

**CALENDAR ITEM
C84**

A	33	06/29/15 SA 5767 J. Porter G. Pelka W. Crunk
S	18	

**CONSIDER AUTHORIZATION OF THE SALE AND ISSUANCE OF A PATENT OF
STATE SCHOOL LANDS AND STATE INDEMNITY SCHOOL LANDS AND
AUTHORIZATION TO ENTER INTO A MEMORANDUM OF AGREEMENT**

APPLICANT:

United States of America
Commanding Officer
Naval Facilities Engineering Command, Southwest
1220 Pacific Highway, Room 201
San Diego, CA 92132-5190
(ATTN: Central IPT AM1 -RAV10.GP)

AREA, LAND TYPE, AND LOCATION:

2,563 acres, more or less, of State school lands and State indemnity school lands located in Section 16, Township 2 North, Range 10 East; Sections 1, 3 and 4, Township 4 North, Range 3 East, Section 16 Township 4 North, Range 4 East; Section 16, Township 5 North, Range 5 East, and Section 36, Township 4 North, Range 5 East, SBM, west and south of the Marine Corps Air Ground Combat Center, San Bernardino County.

BACKGROUND:

School lands were granted to the State of California by the federal government under the Act of March 3, 1853 (10 Stat. 244), and consisted of the 16th and 36th sections of land in each township (with the exceptions of lands reserved for public use, lands taken by private land claims, and lands known to be mineral in character). In cases of preemption due to the exceptions described above, the State was given the opportunity to select replacement lands from the United States in lieu of a Section 16 or a Section 36. These replacement lands are now known as State indemnity school lands or lieu lands.

OTHER PERTINENT INFORMATION:

1. The United States of America, acting through the Department of the Navy, has applied to the Commission to purchase portions of seven sections of State school lands and State indemnity school lands (Subject Property) as part of the Marine Corps Air Ground Combat Center expansion project.

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2. The purchase price of \$806,500 is within the range of fair market value for the subject property, supported by a staff review of an appraisal of the property and other pertinent area sales data. In addition to the \$806,500 purchase price, the Applicant is required to pay a patent fee and other costs associated with the purchase.
3. The consideration of \$806,500 will be deposited into the School Land Bank Fund to: 1) facilitate the management of school lands; 2) generate revenue, and 3) carry out the goals of the School Land Bank Act. The California State Lands Commission (Commission or CSLC) acts as trustee for the School Land Bank Fund, pursuant to Division 7.7 of the Public Resources Code, for this transaction.
4. Parcel 191-038 described as Section 36, Township 4 North, Range 5 East, San Bernardino Baseline and Meridian contains the Los Padres Mine, a past producer of gold and silver, with more than 2,000 feet of mine tunnel on two levels. Although no applications are pending or expected in the immediate future, Commission staff believe the possibility exists that the mining industry will desire to explore for and develop precious metals at this site. While the State is only selling the surface interest in the seven parcels with reservation of all minerals, a Memorandum of Agreement (MOA) with the United States has been drafted (Exhibit E) that establishes a framework under which future permittees or lessees of the State may access, explore for and develop such minerals, pursuant to terms and conditions agreed between the State and United States that do not conflict with the military mission for which the lands are being acquired.
5. Staff filed a General Plan for this activity with the Legislature pursuant to Public Resources Code section 6373 (Exhibit C).
6. Pursuant to the Commission's delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15025), the staff has prepared a Supplement to an Environmental Impact Statement (EIS) prepared by the Department of the Navy identified as CSLC Environmental Impact Report (EIR) No. 783, State Clearinghouse No. 2014081010. Such CEQA Supplement was prepared and circulated for public review pursuant to the provisions of CEQA. The Commission, as the CEQA lead agency, has prepared this CEQA Supplement to the *Land Acquisition and Airspace Establishment To Support Large-Scale MAGTF Live-Fire and Maneuver Training at the Marine Corps Air Ground Combat Center, Twentynine Palms, CA* Final EIS for use in place of an EIR pursuant to section 15221 of the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15221). Commission staff

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believes the EIS together with the Supplement meets the requirements of CEQA (Cal. Code Regs. tit. 14, § 15225, subd. (a)).

Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091) and a Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15093) are contained in Exhibit D, attached hereto.

7. The staff recommends that the Commission find that the subject authorization to execute a Memorandum of Agreement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with CEQA.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15060, subdivision (c)(3) and 15378.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the Project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. General Plan
- D. Findings and Statement of Overriding Considerations
- E. Memorandum of Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Certify that the CEQA Supplement to an EIS, CSLC EIR No. 783, State Clearinghouse No. 2014081010, was prepared for this Project pursuant to the provisions of CEQA, that the Commission has reviewed and considered the information contained therein and in the comments received in response thereto and that the CEQA Supplement to an EIS reflects the Commission's independent judgment and analysis.

Find that the Commission believes the EIS together with the CEQA Supplement meets the requirements of CEQA.

Adopt the Findings, made in conformance with California Code of Regulations, Title 14, section 15091, and the Statement of Overriding Considerations made in conformance with California Code of Regulations, Title 14, section 15093, as contained in Exhibit D, attached hereto.

Find that the subject authorization to execute a Memorandum of Agreement is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3) because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Find that a General Plan for this activity (attached as Exhibit C) was filed with the Legislature pursuant to Public Resources Code section 6373 and that the proposed use of the land as described in Exhibit A and shown on Exhibit B will be consistent with such plan.
2. Authorize the Executive Officer, or her designee, to execute, consistent with the General Plan, that certain document entitled "Offer to Purchase Real Estate in the County of San Bernardino and Acceptance of Offer to Purchase," in substantially the same form as on file with the Commission, and any other document(s) necessary to complete this transaction.
3. Authorize issuance of a patent to the United States of America, subject to applicable statutory and constitutional reservations, for the land described in Exhibit A and as shown on Exhibit B, both attached and by this reference made a part hereof.
4. Authorize the deposit of \$806,500 into the School Land Bank Fund.
5. Authorize the Executive Officer, or her designee, to execute a Memorandum of Agreement between the United States Department of Defense by and through the United States Department of the Navy and

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the California State Lands Commission, substantially in the form attached hereto as Exhibit E, relating to the future access to explore for and develop the mineral estate of State School Land Parcel 191-038.

