliminate or minimize impacts to ESHA may be utilized. Access-ways to and along the shoreline may be sited, designed, and managed to avoid and/or protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes." (City of Solana Beach: 16).
- **"Policy 2.22:** New public beach facilities may be limited to only those structures which provide or enhance public recreation activities. No development, other than Bluff Retention Devices permitted pursuant to the Land Use Plan, may be permitted on sandy public beach areas, except that lifeguard stations, public beach access stairs, small visitor serving concessions, trash and recycling receptacles, and physically challenged access improvements may be permitted when sited and designed to minimize adverse impacts to public access, visual resources and environmentally sensitive habitat areas and marine resources." (City of Solana Beach: 18).

[1] City of Solana Beach. 2009. Local Coastal Program Land Use Plan. September 2009. Accessed online at: http://solana-beach.hdso.net/LCPLUP/CD_LCPLUP.pdf.

[2] California Coastal Commissions, LCP Statues Summary Chart - San Diego Coast District, Actions through June 30, 2010. Dated October 19, 2010. Accessed online at: http://www.coastal.ca.gov/la/docs/lcp/Part6_SanDiegoCoastDistrict.pdf.

[3] Page numbers corresponds to individual sections of the LCP LUP and not the PDF.

- **"Policy 2.36:** Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, should be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities should be discouraged unless the use will be replaced with another offering comparable visitor serving or recreational opportunities." (City of Solana Beach: 19)
- **"Policy 2.73:** To maintain a safe, wide sandy beach to the extent feasible to increase the general quality of life for the citizens of Solana Beach. A safe, wide sandy beach augments and enhances recreational opportunities such as surfing, sunbathing, fishing, volleyball, and other such activities, all of which have beneficial economic impacts to the City, its residents, and businesses by resulting in increased business income, sales taxes, transient occupancy taxes, and public and private property values." (City of Solana Beach: 28)
- **"Policy 3.2:** Any Areas of Special Biological Significance and Marine Protected Areas (as designated by the California Department of Fish and Game), shall be considered ESHA and shall be accorded all protection provided for ESHA in the LCP." (City of Solana Beach: 34).
- **"Policy 3.65:** Manage development and land alteration to protect marine resources." (City of Solana Beach: 45).
- **"Policy 3.66:** For ocean shoreline area, limit development on sand or rock beaches to lifeguard towers/stations, temporary public comfort stations, safety and public information signs, public stairways, public recreation equipment and fire rings, other necessary public infrastructure, Bluff Retention Devices as permitted herein, and pollution control devices approved by the Regional Water Quality Control Board." (City of Solana Beach: 45).
- **"Policy 3.68:** Efforts by the California Department of Fish and Game and Regional Water Quality Control Board to increase monitoring to assess the conditions of near shore species, water quality and kelp beds, and to rehabilitate or enhance areas that have been degraded by human activities shall be encouraged and allowed." (City of Solana Beach: 45).
- **"Policy 3.69:** Near shore shallow fish habitats and shore fishing areas shall be preserved, and where appropriate and feasible, enhanced." (City of Solana Beach: 45).

Marine-specific Policies:

- **"Policy 3.65:** Manage development and land alteration to protect marine resources." (City of Solana Beach: 45).
- **"Policy 3.66:** For ocean shoreline area, limit development on sand or rock beaches to lifeguard towers/stations, temporary public comfort stations, safety and public

information signs, public stairways, public recreation equipment and fire rings, other necessary public infrastructure, Bluff Retention Devices as permitted herein, and pollution control devices approved by the Regional Water Quality Control Board." (City of Solana Beach: 45).

- **"Policy 3.68:** Efforts by the California Department of Fish and Game and Regional Water Quality Control Board to increase monitoring to assess the conditions of near shore species, water quality and kelp beds, and to rehabilitate or enhance areas that have been degraded by human activities shall be encouraged and allowed." (City of Solana Beach: 45).
- **"Policy 3.69:** Near shore shallow fish habitats and shore fishing areas shall be preserved, and where appropriate and feasible, enhanced." (City of Solana Beach: 45).

Lagoon-related Policies:

- "**Policy 3.85:** Lagoon breaching or water level modification should not be permitted until and unless a management plan for the lagoon is approved by the appropriate agencies, unless it can be demonstrated that there is a health or safety emergency, there is no feasible less environmentally damaging alternative, and all feasible mitigation measures will be implemented to minimize adverse environmental effects." (City of Solana Beach: 48).
- "**Policy 3.86:** Solana Beach shall encourage and support efforts to restore the San Elijo Lagoon and San Dieguito Lagoon in coordination with all applicable resource management agencies." (City of Solana Beach: 48).

Bluff Retention-related Policies:

- **"Policy 4.103:** To pursue a demonstration/temporary pilot project for sand retention such as a submerged, or emergent, reef or short T-head groin. If constructed, such a project will be monitored closely for effects. The structure could be removed if determined unsuccessful, or allowed to remain if deemed a success. The environmental, recreational and aesthetic effects of any sand retention structure will be considered in its planning and design. The City will also consider any implementation of sand replenishment and retention structures in the Oceanside Littoral Cell in a regional context and in cooperation with other cities' beach sand retention efforts." (City of Solana Beach: 42).

The Plan's definition of "Submerged Reef" means, when considered for sand retention, "a proposed man-made structure positioned underwater offshore and used to dissipate wave energy shoreward of the reef and may result in sand retention."

Other relevant background information excerpted from the CLP LUP:

> "The shoreline includes 1.7 miles of narrow beach, backed with 75+ foot high seacliffs that are nearly completely built out with houses and condominiums. Seacliff erosion is a natural process occurring throughout San Diego County generally and in Solana Beach specifically; which in the last several decades has been greatly accelerated by the lack of sand replenishment due to the damming of, and mining in, coastal rivers that formerly carried to the ocean much greater amounts of sediment than are currently being delivered. The current approximate rate of erosion is estimated at an average of 0.4 feet per year, equating to a range of approximately 27 to 40 feet per 100 years." (City of Solana Beach: 1).
>
> "Shoreline protection along the coast is common in Solana Beach. Shoreline protective devices include various types of bluff retention devices: seawalls, revetments, shotcrete walls/cave, notch and dripline infills. More than 25 percent of the Solana Beach coastline is armored with seawalls. The percentage of the Solana Beach coastline with some type of protection increases to just over 50 percent, when including concrete installed on the coast to infill notches and seacaves." (City of Solana Beach: 2).
>
> "Given proper land use management, bluff retention devices are not inevitable along the entire shoreline of Solana Beach. If the City implements and construct a few small artificial reefs or headlands and pre-fills the entire system, in the next 75 years, bluff retention devices need not be constructed along the entire City shoreline. Implementation of the LUP may well increase the environmental quality of the Solana Beach shoreline. Beach nourishment is the only way to preclude the inevitability of bluff retention devices along the City's entire shoreline. In addition, a properly implemented assessment or hazard abatement district could also be a vehicle by which both sand retention structures and beach nourishment could be implemented, improving the recreational quality of Solana Beach and eliminating the long-term need for the complete walling off of the Solana Beach shoreline." (City of Solana Beach: 2).
>
> "As part of this LCP and its implementing laws and policies, the City of Solana Beach is establishing a long-term shoreline management plan." (City of Solana Beach: 3).
>
> "The Solana Beach LCP LUP includes long-term goals for the establishment of a sand replenishment and retention program for the beach and the potential to eventually remove Bluff Retention Devices, provided certain criteria are satisfied. A long-term shoreline management plan is being established with this LUP to achieve this latter goal by the 2081 or in minimum twenty-year increments thereafter. At such

time, the impacts of the Bluff Retention Devices will either: 1) continue to be mitigated; 2) the Bluff Property will be acquired by the City at fair market value; or 3) the Bluff Retention Device will be removed provided impacts associated with removal on the adjacent private and public properties will be addressed financially, structurally and otherwise by the policies contained in this plan." (City of Solana Beach: 4).

"San Elijo Lagoon Ecological Reserve is an approximately 1,000 acre nature reserve on the northern border of the City. The reserve is collectively owned and managed by the State of California (managed by the California Department of Fish and Game), the County of San Diego (managed by the County Department of Parks & Recreation), and the San Elijo Lagoon Conservancy. These agencies are jointly responsible for preserving this area as a sanctuary for critical natural resources. The City's inland lagoon access points provide significant access and recreation opportunities in the City, and are as important to coastal access as shoreline access-ways." (City of Solana Beach: 4).

"Once the LCP is certified, the City will have jurisdiction to issue Coastal Development Permits for projects landward of the Mean High Tide Line, with the Coastal Commission retaining appeal jurisdiction only. Both before and after the certification of the LCP, the Coastal Commission retains original jurisdiction with respect to projects seaward of the Mean High Tide Line (i.e., on tidelands, submerged lands, filled and unfilled public trust lands) and with respect to any areas within the Coastal Zone for which the LCP which has not yet been certified. Accordingly, applications for all Bluff Retention Devices to be sited seaward of the Mean High Tide Line, as shown on the Mean High Tide Line Survey, shall be submitted to the City and then to the Coastal Commission. The Land Lease/Recreation Fee for use of City property will still be collected by the City regardless of the permitting entity." (City of Solana Beach: 5)".

Response to Comment A75_ii-48: See response to Comment A75_ii-39.

Response to Comment A75_ii-49: Comment noted. The purpose of this section is to summarize the impacts of the proposed project and alternatives. Land use impacts are described in detail in Section 8.3 of the Draft EIR. For clarification purposes, a reference to Section 8.3 has been included in the summary in Section 9.4.8.1.

Letter A85_ii

redondo BEACH

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October 19, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 90720

VIA: US MAIL AND EMAIL TO "MLPA CEQA COMMENTS" (MLPAComments@dfg.ca.gov)

Dear Sirs:

The City Council of the City of Redondo Beach has authorized the submission of official City comments to the South Coast MLPA DEIR. While the City continues to have concerns, the Blue Ribbon Committee revisions and modifications of the Integrated Preferred Alternative (IPA) to exclude Rocky Point have lessened the potentially significant impacts of the project. A85_ii-1

The IPA provides an opportunity to achieve a balance between environmental goals and sustainable commercial and recreational use of ocean resources. The IPA will lessen the City's socioeconomic concerns as they relate to the environment and will reduce concerns about Green House Gas (GHG) emissions. However, the DEIR should contain additional discussion of these impacts as discussed in the comments below. A85_ii-2

Once again, the City of Redondo Beach appreciates the opportunity to participate in the process and offers the following comments:

- Objective 5.1 of the DEIR states that the project should, "Minimize negative socio-economic impacts and optimize positive socio-economic impacts for all users including coastal dependent entities, communities and interests, to the extent possible, and if consistent with the Marine Life Protection Act and its goals and guidelines." The collection of baseline data on existing conditions should be conducted to ensure that impacts can be quantified. A85_ii-3

- The DEIR should include a discussion on the socio-economic impacts of the project. Given concerns about direct business loss and the indirect economic multiplier effects, a full analysis is necessary. A85_ii-4

- Objective 5.2 states that ,"opportunities for interested parties to help develop objectives, a long-term monitoring plan that includes standardized biological and socio-economic monitoring protocols, a long-term education and outreach plan, and a strategy for MPA evaluation shall be provided." The objectives, monitoring plan, outreach and education plan A85_ii-5

and evaluation strategy should be developed before MPA implementation. Reliance on a future plan or action does not constitute adequate mitigation pursuant to CEQA. A85_ii-5

- Objective 5.4 regarding compliance and stakeholder support for boundaries and regulations cannot be achieved without public education, monitoring and enforcement. The DEIR does not document that there will be adequate resources to monitor and enforce MPA's. An examination of existing enforcement resources and an estimate of additional resources necessary should be conducted. Funding sources for public education, monitoring and enforcement should be identified and a schedule of these activities should be provided. Any demands on local agencies should be clearly specified. A85_ii-6

- Section 36.2 regarding "Enforcement" states that enforcement is highly dependent on "efforts to acquire more direct assistance from appropriate agencies". This statement implies that resources are insufficient for monitoring and enforcement. (see previous comment) A85_ii-7

- The DEIR does not adequately address regional Green House Gas (GHG) emissions, particularly the cumulative effects of the project on such emissions. The discussion in the DEIR concludes that the project would result in additional regional emissions due to longer travel distances for commercial and recreational fishing vessels yet dismisses the potential impact as less than significant due to non-exceedance of emission thresholds. The doubling of emissions from commercial vessels and similar increases from recreational vessels cannot be dismissed as a less than significant impact. The need exists to provide mitigation that fully offsets the increased GHG emissions. One potential mitigation measure would be to fund and operate a marine engine repowering program. Other options could include funding and operating a land-side program to reduce an equivalent amount of emissions from fleet vehicles or other stationary sources. A85_ii-8

Thank you for the opportunity to comment on the DEIR. We look forward to your careful consideration of these comments and hope that serious consideration is given to modifying the project to address the concerns that we raise and to allow a balance of limited consumptive uses and environmental protection.

Sincerely,

Mike Gin

Responses to Comment Letter A85_ii

Response to Comment A85_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-3: Comment noted. See Master Response 3. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-4: Comment noted. See Master Response 3. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-5: Comment noted. See Master Response 1. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-6: Comment noted. See Master Response 1. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-7: Comment noted. See Master Response 1. *No changes to the Draft EIR are required.*

Response to Comment A85_ii-8: See response to comment A84_ii-11.

F:\atty\muni\laws\mjm\MarineLifeProtectionActReso032409
City Council Meeting: 3/24/2009 Santa Monica, California

RESOLUTION NUMBER 10388 (CCS)

(City Council Series)

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SANTA MONICA, SUPPORTING IMPLEMENTATION OF THE
MARINE LIFE PROTECTION ACT (MLPA)

WHEREAS, the health of the Pacific Ocean is directly tied to the City of Santa Monica's economy, public health, and environment; and

WHEREAS, there is increasing scientific evidence that human activities are damaging marine ecosystems and ocean life; and

WHEREAS, the City of Santa Monica endorses a balanced approach to managing, sustaining, and protecting the ocean environment, including protection of habitat and wildlife, fishing and recreation; and

WHEREAS, California adopted the Marine Life Protection Act (MLPA) in 1999 to provide improved protection for the diversity and abundance of California's ocean habitats through a network of marine protected areas (MPAs) with the goals of sustaining, conserving and protecting marine life populations; protecting marine ecosystems; improving recreational, educational and study opportunities provided by marine ecosystems; and protecting marine natural heritage; and

WHEREAS, in order to ensure success of the MLPA, diverse, interested stakeholders, including fishermen are included in the MPA design; and

WHEREAS, MPAs encompass a range of protection levels, from fully protected no-take reserves to parks and conservation areas that allow for only certain types of fishing activity; and

WHEREAS, there is strong scientific evidence that marine protected areas, especially marine reserves, restore and protect the natural diversity and abundance of marine life, and the structure, function and integrity of marine ecosystems; and

WHEREAS, marine reserves throughout the world generally show greater benefits to the habitat and wildlife populations, resulting in significantly higher densities of marine life within their boundaries relative to only partially protected sites; and

WHEREAS, MPAs and reserve designation requires a balance of ecological, political, economic and social goals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Santa Monica supports the goals and implementation of the Marine Life Protection Act to establish a network of MPAs in California waters designed to protect the State's marine life, habitat, and ocean ecosystems.

A90_ii-1

SECTION 2. That the City Council of the City of Santa Monica endorses the planning process for the Marine Life Protection Act in Southern California and will support creative implementation processes that include input from the science community and all interested stakeholders, including fishermen. A90_ii-2

SECTION 3. That the City Council of the City of Santa Monica endorses the use of MPAs with a variety of protection levels in order to accommodate multiple objectives and stakeholder use, but strongly urges the use of fully protected marine reserves to the greatest extent practicable to ensure the health of California's marine resources for future generations. A90_ii-3

SECTION 4. The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect.

APPROVED AS TO FORM:

Marsha Jones Moutrie

MARSHA JONES MOUTRIE
City Attorney

Adopted and approved this 24th day of March, 2009.

Ken Genser, Mayor

I, Maria Stewart, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Resolution No. 10388 (CCS) was duly adopted at a meeting of the Santa Monica City Council held on the 24th day of March, 2009, by the following vote:

Ayes:	Council members:	Bloom, Davis, Holbrook, McKeown Mayor Genser, Mayor Pro Tem O'Connor
Noes:	Council members:	None
Abstain:	Council members:	None
Absent:	Council members:	Shriver

ATTEST:

Maria Stewart, City Clerk

Responses to Comment Letter A90_ii

Response to Comment A90_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A90_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A90_ii-3: Comment noted. *No changes to the Draft EIR are required.*

Letter A94_ii

ANTONIO R. VILLARAIGOSA
MAYOR

November 9, 2009

MLPA Blue Ribbon Task Force
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Support – Map 3 and Strong Protections of Southern California's Coastal Ecosystem

Dear Blue Ribbon Task Force members:

As the Mayor of the City of Los Angeles, I am committed to ensuring the future health and vitality of our coast. I strongly support the Marine Life Protection Act (MLPA) process and the establishment of a network of marine protected areas (MPAs) along the southern California coast. I would like to express my strong support for Map 3 as it is the only map which adequately protects the critical areas and high quality habitats necessary to ensure that fisheries can recover and be healthy for generations to come. A94_ii-1

The health of the coastal ocean is important to all of Los Angeles, and not just those who live on the coast. Residents throughout our City visit the beaches and coastline, each year, to enjoy marine wildlife, and subsistence fish from the public piers. The ocean is a public resource and its protection is of critical importance.

