

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



07/10/2012

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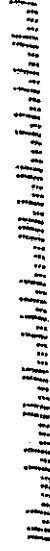
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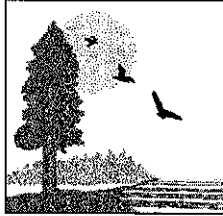
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Naval Facilities Engineering Command,
Southwest
Attention: HSTT EIS/OEIS Project Manager - EV
21.CS
1220 Pacific Highway, Building 1, Floor 3
San Diego, CA 92132-5190

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July 10, 2012

Naval Facilities Engineering Command, Southwest
Attention: HSTT EIS/OEIS Project Manager – EV 21.CS
1220 Pacific Highway, Building 1, Floor 3
San Diego, CA 92132-5190

Subject: Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) for the Hawaii-Southern California Training and Testing (HSTT) Activities, Ventura, Los Angeles, Orange and San Diego Counties

To Whom It May Concern:

The California State Lands Commission (CSLC) staff has reviewed the subject Draft EIS/OEIS for the U.S. Navy's HSTT Activities (Project), which is being prepared by the U.S. Department of the Navy (Navy). The Navy, as a public agency proposing to carry out a project, is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). At this time, no state lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) has been identified; however, the CSLC has prepared these comments because of its jurisdiction, identified below, over State sovereign lands located within the Study Area identified in the EIS/OEIS. The CSLC also has trust responsibility for any and all projects that could directly or indirectly affect state owned sovereign lands and/or school lands, and their resources or uses (pursuant to State CEQA Guidelines,¹ §§ 15381 and 15386, subd. (b)).

CSLC Jurisdiction, Public Trust Lands, and CEQA

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat

¹ The "State CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

preservation, and open space. On the open coast, the State's sovereign fee ownership extends from the mean high tide line to three nautical miles offshore, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The Navy proposes to conduct training and testing activities which may include the use of active sonar and explosives, off the Southern California coast, Navy pierside locations, and Port transit channels. After review of the information provided and in-house records, CSLC staff has determined that the proposed project will be located within:

- Ungranted sovereign lands of the Pacific Ocean and under the leasing jurisdiction of the CSLC.
- Lands granted to Orange County pursuant to Chapter 321, Statutes of 1961, with minerals reserved to the State.
- Lands granted to the city of Oceanside pursuant to Chapter 846, Statutes of 1979, with minerals reserved to the State.
- Lands granted to the city of San Diego pursuant to Chapter 937, Statutes of 1931, with minerals reserved to the State.
- Lands granted to the city of San Diego pursuant to Chapter 688, Statutes of 1933, with mineral reserved to the State.
- Lands granted to the city of San Diego pursuant to Chapter 2139, Statutes of 1963, with minerals reserved to the State.
- Lands granted to the city of San Diego pursuant to Chapter 2140, Statutes of 1963, with minerals reserved to the State.
- Lands granted to the U.S.A. pursuant to Chapter 89, Statutes of 1937, with minerals reserved to the State.
- Lands granted to the city of Avalon pursuant to Chapter 303, Statutes of 1943, with minerals reserved to the State

HSTT activities proposed in areas of ungranted sovereign lands under the leasing jurisdiction of the CSLC may require a lease from the CSLC. Additionally, any dredging activities on ungranted sovereign lands, or granted lands for which minerals were reserved for the State, would require a dredging lease from the CSLC. The CSLC's surface lease application can be found at www.slc.ca.gov. Please contact Michelle Andersen, Public Land Manager, at the number listed at the end of this letter regarding any questions regarding leasing.

Additionally, the EIS/OEIS indicates on page 2-40 that training and testing activities may include Synthetic Aperture Sonar, "in which active acoustic signals are post-processed to form high-resolution images of the seafloor." Please be aware that geophysical and geological surveys conducted in State waters require a geophysical survey permit from the CSLC pursuant to California Public Resources Code section 6826. For more

information on these survey permits, please contact Richard Greenwood at the contact information listed at the end of this letter.

If it is determined that the Project requires a lease or permit from CSLC for activities on State sovereign lands, the lease or permit would require approval by the CSLC at a properly noticed public meeting, and as a discretionary action, would also require the CSLC to comply with CEQA. The State CEQA Guidelines provide a mechanism by which an EIS can be used by an approving agency if specified conditions are met (see generally §§ 15220-15225). With regard to circulation and public review of the document, pursuant to section 15225 of the State CEQA Guidelines, the CSLC may only use an EIS in place of an Environmental Impact Report if the federal lead agency circulated the EIS in accordance with CEQA and gave notice of the document's availability as specified in section 15087 of the State CEQA Guidelines.