EXHIBIT A

SA 5767

LAND DESCRIPTION

Seven parcels of State School Land situated in San Bernardino County, State of California, more particularly described as follows:

PARCEL 1

All of Section 16, Township 2 North, Range 10 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved July 23, 1856.

PARCEL 2

The NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 1, Township 4 North, Range 3 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved June 25, 1856.

PARCEL 3

The Lot 1 of NW $\frac{1}{4}$, W $\frac{1}{2}$ of Lot 1 of NE $\frac{1}{4}$ and N $\frac{1}{2}$ of S $\frac{1}{2}$ of Section 3, Township 4 North, Range 3 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved June 25, 1856.

PARCEL 4

The N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 4, Township 4 North, Range 3 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved June 25, 1856.

PARCEL 5

The Lots 1, 2, 3 and 4 of Section 16, Township 4 North, Range 4 East, San Bernardino Meridian, as shown on the Depended Resurvey & Survey Township Plat approved July 18, 1960.

PARCEL 6

All of Section 16, Township 5 North, Range 5 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved June 2, 1921.

PARCEL 7

All of Section 36, Township 4 North, Range 5 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved June 2, 1921.

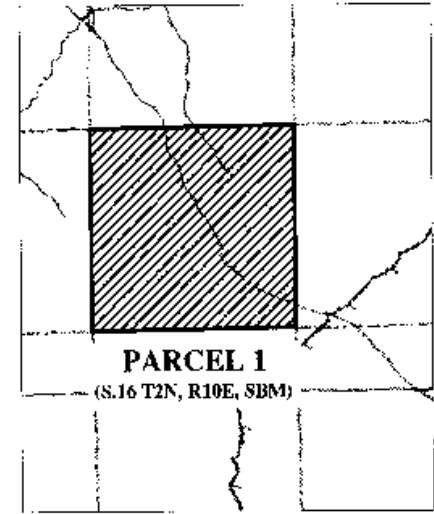
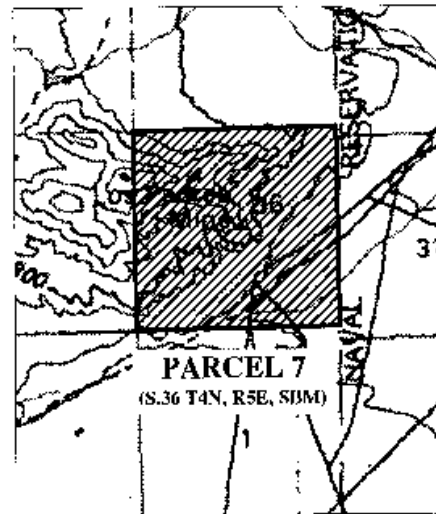
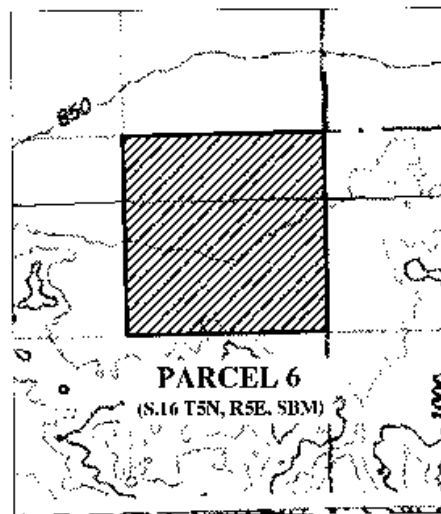
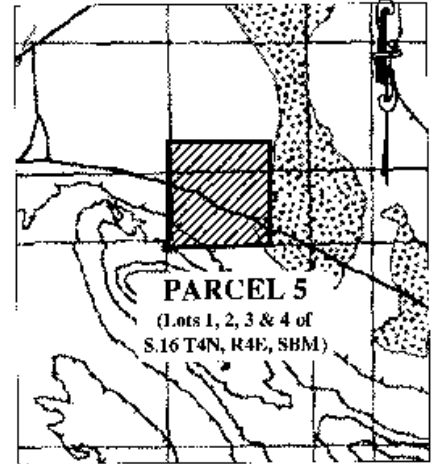
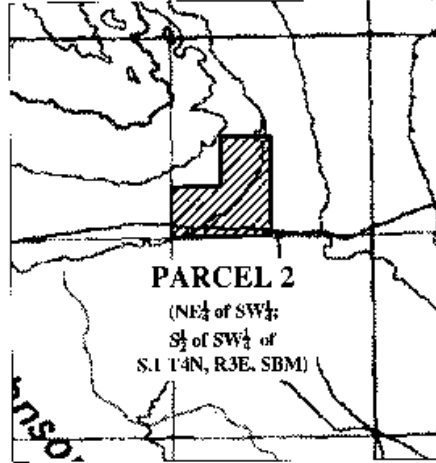
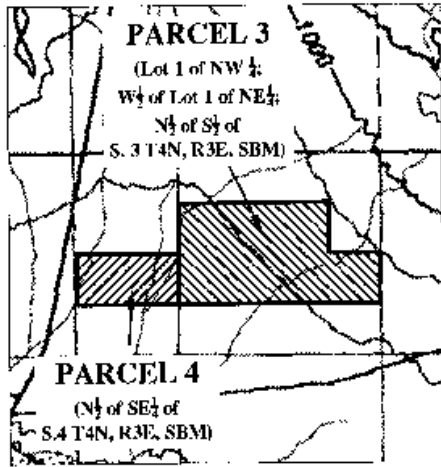
END OF DESCRIPTION

Prepared 05/28/2014 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



SCHOOL LANDS NEAR THE CITIES OF LANDERS, JOHNSON VALLEY, NORTH OF YUCCA VALLEY

NO SCALE

LOCATION

Exhibit B

SA 5767
29 PALMS EXPANSION
PROJECT
SCHOOL LANDS SALE
SAN BERNARDINO
COUNTY



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the sale property, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT C

GENERAL PLAN

PROPOSED TRANSACTION

The United States of America, acting through the Department of the Navy (Navy), proposes to purchase 2,563 acres, more or less, of State school lands and indemnity school lands in San Bernardino County.