As you recommended at your last meeting in July, a strong backbone of marine reserves which thoroughly meet all the science guidelines provided by the Science Advisory Team is critical for the success of an MPA network and for the protection of southern California's coastal ecosystem. Such protections will not only protect what is left of precious ecosystems, but it will also keep our region's fishing industry sustainable for future generations. In a state where our economic activity is largely fueled by the health of our coastal resources, it is vital we invest in our ocean future.

Thank you very much for all your hard work in ensuring the protection of Southern California's marine life, and trust that the Task Force will choose Map 3 as the preferred alternative.

Very truly yours,

ANTONIO R. VILLARAIGOSA
Mayor

ARV:rp

cc: California Fish and Game Commission

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 978-0600 • FAX: (213) 978-0750
EMAIL: MAYOR@LACITY.ORG

Responses to Comment Letter A94_ii

Response to Comment A94_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Letter A94_iii

09-0002-S167

RULES & GOVERNMENT

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Santa Monica Bay Restoration Commission (SMBRC) is a state entity whose mission is to restore and enhance the Santa Monica Bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the Bay's benefits and values; and

WHEREAS, the SMBRC represents a broad stakeholder group that values a rational, ecosystem-based approach to natural resource management, transparent decision-making, an inclusive public process, and finding balance between competing demands while maximizing the many benefits for all that stem from resource protection; and

WHEREAS, nearshore rocky reef and kelp bed habitats along the north coast of Malibu and Palos Verdes Peninsula are among most abundant and diverse in marine life in Santa Monica Bay as well as the Southern California Bight; and

WHEREAS, goals of the Marine Life Protection Act (MLPA) are consistent with the restoration, educational and research goals and objectives of the Bay Restoration Plan; and

WHEREAS, Marine Protected Areas (MPAs) established through the MLPA process provide a range of protection levels through three types of MPA designations: state marine reserve (SMR), state marine park (SMP), and state marine conservation area (SMCA) in order to meet MLPA goals.; and

WHEREAS, California Department of Fish and Game (DFG) data show that some fish stocks in Santa Monica Bay and the Southern California Bight are dwindling and unlikely to recover due to loss of quality habitat; and

WHEREAS, DFG documents show that recreational and commercial fishing are of enormous cultural and economic value and provide significant employment and recreational opportunities for small businesses, subsistence fishers, sport divers, and others; and

WHEREAS, scientific studies locally and around the world show that freeing key habitats of fishing pressure results in increased abundance, diversity and size of target species in adjacent areas and is the most effective way to support long-term harvesting of fish for present and future users; and

WHEREAS, these scientific studies also show that a wider variety of bigger, more abundant fish are better at seeding future populations which, in the event of natural or man-made environmental disasters or accidental mismanagement of fisheries due to lack of knowledge of

EG

the resource, will expedite recovery of fish stocks and other related resources and ensure the ecological integrity of the Santa Monica Bay's ecosystems;

NOW THEREFORE BE IT RESOLVED, with the concurrence of the Mayor, that the City of Los Angeles hereby includes in its 2009-2010 State Legislative Program SUPPORT for the implementation of the Marine Life Protection Act, inasmuch as it will include the following elements: A94_iii-1

- Marine protected areas that protect and conserve marine life and habitat, allowing for the recovery of depleted fish, invertebrate, and plant populations.
- Stakeholder process that uses the best readily available science as well as the advice and assistance of scientists, resource managers, experts, stakeholders and members of the public.
- A network of marine protected areas that meet the scientific guidelines established by the MLPA Science Advisory Team;
- Marine reserves that protect high quality rocky habitats in Santa Monica Bay such as Point Dume and the Palos Verdes Peninsula and generate spill-over of fish into surrounding habitat;
- Marine cultural preserves at places such as Nicholas Canyon that will protect the Chumash cultural heritage;
- Marine parks and conservation areas that encourage public enjoyment of the marine environment, while educating users about the benefits and risks of consuming fish and shellfish from Santa Monica Bay;
- Marine protected areas that improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance; and
- A management framework that actively involves the SMBRC and coastal communities in long-term outreach and monitoring of MPAs in Santa Monica Bay.

PRESENTED BY: _____
Bill Rosendahl
Councilmember, 11th District

SECONDED BY: _____

ORIGINAL

AUG 7 2009

Responses to Comment Letter A94_iii

Response to Comment A94_iii-1: Comment noted. *No changes to the Draft EIR are required.*

Letter A96_ii

City of Malibu

Andy Stern, Mayor
23815 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.ci.malibu.ca.us

October 15, 2009

Marine Life Protection Act Initiative
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: MLPA – South Coast Study Region

To the Members of the Blue Ribbon Task Force:

At the Regular City Council meeting on October 12, 2009, the Malibu City Council reviewed the Marine Life Protection Act (MLPA) Science Advisory Team's recommendations regarding Marine Protected Areas (MPA) in the South Coast Study Region, which includes Malibu coastal waters. The City believes that an MPA is one element of a comprehensive conservation and fisheries management effort.

The City Council, in a unanimous vote, supported the implementation of MPA Proposal 1 for Subregion 2 (Rincon Point to Point Dume). The Council determined that Proposal 1, which allows for the establishment of both a state marine conservation area (SMCA) and state marine reserve (SMR) in the Point Dume area, provided the best option for meeting the needs of the Malibu community. In the Council action, it also made the recommendation that the California Department of Fish and Game build in a proviso that a scientific evaluation process be conducted in a timely manner. A96_ii-1

The City of Malibu recognizes the magnitude of the decision before you and thanks the members of the Blue Ribbon Task Force for their thoughtful consideration of this important matter.

Sincerely,

Andy Stern
Mayor

cc: Honorable Members of the Malibu City Council
Jim Thorsen, City Manager

M:\City Council\Mayor Chron Files\2009\MLPA recommendation_091015.doc

Recycled Paper

Responses to Comment Letter A96_ii

Response to Comment A96_ii: Comment noted. *No changes to the Draft EIR are required.*

RESOLUTION NO. 09-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU SUPPORTING IMPLEMENTATION OF THE MARINE LIFE PROTECTION ACT (MLPA)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

Section 1. Recitals

A. There is increasing scientific evidence that human activities are damaging marine ecosystems and ocean life.

B. The City of Malibu endorses a balanced approach to managing, sustaining, and protecting the ocean environment, including protection of habitat and wildlife, fishing and recreation.

C. California adopted the Marine Life Protection Act (MLPA) in 1999 to provide improved protection for the diversity and abundance of California's ocean habitats through a network of marine protected areas (MPAs) with the goals of sustaining, conserving and protecting marine life populations; protecting marine ecosystems; improving recreational, educational and study opportunities provided by marine ecosystems; and protecting marine natural heritage.

D. In order to ensure success of the MLPA, diverse, interested stakeholders, including fishermen, are included in the MPA design.

E. MPAs encompass a range of protection levels, from fully protected, no-take reserves to parks and conservation areas that allow for only certain types of fishing activity.

F. There is strong scientific evidence that marine protected areas, especially marine reserves, restore and protect the natural diversity and abundance of marine life, and the structure, function and integrity of marine ecosystems.

G. Marine reserves throughout the world generally show greater benefits to the habitat and wildlife populations, resulting in significantly higher densities of marine life within their boundaries relative to only partially protected sites.

H. MPAs and reserve designation requires a balance of ecological, political, economic and social goals.

I. On November 22, 2004, the City Council of the City of Malibu adopted Resolution No. 04-57 endorsing the implementation of the MLPA in Southern California as soon as possible and supporting creative implementation processes to include input from the science community and every interested stakeholder group, including commercial and recreational fishing interests. A96_iii-1

Section 2.

A. The City Council of the City of Malibu supports the goals and implementation of the Marine Life Protection Act (MLPA) to establish a network of Marine Protected Areas (MPAs) in California waters designed to protect the State's marine life, habitat and ocean ecosystems. A96_iii-1

B. The City Council of the City of Malibu endorses the planning process for the Marine Life Protection Act in Southern California and will support creative implementation processes that include input from the science community and all interested stakeholders, including fishermen.

C. The City Council of the City of Malibu endorses the use of MPAs with a variety of protection levels in order to accommodate multiple objectives and stakeholder use, but strongly urges the use of protected marine areas to ensure the health of California marine resources for future generations.

Section 3. The City Clerk shall certify the adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this 19th day of March 2009.

ANDY STERN, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 09-18 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 19th day of March, 2009, by the following vote:

AYES:	4	Councilmembers:	Conley Ulich, Sibert, Barovsky, Stern
NOES:	0		
ABSTAIN:	0		
ABSENT:	1	Councilmember:	Wagner

LISA POPE, City Clerk
(seal)

Responses to Comment Letter A96_iii

Response to Comment A96_iii-1: Comment noted. *No changes to the Draft EIR are required.*

City of Malibu

Sharon Barovsky, Mayor

23815 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.ci.malibu.ca.us

February 17, 2010 *Sent via Email to fgc@fgc.ca.gov*

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

RE: MLPA – South Coast Study Region

Dear President Kellogg and Members of the Fish and Game Commission:

At the Regular City Council meeting on October 12, 2009, the Malibu City Council reviewed the Marine Life Protection Act (MLPA) Science Advisory Team's recommendations regarding Marine Protected Areas (MPA) in the South Coast Study Region, which includes Malibu coastal waters. The City believes that an MPA is one element of a comprehensive conservation and fisheries management effort.

The City Council, in a unanimous vote, supported the implementation of MPA Proposal 1 for Subregion 2 (Rincon Point to Point Dume). The Council determined that Proposal 1, which allows for the establishment of both a state marine conservation area (SMCA) and state marine reserve (SMR) in the Point Dume area, provided the best option for meeting the needs of the Malibu community. In the Council action, it also made the recommendation that the California Department of Fish and Game build in a proviso that a scientific evaluation process be conducted in a timely manner. A96_iv-1

The City of Malibu recognizes the magnitude of the decision before you and thanks the members of the Fish and Game Commission for their thoughtful consideration of this important matter.

Sincerely,

Sharon Barovsky
Mayor

cc: Honorable Members of the Malibu City Council
Jim Thorsen, City Manager

Responses to Comment Letter A96_iv

Response to Comment A96_iv-1: Comment noted. *No changes to the Draft EIR are required.*

accepting comments on a draft EIR for a Marine Protected Area in the Santa Monica Bay. Deadline is tomorrow.

Sorry for the late notice. Our MLPA staff has been working hard on this and just recently suggested that those Governing Board members who have supported the process please re-send their resolutions. I am helping to reach out.

The resolution can be sent to:

MLPAComments@dfg.ca.gov<mailto:MLPAComments@dfg.ca.gov> Subject line: MLPA CEQA Comments

AND also to

fgc@fgc.ca.gov<mailto:fgc@fgc.ca.gov> Subject Line: South Coast Marine Protected Areas

Call me with any questions!

/s
Scott Valor
Director of Government Affairs
Santa Monica Bay Restoration Commission
310-922-2376

visit us at santamonicabay.org<http://santamonicabay.org>

---- End forwarded message ----
---- End forwarded message ----
---- Forwarded message ----
Subject: Fwd: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Region
From: MLPAComments
Date: Tue, 19 Oct 2010 10:58:00
From MLPA Comments - DFG

---- Forwarded message ----
Subject: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Region
From: Greg Wade <GWade@CityofIB.org>
Date: Tue, 19 Oct 2010 10:56:00
To Whom it May Concern ~

The City of Imperial Beach has reviewed the above Draft EIR and has the following comments:

In Section 3.5.48 (Tijuana River Mouth SMCA) of the DEIR, beach nourishment and other sediment management activities are discussed. The DEIR states the following:

Proposed Modification of Other Regulated Activities: The proposed regulations would allow beach nourishment or other sediment management activities and operations and maintenance of artificial structures inside the conservation area pursuant to any required permits or as otherwise authorized by the Department (page 3-44).

A97_i-1

The City of Imperial Beach feels it is imperative for this section of the DEIR, and others throughout the DEIR that discuss "beach nourishment or other sediment management activities", to clearly state that "beach replenishment, dredging for beach replenishment, maintenance dredging of lagoon/wetland inlet flood shoal areas and associated beach/nearshore sediment disposal, and ancillary activities associated with beach replenishment (including ongoing beach maintenance) are considered consistent with the goals of the MLPA designation (in the case of Imperial Beach, a State Marine Conservation Area) and would be allowed subject to required permits and approvals."

The current language does not make it clear enough that these other activities, most notably dredging of sediment, are allowed and does not make clear that that projects would be allowed in the future, as opposed to allowing projects only with existing permits to continue. The San Diego Association of Governments (SANDAG) has also commented on this specific issue and has suggested language be added to clarify this. The City of Imperial Beach wholly supports this request and similarly requests the following additional language (underlined) be added to the above paragraph:

"... would allow beach renourishment, including the dredging and placement of sediment, or other sediment management activities ... pursuant to any required permits for projects now and in the future, or as otherwise authorized by the Department."

This is particularly important to the City of Imperial Beach as we currently have a federally-authorized Shoreline Protection and Beach Replenishment Project that proposes to dredge up to 5.6 million cubic yards of sand over a 50-year time span from a designated borrow site within the proposed State Marine Conservation Area (SMCA) off Imperial Beach (see attached drawing of Borrow Site B).

A97_i-2

To this point, Section 6.4.2.2.1 of the DEIR (Beach Nourishment) generally addresses beach renourishment and identifies several locations in San Diego County where proposed beach renourishment projects and activities are either within or adjacent to proposed MPAs. Although this section accurately identifies the off-shore sand source (Borrow Site B) within the proposed

Tijuana River Mouth SMCA, "beach nourishment/replenishment activities" should also be clarified here to ensure that the activities mentioned above are included, specifically dredging. Page 6.4-10, Section 6.4.2.2.1 (Beach Nourishment) of the DEIR states:

A97_i-3

The California Fish and Game Commission (Commission) does not have authority to permit or prohibit beach nourishment in the marine or estuarine environment and the MLPA cannot supersede otherwise lawful activities that are not within the authority of the Commission to regulate (Department 2009b).

The City of Imperial Beach requests that clarifying language (underlined) be added to this section to read, "... beach nourishment, including the dredging and placement of sediment, in the marine or estuarine environment ...". This will ensure that it is understood that dredging activities will likely and may occur with beach nourishment activities.

Finally, as also pointed out by SANDAG, the DEIR should make it clear that agencies with permitting authority will continue now and in the future to issue permits under existing regulations. One example of where this issue is unclear is found on page 6.3-1 of Section 6.3.1 (Regulatory Framework), where the DEIR states:

A97_i-4

6.3.1 Regulatory Framework

... there are existing activities and artificial structures such as wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment that occur throughout the south coast study region (SCSR). These activities are regulated by other federal, state and local agencies, whose jurisdiction cannot be pre-empted through designation of Marine Protected Areas (MPAs) under the Marin Life Protection Act (MLPA) of 1999. Of the 35 MPAs in the proposed Project IPA regulations, 23 have been identified as having various existing activities regulated by other agencies. These activities are addressed within the proposed Project IPA regulations to explicitly allow these regulated activities to continue under current permits.

The language with which the City of Imperial Beach has concern is at the end of this paragraph as it refers only to activities with "current permits." We join with SANDAG in requesting that clarifying language be added to allow for future such activities and projects to be carried out, subject to required permits. This language, therefore, could be modified to read, "... to explicitly allow these regulated activities to continue under appropriate permitting authority for projects now and in the future."

A97_i-4

The City of Imperial Beach appreciates the opportunity to comment on this DEIR and respectfully requests that the sections of the DEIR addressed above be specifically amended as noted.

Thank you.

[IB Logo1.JPG]

Greg Wade
Community Development Director
City of Imperial Beach
Community Development Dept.
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Phone: (619) 628-1354 - Fax: (619) 424-4093
gwade@cityofib.org<mailto:gwade@cityofib.org> - www.cityofib
.com<blocked::http://www.cityofib.com/>

---- End forwarded message ----
---- End forwarded message ----
---- Forwarded message ----
Subject: Fwd: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Region
From: MLPAComments
Date: Tue, 19 Oct 2010 11:11:00
From MLPA Comments - DFG

---- Forwarded message ----
Subject: MLPA CEQA Comments - DEIR Regarding Marine Protected Areas inCalifornia's South Coast Study Region
From: Greg Wade <GWade@CityofIB.org>
Date: Tue, 19 Oct 2010 11:09:00
To Whom it May Concern ~

In addition to the comments just submitted, the City of Imperial Beach would also like to go on record as strongly opposing any consideration of Marine Protected Area (MPA) Alternative 3. In proposing a State Marine Conservation Area (SCMA) that would encompass and include the entire coastline of the City of Imperial Beach, this alternative would render our entire coastline off limits to long-practiced recreational activities such as pole fishing, spear fishing, grunion fishing, lobster fishing and clamming. Such a restriction would have far-reaching and devastating impacts to our City's tourism industry and to our quality of life.

