



UNITED STATES MARINE CORPS
MARINE CORPS INSTALLATIONS WEST-MARINE CORPS BASE
BOX 555010
CAMP PENDLETON, CALIFORNIA 92055-5010

Mr. Joseph Street
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Mr. Street:

The United States Navy (Navy) and the United States Marine Corps (USMC) take this opportunity to provide comments for the record on Southern California Edison's (SCE) coastal permit application No. 9-15-0228. This application is for the construction of an independent spent fuel storage installation, consisting of an approximately 25,000 square foot concrete pad and 75 fuel storage modules, at the San Onofre Nuclear Generating Station (SONGS) located on Marine Corps Base, Camp Pendleton, San Diego County. It is the Navy's and USMC's position that the California Coastal Commission lacks jurisdiction to require or issue a Coastal Development Permit (CDP) for actions at the SONGS site.

The proposed project would occur entirely within the previously developed SONGS site. In 1963, Congress, through Public Law 88-82, authorized the Secretary of the Navy to issue an easement on this site to SCE and San Diego Gas & Electric "for the construction, operation, maintenance, and use of a nuclear generating station, consisting of one or more generating units, and appurtenances thereto." In 1964, the Secretary of the Navy issued such an easement for a 60-year period. At the termination of the easement, the Secretary of the Navy may require SCE to remove all improvements and restore the site to its pre-easement condition.

The above clearly shows that the SONGS site is on land "the use of which is by law subject solely to the discretion of . . . the Federal Government, its officers or agents." (16 U.S.C § 1453(1)). As such, the SONGS site, under the Federal Coastal Zone Management Act (CZMA), is excluded from the coastal zone. While each State participating in the CZMA's federal-state cooperative program defines the boundaries of its coastal zone, Federal regulations require that the "boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is by law subject solely to the discretion of the Federal Government, its officers or agents." (Emphasis added). (15 C.F.R § 923.33). Thus, Federal law requires Federal land to be excluded from California's coastal zone as defined in the California Coastal Act. Since a CDP is issued for development in the coastal zone, the Commission is without jurisdiction to require or issue a CDP for actions outside the coastal zone, like the SONGS site.

The Navy and USMC position on this matter is fully consistent with the ruling in Manchester Pacific Gateway v. California Coastal Commission (S.D. Cal. 2008) (Manchester) (the jurisdiction in which the SONGS site is located) that found that the Commission did not have the authority to require a CDP for development actions at the Navy Broadway Complex (NBC) in San Diego. Like the NBC site, the SONGS site is on Department of the Navy-owned land, under exclusive federal legislative jurisdiction, where a particular development was specifically authorized by Congress, and a real estate instrument for use of this site was issued by the Navy and USMC. For the SONGS site, the

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instrument at issue is an easement, in which the federal agency retains even more rights to access the site subject to the easement than it does with a lease similar to that addressed by the federal district court in *Manchester*.

The Navy and USMC understand the commission's reliance on the *California Coastal Commission v. Granite Rock Co.*, (480 U.S. 572) case to assert jurisdiction under the California Coastal Act over this Federal property. The Federal property in *Granite Rock*, though, was under proprietorial jurisdiction where State law generally applies. The SONGS site, on the other hand, is under exclusive federal jurisdiction where State law generally does NOT apply. Thus, it is the Navy and USMC position that the Commission only has jurisdiction over the SONGS site through the consistency provisions of the Federal Coastal Zone Management Act. Therefore, the Navy and USMC object to the Commission requiring or issuing a Coastal Development Permit under the California Coastal Act for the proposed action at hand or for any other proposed action at the SONGS site.

Respectfully,



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