PROPERTY LOCATION/INFORMATION

The property proposed for acquisition (Subject Property) is comprised of state school lands and indemnity school lands located in Section 16, Township 2 North, Range 10 East; Sections 1, 3 and 4, Township 4 North, Range 3 East, Section 16 Township 4 North, Range 4 East; Section 16, Township 5 North, Range 5 East, and Section 36, Township 4 North, Range 5 East, SBM, west and south of the Marine Corps Air Ground Combat Center, San Bernardino County.

LAND USE

The Subject Property is vacant, unincorporated desert land. The topography varies from relatively level in some sections to rolling and hilly, with some mountainous outcroppings and numerous washes and small gorges. Surrounding lands are owned primarily by the United States of America, although there are some small private landholdings in the area. The Subject Property has little immediate development potential or commercial value due to its remote location and lack of utilities and infrastructure.

PROPOSED USE

The Navy will be acquiring the land for the expansion of the Marine Corps Air Ground Combat Center which is located immediately to the east of the Subject Property. The plan for the expansion project is entitled: *Proposed Land Acquisition/Airspace Establishment in Support of Large-Scale MAGTF Live-Fire and Maneuver Training, Project Description Paper - Issue 8 - February 14, 2013*. Because the plan is so voluminous and to comply with the spirit of the Paperwork Reduction Act, more information can be found at <http://www.29palms.marines.mil/Staff/G4InstallationsandLogistics/LandAcquisition.aspx>.

EXHIBIT D – SALE OF SCHOOL LANDS FOR THE MARINE CORPS AIR GROUND COMBAT CENTER PROJECT

CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

1.0 INTRODUCTION

The California State Lands Commission (CSLC), acting as a lead agency under the California Environmental Quality Act (CEQA), makes these Findings and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize a sale of school lands to the United States of America, acting through the Department of the Navy (Navy), for the proposed Sale of School Lands for the Marine Corps Air Ground Combat Center Project (Project). The CSLC is making these Findings pursuant to Public Resources Code section 21081 and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091, subd. (a)),¹ which states in part:

No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale of each finding.

The CSLC manages approximately 468,000 acres of school lands held in fee ownership by the State and the reserved mineral interests on an additional 790,000± acres where the surface estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code, § 6217.5). In 1984, the State Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund and appointed the CSLC as its trustee (Pub. Resources Code, § 8700 et seq.). The Act directed the CSLC to develop school lands into a permanent and productive resource base for revenue generating purposes.

The CSLC is the lead agency under CEQA for the Project because the CSLC has the principal responsibility for taking action on the Project by approving the sale of approximately 2,563 acres of school land for the Project. The Navy analyzed the overall environmental impacts associated with its proposed action in a Final Environmental Impact Statement (EIS) titled *Land Acquisition and Airspace Establishment To Support Large-Scale Marine Air Ground Task Force Live-Fire and Maneuver Training at the Marine Corps Air Ground Combat Center, Twentynine Palms, CA*, pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The Navy approved the proposed action, which includes the school land sale component, in its Record of Decision (ROD) dated February 11, 2013.

¹ CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, Title 14, section 15000 et seq.

Pursuant to section 15221 of the State CEQA Guidelines, when a project requires compliance with both NEPA and CEQA, the CEQA lead agency "...should use the EIS...rather than preparing an EIR..." if (1) the EIS has been prepared prior to a CEQA document, and (2) the EIS complies with the provisions of CEQA. If needed, the EIS may be supplemented to include CEQA-required topics so it can be used in the place of an EIR. The Navy's EIS was completed prior to preparation of a CEQA document, and together with the CEQA Supplement to EIS (Supplement) prepared by the CSLC, the CSLC believes the requirements of CEQA are met. (State CEQA Guidelines, §§ 15221, subd. (b); 15225, subd. (a).) The Supplement to the final EIS and the final EIS were circulated in accordance with the requirements of CEQA. (State Clearinghouse [SCH] No. 2014081010).² The EIS along with the Supplement, therefore, is being used by the CSLC in place of a separate EIR, and is the document on which these Findings are based.

The Navy's overall proposed action involves expanding the existing air and ground operating areas at the Combat Center to establish the required Marine Expeditionary Brigade (MEB)-sized training facility and support sustained, combined-arms, live-fire, and maneuver training for all elements of MEB-sized Marine Air Ground Task Forces. The proposed Project for purposes of the CSLC's approval involves the sale of seven parcels totaling approximately 2,563 acres of State school lands that are needed by the Navy for its overall proposed action. CSLC staff received an application from the Navy in January 2014 requesting to purchase these school land parcels from the CSLC.

As part of the acquisition process, an independent appraisal was submitted by the Navy. The appraisal was reviewed and deemed fair and accurate by the CSLC. Subsequently, an Offer to Purchase (OTP) was negotiated between the CSLC and the Navy that specifies the terms and conditions of the sale. When the OTP is approved and executed by both parties, the CSLC will authorize the issuance of a patent that will complete the transfer of ownership of the property to the United States of America upon payment of \$806,500 to the School Land Bank Fund. These funds will be used to 1) facilitate the management of school lands; 2) generate revenue; and 3) carry out the goals of the School Land Bank Act.

2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS

These Findings are based on the information contained in the EIS and Supplement for the Project, as well as information provided by the Applicant and gathered through the public involvement process, all of which is contained in the administrative record. References cited in these Findings can be found in the final EIS, Chapter 8, References. The administrative record is located in the Sacramento office of the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

² The Supplement to the EIS was published in August 2014 and circulated for 45 days. The Final document, published in December 2014, is available on the CSLC website at: www.slc.ca.gov (under the "Information" tab and "CEQA Updates" link).

3.0 FINDINGS

Findings are required by each “public agency” that approves a project for which an EIR has been certified that identifies one or more significant environmental impacts. (Pub. Resources Code, § 21081; State CEQA Guidelines, § 15091.) These Findings, as a result, are intended to comply with the above-described mandate that for each significant effect identified in an EIR, the CSLC adopt one or more of the following, as appropriate.