A97_i-5

Once again, the City of Imperial Beach appreciates the opportunity to comment on this DEIR and respectfully requests that Alternative 3 not be considered.

Thank you.

[IB Logo1.JPG]

Greg Wade
Community Development Director
City of Imperial Beach
Community Development Dept.
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Phone: (619) 628-1354 - Fax: (619) 424-4093
gwade@cityofib.org<mailto:gwade@cityofib.org> - www.cityofib
.com<blocked::http://www.cityofib.com/>

---- End forwarded message ----
---- End forwarded message ----
---- Forwarded message ----
Subject: Fwd: MLPA CEQA COMMENTS
From: MLPAComments
Date: Tue, 19 Oct 2010 12:30:00
From MLPA Comments - DFG

---- Forwarded message ----
Subject: MLPA CEQA COMMENTS
From: Bob Osborn <bob@pacificangler.com>
Date: Tue, 19 Oct 2010 12:26:00
Comments on draft environmental impact report regarding

marine protected areas in California's south coast study region pursuant to

the Marine Life Protection Act submitted on behalf of:

Steve Fukuto

President United Anglers of Southern California

1933 Temple Ave

Signal Hill, CA 90755

Responses to Comment Letter A97_i

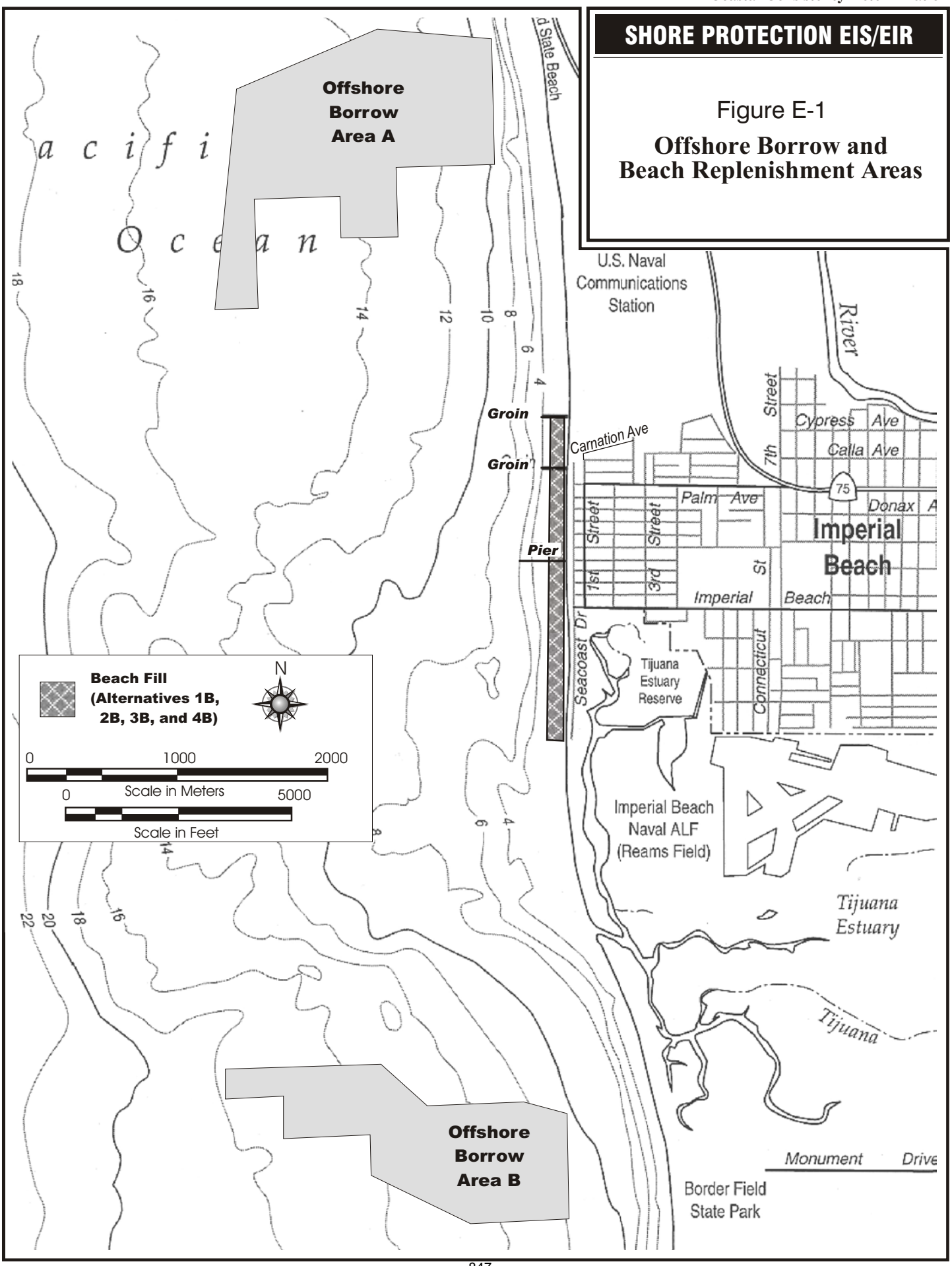
Response to Comment A97_i-1: The Tijuana River Mouth SMCA proposed regulations would allow for "Beach nourishment and other sediment management activities. pursuant to any required federal, state and local permits, or as otherwise authorized by the department." This is noted in Draft EIR sec. 3.5.48 under "Proposed Modification of Other Regulated Activities." In addition, existing activities that are regulated by other agencies are specifically exempted from the take restriction for MPA within the proposed Project IPA in subsections of 3.5 of the Draft EIR. Further, section 6.3.4 of the Draft EIR notes that "Pre-existing activities and artificial structures including but NOT limited to wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment occur throughout the heavily urbanized southern south coast study region. These are activities that may result in incidental take. However, these activities are regulated by other federal, state, and local agencies, whose jurisdiction cannot be pre-empted through designation of MPAs under MLPA. These activities are specified within the proposed MPA regulations to make explicit that these regulated activities are allowed to continue under current permits." *No changes to the Draft EIR are required.*

Response to Comment A97_i-2: The comment explains that authorization for beach nourishment is of particular importance to the City of Imperial Beach, as the City has a federally-authorized dredging project for this purpose, and the borrow site is located within a proposed SMCA. Further, the comment provides suggested revisions to the proposed regulatory language clarifying that dredging activities and placement of sediment would be within the scope of the provisions allowing beach nourishment within MPAs. Proposed regulations for the Tijuana River Mouth SMCA, described in Section 3.5.48 of the Draft EIR, would allow for "Beach nourishment and other sediment management activities… pursuant to any required federal, state, and local permits, or as otherwise authorized by the Department." The proposed language sufficiently mitigates for the agencies concerns on ongoing dredging activities, therefore *no changes to the Draft EIR are required.*

Response to Comment A97_i-3: See response to Response to Comment A97_i-2.

Response to Comment A97_i-4: Comment noted.

Response to Comment A97_i-5: The comment presents an opinion of Tijuana River Mouth SMCA proposed under Alternative 3 relative to the City of Imperial Beach. This comment will be considered by the Commission prior to making a decision on the project. If Alternative 3 were adopted, the alongshore span of this SMCA could be adjusted to accommodate existing recreational uses and fishing adjacent to the City of Imperial Beach.


SHORE PROTECTION EIS/EIR
Figure E-1
Offshore Borrow and Beach Replenishment Areas
Offshore Borrow Area A
Offshore Borrow Area B
Groin
Groin
Pier
Beach Fill (Alternatives 1B, 2B, 3B, and 4B)
N
0
1000
2000
Scale in Meters
0
5000
Scale in Feet
U.S. Naval Communications Station
River
Carnation Ave
Cypress Ave
Calla Ave
7th Street
Palm Ave
Donax
Imperial Beach
1st Street
3rd Street
Imperial Beach St
Seacoast Dr
Connecticut
Tijuana Estuary Reserve
Imperial Beach Naval ALF (Reams Field)
Tijuana Estuary
Tijuana
Monument Drive
Border Field State Park
75

Response to Comment A97_ii

Response to Comment A97_ii: This comment letter is a map, received as an attachment to a letter from the same commenter. While the map serves to inform the comments in the other letter, the map itself does not contain comments related to the content or adequacy of the Draft EIR. Comment noted.

RESOLUTION NO. 2009-R 068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, SUPPORTING IMPLEMENTATION OF THE MARINE LIFE PROTECTION ACT (MLPA)

WHEREAS, California adopted the Marine Life Protection Act (MLPA) in 1999 to provide improved protection for the diversity and abundance of California's ocean habitats through a network of marine protected areas (MPAs) with the goals of sustaining, conserving and protecting marine life populations, protecting marine ecosystems, improving recreational, educational and study opportunities provided by marine ecosystems, and protecting marine natural heritage; and

WHEREAS, goals of the MLPA are consistent with the restoration, educational and research goals and objectives of the Santa Monica Bay Restoration Commission's Santa Monica Bay Restoration Plan; and

WHEREAS, near-shore rocky reef and kelp bed habitats along the north coast of Malibu and Palos Verdes Peninsula are among most abundant and diverse in marine life in Santa Monica Bay as well as the Southern California Bight; and

WHEREAS, California Department of Fish and Game (DFG) data show that some fish stocks in Santa Monica Bay and the Southern California Bight are dwindling and unlikely to recover due to loss of quality habitat; and

WHEREAS, there is strong scientific evidence that MPAs, especially marine reserves, restore and protect the natural diversity and abundance of marine life, and the structure, function and integrity of marine ecosystems; and

WHEREAS, DFG documents show that recreational and commercial fishing are of enormous cultural and economic value and provide significant employment and recreational opportunities for small businesses, subsistence fishers, sport divers, and others; and

WHEREAS, scientific studies locally and around the world show that freeing key habitats of fishing pressure results in increased abundance, diversity and size of target species in adjacent areas and is the most effective way to support long-term harvesting of fish for present and future users; and

WHEREAS, these scientific studies also show that a wider variety of bigger, more abundant fish are better at seeding future populations which, in the event of natural or man-made environmental disasters or accidental mismanagement of fisheries due to lack of knowledge of the resource, will expedite recovery of fish stocks and other related resources and ensure the ecological integrity of the Santa Monica Bay's ecosystems;

NOW, THEREFORE, the City Council of the City of Culver City, DOES HEREBY RESOLVE as follows:

The City Council of the City of Culver City, California supports the implementation of the MLPA in Santa Monica Bay, inasmuch as it includes the following elements: A98_ii-1

1. Marine protected areas that protect and conserve marine life and habitat, allowing for the recovery of depleted fish, invertebrate, and plant populations;

2. Stakeholder process that uses the best readily available science as well as the advice and assistance of scientists, resource managers, experts, stakeholders and members of the public;

3. A network of MPAs that meet the scientific guidelines established by the MLPA Science Advisory Team;

4. Marine reserves that protect high quality rocky habitats in Santa Monica Bay such as Point Dume and the Palos Verdes Peninsula and generate spill-over of fish into surrounding habitat;

5. Marine cultural preserves at places such as Nicholas Canyon that will protect the Chumash cultural heritage;

6. Marine parks and conservation areas that encourage public enjoyment of the marine environment, while educating users about the benefits and risks of consuming fish and shellfish from Santa Monica Bay;

7. MPAs that improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance; and

8. A management framework that actively involves the Santa Monica Bay Restoration Commission and coastal communities in long-term outreach and monitoring of MPAs in Santa Monica Bay.

APPROVED, AND ADOPTED this 24th day of August, 2009.

ANDREW WEISSMAN, MAYOR
City of Culver City, California

ATTEST:

MARTIN R. COLE, City Clerk

A09-00339

APPROVED AS TO FORM:

for CAROL A. SCHWAB, City Attorney

Responses to Comment Letter A98_ii

Response to Comment A98_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Letter B05

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

STEVE FRANKS
DIRECTOR
OC COMMUNITY RESOURCES

RYAN DRABEK
DIRECTOR
OC ANIMAL CARE

KAREN ROPER
DIRECTOR
OC COMMUNITY SERVICES

MARK DENNY
DIRECTOR
OC PARKS

HELEN FRIED
COUNTY LIBRARIAN
OC PUBLIC LIBRARIES

September 15, 2010

Marine Life Protection Act/South Coast Study Region
Department of Fish and Game
South Coast MLPA Office
4665 Lampson. Suite C
Los Alamitos, CA 90720
Attn: Mr. Thomas Napoli

RE: Extension for the Review Period of the Draft Environmental Impact Report – Marine Life Protection Act Initiative

Dear Mr. Napoli:

On behalf of the County of Orange, we would like to request an extension for the review period of the Draft Environmental Impact Report – Marine Life Protection Act Initiative, South Coast Study Region. B05-1

The public comment period is scheduled to end on October 4, 2010 and we would like to request a 45-day extension to the comment period. Additional time is requested to allow sufficient review of the document to understand the impacts to County of Orange operations and prepare appropriate comments.

Sincerely,

Mark Denny
Director, OC Parks

OCparks
13042 OLD MYFORD ROAD
IRVINE, CA 92602
PHONE: 866-627-2759
FAX: 714-667-6510

Responses to Comment Letter B05

Response to Comment B05-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

R2.2.6 Comments from Organizations

The following group of comment letters is those received from organizations. Table R2-6 lists the comment letters received from organizations, along with the unique number assigned to each comment letter, the name of the commenter, and the page number of the comment letter. Responses to each letter immediately follow the letter.

TABLE R2-6
ORGANIZATION COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A08_i	Kira	Redmond	SB Channelkeeper, Audubon California, SD Coastkeeper, Heal the Bay, CA Coastkeeper Alliance, OC Coastkeeper, Ocean Conservancy, Defenders of Wildlife, Wishtoyo, SM Baykeeper, Ventura Coastkeeper, NRDC, WildCoast	Organization	863
A08_ii	Kira	Redmond	SB Channelkeeper, Audubon California, SD Coastkeeper, Heal the Bay, CA Coastkeeper Alliance, OC Coastkeeper, Ocean Conservancy, Defenders of Wildlife, Wishtoyo, SM Baykeeper, Ventura Coastkeeper, NRDC, WildCoast	Organization	867
A17	Steven	Hoch	Brownstein Hyatt Farber Schreck	Organization	873
A18_i	David	Cooke	Allen Matkins Leck Gamble Mallory & Natsis LLP	Organization	877
A18_ii	David	Cooke	Allen Matkins Leck Gamble Mallory & Natsis LLP	Organization	881
A30_i	Richard	Drury	Ocean Conservancy	Organization	885
A30_ii	Richard	Drury	Ocean Conservancy	Organization	889
A33_i	Dennis	Long	Monterey Bay Sanctuary Foundation	Organization	899
A33_ii	Dennis	Long	Monterey Bay Sanctuary Foundation	Organization	903
A34_i	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	907
A34_ii	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	911
A34_iii	Kaitlin	Gaffney	Ocean Conservancy, NRDC, Heal the Bay	Organization	917

TABLE R2-6 (CONTINUED)
ORGANIZATION COMMENT LETTERS
(Volume 1)

Comment Set ID	Commenter First Name	Commenter Last Name	Organization	Type	Page Number
A35_i	Joel	Greenberg	RFA SoCal Chapter	Organization	921
A35_ii	Joel	Greenberg	RFA SoCal Chapter	Organization	925
A36_i	Garry	Brown	OC Coastkeeper	Organization	929
A36_ii	Garry	Brown	OC Coastkeeper	Organization	933
A38_i	April	Bucksbaum	The Baum Foundation	Organization	937
A38_ii	April	Bucksbaum	The Baum Foundation	Organization	941
A39_i	Linda	Krop	Environmental Defense Center	Organization	945
A39_ii	Linda	Krop	Environmental Defense Center	Organization	949
A45_i	Steve	Parkford	Long Beach Neptunes	Organization	963
A45_ii	Steve	Parkford	Long Beach Neptunes	Organization	967
A45_iii	Steve	Parkford	Long Beach Neptunes	Organization	971

Note: organization comment letters continue in Volume 2.