Because the CSLC is a state agency, when it acts as a lead agency under CEQA, it is required to circulate environmental documents through the State Clearinghouse at the Governor's Office of Planning and Research. For the Project EIS/OEIS, CSLC staff has been unable to verify that the Navy gave such notice; therefore, prior to the Navy's approval of the Project and before the CSLC can use the EIS/OEIS to consider approval of a lease or permit for the Project, the EIS/OEIS will need to be noticed and circulated in accordance with CEQA requirements. Please contact Sarah Sugar at the contact information identified below for further assistance in meeting this requirement. With regard to CEQA's substantive requirements to mitigate or avoid significant effects on the environment, CSLC staff has reviewed the EIS/OEIS for compliance with the conditions set forth in CEQA and the State CEQA Guidelines and offers the following comments.

Project Description

The Navy proposes to conduct military readiness training and testing activities throughout the in-water areas around the Hawaiian Islands and off the coast of Southern California, primarily in established operating and military warning areas of the Study Area. Although similar training and testing activities already take place in the Study Area, the proposed Project would involve changes in the frequency and location of certain activities. The Navy proposes to conduct these activities to ensure that the Navy meets its mission, which is to maintain, train and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. This mission is achieved in part by conducting training and testing within the Study Area.

CSLC staff understands that the Project would include the training and testing activities related to:

- Anti-Air Warfare
- Amphibious Warfare
- Strike Warfare
- Anti-Surface Warfare
- Anti-Submarine Warfare
- Electronic Warfare
- Mine Warfare; and
- Naval Special Warfare

The EIS/OEIS found Alternative 2 to be the Preferred Alternative under NEPA.

Environmental Review

1. Clarification of Location of Training and Testing Activities: Although the EIS/OEIS specifies that certain activities, such as anti-submarine warfare training events, would occur further offshore and outside of State jurisdictional waters, and that certain activities, such as mine-detection sonar, would generally occur in shallower waters, the EIS/OEIS lacks an overall, broader discussion or table, separately identifying the training and testing activities that might occur in state waters and, therefore, potentially affect California's public trust resources. Although CSLC staff understands that the particular location and frequency of the various Project activities at any given time change according to the Navy's needs, CSLC staff requests that the EIS/OEIS provide further information on activities that *may* occur in California state waters and, if available, an estimate of the frequency of particular activities in State waters. Such a discussion would help CSLC staff with leasing and management activities in the Study Area, both with the Navy and other lease applicants or lessees, and would be useful in determining potential use conflicts with other ocean users in the Study Area in the future.
2. Cultural Resources, Title to Resources: The EIS/OEIS should also mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the CSLC. The recovery of objects from any submerged archaeological site or shipwreck may require a salvage permit under Public Resources Code section 6309. On statutorily granted tide and submerged lands, a permit may be issued only after consultation with the local grantee and a determination by the CSLC that the proposed salvage operation is not inconsistent with the purposes of the legislative grant. CSLC staff requests that the Navy consult with Senior Staff Counsel Pam Griggs at the contact information noted at the end of this letter, should any cultural resources be discovered during Project activities.

Thank you for the opportunity to comment on the EIS/OEIS for the Project. Because part of the proposed Project involves use of State sovereign lands and may require issuance of a lease or permit, the CSLC would need to rely on an environmental document that meets CEQA requirements. The CSLC will review the final document and determine whether it has met the requirements identified in this letter for use in lieu of a separate EIR. If it does not, the CSLC would be required to prepare and circulate a separate environmental document that complies with CEQA prior to taking action on approval of a lease or permit.

Please send copies of future Project-related documents, including an electronic copy of the Final EIS/OEIS, Mitigation Monitoring and Reporting Program (MMRP), and Record of Decision (ROD) when they become available, and refer questions concerning environmental review to Sarah Sugar, Environmental Scientist, at (916) 574-2274 or via e-mail at Sarah.Sugar@slc.ca.gov. In addition, please contact the following CSLC staff for questions relating to the following topics.

- For questions concerning CSLC leasing jurisdiction, please contact Michelle Andersen, Public Land Manager, at (916) 574-0200, or via email at Michelle.Andersen@slc.ca.gov.
- For questions concerning CSLC geophysical survey permitting, please contact Richard Greenwood, Statewide Geophysical Coordinator, at (562) 590-5897, or via email at Richard.Greenwood@slc.ca.gov.
- For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Senior Staff Counsel Pam Griggs at (916) 574-1854 or via email at Pamela.Griggs@slc.ca.gov.

Sincerely,



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

cc: Office of Planning and Research
Michelle Andersen, CSLC
Richard Greenwood, CSLC
Sarah Sugar, CSLC
Kathryn Colson, CSLC