- (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

These Findings are also intended to comply with the requirement that each finding by the CSLC be supported by substantial evidence in the administrative record of proceedings, as well as accompanied by a brief explanation of the rationale for each finding. (State CEQA Guidelines, § 15091, subds. (a), (b).) To that end, these Findings provide the written, specific reasons supporting the CSLC’s decision under CEQA to approve the Project.

Importantly, in this case, the CSLC’s approval is limited to the sale of the above-identified parcels to the United States; the CSLC is not carrying out any of the activities associated with the overall proposed action and will not, upon transfer of the property, have any jurisdiction or responsibility to implement or enforce the mitigation measures identified in the final EIS – that responsibility rests with the Navy as the lead agency under NEPA. However, the Navy has incorporated mitigation measures intended to minimize potentially significant impacts (ROD, p. 1; final EIS). As a result and in approving the Project, the CSLC has made Finding (1) for impacts where the Navy has adopted alterations and mitigation measures. Finding (2) is also made for each significant impact identified in the EIS because the Navy is identified as the agency with the responsibility to adopt, implement, and enforce the required mitigation. Although the CSLC believes the Navy will fulfill its mitigation responsibilities, because the CSLC has no way to be sure the Navy will do so, the CSLC also adopts Finding (3) for significant impacts that are identified as Less than Significant with Mitigation.

The Navy has determined that certain identified impacts will exceed the significance criteria set forth in the EIS even after implementation of all feasible mitigation measures and consideration of feasible alternatives. The CSLC adopts the Statement of Overriding Considerations included in this Exhibit D for each impact with Finding (3). The Statement of Overriding Considerations adopted as part of this Exhibit applies to all

such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

All environmental impacts of the Project identified in the EIS are listed below; the significance of each impact is classified as follows.

Definition	Findings Required
Significant and Unavoidable (SU). Significant adverse impact that remains significant after mitigation	Yes
Less than Significant with Mitigation (LTSM). Significant adverse impact that can be eliminated or reduced below an issue’s significance criteria	Yes
Less than Significant (LTS). Adverse impact that does not meet or exceed the identified significance criteria	No
No Impact (NI)	No

A. SUMMARY OF FINDINGS

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Water Resources (wells)
- Utilities
- Geology, Sediments, and Seismicity

The EIS identified the following impacts as Less Than Significant:

- Air Quality
- Greenhouse Gases
- Biological Resources (Mojave fringe-toed lizard, spectacle fruit, vegetation communities)
- Mineral Resources
- Water Resources
- Agriculture (grazing)
- Transportation
- Noise
- Soils
- Visual Resources
- Public Health and Safety
- Socioeconomics and Environmental Justice

For the remaining potentially significant effects, the Findings set forth below are:

- Organized by significant impacts within the following EIS issue areas:
 - Biological Resources (desert tortoise, crucifixion thorn) (BIO)
 - Cultural Resources (CUL)
 - Land Use and Recreation (REC)

- Airspace Management (AM)
- Followed by an explanation of the rationale for each Finding.

B. POTENTIALLY SIGNIFICANT IMPACTS

In its ROD on the EIS and approval of the preferred alternative for the overall proposed action, the Navy imposed various mitigation measures for significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures. Impacts determined to be Less Than Significant with Mitigation are shown in Table 1. As noted above, the proposed action will be implemented after title to the State-owned parcels are transferred to the Navy, and the Navy will be responsible for implementation and enforcement of the mitigation measures; however, for purposes of these Findings, the CSLC is including a description of the impacts and mitigation measures identified in the EIS.

Even with the implementation of all feasible mitigation, the Navy concluded in the EIS that some potentially significant impacts will remain significant. Table 1 identifies those impacts that the Navy determined would be, after mitigation, Significant and Unavoidable. As a result, the CSLC adopts the Statement of Overriding Considerations set forth in Section 4.0 of this Exhibit to support its approval of the Project despite the significant and unavoidable impacts.

Table 1 – Significant Impacts by Issue Area

Environmental Issue Area	Impact Nos.	
	LTSM	SU
Biological Resources	BIO-1	EIS Chapter 2.8 – Special Conservation Measures
Cultural Resources	N/A	CUL-1
Land Use and Recreation	N/A	REC-1, REC-2
Airspace Management	N/A	AM-1

C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION (LTSM)

The impacts identified below were determined in the final EIS to be potentially significant absent mitigation; after application of mitigation, however, the impacts were determined to be less than significant.

1. BIOLOGICAL RESOURCES (CRUCIFIXION THORN)

CEQA FINDING NO. BIO-1
Impact: Impact BIO-1. Small populations of crucifixion thorn could be lost.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (Navy)

(3) Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIS.

FACTS SUPPORTING THE FINDING

Approval of the Project will transfer title, jurisdiction, and responsibility over the subject parcels to the United States for purposes of national defense; however, the Navy has adopted a mitigation measure related to the impact **BIO-1**. This mitigation measure is intended to reduce the identified impact to a less than significant level.

Military training activities proposed as part of the Navy's proposed action have the potential to result in the loss of small populations of crucifixion thorn. Loss of these plants could occur as a result of crushing or from ordnance explosions.

The Navy has incorporated implementation of Mitigation Measure **BIO-1** into the proposed action to reduce this impact to a less-than-significant level. This impact is further discussed in the final EIS, page 4.10-19.

Mitigation Measure BIO-1: Avoid crucifixion thorn populations. The Navy shall avoid, as feasible, the small populations of crucifixion thorn through exercise design and/or installation of protective fencing, before commencement of ground-disturbing training activities.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is expected to be reduced to a less than significant level; however, because the CSLC has no way to be sure the Navy will implement the mitigation, the CSLC also adopts Finding (3) for this impact. The Statement of Overriding Considerations adopted as part of this Exhibit D applies to this impact in addition to the impacts in section D below.

D. SIGNIFICANT AND UNAVOIDABLE IMPACTS (SU)

The following impacts were determined in the final EIS to be significant and unavoidable. The Statement of Overriding Considerations adopted as part of this Exhibit D applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

1. BIOLOGICAL RESOURCES (DESERT TORTOISE)

CEQA FINDING NO. BIO-2

Impact: **Impact BIO-2.** Direct and indirect impacts to desert tortoise populations.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (Navy)

(3) Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIS.