Letter A08_i

FGC - Comment letter for FGC meeting 9-29-10

From: Greg Helms <ghelms@oceanconservancy.org>
To: <fgc@fgc.ca.gov>
Date: 9/20/2010 3:34 PM
Subject: Comment letter for FGC meeting 9-29-10
Attachments: final coalition CEQA delay letter.pdf

Dear Ms Biederman or Ms Fonbuena:

Attached please find a letter from a coalition of our organizations for the FGC special meeting on September 29, 2010. We hope this letter can be placed into the Commissioner's binders. Please contact me if you have any questions –

Sincerely,

Greg Helms
Manager, Pacific Conservation
Telephone: 805.687.2322
Mobile: 805.886.8645
Facsimile: 805.682.3318
E-mail: ghelms@oceanconservancy.org

Ocean Conservancy
Start a Sea Change

120 B West Mission Street
Santa Barbara, CA 93101
www.oceanconservancy.org

Join Ocean Conservancy on **September 25** for the 25th anniversary of our International Coastal Cleanup! Go to www.signuptocleanup.org to register for an event near you.

Responses to Comment Letter A08_i

Response to A08_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

September 20, 2010

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090 { Delivered via electronic mail to: fgc@fgc.ca.gov }

RE: **Deny Request for Extension of DEIR Comment Period for South Coast MPA Project**

Dear President Kellogg and Members of the Fish and Game Commission:

Please accept the following comments on behalf of the undersigned organizations. Our non-profit conservation organizations have thousands of members and activists, and have been active in the South Coast Marine Life Protection Act (MLPA) process since its inception. We respectfully request that you deny an extension of the comment period for the Draft Environmental Impact Report (DEIR) regarding marine protected areas (MPAs) in the South Coast Study Region.

The process of designing and evaluating marine protected areas on the South Coast has already undergone an unprecedented amount of review. Because the proposed South Coast MPA network has been designed via the inclusive MLPA process, the Proposed Project and its alternatives have had the benefit of already being informed by a 300-page South Coast Regional Profile, as well as real-time conversations with the Department of Defense, state and regional water boards and other relevant agencies. South Coast stakeholders, scientists and decision makers have pored over detailed biological, social and economic information over the course of the last 23 months, where fishermen, conservationists and divers have participated in 57 days of public meetings and 95 hours of public comment. A08_ii-1

This unparalleled public process and the preparation of a comprehensive environmental review document (the DEIR) have allowed every conceivable concern and issue to be raised, vetted, and addressed to the maximum extent possible. This is evidenced by the fact that the July 23rd California Environmental Quality Act scoping hearing added by your Commission in response to stakeholder concern had very few participants and did not yield any new substantive issues. A08_ii-1

For these reasons, we believe the existing 45-day comment period provides ample opportunity for any additional input by the public. We urge you to deny the request to extend the DEIR comment period and move forward with adoption of the South Coast MPA network under the existing timeline.

Thank you for this opportunity to comment. We look forward to submitting our comments on the DEIR and appreciate your continued efforts to create an ocean legacy for present and future Californians.

Sincerely,

Kira Redmond
Executive Director
Santa Barbara Channelkeepr

Sarah Abramson Sikich
Coastal Resources Dir.
Heal the Bay

Anna Weinstein
Seabird Conservation Coord.
Audubon California

Bruce Reznik
Executive Director
San Diego Coastkeeper

Linda Sheehan
Executive Director
CA Coastkeeper Alliance

Kaitilin Gaffney
Director of Pac. Ecosystem Protection
Ocean Conservancy

Ray Heimstra
Associate Director
Orange County Coastkeeper

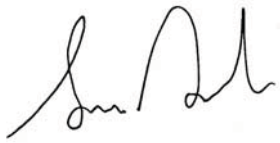
Richard Charter
Senior Policy Advisor,
Marine Programs
Defenders of Wildlife

Karen Garrison
Co-Director, Oceans Program
Natural Resources Defense
Council

Liz Crosson
Executive Director/Baykeeper
Santa Monica Baykeeper

Mati Waiya
Executive Director
Wishtoyo Foundation

Jason Weiner
Assoc. Dir. / Staff Attorney
Ventura Coastkeeper



Serge Dedina
Executive Dirctor
WildCoast

Responses to Comment Letter A08_ii

Response to Comment A08_ii-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Subject: FW: Recent Comments re NOP for South Coast Area
From: MLPAComments
Date: Tue, 03 Aug 2010 14:36:00
To: "FGC" <FGC@fgc.ca.gov>

Susan Colley-Monk

Interim Office Manager

MLPA Initiative

1416 9th St., Room 1311

Sacramento, CA 95814

916-654-1885

From: Steven L Hoch [mailto:SHoch@bhfs.com]
Sent: Monday, August 02, 2010 11:21 AM
To: MLPAComments
Subject: Recent Comments re NOP for South Coast Area

Please advise when the public comments will be posted on your website.
Thanks. A17-1

Steven L. Hoch

Brownstein Hyatt Farber Schreck, LLP

2029 Century Park East, Suite 2100

Los Angeles, California 90067-3007

SHoch@bhfs.com

310.500.4611 Direct

310.500.4602 Facsimile

310.500.4610 Ivy Capili (Assistant)

www.bhfs.com <http://www.bhfs.com/>

This is a transmission from Brownstein Hyatt Farber Schreck, LLP. This message and any documents attached to this may be confidential and contain information protected by the attorney-client privilege or attorney work product doctrine. They are intended for the addressee only. If any attachments require conversion or this transmission is received in error, please call my office.

Attachment: TEXT2.htm
Attachment: Mime3.822

Responses to Comment Letter A17

Response to Comment A17-1: Comment noted. See responses A09-1 and A35_ii-4.

Subject: Letter to Mr. Fischer
From: Cooke, David
Date: Mon, 13 Sep 2010 18:08:00
To: "FGC" <FGC@fgc.ca.gov>

Hello:

Please deliver this letter, regarding the upcoming meeting of the Fish & Game Commission, to Mr. Fischer. The original should arrive on Tuesday, September 14, by Federal Express.

Many thanks.

David Cooke

David D. Cooke

Allen Matkins Leck Gamble Mallory & Natsis LLP

Three Embarcadero Center, 12th Floor

San Francisco, CA 94111

Main Tel.: (415) 837-1515

Direct Line: (415) 273-7459

Fax: (415) 837-1516

Cell: (510) 499-6409

Allen Matkins

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Attachment: TEXT5.htm
Attachment: Letter to Mr
Attachment: Mime6.822

Responses to Comment Letter A18_i

Response to A18_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
Three Embarcadero Center, 12th Floor | San Francisco, CA 94111-4074
Telephone: 415.837.1515 | Facsimile: 415.837.1516
www.allenmatkins.com

David D. Cooke
E-mail: dcooke@allenmatkins.com
Direct Dial: 415.273.7459 File Number: 370684-00003/SF793150.01

Via Electronic Mail/FedEx

September 13, 2010

Mr. Jon K. Fischer
Acting Executive Director
California Fish & Game Commission
1416 Ninth Street
Suite 1320
Sacramento, CA 95814

Re: MLPA Initiative - South Coast Study Region
Public Comment Period Regarding Draft Environmental Impact Report

Dear Mr. Fischer:

This office represents members of the Partnership for Sustainable Oceans ("PSO"), including United Anglers of Southern California. Members of the PSO, and, we understand, other interested persons or organizations, have asked that the Fish & Game Commission ("Commission") extend to 90 days the public review period for the "Draft Environmental Impact Report, California Marine Life Protection Act Initiative, South Coast Study Region" (State Clearinghouse No. 2010071012) ("Draft EIR"). The current public comment period, specified in the Department of Fish & Game's August 18, 2010 Notice of Availability, is the minimum allowable period of 45 days. Without the requested extension, comments would be due by October 4, 2010. With the requested extension, they would be due on or about November 19, 2010.

The California Environmental Quality Act ("CEQA") authorizes the Commission, as a public agency, to delegate certain functions relating to CEQA compliance to its staff. 14 C.C.R. § 15025(a). Pursuant to CEQA implementing regulations applicable to the Commission (as well as the Department of Fish & Game and the California Wildlife Conservation Board), the "ESB [Environmental Services Branch] shall specify the length of the review period after considering the physical and environmental complexities of the proposed project." 14 C.C.R. § 770(a). The ESB consists of Department of Fish & Game personnel. 14 C.C.R. §§ 760, 758. The decision to delegate this issue to staff is within the range of decisions that can be delegated by the decision-making body of a public agency. 14 C.C.R. § 15025(b) (specifying the decisions that cannot be delegated). The delegation of a Commission function to staff would be meaningless if the Commission was required to take formal action on every decision implementing the delegated

function. Thus it would appear that the specification by staff of a public review period longer than the 45 day statutory minimum period, like many other decisions that have been made in connection with the CEQA process related to this and related projects, would not constitute an "action taken" by the Commission that would require observance of the procedural requirements of the Bagley-Keene Open Meeting Act, Gov. Code §§ 11120 et seq.; Gov. Code § 11122.

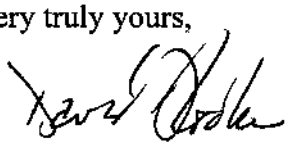
Notwithstanding, the ultimate responsibility for compliance by the Commission with CEQA – including the requirement that "adequate time" be allowed for other public agencies and members of the public to review and comment on a draft EIR – rests with the Commission. 14 C.C.R. § 15203. For this reason, it is assumed that the staff supporting the Commission would implement the Commissioners' views on the merits of the pending requests to extend the public comment period, which we understand will be taken up at some point during the Commission hearing later this week. A18_ii-1

In light of the complexity of the proposed project and the number of environmental concerns it raises, members of the PSO have urged and will continue to urge the Commission and its staff to extend the public review and comment period as requested in order to ensure that an adequate time to prepare and submit comments has been allowed.

Please include this letter with the record of the Commission proceedings this week, and share a copy of it with the members of the Commission in advance of the meeting.

Thank you.

Very truly yours,



David D. Cooke

DDC

Responses to Comment Letter A18_ii

Response to Comment A18_ii-1: The comment period was extended from Oct. 4, 2010 to Oct. 19, 2010.

Thomas Napoli - MLPA CEQA Comments

From: Toyer Grear <toyer@lozeaudrury.com>
To: <MLPAComments@dfg.ca.gov>
Date: 10/4/2010 2:58 PM
Subject: MLPA CEQA Comments
CC: <ghelms@oceanconservancy.org>, Richard Drury <richard@lozeaudrury.com>
Attachments: 2010 10.4 SCSR MPA NOP Com Ltr-FINAL-clean.pdf

Dear Mr. Napoli;

Attached please find a copy of Ocean Conservancy's response to the comments of Los Angeles County Sanitation Districts June 29, 2010 notice of preparation of draft Environmental Impact Report regarding Marine Protected Areas in the California South Coast Study Region Pursuant to the Marine Life Protection Act. A hard copy will follow by mail.

If you have any questions or concerns please feel free to contact our office.

Thanks,
Toyer Grear
Lozeau | Drury LLP
Legal Assistant to Richard T. Drury
410 12th Street, Suite 250
Oakland, CA 94607
510-836-4200
510-836-4205 fax
toyer@lozeaudrury.com

Responses to Comment Letter A30_i

Response to A30_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

LOZEAU DRURY LLP
T 510.836.4200
F 510.836.4205
410 12th Street, Suite 250
Oakland, Ca 94607
www.lozeaudrury.com
richard@lozeaudrury.com

BY ELECTRONIC MAIL AND US MAIL

October 4, 2010

Mr. Thomas Napoli
Marine Life Protection Act/South Coast Study Region
Draft Environmental Impact Report
Department of Fish & Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720
MLPAComments@dfg.ca.gov

RE: MLPA CEQA Comments -- Response to Comments of Los Angeles County Sanitation Districts on June 29, 2010 Notice of Preparation of Draft Environmental Impact Report Regarding Marine Protected Areas in the California South Coast Study Region Pursuant to the Marine Life Protection Act

Dear Mr. Napoli:

I am writing on behalf of Ocean Conservancy to respond to the comment letter submitted by the County Sanitation Districts of Los Angeles County dated August 3, 2010 ("Sanitation Districts Letter"). The Sanitation Districts misconstrue the California Environmental Quality Act ("CEQA") in several significant respects, as will be discussed below. The Sanitation Districts present no legally valid CEQA concerns and their comments address policy concerns that are outside the scope of the environmental review process. A30_ii-1

A. Increasing the Quantity and Diversity of Aquatic Life is a Beneficial Effect, Not an Adverse Environmental Impact. CEQA is Concerned with the Impacts of the Proposed Project on the Environment, not with the Impacts of the Environment on the Proposed Project.

The primary argument raised by the Sanitation Districts is that the Department of Fish and Game ("DFG") should not assume that increasing the quantity and diversity of aquatic life in the South Coast Study Region ("SCSR") is a "beneficial effect." The A30_ii-2

Sanitation Districts contend that the opposite is true – that while the MPA may increase the quantity and diversity of aquatic life in the SCSR, the result will be even more fish that may come into contact with contaminated sediment at the Palos Verdes Shelf Superfund Site, ("Superfund Site"), and that those fish may become contaminated and possibly consumed. A30_ii-3

Taken to its logical conclusion, the environmentally preferable alternative under the Sanitation Districts' rationale would be to eliminate all aquatic life in the SCSR so that no life forms would come in contact with the Superfund Site. In other words, it would be necessary to "destroy the village to save it."[1] Obviously, CEQA does not require such absurd results. A30_ii-4 A30_ii-5

CEQA requires the lead agency to analyze the impact of a proposed project on the environment, not the impact of the environment on a proposed project. *Baird v. County of Contra Costa* (1995) 32 Cal. App. 4th 1464. In the *Baird* case, a project applicant sought to expand a drug rehabilitation facility. Neighbors objected to the facility, raising specious CEQA claims that the facility would be located near soil contaminated with toxic chemicals, and that it was possible the future residents of the facility may come into contact with the contaminated soil. The Court rejected these arguments, concluding that such concerns were outside of the scope of CEQA, since the proposed project would not exacerbate existing contamination. As the Court explained: A30_ii-6 A30_ii-7

> "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068, italics added.) This means "an adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Cal. Code Regs., tit. 14, § 15382; see Pub. Resources Code, § 21060.5, 21100, 21151.)
>
> Baird's complaint is not that the proposed facility will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, ***Baird's point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed facility and its residents. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment.*** CEQA is implicated only by adverse changes in the environment. (Pub. Resources Code, § 21068.) "The evaluation process contemplated by CEQA relates to the effect of proposed A30_ii-8

[1] "Major Describes Move". New York Times. February 8, 1968.

> changes in the physical world which a public agency is about to either make, authorize or fund . . . ." (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal. App. 3d 648, 666.) Adverse environmental changes are not contemplated here. The purported contaminations are preexisting (or do not exist at all).

A30_ii-8 (cont.)

A30_ii-9

Baird v. County of Contra Costa, 32 Cal. App. 4th 1464, 1468 (emphasis added).

To paraphrase the *Baird* case, the Sanitation Districts' "complaint is not that the proposed [MPA] will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, [Sanitation Districts'] point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed [MPA] and its [fish]. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment."

A30_ii-10

The MPAs will *not* increase, exacerbate, or disturb existing contamination at the Superfund Site. The MPAs will merely have the beneficial impact of increasing the diversity and quantity of marine life adjacent to the area and reducing habitat disturbance. Even if some of those fish may come in contact with contamination (which is questionable at best), this issue is entirely outside the scope of CEQA. By focusing not on the impacts of the proposed project on the environment, but rather on the impacts of the environment on the proposed project, the Sanitation Districts turn CEQA law on its head.

A30_ii-11

A30_ii-12

B. A New Notice of Preparation is Not Required.

The Sanitation Districts next seek to rewind the CEQA process back to "square one" by arguing that the CEQA Notice of Preparation ("NOP") is inadequate due to an alleged failure to identify the Superfund Site, which is on the Cortese List. The Sanitation Districts contend that under CEQA section 21092.6, a new NOP is required.

A30_ii-13

The Sanitation Districts refer to CEQA section 21092.6 subsection (a). However, they fail to discuss CEQA section 21092.6 subsection (b). While subsection (a) states that the NOP should identify any sites contained on the Cortese list, subsection (b) states that if the NOP fails to mention a Cortese List site, then the remedy is to ensure that the site is mentioned in the Draft Environmental Impact Report ("DEIR"). CEQA section 21092.6 subsection (b) provides as follows:

A30_ii-14

> "If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code [Cortese List] and the lead agency did not accurately specify or did not specify any list

A30_ii-15

pursuant to subdivision (a), [NOP] the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision." A30_ii-15 (cont.)

Thus, contrary to the assertion made by the Sanitation Districts, it is not necessary to restart the CEQA process with a new NOP. Rather, it is appropriate for the agency simply to disclose this administrative detail in the document. No delay in the CEQA process is required or even appropriate. A30_ii-16

C. The Sanitation Districts Misconstrue the Recent *CBE v. SCAQMD* Case Concerning the CEQA Baseline. The Contamination is Categorically Exempt from CEQA Review as a Pre-Existing Condition.