FACTS SUPPORTING THE FINDING(S)

Approval of the Project will transfer title, jurisdiction, and responsibility over the subject parcels to the United States for purposes of national defense. The Navy has identified Significant and Unavoidable impacts related to the desert tortoise population (final EIS, page 4.10-51) over the entirety of the base expansion project identified within the EIS. Although the Project only encompasses a portion of the Navy's total land acquisition, the CSLC is confident that the Navy will implement the Special Conservation Measures referenced below and in section 2.8.4 of the final EIS.

Military training activities proposed as part of the Navy's proposed action have the potential to result in the direct loss of 154 to 714 adult desert tortoises, and additional indirect impacts to desert tortoises and their habitat from displaced off-highway vehicle (OHV) users.

The Navy has incorporated implementation of a number of Special Conservation Measures to minimize this impact; these measures are described in detail in Chapter 2.8.4 of the Navy's EIS. Measures include continued implementation of all measures identified in the 2002 Basewide Biological Opinion, the 2007 Integrated Natural Resources Management Plan (INRMP), Combat Center Order 5090.1D, and the 2012 Land Acquisition and Airspace Establishment Biological Opinion. In addition, the Navy will designate new Special Use Areas that restrict access to desert tortoise habitat, develop and implement a translocation program to move tortoise out of harm's way and reduce mortality of individuals, develop and implement a desert tortoise "headstarting" and population augmentation program, and implement a 25-year monitoring program.

While these Special Conservation Measures are expected to be effective in reducing impacts to desert tortoises, the potential mortality of 154 to 714 adults remains a significant impact.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

2. CULTURAL RESOURCES

CEQA FINDING NO. CUL-1

Impact: **Impact CUL-1.** Direct and indirect impacts, including cumulative impacts, could occur from weapons fire, training exercises, battalion movements, and construction.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (Navy)

(3) Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIS.

FACTS SUPPORTING THE FINDING

Approval of the Project will transfer title, jurisdiction, and responsibility over the subject parcels to the United States for purposes of national defense. The Navy has identified Significant and Unavoidable impacts related to Cultural Resources (**CUL-1**). The Navy has incorporated the mitigation measures referenced below in order to minimize the potential impact.

Military training activities proposed as part of the Navy's proposed action have the potential to result in direct and indirect impacts to cultural resources, including significant cumulative impacts. Impacts could occur as a result of ordnance explosions, training exercises and battalion movements, aviation, and construction activities.

To minimize this impact, the Navy has incorporated implementation of Mitigation Measure **CUL-1** into the proposed action. This impact is further discussed in the final EIS, and on pages 11 and 16 of the ROD.

Mitigation Measure CUL-1: Consultation. The Navy will develop mitigation measures in consultation with SHPO, the Tribes, and interested parties; in addition the existing Integrated Cultural Resources Management Plan (ICRMP) would be modified and developed in consultation with the parties.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

3. LAND USE AND RECREATION

CEQA FINDING NO. REC-1

Impact: **Impact REC-1.** Loss of access to and use of OHV areas.

- Finding(s):
- (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.
 - (2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (Navy)
 - (3) Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIS.

FACTS SUPPORTING THE FINDING(S)

Approval of the Project will transfer title, jurisdiction, and responsibility over the subject parcels to the United States for purposes of national defense. The Navy has identified Significant and Unavoidable impacts related to land use and recreation (**REC-1**). The Navy has incorporated the mitigation measures referenced below in order to minimize the potential impact.

Military training activities proposed as part of the Navy's proposed action will result in displacement of OHV users from approximately 56 percent of the Johnson Valley OHV Area, and the loss of the remaining 44 percent of the Area for two months of the year. This loss of access and use is inconsistent with the Johnson Valley OHV Area Management Plan and would displace users to other recreation areas, thus impacting recreational opportunities throughout the region.

To minimize this impact, the Navy will prepare a Recreation Management Plan as a component of the INRMP and ensure the requirements of Executive Order (EO) 11644 are fulfilled. The Plan will include a recreational carrying capacity analysis that addresses recreational use, user profile, demand, preference, conflicts, and conditions consistent with other applicable natural resource and environmental laws.

While implementation of the Recreation Management Plan will alleviate the impacts to OHV access and use to the extent feasible, the impact cannot be avoided because the acquisition area deemed necessary by the Navy and the objectives of the proposed action require the restriction of access to a majority of the Johnson Valley OHV Area.

The Navy has incorporated implementation of Mitigation Measures **REC-1** and **REC-2** into the proposed action to reduce this impact to the extent feasible. This impact is further discussed in the final EIS.

Mitigation Measure REC-1: The Marine Corps, in cooperation with the BLM, would establish a Resource Management Group that would be charged with addressing all issues associated with the Shared Use Area. The Resource Management Group would implement an aggressive community/public outreach plan to ensure the public is given every opportunity to understand the change in land use and potential dangers.

Mitigation Measure REC-2: The Resource Management Group would meet at least once a year to discuss the suitability of procedures to facilitate recreational use of the Shared Use Area. The Resource Management Group would seek information from representatives of relevant State agencies, private OHV interest groups, event managers, environmental advocacy groups, and others as needed and appropriate. Through this process, the management of the Shared Use Area would be continuously improved to balance Marine Corps training needs with recreational demand. The Resource Management Group would also consider the potential use of portions of the Exclusive Military Use Area for strictly limited recreational use on a case-by-case basis for organized OHV race events and make recommendations to the Marine Corps.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

4. AIRSPACE MANAGEMENT

CEQA FINDING NO. AM-1

Impact: **Impact AM-1.** Impacts to air traffic routes will occur.

Finding(s): (1) Changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the final EIS.

(2) Project changes or alterations are within the responsibility and jurisdiction of another public agency and not the CSLC. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (Navy)

(3) Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIS.

FACTS SUPPORTING THE FINDING(S)

Approval of the Project will transfer title, jurisdiction, and responsibility over the subject parcels to the United States for purposes of national security. The Navy has identified Significant and Unavoidable impacts related to airspace management (**AM-1**). The Navy

has incorporated the mitigation measures referenced below in order to minimize the potential impact.

Military training activities proposed as part of the Navy's proposed action have the potential to result moderate to significant impacts to air traffic routes, jet traffic, general aviation aircraft, public airports and instrument approach procedures within close proximity to the proposed Special Use Airspace.

The Navy has consulted with the Federal Aviation Administration (FAA). The FAA has indicated that it will conduct an aeronautical study on the preferred alternative and thereafter determine appropriate measures to minimize the impact of the alternative airspace configuration. The Navy will conduct outreach to airport operators and general aviation pilot groups and seek input on minimizing impacts on the aviation community.

The Navy has also incorporated implementation of Mitigation Measure **AM-1** into the proposed action to reduce this impact to the extent feasible. This impact is further discussed in the final EIS.

Mitigation Measure AM-1: Feasible measures expected to be developed may include scheduling of Special Use Airspace for military activities during off-peak civil air traffic periods, other scheduling and Special Use Airspace utilization measures, and raising Special Use Airspace floors to minimize impacts to local airports. Continued Marine Corps outreach to local airport operators and general aviation pilot groups will seek means of minimizing impacts on the general aviation community.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

4.0 STATEMENT OF OVERRIDING CONSIDERATIONS

A. INTRODUCTION

The combined Supplement to the EIS prepared by the CSLC as lead agency under CEQA for the proposed Sale of School Lands for the Marine Corps Air Ground Combat Center Project (SCH No. 2014081010) and the EIS identify significant impacts of the Project that cannot feasibly be mitigated to below a level of significance. Pursuant to Public Resources Code section 21081 and section 15043 of the State CEQA Guidelines, the CSLC may approve a project even though it will cause a significant effect on the environment, if the CSLC makes a fully informed and publicly disclosed decision that there is no feasible way to lessen or avoid the significant effect, and specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.

State CEQA Guidelines section 15093 states in part:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or

statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

This Statement of Overriding Considerations presents a list of (1) the specific significant effects on the environment attributable to the approved Project that cannot feasibly be mitigated to below a level of significance, (2) benefits derived from the approved Project, and (3) specific reasons for approving the Project.

Although the Navy, in approving the preferred alternative of the *Land Acquisition and Airspace Establishment to Support Large-Scale MAGTF Live-Fire and Maneuver Training at the Marine Corps Air Ground Combat Center* proposed action, imposed mitigation measures to reduce impacts, impacts remain that are considered significant after application of all feasible mitigation. Impacts and mitigation measures are identified and discussed throughout Chapters 2, 4, 5, and 6 of the final EIS. Notably, the only action being approved by the CSLC is the sale of approximately 2,563 acres of school lands. Once the sale of the school land is finalized, the CSLC will have no authority or jurisdiction to enforce the identified mitigation measures. In addition, should the sale not be finalized, the Navy could proceed with the proposed action without the CSLC parcels or could acquire the parcels through its power of eminent domain. While the CSLC believes the Navy will implement the mitigation identified in the ROD and EIS, for the purposes of CEQA, the CSLC must adopt this Statement of Overriding Considerations. Significant impacts of the approved Project fall under four resource areas: Biological Resources; Cultural Resources; Land Use and Recreation; and Airspace Management (see Tables 1 and 2). These impacts are specifically identified and discussed in more detail in the CSLC's CEQA Findings, above, the Supplement, and in the Navy's final EIS.

Table 2 – Significant and Unavoidable Impacts Identified for the Approved Project

Impact	Impact Description
Biological Resources	
Impacts to desert tortoise populations	The Navy’s proposed action would result in potentially significant impacts to crucifixion thorn, but this impact will be mitigated through implementation of mitigation measure BIO-1 that specifies avoidance measures. The Navy’s proposed action would result in significant unavoidable impacts to desert tortoise, even after the implementation of feasible mitigation measures. While the adherence to all measures identified in the 2002 Basewide Biological Opinion, the 2007 Integrated Natural Resources Management Plan (INRMP), Combat Center Order 5090.1D, and the 2012 Land Acquisition and Airspace Establishment Biological Opinion, along with the translocation, population augmentation, and monitoring, would reduce this impact, it would remain significant and adverse because an estimated 154-714 adult tortoises would still be killed. There are no other feasible mitigation measures that are available to offset this significant impact.
Cultural Resources	
Impacts to cultural resources	The Navy’s proposed action would result in significant unavoidable impacts, including cumulative impacts, to cultural resources, even with implementation of mitigation measure CUL-1, which specifies a Tribal consultation process and development of an Integrated Cultural Resources Management Plan, to reduce this impact. There are no other feasible mitigation measures that are available to offset this significant impact.
Land Use and Recreation	
Loss of access to and use of a portion of the Johnson Valley OHV Area	The Navy’s proposed action would result in significant unavoidable impacts to OHV users, even after the implementation of feasible mitigation measures. While the Navy was able to reach a negotiated agreement with the OHV community that allows use of a portion of the Johnson Valley OHV Area for 10 months out of the year, the remainder of the Area would be lost to OHV use, resulting in impacts to other OHV areas. As a result, this impact would remain significant and adverse. There are no other feasible mitigation measures that are available to offset this significant impact.
Airspace Management	
Changes to airspace configuration and special use airspace	The Navy’s proposed action would result in significant unavoidable impacts to airspace management, through changes to air traffic patterns and establishment of special use airspace that would restrict or alter air traffic patterns in the area. While the Navy has committed to increased outreach to aviators and local airports, and the FAA has indicated that it will conduct an aeronautical study and determine appropriate mitigation measures based on the study results, the impact would remain significant and adverse because the other airspace users would be restricted or would have to modify their routes and approach procedures. There are no other feasible mitigation measures that are available to offset this significant impact.

B. ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 1000:

When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether [s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].

The seven alternatives analyzed by the Navy in the EIS, including the “no action” and “preferred” alternatives, represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. As presented in the EIS, the alternatives were described in equal detail and compared with each other, as required by NEPA .