The Sanitation Districts rely extensively on the recent case of *Communities for a Better Environment v. South Coast Air Quality Management District (ConocoPhillips)* (2010) 48 Cal.4th 310 for the assertion that the EIR must analyze and mitigate existing contamination at the Superfund Site and the Portugese Bend Landslide ("PBL"). The undersigned was the lead counsel representing the successful party, Communities for a Better Environment, in that case. As such, the undersigned can assert unequivocally that the Sanitation Districts misconstrue the Supreme Court's holding in that case. A30_ii-17

There is no dispute that the DEIR should identify the existing environmental setting for the MPAs. That setting includes both the Superfund Site and the PBL. A30_ii-18
However, it does not follow that DFG must mitigate the existing contamination at the site. DFG had no part in creating the pre-existing contamination, and the proposed MPAs will not exacerbate or impact the pre-existing contamination in any way. A30_ii-19

Indeed, CEQA's first and most important exemption is for "pre-existing" conditions. CEQA's Class 1 categorical exemption excludes entirely from CEQA review projects and "topographical features" that are already in existence at the time of CEQA review. (CEQA Guidelines, § 15301.) As the Court explained in *Bloom v. McGurk* (1994) 26 Cal. App. 4th 1307, 1312: A30_ii-20

"The first category of projects exempted from CEQA under the CEQA Guidelines are those 'consist[ing] of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.' (CEQA Guidelines, § 15301.)" A30_ii-21

The pre-existing contamination at the Superfund Site and the PBL falls squarely within CEQA's Class 1 Categorical Exemption. This contamination existed long before the proposed MPAs were proposed, and the MPAs will not exacerbate or contribute to the contamination in any manner. As such, while the contamination must be disclosed as part of the environmental setting of the project, there is no requirement for DFG to remediate the contamination. A30_ii-22 A30_ii-23

D. The MPAs will not Cause Adverse Impacts Related to Consumption of Contaminated Fish.

The Sanitation Districts contend that the creation of the MPAs may cause adverse impacts related to the possible consumption of contaminated fish. The Sanitation Districts contends that fish in the area of the proposed MPAs are already contaminated, and that the MPAs will result in more contaminated fish that may be consumed. A30_ii-24

The Sanitation Districts' argument ignores the obvious. The purpose of an MPA is to prohibit fishing (and therefore fish consumption) within the State Marine Reserve and limit fishing with the State Marine Conservation Area. Thus, the project will in essence be self-mitigating in this respect. While some commercial and recreational anglers may currently fish in the area proposed for the MPAs, once the MPAs are established, such fishing will be prohibited or limited. Thus, to the extent that fish consumption issue is a concern at all, the MPA project itself mitigates this impact directly. A30_ii-25 A30_ii-26

E. CEQA Does Not Require Analysis of Purely Hypothetical Future Impacts.

The Sanitation Districts contend that "a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system." The Districts contend that this may in turn require the construction of new or expanded sewage treatment plants, which would in turn create impacts related to the construction of those new plants. The Districts contend that the DEIR must therefore analyze the impacts of the construction of any potential new or expanded sewage treatment plants, including related construction emissions, land use and zoning conflicts, noise issues and all other impacts. A30_ii-27

The Sanitation Districts' position is preposterous. CEQA does not require an agency to gaze into a crystal ball and divine all future events. First, there is no evidence to support speculation that MPAs will affect discharges in any way let alone lead to new restrictions being imposed on the Sanitation Districts' outfall system. Second, even if new restrictions are imposed, it is not at all clear that this will require construction of any new or expanded facilities. Third, even if new or expanded facilities are required at A30_ii-28 A30_ii-29 A30_ii-30 A30_ii-31

some distant point in the future, there is absolutely no way to know at this point where those facilities will be located, and what the impacts of construction and noise might be on nearby residents. CEQA simply does not require the lead agency to predict the future. A30_ii-31 (cont.)

As the Court explained in the case of *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal. App. 4th 464, 474-475, CEQA only requires analysis of an impact if there is a "causal link" between the governmental action and the alleged environmental impact. The Court explained that the action is only subject to CEQA review if it is "an essential step culminating in action which may affect the environment." In that case, a petitioner alleged that CEQA review was required prior to the creation of a community facilities district ("CFD") because it was possible that at some time in the future, the CFD could be used to finance the construction of a school at some indeterminate location. The Court rejected this argument because the impact alleged was far too hypothetical and there was no clear "causal connection" between the CFD and the alleged construction project. A30_ii-32

As in the Kaufman and Broad case, the analysis urged by the Sanitation Districts would be premature at this time since potential proposals for any new sewage plants are not "sufficiently developed to provide meaningful information for technical review." A30_ii-33

In short, CEQA does not require agencies to predict the future. There is simply no way that the DFG or any other agency can conduct the analysis urged by the Sanitation Districts, and there is no proximate causal connection between the proposed MPAs and any new sewage treatment plants that might be considered at some future date. A30_ii-34

F. The NOP Proposes a Reasonable Range of Alternatives.

The Sanitation Districts contend that the three alternatives proposed in the NOP are inadequate, and that DFG should consider an alternative that does not include Abalone Cove and Point Vicente. A30_ii-35

The Sanitation Districts misunderstand the purpose of CEQA's alternative analysis, which is to avoid significant adverse impacts of a proposed project. "CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, also consider and analyze project alternatives that would reduce adverse environmental impacts. (Pub. Resources Code, § 21061; see also id., §§ 21001, subd. (g), 21002, 21002.1, subd. (a), 21003, subd. (c)) The CEQA Guidelines state that an EIR must 'describe a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project ... .' ([Guidelines], § 15126.6, subd. (a).)" *Jones v. Regents of University of California* (2010) 183 Cal. App. 4th 818, 825. A30_ii-36 A30_ii-37

CEQA's alternative analysis requires consideration of alternatives that would avoid significant adverse impacts of a proposed project. As discussed above, the proximity of the Superfund Site, the PBL and the JOS are not adverse impacts of the MPAs. Rather, they are merely pre-existing elements of the environmental setting of the project. As such, there is no requirement for consideration of an alternative that would reduce impacts related to the Superfund Site, the PBL or the JOS, since these are not project impacts. The range of alternatives proposed in the NOP is perfectly adequate to meet CEQA's requirements. A30_ii-38 A30_ii-39 A30_ii-40

G. DFG Need Not Consider Mitigation Measures that are Outside of its Jurisdiction and Unrelated to the Impacts of the MPAs.

The Sanitation Districts argue that the DEIR must analyze and mitigate impacts related to the Superfund Site, the PBL and the JOS. All of these issues are outside of the jurisdiction of the DFG, are unrelated to any impacts caused by the MPAs, and are being addressed by other agencies, such as the United States Environmental Protection Agency and the State and Regional Water Quality Control Board. Thus, DFG is not required to impose mitigation measures related to these issues. A30_ii-41 A30_ii-42

First, CEQA requires only that an agency must impose measures to mitigate impacts reasonably related to the adverse impacts ***created by the project***. (14 Cal.Code Regs. §15370.) There must be a "nexus" or "reasonable relationship" between the project's impacts and the mitigation imposed. (*Dolan v. City of Tigard* (1994) 512, US 374; 14 Cal.Code Regs. §§15041(a), 15126.4(a)(4).) For example, in *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, the Court held that an agency could not impose a mitigation measure requiring the project proponent to pay for road widening because the proposed project would not cause any increase in traffic. A30_ii-43 A30_ii-44

As discussed above, the MPAs do not cause or contribute to the contamination at the Superfund Site, PBL, or JOS. Thus, DFG is not obligated to mitigate this contamination or even to analyze measures to mitigate this contamination. A30_ii-45

Second, the impacts alleged by the Sanitation Districts are not within the jurisdiction of DFG. Any mitigation measures must be within the jurisdiction of the agency submitting them. (Pub.Res. Code §21081.6(c).) Under CEQA Section 21004 and CEQA Guidelines Section 15040, mitigation measures that go beyond the powers conferred by law on lead and responsible agencies are legally infeasible. (*Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291) Agencies are not required to proposed or analyze a mitigation measure that cannot be legally imposed. (14 Cal.Code Regs. §15126.4(a)(5).) Since DFG has no jurisdiction to impose measures to clean-up the Superfund Site or the JOS, or reduce discharges from the JOS, these measures do not need to be analyzed in the DEIR. A30_ii-46

CONCLUSION

For the foregoing reasons, Ocean Conservancy urges the Department of Fish and Game to move forward with the environmental review process without further delay. The Sanitation Districts raise no valid CEQA concern. The California Supreme Court has cautioned that the "Legislature did not intend to promote endless rounds of revision and recirculation of EIR's. . . Rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1132. We urge the DFG to move forward with the SCSR MPA process without further delay. Thank you for considering our comments. A30_ii-47

Sincerely,

Richard Toshiyuki Drury
LOZEAU|DRURY LLP
Attorney for Ocean Conservancy

cc: Lester Snow, California Secretary for Natural Resources
John McCammon, Director, California Dept. of Fish and Game
Sonke Mastrup, Asst. Director, California Dept. of Fish and Game

Responses to Comment Letter A30_ii

Comment letter A30_ii is a third-party response to a letter received by the Department during the scoping process, and thus is not directly commenting on the Draft EIR. Because this letter does not contain comments on the adequacy of the Draft EIR, no responses to this letter are necessary.

FGC - MLPA Timeline, South Coast Region

From: Dennis Long <dennis@dennislong.org>
To: <fgc@fgc.ca.gov>
Date: 9/17/2010 4:32 PM
Subject: MLPA Timeline, South Coast Region
Attachments: MBSF Letter to FGC, 9.17.2010.doc

Dear President Kellog and Members of the Fish and Game Commission,
Please see the attached letter in support of maintaining the current timeline for MLPA implementation in the South Coast Region.
Thank you for your ongoing efforts and consideration.
Sincerely,
Dennis Long

Responses to Comment Letter A33_i

Response to A33_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A33_ii
299 Foam Street, Suite D
Monterey, CA 93940
Telephone (831) 647-4209
Fax (831) 647-4244
www.mbnmsf.org

September 17, 2010 Via email

President Jim Kellog and
Members of the Fish and Game Commission
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Implementation of the Marine Life Protection Act

Dear President Kellogg and Members of the Fish and Game Commission:

We're writing to express support for the continued implementation of the Marine Life Protection Act and the network of marine protected areas in California, and maintaining the current timeline for doing so. A33_ii-1

The Marine Life Protection Act (MLPA) is one of our State's most critical ocean protection laws. Marine protected areas (MPAs) are essential tools for protecting our treasured marine wildlife and ecosystems and will ensure a healthy ocean for future generations. They are also an integral component of our vibrant coastal economy.

The MLPA is globally significant in its call for a statewide network of MPAs. Thanks to you and the Blue Ribbon Task Force, the inclusive stakeholder process set up to accomplish those goals is also unparalleled. The statewide effort to implement the MLPA has included thousands of hours of deliberation and public comment from all constituencies including fishermen, interpretive volunteers, conservationists, divers, and scientists. In the South Coast alone, the extensive number of public meetings and hours of testimony has reinforced the inclusive and thorough nature of the process. A33_ii-1

An unprecedented level of planning and review over every issue related to MPAs has already been conducted for the South Coast MPA network, including an exhaustive environmental document.

With the Channel Islands, Central and North Central study regions already protected in a network of MPAs, the Fish and Game Commission now has the opportunity to get one step closer to completing the nation's first statewide MPA network. This network will enhance ocean protection, while still allowing fishing to continue on nearly 90% of the coast. In short, it is a win for all Californians. A33_ii-2

As you saw at the April Commission meeting in Monterey, our efforts coordinating an MPA Education & Outreach Initiative, to support and enhance the California Department of Fish & Game's efforts in implementing the MLPA specific to interpretation, education and outreach have been gratifying. We are collaborating with over three dozen organizations along the central coast including California State Parks, the Monterey Bay Aquarium, national marine sanctuaries and national estuaries. The programs and products being produced reinforce the value of California's new network of MPAs and are designed for export and use in other regions. Funding for these efforts is from both private and federal sources. A33_ii-3

Our project provides a great example of the value of partnerships, and the role they are playing in effective implementation of the MLPA. Please do what you can to ensure these efforts do not get delayed and maintain the current timeline for MLPA implementation in the South Coast Region. Thank you for your efforts. A33_ii-3 A33_ii-1

Sincerely,

Dennis J. Long
Executive Director

Cc: MBSF Board of Directors

Responses to Comment Letter A33_ii

Response to Comment A33_ii-1: Comment noted.

Response to Comment A33_ii-2: Comment noted.

Response to Comment A33_ii-3: Comment noted.

FGC - MLPA should stay on schedule: response to request by LA County Sanitation Districts

From: "Garrison, Karen" <kgarrison@nrdc.org>
To: <fgc@fgc.ca.gov>
Date: 9/20/2010 4:07 PM
Subject: MLPA should stay on schedule: response to request by LA County Sanitation Districts
CC: "Kaitilin Gaffney" <kgaffney@oceanconservancy.org>, "Sarah Abramson Sikich" <ssikich@healthebay.org>
Attachments: LA Sanitation Commiss let 091610 fin.doc; Palos Verdes MPA-Outfall map.JPG

Please accept the attached comments and map for the Commission's Sept 29 meeting and packet.

Thank you.

Karen Garrison, Co-Director, Oceans Program
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Tel: 415.875.6100
Cell: 415.990.6732

Responses to Comment Letter A34_i

Response to A34_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A34_ii

September 15, 2010

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

RE: Response to Los Angeles Sanitation Districts concerns about proposed Palos Verdes marine protected areas

Dear President Kellogg and Members of the Fish and Game Commission:

Please accept the following comments on behalf of NRDC, Ocean Conservancy and Heal the Bay. Our non-profit conservation organizations have over 1.3 million members and activists combined, and have been active in the Marine Life Protection Act (MLPA) process for over a decade. We write to provide our perspective on concerns raised by the Los Angeles County Sanitation Districts about two sites in the proposed Integrated Preferred Alternative (IPA) plan for marine protected areas (MPAs) on the south coast. It is our understanding that the Sanitation Districts have requested a delay in the MLPA process and elimination of the Palos Verdes area MPAs. In our view, these actions are unnecessary and would undermine effective completion of the south coast MLPA process. A34_ii-1 A34_ii-2

In brief, LA Sanitation Districts' concerns about potential impacts on their infrastructure from two proposed Palos Verdes Peninsula MPAs are not new and would not benefit in any way from a delay in the MLPA process. The Districts raised their concerns months ago, and adequate measures have already been taken to address them. A34_ii-3

- First, language will be included in the regulations for all relevant MPAs in the IPA clarifying that the Districts' pre-existing monitoring and maintenance activities will continue to be allowed. A34_ii-4
- Second, the IPA specifically allows for monitoring and research as required by regulatory agencies or conducted for scientific research. A34_ii-5
- Third, State Water Quality Control Board staff have been meeting constructively with the Districts to resolve any concerns about potential future tightening of water quality standards in these MPAs. A34_ii-6

Protected areas in the ocean, like refuges and parks on land, produce significant long-term benefits for fish and wildlife, for ecosystem health, and for people who depend on those systems. The IPA is a thoughtful compromise that minimizes adverse impacts and will produce real and much needed benefits for the south coast. The IPA is the result of an unprecedented public A34_ii-7

process - all told, 56 meetings have been held and nearly 100 hours of public comment have gone into south coast MPA planning to date. Literally every possible issue has been raised, considered, and addressed during this exhaustive public process. We urge you to stay on track and continue to move forward with the IPA, as is. A34_ii-7 (cont.)

Specifically, the two state marine conservation areas (SMCAs) in question were sited as far as practical from the LA Sanitation Districts' facility at White's Point in San Pedro (see attached map), and the Districts have no discharges in any of the proposed MPAs for the south coast. A34_ii-8 Indeed, great care was taken to avoid conflicts between new MPAs and existing uses and users during the MPA design phase and by the Blue Ribbon Task Force (BRTF) when adopting the IPA. Instead the Sanitation Districts' concerns are based on what they perceive to be a potential future threat to their monitoring activities and outfall pipe maintenance and questions about whether water quality standards might be tightened in the future in or around MPAs. A34_ii-9 They have also noted the Palos Verdes MPAs do not fully meet the science guidelines of the MLPA. A34_ii-10

The relevant agencies have heard from the Sanitation Districts, have taken their concerns seriously and have already taken specific steps to address them: A34_ii-11

(1) The Department of Fish and Game is including language in the regulations for all relevant MPAs that explicitly allows existing monitoring and maintenance of outfalls. The Draft Environmental Impact Report for the South Coast Preferred Alternative notes (pages 6.3-28 and 6.3-29): A34_ii-12

"Pre-existing activities and artificial structures including but not limited to wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment occur throughout the heavily urbanized southern south coast study region. These are activities that may result in incidental take. However, these activities are regulated by other federal, state and local agencies, whose jurisdiction cannot be pre-empted through designation of MPAs under MLPA. These activities are specified within the proposed MPA regulations to make explicit that these regulated activities are allowed to continue under current permits."

(2) Furthermore, the proposed project Integrated Preferred Alternative described in the Initial Statement of Reasons (DFG 2010) allows for monitoring and research as required by regulatory agencies or conducted for scientific research, as follows: A34_ii-13

"Monitoring includes sampling of water, sediments, and marine organisms using a variety of methods. Since monitoring and research is permissible in all MPA designations, the proposed regulation adds a general provision to 14 CCR 632(a), to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit."

(3) In addition, State Water Board staff have been meeting constructively with the Sanitation Districts to resolve any concerns about potential future tightening of water quality standards in these MPAs. That said, current regulatory decisions should not be made based primarily on the speculative potential for other regulatory decisions at some point in the future. If that were the typical process, no decisions would ever be made. A34_ii-14

(4) Regarding the concern that the sites at Palos Verdes don't fully meet the science guidelines, we agree. These areas are the result of an effort by the BRTF to find a compromise everyone could live with. If eliminated, they would need to be replaced by one of several alternatives that better meet the science guidelines. While we would prefer sites like Rocky Point that have greater conservation value, we recognize that fishermen generally would not. The BRTF chose the Palos Verdes sites in the interest of balancing the needs of all stakeholders. Eliminating the proposed Palos Verdes MPAs as suggested by the Sanitation Districts would significantly erode the integrity of the south coast MPA network and worsen the gap between key habitats right at the heart of the south coast MPA system. A34_ii-15

In short, the Districts' concerns have already been addressed by the relevant agencies. Their activities can continue in the proposed Palos Verdes MPAs. We urge you to move the IPA forward as is in a timely way. Thank you for your consideration of these comments. A34_ii-16

Kaitilin Gaffney
Ocean Conservancy

Karen Garrison
NRDC

Sarah Sikich
Heal the Bay

cc: Resource Secretary Lester Snow

Responses to Comment Letter A34_ii

Response to Comment A34_ii-1: No comment response required.

Response to Comment A34_ii-2: Comment noted.

Response to Comment A34_ii-3: Comment noted.

Response to Comment A34_ii-4: Comment noted.

Response to Comment A34_ii-5: Comment noted.

Response to Comment A34_ii-6: Comment noted.

Response to Comment A34_ii-7: Comment noted.

Response to Comment A34_ii-8: Comment noted.

Response to Comment A34_ii-9: Comment noted.

Response to Comment A34_ii-10: Comment noted.

Response to Comment A34_ii-11: See response A31_ii-2.

Response to Comment A34_ii-12: The Commission agrees.

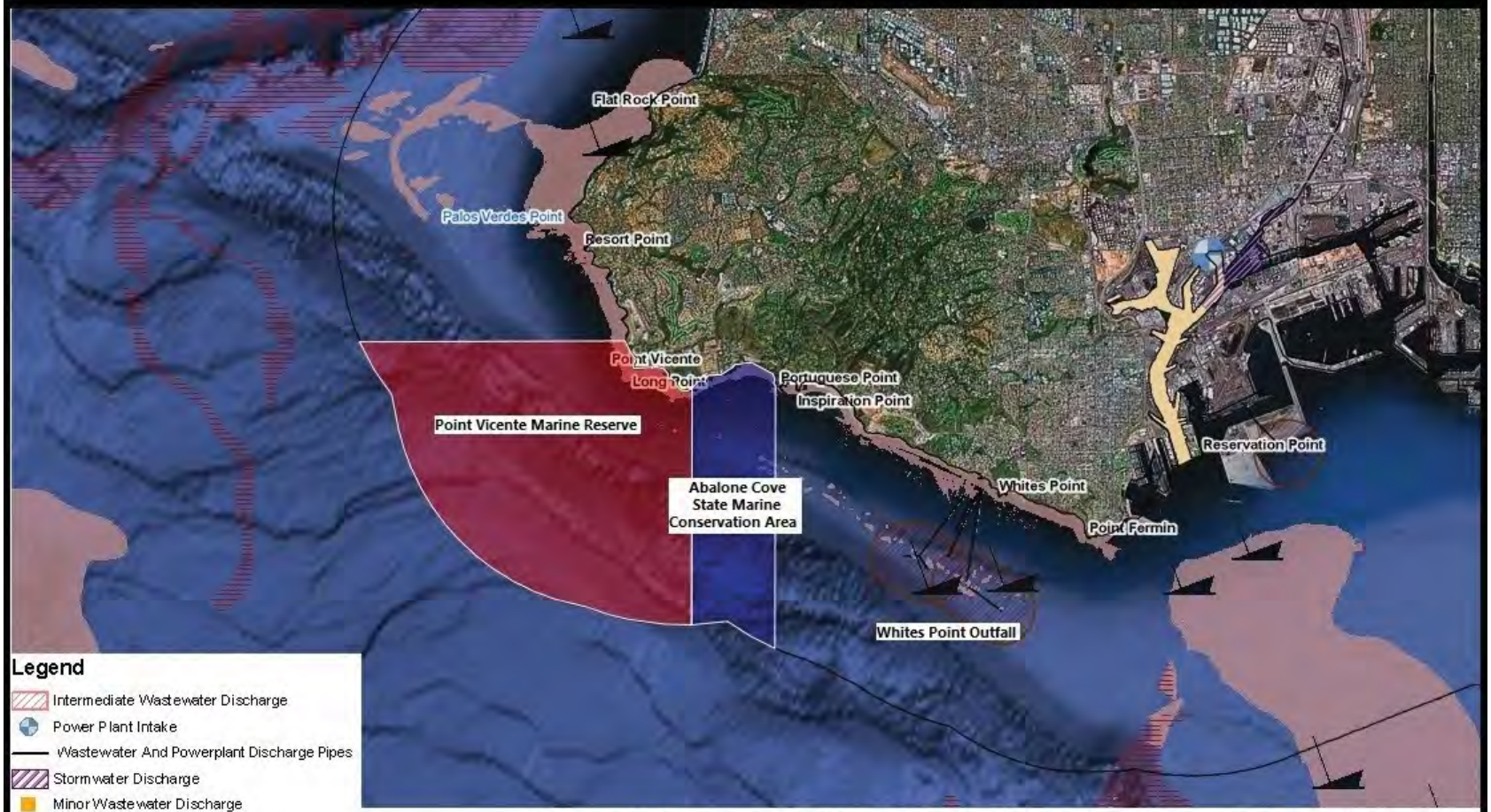
Response to Comment A34_ii-13: All MPAs will allow for scientific research.

Response to Comment A34_ii-14: Comment noted.

Response to Comment A34_ii-15: Comment noted.

Response to Comment A34_ii-16: Comment noted.

Proposed Marine Protected Areas for Palos Verdes Address Water Quality Concerns



Legend

- Intermediate Wastewater Discharge
- Power Plant Intake
- Wastewater And Powerplant Discharge Pipes
- Stormwater Discharge
- Minor Wastewater Discharge
- Major Wastewater Discharge

Power Plant Entrainment

Millions of Larvae per Year Entrained

- 30 - 99.9
- 100 - 999.9
- 1,000 - 3,199.9
- 3,200 - 6,231

- Shipwrecks
- Artificial Reefs
- Submarine Canyons
- Hard Substrate

- The Integrated Preferred Alternative (IPA) is a compromise among a variety of interests endorsed by the Blue Ribbon Task Force and Fish and Game Commission. It includes carefully planned tradeoffs.
- The IPA follows guidance from the Scientific Advisory Team (SAT) by avoiding overlap with outfall pipes. Whites Point Outfall is more than 2 miles southeast from the proposed Marine Protected Areas (MPAs), with no direct overlap with their direct impacts.
- State Water Quality Control Board staff have been meeting constructively with Los Angeles County Sanitation to resolve any concerns about potential future tightening of water quality standards in these MPAs.
- The FGC should not make current decisions about South Coast MPAs based on perceived potential future decisions made by other regulatory bodies.

Responses to Comment Letter A34_iii

Response to Comment A34_iii: Comment noted.

From: Joel Greenberg <rfacer@ix.netcom.com>
To: <fgc@fgc.ca.gov>, Adrianna Shea <ashea@fgc.ca.gov>
Date: 9/20/2010 4:21 PM
Subject: Comments RE: June 29, 2010 Meeting, Item 1.
Attachments: FGC_CEQA_extension.pdf

Jon and Adrianna . . .

Please do the best you can to have this document circulated to the Commissioners in advance of their June 29 meeting. It is unlikely that I will able to be in attendance myself, but I stand ready to respond questions for clarification or additional details either by e-mail or telephone.

Thanks for your help . . .

-Joel

Responses to Comment Letter A35_i

Response to A35_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A35_ii

RECREATIONAL FISHING ALLIANCE
National Headquarters
P.O. Box 3080
New Gretna, New Jersey 08224
Phone: (888) 564-6732
Fax: (609) 294-3816

Northern California State Chapter
Phone: (707) 964-8326

Southern California State Chapter
Phone: (818) 921-3805

September 20, 2010 [Submitted via e-mail]

Mr. Jim Kellogg, President
Mr. Jon K. Fischer, Acting Executive Director
Members of the California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

RE: Sept 29, 2010 Meeting, Item 1. – Support and Request that the Commission adopt a MINIMUM 45-day extension of public review and comment period for the Draft Environmental Impact Report for the MLPA South Coast Study Region

Dear Mr. Kellogg, Mr. Fischer and Commissioners,

I am writing on behalf of our California chapters of the Recreational Fishing Alliance and myself as constructive participants in the Marine Life Protection Act process, dedicated to a fair and equitable implementation of MPAs in our state waters. We appreciate this opportunity to present this request for your consideration. A35_ii-1

We strongly urge the Commission to adopt a minimum 45-day extension of the public commentary period for the MLPA SCSR DEIR, in order to allow members of the public, representative organizations, local governmental and regulatory agencies and other coastal dependent entities adequate time to review this massive and complex document for the purpose of addressing potential impacts that have yet to be identified by the CDFG or brought to the attention of this Commission. Given the fact that the South Coast is the most heavily populated and complex Study Region, we believe that even a 45-day extension may be inadequate. We request that the Commission take this into consideration during your deliberations on Sept. 29th. A35_ii-2

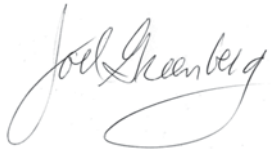
At your June 24, 2010 meeting, by consensus the Commission directed staff to "work with the appropriate parties to schedule a scoping meeting at the appropriate time." On July 6th , the CDFG issued a press release announcing a scoping meeting to be held Friday, July 23rd. On July 21st, the Department announced a last minute change in venue for that meeting. Despite the confusion this caused, and the fact that travel to Los Angeles County from other counties in southern California is a daunting task on a Friday, the July 23rd meeting had a larger attendance than those of previous study regions. A35_ii-3

As is customary, a stenographer was present to transcribe oral commentary at the July 23rd scoping meeting. Many of us in attendance gave oral testimony and we were all told that the transcript would be published in the DEIR. It was not! The DEIRs for both the CC and NCC Study Regions contained scoping transcripts along with full Scoping Reports that included written comments submitted at their respective meetings. The lack of these documents in the South Coast DEIR has contributed to the widespread belief that many issues raised during scoping have not been identified in the DEIR. A35_ii-4

We believe that the hasty and haphazard approach that the "appropriate parties" took to holding that scoping meeting was contrary to the spirit of this Commission's direction to staff on June 24th. A35_ii-5

Thank you again for the opportunity to bring these very important issues before the Commission. We appreciate your thoughtful consideration of this request.

Sincerely,



Joel Greenberg, Chairman
Southern California Chapter
Recreational Fishing Alliance
5341 Wilkinson Ave #2
Valley Village, CA 91607

joelg@rfasocal.org
(818) 921-3805

Responses to Comment Letter A35_ii

Response to Comment A35_ii-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission.

Response to Comment A35_ii-2: While it is correct that the SCSR is the most heavily populated region of the five regions under the MLPA, the SCSR is the third region to undergo the MPA designation process, which has been refined since its implementation in previous regions. This refined design process, in addition to the ample time interested parties have had to participate leading up to the Draft EIR (see Table 2-1 for a list of meetings pertaining to the implementation of MPAs in the SCSR), was taken into consideration the Commission's decision to provide a 15-day extension for the Draft EIR comment period, which was changed from October 4, 2010, to October 19, 2010.

Response to Comment A35_ii-3: Aligned with the spirit of the MLPA, a scoping meeting was scheduled and held on Friday, July 23rd, 2010. Due to the loss of availability of the original meeting venue, the meeting was moved to a new location less than one and one-half mile distance from the original location. The time and date from the original meeting remained the same. The commenter notes that a press release announcing the change of location was released on July 21, with which the Commission concurs - a new meeting location and information to the new venue were released promptly after the loss of availability of the initial venue.

Response to Comment A35_ii-4: Public comments received prior to the publication of the Draft EIR are not required to be published in the Draft EIR under State CEQA Guidelines. The transcript from the Draft EIR scoping meeting held on July 23, 2010, does not reflect a statement from the Department staff indicating that the transcript would be provided. A copy of the transcript from the scoping meeting is available upon request, as noted in the Draft EIR.

Response to Comment A35_ii-5: See response to Comment A35_ii-3.

Letter A36_i

FGC - MARINE LIFE PROTECTION ACT/ South Coast EIR Comment Period Extension-Oppose

From: Ray Hiemstra <ray@coastkeeper.org>
To: <fgc@fgc.ca.gov>
Date: 9/20/2010 4:27 PM
Subject: MARINE LIFE PROTECTION ACT/ South Coast EIR Comment Period Extension-Oppose
Attachments: F_G DEIR extension.doc

Dear Sirs,
Attached is the Comment letter from Orange County Coastkeeper regarding the proposed Comment period extension on the MLPA South Coast EIR.
Thanks,
Raymond Hiemstra
Associate Director
Orange County Coastkeeper

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5465 (20100920) _____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Responses to Comment Letter A36_i

Response to A36_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A36_ii

ORANGE COUNTY
COASTKEEPER
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
Website www.Coastkeeper.org

September 20, 2010

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

RE: **MARINE LIFE PROTECTION ACT/ South Coast EIR Comment Period Extension- Oppose**

Dear President Kellogg and Members of the Fish and Game Commission:

Orange County Coastkeeper ("Coastkeeper") is an environmental organization with the mission to preserve, protect and restore the watersheds and marine habitat of the region. We write to request that you not extend the comment period for the Draft Environmental Impact Report (DEIR) for the South Coast Marine Life Protection Act and keep the South Coast MLPA process on track. A36_ii-1

Orange County Coastkeeper has participated in the MLPA process at every possible level since the beginning of the south coast process and we have witnessed the equally intense participation by a wide variety of stakeholders and agencies with all perspectives on the process.

We have no doubt that during the 57 meetings and 95 hours of public comment, attended by thousands of individuals, every conceivable concern and issue has been raised, vetted, and addressed to the extent possible. As the poor turnout at the July 23, 2010 CEQA scoping hearing showed, there are no remaining issues that were not raised and considered during the exhaustive stakeholder, Blue Ribbon Task Force (BRTF), and Fish and Game Commission processes. For these reasons, we believe that the existing CEQA comment period (which, at its current deadline of October 4 provides over six weeks to submit comments) provides ample opportunity for input by the public. Therefore, we urge you to oppose an unnecessary and counterproductive extension of this deadline. A36_ii-1 (con't)

Coastkeeper thanks you for the opportunity to comment on the proposed extension of public review and comment period for the DEIR of the South Coast Study Region. We urge you to move forward in a timely manner and to consider the South Coast Marine Life Protection Act under the existing timeline. The quality of our state's waters is of critical importance to Coastkeeper and we look forward to continued cooperation during the completion of this process.

Sincerely,

Garry Brown
Executive Director
Orange County Coastkeeper

Responses to Comment Letter A36_ii

Response to Comment A36_ii-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

Letter A38_i

FGC - Letter re DEIR Comment Period for South Coast MPAs

From: Janet Garvin <janet@thebaumfoundation.org>
To: <FGC@FGC.ca.gov>
Date: 9/21/2010 4:30 PM
Subject: Letter re DEIR Comment Period for South Coast MPAs
CC: April Bucksbaum <april@thebaumfoundation.org>, <ghelms@oceanconservancy.org>
Attachments: From Baum Fdn 9-21-10.doc

Dear President Kellogg and Members of the Fish and Game Commission:

Please see the attached letter from The Baum Foundation.

Thank you,

Janet Garvin

Janet Garvin
Development Director
The Baum Foundation
P.O. Box 475027
San Francisco, CA 94147
415-346-6060 office
415-845-4580 cell
janet@thebaumfoundation.org

Responses to Comment Letter A38_i

Response to A38_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A38_ii

THE BAUM FOUNDATION

September 21, 2010

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

RE: Deny Request for Extension of DEIR Comment Period for South Coast MPA Project

Dear President Kellogg and Members of the Fish and Game Commission:

Please accept the following comments. The Baum Foundation has been active in the South Coast Marine Life Protection Act (MLPA) process since its inception. We analyzed it as the foundation for our public service film about the South Coast MLPA, *The Southern Passage*. Before that, we documented the North Central Coast MLPA process in our 2008 film, *A Sheltered Sea*.