In its ROD dated February 11, 2013, the Navy approved Alternative 6, the “preferred alternative,” with additional mitigation developed in consultation with the Bureau of Land Management (BLM) to address impacts to recreational users in the expansion area. In so doing, the Navy found that the unavoidable significant impacts attributable to the proposed action were outweighed by their specific national security needs. For the CSLC, the only action being considered is the sale of approximately 2,563 acres of school lands. In light of the Navy's approval of Alternative 6 in February 2013, the alternatives in front of the CSLC are limited to the “no project” – meaning denial of the sale to Navy – or the proposed Project, which would approve the sale of the school lands to the Navy. The no project alternative would not meet the Navy's objective to acquire sufficient property to accommodate training activities for a MEB as described in its ROD and final EIS. As noted above, the United States, acting through the Navy, is authorized to use its power of eminent domain to acquire the subject school land parcels, i.e., the parcels could be condemned; however, it has elected to seek a mutually agreeable sales transaction with the CSLC to meet its land acquisition needs. It is unknown at this time whether the United States would pursue condemnation of the properties should the CSLC not approve the proposed sale. As a result, the CSLC has determined that the significant and unavoidable environmental impacts attributable to the Navy's proposed action would likely occur regardless of whether the sale is approved or denied. Against this backdrop, the CSLC believes that a mutually agreeable sales transaction is preferable to the additional cost and expenditure of legal resources involved with a potential condemnation action, and therefore, the no project alternative is infeasible for economic and legal reasons.

C. BENEFICIAL IMPACTS OF THE PROJECT

State CEQA Guidelines section 15093, subdivision (a), requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

In its ROD dated February 11, 2013, the Navy approved the proposed action with additional mitigation developed in consultation with the BLM and found that specific national security needs outweighed the unavoidable significant impacts attributable to the proposed action. The purpose and need, as explained in section 1.3.1 of the final EIS, is to support field training for the Marine Corps and to support national defense. For the CSLC, the only action being considered is the sale of approximately 2,563 acres of school lands. As noted above, the United States, acting through the Navy, is authorized to use its power of eminent domain to acquire the subject school land parcels; however, it has elected to seek a mutually agreeable sales transaction with the CSLC to meet its land acquisition needs. Pursuant to Public Resources Code section 6217.7, all net revenues, monies, and remittances from the sale of school lands are deposited into the State Treasury to the credit of the School Land Bank Fund. The CSLC believes that the national defense purpose along with the opportunity to contribute \$806,500 to the School Land Bank Fund are beneficial impacts of the Project.

D. CSLC ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS

As noted above, under Public Resources Code section 21081, subdivisions (a)(3) and (b) and State CEQA Guidelines section 15093, subdivision (a), the decision-making agency is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve a project.

For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, the decision-making agency may approve the underlying project. CEQA, in this respect, does not prohibit the CSLC from approving the Project, even if the activities authorized by that approval may cause significant and unavoidable environmental effects. This balancing is particularly difficult given the significant and unavoidable impacts on the resources discussed in the Navy's EIS and these Findings. Nevertheless, the CSLC finds, as set forth below, that the benefits anticipated by implementing the Project outweigh and override the expected significant effects.

As stated above, Navy is pursuing this Project in order to support national defense through an expansion of the Twentynine Palms Marine Corps Air Ground Combat Center. The CSLC's approval is limited to the sale of approximately 2,563 acres of school lands to the United States, acting through the Navy. Furthermore, the Navy has already approved the proposed action which entails the acquisition of CSLC and other

lands, establishment of Special Use Airspace, and expanded training and live-fire exercises on the expanded Marine Corps Combat Center. Upon transfer of title of the school lands to the United States, the CSLC will have no authority to implement or enforce mitigation measures or to disapprove the overall activities on the expanded Base. Additionally, the Navy and the CSLC have negotiated a mutually agreeable sales proposal which will provide \$806,500 to the School Land Bank Fund. Although Significant Impacts will likely occur as a result of the Project, the Navy will implement mitigation and other measures that will seek to limit those impacts and the CSLC believes the Navy will follow through with such actions. Therefore, the CSLC adopts and makes this Statement of Overriding Considerations with respect to the impacts identified in the EIS and these Findings that cannot be reduced to a less than significant level.

E. CONCLUSION

The CSLC has considered the CEQA Supplement to the final EIS, the final EIS, and all of the environmental impacts described therein including those that cannot be mitigated to a less than significant level. The CSLC has considered the benefits of the Project and has balanced them against the Project's significant and unavoidable adverse environmental impacts and, based upon substantial evidence in the record, has determined that the benefits of the Project outweigh the adverse environmental effects. Based on the foregoing and pursuant to Public Resources Code section 21081 and State CEQA Guidelines section 15093, the CSLC finds that the remaining significant unavoidable impacts of the Project are acceptable in light of the benefits of the Project. Such benefits outweigh such significant and unavoidable impacts of the Project and provide the substantive and legal basis for this Statement of Overriding Considerations.

The CSLC finds that to the extent that any impacts identified in the final EIS remain unmitigated, all feasible mitigation measures have been required by the Navy as the lead agency under NEPA, although the impacts could not be reduced to a less than significant level.

Based on the above discussion, the CSLC finds that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and considers such impacts acceptable.

Data to support the overriding factors are found in the final EIS, the CEQA Supplement to EIS, these Findings, and Calendar Item 57.

EXHIBIT E

MEMORANDUM OF AGREEMENT

RELATING TO THE FUTURE ACCESS TO EXPLORE AND OR DEVELOP A STATE SCHOOL LAND PARCEL AMONG THE UNITED STATES DEPARTMENT OF DEFENSE BY AND THROUGH THE UNITED STATE DEPARTMENT OF THE NAVY AND THE CALIFORNIA STATE LANDS COMMISSION

INTRODUCTION

This Memorandum of Agreement (“MOA”) is between the United States Department of Defense (“DOD”), acting by and through the United States Department of the Navy (“Navy”), and the California State Lands Commission (“CSLC”) (collectively referred to as “Parties”, and each individually as a “Party”). This MOA is entered into to facilitate the expansion of the Marine Corps Air Ground Combat Center at Twentynine Palms, California while preserving the ability of the CSLC to have reasonable access to a state school land parcel, on which the Los Padres Gold Mine is located, to explore and or develop the mineral estate for the economic benefit of the State Teachers’ Retirement System.