We respectfully request that you deny extension of the comment period for the Draft Environmental Impact Report (DEIR) regarding marine protected areas (MPAs) in the South Coast Study Region. A38_ii-1

Designing and evaluating South Coast marine protected areas has already undergone unprecedented levels of review. The proposed MPA network was designed via the inclusive MLPA process informed by a comprehensive South Coast Regional Profile and input from the Department of Defense, state and regional water boards, and other relevant agencies. Over the last 23 months South Coast stakeholders, scientists and decision makers pored over detailed biological, social and economic information. Fishermen, conservationists and divers participated in 57 days of public meetings and 95 hours of public comment.

This process and preparation of a comprehensive environmental review document (the DEIR) have allowed every conceivable concern and issue to be raised, vetted, and addressed. As evidence of this, the July 23rd California Environmental Quality Act scoping hearing, added by your Commission in response to stakeholder concern, drew very few participants and yielded no new substantive issues.

We believe the existing 45-day comment period provides full opportunity for additional public input. We urge you to deny the request to extend the DEIR comment period and move forward with adoption of the South Coast MPA network under the existing timeline.

Thank you for this opportunity to comment. We appreciate your continued efforts to create an ocean legacy for present and future Californians.

Sincerely,

April Bucksbaum
Executive Director
The Baum Foundation

P.O. Box 475027 San Francisco, CA 94147 p: 415.346.6060 f: 415.346.6969 www.thebaumfoundation.org

Responses to Comment Letter A38_ii

Response to Comment A38_ii-1: Comment noted. See text provided in the preamble of this section on the 15-day extension that was granted by the Commission. *No changes to the Draft EIR are required.*

From: Susan Ashcraft
To: Tom Napoli
CC: Angie Im; FGC; Tom Mason
Date: 10/12/2010 3:35 PM
Subject: Fwd: MLPA CEQA Comments - South Coast Study Region
Attachments: EDC letter re MLPA_DEIR_Final_10.12.10.pdf

FYI - interesting comment.

****NOTE NEW PHONE NUMBER & ADDRESS*******

Susan Ashcraft
Senior Marine Biologist
Supervisor - Marine Protected Areas
California Dept. of Fish and Game
1812 Ninth Street | Sacramento, CA 95811
Tel (916) 445-6451 | Cell (650) 222-9036 | Fax (916) 445-6458
sashcraft@dfg.ca.gov | www.dfg.ca.gov

"Pursuant to Governor's Executive Order S-12-10, I will be out of the office on the second, third and fourth Friday of each month

>>> Kristi Birney Rieman <kristi@edcnet.org> Tue, 12 Oct 10, 1:30 PM >>>
To Whom It May Concern:

The Environmental Defense Center (EDC) submits the following comments regarding the South Coast Study Region (SCSR) Draft Environmental Impact Report (DEIR)*. *We have the following suggestions to improve the accuracy and completeness of some portions of the document. We recommend that the EIR: (1) use the Science Advisory Team's (SAT) Guidelines to compare biological benefits expected from the proposed project and the alternatives; (2) identify Alternative 3 as the environmentally superior alternative; and (3) clearly state that designating marine protected areas (MPAs) will not cause or contribute to the existing Palos Verdes Peninsula sediment contamination and therefore will not cause adverse impacts related to consumption of contaminated fish. Please see attached comment letter for more detail.

A39_i-1

A39_i-2

A39_i-3

Thanks Kristi

--
Kristi Birney Rieman
Marine Conservation Analyst

Environmental Defense Center
906 Garden St.
Santa Barbara, CA 93101
Phone: (805) 963-1622 x 105

Fax (805) 962-3152

http://www.edcnet.org

Responses to Comment Letter A39_i

Response to Comment A39_i-1: See response to Comment C06_ii-3. *No changes to the Draft EIR are required.*

Response to Comment A39_i-2: See response to Comment A39_ii-2*No changes to the Draft EIR are required.*

Response to Comment A39_i-3: See response to Comment A39_ii-3*No changes to the Draft EIR are required.*

Letter A39_ii

environmental
DEFENSE CENTER

October 12, 2010

MLPA South Coast CEQA
California Department of Fish and Game
4665 Lampson, Suite C
Los Alamitos, CA 92679

Comments delivered electronically to: mlpacomments@dfg.ca.gov

Re: MLPA CEQA Comments - South Coast Study Region

Dear Department of Fish and Game:

The Environmental Defense Center (EDC) submits the following comments regarding the South Coast Study Region (SCSR) Draft Environmental Impact Report (DEIR). We have the following suggestions to improve the accuracy and completeness of some portions of the document. We recommend that the EIR: (1) use the Science Advisory Team's (SAT) Guidelines to compare biological benefits expected from the proposed project and the alternatives; (2) identify Alternative 3 as the environmentally superior alternative; and (3) clearly state that designating marine protected areas (MPAs) will not cause or contribute to the existing Palos Verdes Peninsula sediment contamination and therefore will not cause adverse impacts related to consumption of contaminated fish. A39 ii-1 A39_ii-2 A39_ii-3

EDC is a non-profit, public interest law firm dedicated to empowering citizens and community groups to defend the natural treasures within and offshore Santa Barbara, Ventura and San Luis Obispo Counties. Our mission is to protect and enhance the local environment through education, advocacy, and legal action. Program areas include protecting coast and ocean resources, open spaces and wildlife, and human and environmental health. EDC worked for a decade as a key stakeholder in establishing the marine reserve network within the Channel Islands National Marine Sanctuary. EDC believes that MPAs, and the ecosystem-based management paradigm that they embody, are fundamental components of protecting and restoring our ocean environment.

I. THE EIR SHOULD USE THE SAT'S GUIDELINES TO COMPARE BIOLOGICAL BENEFITS

A39 ii-1

Section 10.0 Alternatives in the DEIR, evaluates the associated impacts of the proposed project to the No Project and all three alternatives. However, the DEIR bases this analysis solely

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www.EnvironmentalDefenseCenter.org

on the amount of total area protected under each MPA network. This analysis fails to recognize the differences between MPA siting (including habitat productivity, habitat quantity, and spacing) and level of protection assigned to each MPA. Each of these factors contributes to the overall network performance and ecological benefits. The importance of siting should come as no surprise as this was the most contentious component of the South Coast Stakeholder Group Process, which took several months to deliberate and develop the proposed project and alternatives evaluated in this DEIR. A39 ii-1

To more accurately categorize the biological benefits expected from the proposed project and the alternatives, the EIR should include a comparison of each alternative to the SAT Guidelines. The SAT Guidelines were developed so that decision makers and stakeholders could understand how (and whether) each alternative fulfills the ecological goals of the MLPA. Not all proposals provide equal benefits, in fact *only* Alternative 3 meets all the SAT guidelines. Please see the Department of Fish and Game's website[1] for information on how each proposal meets the science guidelines.

II. ALTERNATIVE 3 SHOULD BE IDENTIFIED AS THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE

A39_ii-2

As Alternative 3 is the only proposal to meet the SAT Guidelines, the EIR should identify it as the environmentally superior alternative. Since the DEIR, Section 10.5.1 Environmentally Superior Alternative, identifies the "No Project" alternative as not being the environmentally superior alternative (because it does not fulfill the mandates of the MLPA), the EIR is not technically required to identify another alternative as being environmentally superior.[2] Nevertheless, it would be useful to the public and decision-makers for the EIR to identify the environmentally superior alternative among the other alternatives. This approach was taken in both the Central Coast and North Central Coast MLPA CEQA processes, in which an environmentally superior alternative was identified, and should be followed here.

Accordingly, we strongly advocate that Alternative 3 be identified in the EIR as the environmentally superior alternative because (as discussed above) it meets the minimum SAT guidelines and best fulfills the goals of the MLPA. Throughout the MLPA process it has been the task of the SAT to evaluate and compare all the proposals to specific SAT scientific guidelines. SAT evaluation of all proposals has revealed that *only* Alternative 3 meets the SAT guidelines for habitat representation, replication, size, and spacing.

In addition, when compared to the other proposals, Alternative 3 best fulfills the goals of the MLPA itself, which include (1) providing refuge for marine wildlife and (2) creating source populations that will provide spillover into areas outside the protected network. Section 2857 of the MLPA focuses almost exclusively on marine conservation, including requirements that alternatives encompass a representative variety of marine habitat types and communities, replicate similar types of marine habitats and communities in more than one reserve within each

[1] MPA Proposals and Evaluations (South Coast Study Region). Department of Fish and Game Website: http://www.dfg.ca.gov/mlpa/scrsg-r3-evaluations.asp
[2] CEQA Guidelines §15126.6(e)(1).

region, and ensure that the MPA network and individual MPAs be of an adequate size, number, type of protection, and location to ensure that the goals of the MLPA are achieved. Cal. Fish & Game Code § 2857(c)(1)-(5). When compared to the other proposals *only* Alternative 3 meets all of these requirements. Thus, we recommend that Alternative 3 be identified in the FEIR as the environmentally superior alternative. A39_ii-2

In Section 10.4.2.6 Biological Resources, the DEIR states that, "Long-term benefits to biological resources resulting from Alternative 3 would be substantially similar to those provided by the proposed Project IPA, as this alternative would preserve approximately the same total habitat area as the proposed Project IPA." We disagree with this statement as the DEIR only compares the total habitat area between the proposed project and each alternative. It should be noted that for biological resources it is important to analyze not only how *much* area is protected but how much *high-quality* habitat is protected. Areas such as Naples Reef, the east side of Point Dume, Rocky Point, the south La Jolla reef complex, and several locations at Catalina Island are ecological hotspots with high biological productivity. Alternative 3 protects more of these areas than any other Alternative; and it is likely that Alternative 3 will produce more long-term network benefits including increased biodiversity, resilience, and ecological integrity than the other alternatives. The EIR should clarify that Alternative 3 will provide greater long-term benefits to biological resources than the Proposed Project and all other alternatives under consideration.

III. THE EIR IS CORRECT THAT MLPA IMPLEMENTATION WILL NOT CAUSE OR CONTRIBUTE TO CONTAMINATED SEDIMENTS AT PALOS VERDES PENINSULA.

The DEIR, Section 8.5.2.2, Hazards and Hazardous Materials discusses the issue of contaminated sediments found on the Palos Verde Peninsula. The DEIR correctly identifies the existing sediment contamination as a pre-existing physical condition and a result of historic dumping that took place before substances such as DDT and PCB were banned in 1971 and 1976 respectively. Implementation of the MLPA will not contribute or physically disturb contaminated sediments on the Palos Verde Peninsula. Thus, we agree with the DEIR that impacts will be less than significant and will not create a hazard to the public or the environment. A39_ii-4

It has been suggested by the County Sanitation Districts of Los Angeles County [3] that as a result of MLPA implementation increased numbers of fish may come in contact with contaminated sediment on the Palos Verdes Shelf, and that these fish will then be consumed by the public. The Sanitation Districts also state that the DEIR must analyze impacts related to consumption of contaminated fish. While we agree with the Sanitation Districts' statement about the benefits of MPAs, including larger size and more abundant fish, we disagree with the notion that the designation of MPAs will result in consumption of more contaminated fish. A39_ii-5

First, the purpose of the MLPA process is to limit or prohibit fishing (and thus fish consumption) within MPAs. Second, any contamination at the Palos Verdes Shelf Superfund Site

[3] County Sanitation Districts of Los Angeles County comments on June 29, 2010 Notice of Preparation of Draft Environmental Impact Report Regarding Marine Protected Areas in the California South Coast Region Pursuant to the Marine Life Protection Act.

constitutes a preexisting condition and is not affected by the proposed project. The EIR could be strengthened by noting that MPAs do not cause or contribute to the contamination on the Peninsula and therefore will not cause adverse impacts related to consumption of contaminated fish. For more discussion of CEQA's requirements in this regard, please see Attachment A: MLPA CEQA Comments by Lozeau/Drury LLP dated 10.4.10. A39_ii-3

CONCLUSION

We appreciate the opportunity to comment on the DEIR and support the efforts to implement the State's MLPA. We look forward to a FEIR with improved accuracy and clarification. In particular, we urge the Department of Fish and Game to provide more analysis comparing the alternatives in terms of their biological benefits, adherence to the SAT guidelines, and relative preferability from an environmental perspective.

Thank you for your consideration of our comments. If you have any questions or wish to discuss any issues in more detail, please contact Kristi Birney Rieman at (805) 963-1622.

Sincerely,

Linda Krop
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Kristi Birney Rieman,
Marine Conservation Analyst
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BY ELECTRONIC MAIL AND US MAIL

October 4, 2010

Mr. Thomas Napoli
Marine Life Protection Act/South Coast Study Region
Draft Environmental Impact Report
Department of Fish & Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 90720
MLPAComments@dfg.ca.gov

RE: MLPA CEQA Comments -- Response to Comments of Los Angeles County Sanitation Districts on June 29, 2010 Notice of Preparation of Draft Environmental Impact Report Regarding Marine Protected Areas in the California South Coast Study Region Pursuant to the Marine Life Protection Act

Dear Mr. Napoli:

I am writing on behalf of Ocean Conservancy to respond to the comment letter submitted by the County Sanitation Districts of Los Angeles County dated August 3, 2010 ("Sanitation Districts Letter"). The Sanitation Districts misconstrue the California Environmental Quality Act ("CEQA") in several significant respects, as will be discussed below. The Sanitation Districts present no legally valid CEQA concerns and their comments address policy concerns that are outside the scope of the environmental review process.

A. Increasing the Quantity and Diversity of Aquatic Life is a Beneficial Effect, Not an Adverse Environmental Impact. CEQA is Concerned with the Impacts of the Proposed Project on the Environment, not with the Impacts of the Environment on the Proposed Project.

The primary argument raised by the Sanitation Districts is that the Department of Fish and Game ("DFG") should not assume that increasing the quantity and diversity of aquatic life in the South Coast Study Region ("SCSR") is a "beneficial effect." The

Sanitation Districts contend that the opposite is true – that while the MPA may increase the quantity and diversity of aquatic life in the SCSR, the result will be even more fish that may come into contact with contaminated sediment at the Palos Verdes Shelf Superfund Site, ("Superfund Site"), and that those fish may become contaminated and possibly consumed.

Taken to its logical conclusion, the environmentally preferable alternative under the Sanitation Districts' rationale would be to eliminate all aquatic life in the SCSR so that no life forms would come in contact with the Superfund Site. In other words, it would be necessary to "destroy the village to save it."[1] Obviously, CEQA does not require such absurd results.

CEQA requires the lead agency to analyze the impact of a proposed project on the environment, not the impact of the environment on a proposed project. *Baird v. County of Contra Costa* (1995) 32 Cal. App. 4th 1464. In the *Baird* case, a project applicant sought to expand a drug rehabilitation facility. Neighbors objected to the facility, raising specious CEQA claims that the facility would be located near soil contaminated with toxic chemicals, and that it was possible the future residents of the facility may come into contact with the contaminated soil. The Court rejected these arguments, concluding that such concerns were outside of the scope of CEQA, since the proposed project would not exacerbate existing contamination. As the Court explained:

> "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068, italics added.) This means "an adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Cal. Code Regs., tit. 14, § 15382; see Pub. Resources Code, § 21060.5, 21100, 21151.)
>
> Baird's complaint is not that the proposed facility will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, ***Baird's point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed facility and its residents. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment.*** CEQA is implicated only by adverse changes in the environment. (Pub. Resources Code, § 21068.) "The evaluation process contemplated by CEQA relates to the effect of proposed

[1] "Major Describes Move". New York Times. February 8, 1968.

> changes in the physical world which a public agency is about to either make, authorize or fund . . . ." (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal. App. 3d 648, 666.) Adverse environmental changes are not contemplated here. The purported contaminations are preexisting (or do not exist at all).

Baird v. County of Contra Costa, 32 Cal. App. 4th 1464, 1468 (emphasis added).

To paraphrase the *Baird* case, the Sanitation Districts' "complaint is not that the proposed [MPA] will cause an adverse change in the environment--that is, in any of the physical conditions within the affected area. Rather, [Sanitation Districts'] point is that preexisting physical conditions, consisting of the various forms of purported contamination, will have an adverse effect on the proposed [MPA] and its [fish]. Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment."

The MPAs will *not* increase, exacerbate, or disturb existing contamination at the Superfund Site. The MPAs will merely have the beneficial impact of increasing the diversity and quantity of marine life adjacent to the area and reducing habitat disturbance. Even if some of those fish may come in contact with contamination (which is questionable at best), this issue is entirely outside the scope of CEQA. By focusing not on the impacts of the proposed project on the environment, but rather on the impacts of the environment on the proposed project, the Sanitation Districts turn CEQA law on its head.

B. A New Notice of Preparation is Not Required.

The Sanitation Districts next seek to rewind the CEQA process back to "square one" by arguing that the CEQA Notice of Preparation ("NOP") is inadequate due to an alleged failure to identify the Superfund Site, which is on the Cortese List. The Sanitation Districts contend that under CEQA section 21092.6, a new NOP is required.

The Sanitation Districts refer to CEQA section 21092.6 subsection (a). However, they fail to discuss CEQA section 21092.6 subsection (b). While subsection (a) states that the NOP should identify any sites contained on the Cortese list, subsection (b) states that if the NOP fails to mention a Cortese List site, then the remedy is to ensure that the site is mentioned in the Draft Environmental Impact Report ("DEIR"). CEQA section 21092.6 subsection (b) provides as follows:

> "If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code [Cortese List] and the lead agency did not accurately specify or did not specify any list

> pursuant to subdivision (a), [NOP] the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision."

Thus, contrary to the assertion made by the Sanitation Districts, it is not necessary to restart the CEQA process with a new NOP. Rather, it is appropriate for the agency simply to disclose this administrative detail in the document. No delay in the CEQA process is required or even appropriate.

C. The Sanitation Districts Misconstrue the Recent *CBE v. SCAQMD* Case Concerning the CEQA Baseline. The Contamination is Categorically Exempt from CEQA Review as a Pre-Existing Condition.

The Sanitation Districts rely extensively on the recent case of *Communities for a Better Environment v. South Coast Air Quality Management District (ConocoPhillips)* (2010) 48 Cal.4th 310 for the assertion that the EIR must analyze and mitigate existing contamination at the Superfund Site and the Portugese Bend Landslide ("PBL"). The undersigned was the lead counsel representing the successful party, Communities for a Better Environment, in that case. As such, the undersigned can assert unequivocally that the Sanitation Districts misconstrue the Supreme Court's holding in that case.

There is no dispute that the DEIR should identify the existing environmental setting for the MPAs. That setting includes both the Superfund Site and the PBL. However, it does not follow that DFG must mitigate the existing contamination at the site. DFG had no part in creating the pre-existing contamination, and the proposed MPAs will not exacerbate or impact the pre-existing contamination in any way.

Indeed, CEQA's first and most important exemption is for "pre-existing" conditions. CEQA's Class 1 categorical exemption excludes entirely from CEQA review projects and "topographical features" that are already in existence at the time of CEQA review. (CEQA Guidelines, § 15301.) As the Court explained in *Bloom v. McGurk* (1994) 26 Cal. App. 4th 1307, 1312:

> "The first category of projects exempted from CEQA under the CEQA Guidelines are those 'consist[ing] of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.' (CEQA Guidelines, § 15301.)"

The pre-existing contamination at the Superfund Site and the PBL falls squarely within CEQA's Class 1 Categorical Exemption. This contamination existed long before the proposed MPAs were proposed, and the MPAs will not exacerbate or contribute to the contamination in any manner. As such, while the contamination must be disclosed as part of the environmental setting of the project, there is no requirement for DFG to remediate the contamination.

D. The MPAs will not Cause Adverse Impacts Related to Consumption of Contaminated Fish.

The Sanitation Districts contend that the creation of the MPAs may cause adverse impacts related to the possible consumption of contaminated fish. The Sanitation Districts contends that fish in the area of the proposed MPAs are already contaminated, and that the MPAs will result in more contaminated fish that may be consumed.

The Sanitation Districts' argument ignores the obvious. The purpose of an MPA is to prohibit fishing (and therefore fish consumption) within the State Marine Reserve and limit fishing with the State Marine Conservation Area. Thus, the project will in essence be self-mitigating in this respect. While some commercial and recreational anglers may currently fish in the area proposed for the MPAs, once the MPAs are established, such fishing will be prohibited or limited. Thus, to the extent that fish consumption issue is a concern at all, the MPA project itself mitigates this impact directly.

E. CEQA Does Not Require Analysis of Purely Hypothetical Future Impacts.

The Sanitation Districts contend that "a reasonably foreseeable indirect effect of including Abalone Cove and Point Vicente as part of the IPA would be to restrict the discharge from the Sanitation Districts' outfall system." The Districts contend that this may in turn require the construction of new or expanded sewage treatment plants, which would in turn create impacts related to the construction of those new plants. The Districts contend that the DEIR must therefore analyze the impacts of the construction of any potential new or expanded sewage treatment plants, including related construction emissions, land use and zoning conflicts, noise issues and all other impacts.

The Sanitation Districts' position is preposterous. CEQA does not require an agency to gaze into a crystal ball and divine all future events. First, there is no evidence to support speculation that MPAs will affect discharges in any way let alone lead to new restrictions being imposed on the Sanitation Districts' outfall system. Second, even if new restrictions are imposed, it is not at all clear that this will require construction of any new or expanded facilities. Third, even if new or expanded facilities are required at

some distant point in the future, there is absolutely no way to know at this point where those facilities will be located, and what the impacts of construction and noise might be on nearby residents. CEQA simply does not require the lead agency to predict the future.

As the Court explained in the case of *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist*. (1992) 9 Cal. App. 4th 464, 474-475, CEQA only requires analysis of an impact if there is a "causal link" between the governmental action and the alleged environmental impact. The Court explained that the action is only subject to CEQA review if it is "an essential step culminating in action which may affect the environment." In that case, a petitioner alleged that CEQA review was required prior to the creation of a community facilities district ("CFD") because it was possible that at some time in the future, the CFD could be used to finance the construction of a school at some indeterminate location. The Court rejected this argument because the impact alleged was far too hypothetical and there was no clear "causal connection" between the CFD and the alleged construction project.

As in the Kaufman and Broad case, the analysis urged by the Sanitation Districts would be premature at this time since potential proposals for any new sewage plants are not "sufficiently developed to provide meaningful information for technical review." In short, CEQA does not require agencies to predict the future. There is simply no way that the DFG or any other agency can conduct the analysis urged by the Sanitation Districts, and there is no proximate causal connection between the proposed MPAs and any new sewage treatment plants that might be considered at some future date.

F. The NOP Proposes a Reasonable Range of Alternatives.

The Sanitation Districts contend that the three alternatives proposed in the NOP are inadequate, and that DFG should consider an alternative that does not include Abalone Cove and Point Vicente.

The Sanitation Districts misunderstand the purpose of CEQA's alternative analysis, which is to avoid significant adverse impacts of a proposed project. "CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, also consider and analyze project alternatives that would reduce adverse environmental impacts. (Pub. Resources Code, § 21061; see also id., §§ 21001, subd. (g), 21002, 21002.1, subd. (a), 21003, subd. (c)) The CEQA Guidelines state that an EIR must 'describe a range of reasonable alternatives to the project … which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project … .' ([Guidelines], § 15126.6, subd. (a).)" *Jones v. Regents of University of California* (2010) 183 Cal. App. 4th 818, 825.

CEQA's alternative analysis requires consideration of alternatives that would avoid significant adverse impacts of a proposed project. As discussed above, the proximity of the Superfund Site, the PBL and the JOS are not adverse impacts of the MPAs. Rather, they are merely pre-existing elements of the environmental setting of the project. As such, there is no requirement for consideration of an alternative that would reduce impacts related to the Superfund Site, the PBL or the JOS, since these are not project impacts. The range of alternatives proposed in the NOP is perfectly adequate to meet CEQA's requirements.

G. DFG Need Not Consider Mitigation Measures that are Outside of its Jurisdiction and Unrelated to the Impacts of the MPAs.

The Sanitation Districts argue that the DEIR must analyze and mitigate impacts related to the Superfund Site, the PBL and the JOS. All of these issues are outside of the jurisdiction of the DFG, are unrelated to any impacts caused by the MPAs, and are being addressed by other agencies, such as the United States Environmental Protection Agency and the State and Regional Water Quality Control Board. Thus, DFG is not required to impose mitigation measures related to these issues.

First, CEQA requires only that an agency must impose measures to mitigate impacts reasonably related to the adverse impacts ***created by the project***. (14 Cal.Code Regs. §15370.) There must be a "nexus" or "reasonable relationship" between the project's impacts and the mitigation imposed. (*Dolan v. City of Tigard* (1994) 512, US 374; 14 Cal.Code Regs. §§15041(a), 15126.4(a)(4).) For example, in *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, the Court held that an agency could not impose a mitigation measure requiring the project proponent to pay for road widening because the proposed project would not cause any increase in traffic.

As discussed above, the MPAs do not cause or contribute to the contamination at the Superfund Site, PBL, or JOS. Thus, DFG is not obligated to mitigate this contamination or even to analyze measures to mitigate this contamination.

Second, the impacts alleged by the Sanitation Districts are not within the jurisdiction of DFG. Any mitigation measures must be within the jurisdiction of the agency submitting them. (Pub.Res. Code §21081.6(c).) Under CEQA Section 21004 and CEQA Guidelines Section 15040, mitigation measures that go beyond the powers conferred by law on lead and responsible agencies are legally infeasible. (*Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291) Agencies are not required to proposed or analyze a mitigation measure that cannot be legally imposed. (14 Cal.Code Regs. §15126.4(a)(5).) Since DFG has no jurisdiction to impose measures to clean-up the Superfund Site or the JOS, or reduce discharges from the JOS, these measures do not need to be analyzed in the DEIR.

CONCLUSION

For the foregoing reasons, Ocean Conservancy urges the Department of Fish and Game to move forward with the environmental review process without further delay. The Sanitation Districts raise no valid CEQA concern. The California Supreme Court has cautioned that the "Legislature did not intend to promote endless rounds of revision and recirculation of EIR's. . . Rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1132. We urge the DFG to move forward with the SCSR MPA process without further delay. Thank you for considering our comments.

Sincerely,

Richard Toshiyuki Drury
LOZEAU|DRURY LLP
Attorney for Ocean Conservancy

cc: Lester Snow, California Secretary for Natural Resources
John McCammon, Director, California Dept. of Fish and Game
Sonke Mastrup, Asst. Director, California Dept. of Fish and Game

Responses to Comment Letter A39_ii

Response to Comment A39_ii-1: See response to Comment C06_ii-3. *No changes to the Draft EIR are required.*

Response to Comment A39_ii-2: The Commission agrees with the commenter's conclusion that it is not required to identify an environmentally superior alternative. As noted in Section 10.0 of the Draft EIR, p. 10.1-1, "Where the No Project alternative is environmentally superior to the other alternatives considered, the lead agency must also identify an environmentally superior alternative among the other alternatives (State CEQA Guidelines Section 15126.6(e)(2))." An environmentally superior alternative is not identified in the Draft EIR because the No Project alternative is not environmentally superior to the other alternatives considered. In this study region the Commission has opted not to identify an environmentally superior alternative. *No changes to the Draft EIR are required.*

In terms of the points regarding alternative 3 meeting SAT guidelines, please see response C06_ii-3.

The commenter disagrees with the statement that "Long-term benefits to biological resources resulting from Alternative 3 would be substantially similar to those provided by the proposed Project IPA" due to concerns about quality vs. quantity of habitat protected. The SAT never evaluated habitat quality but rather the amount of each key habitat contained with in each MPA proposal. Further, please see response C06_ii-2.

Response to Comment A39_ii-3: Regarding Attachment A, see responses to Letter A30_ii. See also response A76_ii-1. *No changes to the Draft EIR are required.*

Response to Comment A39_ii-4: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A39_ii-5: Comment noted. See also responses to LA County Sanitation District. *No changes to the Draft EIR are required.*

Letter A45_i

Thomas Napoli - FW: Long Beach Neptunes

From: MLPAComments <MLPAComments@resources.ca.gov>
To: <tnapoli@dfg.ca.gov>, <fgc@fgc.ca.gov>
Date: 10/25/2010 9:12 AM
Subject: FW: Long Beach Neptunes
Attachments: LBN MPLA page 2058.pdf; LBN MPLA page 1057.pdf

From: Steve Parkford [mailto:sparkford@mac.com]
Sent: Friday, October 22, 2010 11:59 AM
To: MLPAComments
Subject: Long Beach Neptunes

Responses to Comment Letter A45_i

Response to A45_i: The comment is a transmittal email for an accompanying comment letter. The email does not address the content or adequacy of the Draft EIR, and no response is required.

Letter A45_ii

LONG BEACH NEPTUNES RESOLUTION TO SUPPORT THE UNIFIED MARINE PROTECTED AREA ARRAY

WHEREAS, the California Marine Life Protection Act (MLPA) calls for the reexamination and redesign of California's Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitat, and ecosystems; and

A45_ii-1

WHEREAS, it is consistent with the MLPA and good public policy to redesign California's MPA system in a manner that gives meaningful consideration to the sustainability of ecological, economic, cultural, and social systems; and

WHEREAS, North Coast fisheries are currently sustainable or rebuilding under existing regulations[1]; and

WHEREAS, recent scientific research has demonstrated that the California Current Ecosystem is one of the most conservatively managed ecosystems in the world[2]; and

WHEREAS, Mendocino County, Humboldt County and Del Norte County are classified as vulnerable to changes in fisheries management measures[3] due to factors such as high economic dependence on fishing, high community isolation, limited industry diversification, high unemployment, and high poverty rates; and

WHEREAS, the MLPA Initiative Regional Stakeholder Group unified during Round Three of the MLPA Initiative process to develop a consensus based MPA array (Unified MPA Array) that meets the goals of the MLPA while minimizing impacts to social, cultural, and economic systems; and

A45_ii-2

WHEREAS, we recognize that, due to significantly distinct ecological, social, cultural and economic conditions in the North Coast, the Unified MPA Array does not precisely meet all the guidelines established by the MLPA Initiative Science Advisory Team, yet represents an MPA network consistent with the spirit of those guidelines and the goals and elements identified in the MLPA legislation; and

WHEREAS, the long term success of MPAs will require acceptance by local communities; and although many community members do not believe any new MPAs are warranted, the Unified MPA Array represents a compromise acceptable to North Coast residents, including recreational fishermen, commercial fishermen and conservation advocates; and

[1] National Marine Fisheries Service. 2009. Our living oceans: report on the status of U.S. living marine resources, 6th edition. U.S. Dep. Commerce, NOAA Technical Memo. NMFS-F/SPO-80.
[2] Worm et al. 2009. Rebuilding Global Fisheries. Science 325: 578-585.
[3] Pacific Fishery Management Council and National Marine Fisheries Service. 2006. Proposed acceptable biological catch and optimum yield specifications and management measures for the 2007-2008 Pacific coast groundfish fishery, and Amendment 16-4: rebuilding plans for seven depleted Pacific coast groundfish species; final environmental impact statement including regulatory impact review and initial regulatory flexibility analysis. Pacific Fishery Management Council, Portland, Oregon, 2006.

Responses to Comment Letter A45_ii

Response to Comment A45_ii-1: Comment noted. *No changes to the Draft EIR are required.*

Response to Comment A45_ii-2: Comment noted. *No changes to the Draft EIR are required.*

Letter A45_iii

LONG BEACH NEPTUNES RESOLUTION TO SUPPORT THE UNIFIED MARINE PROTECTED AREA ARRAY

WHEREAS, California Indian Tribes and Tribal Communities are traditional and active stewards of marine ecosystems, and their continued gathering and use of marine resources is an ongoing and essential part of their culture and survival. A45_iii-1

NOW, THEREFORE, BE IT RESOLVED by the Long Beach Neptunes that we strongly urge the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission to support and adopt the Unified MPA Array developed by the Regional Stakeholder Group during Round 3 of the North Coast MLPA Initiative process.

BE IT FURTHER RESOLVED THAT if the Blue Ribbon Task Force makes the decision to redesign the Unified MPA Array contrary to the recommendation of the Long Beach Neptunes, then the redesign must be conducted in collaboration with North Coast Regional Stakeholders. Regional Stakeholders have worked for months to design a single cohesive array that incorporates the unique ecological, social, cultural and economic conditions of the North Coast within the framework of the statewide MLPA Initiative Guidelines and MLPA legislation. Because the alteration of any single element of the Unified MPA Array has the potential to undermine its cohesiveness, collaboration with Regional Stakeholders and local communities regarding any change to the Unified MPA Array is essential to retaining both its integrity and the support of local communities, factors that are vital to the long term success of the MPA system. A45_iii-2

BE IT FURTHER RESOLVED THAT any approved MPA array design will need to allow traditional, non-commercial, gathering, subsistence, harvesting, ceremonial and stewardship activities by California Tribes and Tribal Communities.

Steve Parkford
President
Long Beach Neptunes
Founded in 1952
Oldest active free diving club in USA
Long Beach, Califorinia

10/19/10

Responses to Comment Letter A45_iii

Response to Comment A45_iii-1: Comment Noted. *No changes to the Draft EIR are required.*

Response to Comment A45_iii-2: The comments provided discuss the North Coast MLPA Initiative process. They are not relevant to the South Coast Study Region Draft EIR. *No changes to the Draft EIR are required.*