I. PARTIES

The following officials are executing this MOA as representatives of their respective agencies that act on behalf of the public as trustees for the lands and natural resources contemplated within this MOA:

- A. Department of the Navy: Director of Real Estate, Naval Facilities Engineering Command Southwest, Department of the Navy; David B. Bixler
- B. Executive Officer, California State Lands Commission; Jennifer Lucchesi

II. AUTHORITY

- A. The Department of Defense; National Defense Authorization Act of 2014, Section 2941, Withdrawal and Reservation of Public Land for the Marine Corps Air Ground Combat Center Twentynine Palms, California, effective December 26 2013
- B. The California State Lands Commission; California Public Resources Code sections 6216 and 6301.

III. DEFINITIONS

“School Land” means land or interest in land granted to the state by an Act of Congress, March 3, 1853 (Ch. 145, 10 Stat. 244) and 43 U.S.C. section 870 (Ch. 57, 44 Stat. 1047) , for the specific purpose of providing support for the public schools.

“School Land Parcel” means the parcel that is the subject of this MOA and is described as State Parcel 191-038 located within Section 36, Township 4 North, Range 5 East, San Bernardino Baseline and Meridian, San Bernardino County, containing 642±acres.

“Surface Entry Agreement” means an agreement between the mineral estate holder and the surface estate holder(s) that will define the reasonable scope of surface access and use related to the exploration, access, extraction, storage, and beneficiation of minerals on the parcel.

IV. BACKGROUND

The National Defense Authorization Act of 2014 provided for the Department of the Navy to expand the Marine Corps Air Ground Combat Center at Twentynine Palms, California. The expansion area involves approximately 151,000 acres of land that traditionally has been used as the Johnson Valley Off-Highway Vehicle Recreation Area. These lands shall be divided into two areas, one comprising about 98,000 acres of lands that shall be for the exclusive use of the military. The second area is comprised of about 53,000 acres and is described as a “Shared Use Area.” The shared use area will be used by the military for two one-month periods of the year for military training. The remaining ten months, the shared use area will be managed by the Department of the Interior through the Bureau of Land Management for the continued use as the Johnson Valley Off-Highway Vehicle Recreation area. Within these two areas are located seven parcels of fee-owned State school land containing 2,563± acres. The Department of the Navy has applied to the CSLC and entered into an offer to purchase contract for the collective surface estate in the amount of \$806,500 pursuant to the appraised surface value.

The CSLC manages State School Lands under its general administrative authority as stated in Public Resources Code section 6216 and in the School Land Bank Act of 1984 pursuant to Public Resources Code 8700 et seq. These lands are managed by the CSLC as a fiduciary for the economic benefit of the State Teachers’ Retirement System. Exhibit A of the Offer to Purchase is entitled “General Terms of Sale”. Paragraph 7 of the General Terms of Sale addresses “Other Terms Applicable to the Sale”. In there, it is noted that “The reservation of the State of California of all mineral deposits contained in the subject lands and the right of surface entry be

allowed at the discretion of the Commanding General, MCAGCC.” Since the CSLC has a continued duty to STRS to encourage mineral development, the CSLC desires to retain a reasonable ability to allow for mineral exploration and development provided it is not inconsistent with the mission of the Navy to use the land two months of the year for its purposes. Of the seven parcels, one parcel in particular, containing the Los Padres Gold Mine is believed to be valuable for the presence of precious and base metals. The parcel is described as *State Parcel 191-038 located within Section 36, Township 4 North, Range 5 East, San Bernardino Baseline and Meridian, San Bernardino County, containing 642±acres* (School Land Parcel). The Los Padres Mine is a past gold producer with recent mineral exploration interest.

V. PURPOSE

The purpose of this MOA is to form a cooperative relationship between the Parties to facilitate the ability of the Navy to use the lands for expanded military maneuvers at Twentynine Palms Marine Corps Air Combat Center and for the CSLC to maintain the ability to reasonably explore and develop the state’s School Land Parcel containing the Los Padres Mine in a manner that does not conflict with the Navy’s use of the lands for military purposes.

VI. PRINCIPLES OF AGREEMENT

The Parties mutually agree:

- A. The Navy and the Commanding General, MCAGCC shall work cooperatively with the CSLC to develop a surface entry agreement at such time as the CSLC receives an application by an applicant to perform mineral exploration or extraction on the state’s School Land Parcel during the ten months of the year when the Navy is not using the land. A surface entry agreement shall be deemed as consent, by the Commanding General, MCAGCC, to a right of surface entry upon the land and shall identify the areas of allowable surface occupation and disturbance and reasonable conditions necessary for both the Navy and the CSLC to carry out their respective objectives over the School Land Parcel. Authorization for surface entry under a surface entry agreement shall not be unreasonably withheld. The term of such authorization shall persist with the term of the entitlement issued to an applicant by the CSLC.
- B. The CSLC recognizes the critical military training that is conducted at the Marine Corps Air Ground Combat Center at Twentynine Palms. Any authorization for mineral exploration/extraction issued by the CSLC will provide express conditions

that all activities may only be conducted when such lands are not in use by the military, which is expected to be ten months, albeit nonconsecutive, within a twelve month period. Should mining commence, beneficiation may occur onsite with any smelting and refining to occur at a site off of the military reservation. Waste rock, if produced, shall be retained in a location that does not interfere with the Navy's use of the Parcel. It is anticipated that existing road leading to the mine shall be used for ingress and egress to the School Land Parcel. The state requests the ability of its permittee or lessee to use, maintain and upgrade that road as necessary for its operations. It is expected that the vast majority of surface activities will be limited to the southeast quarter of the section (at the eastern edge of the subject land).

VII. GENERAL PROVISIONS

- A. Nothing in this MOA is intended to, or shall be construed to limit or affect in any way the authority or legal responsibilities of the Navy or CSLC. Specifically, nothing in this MOA shall imply that any signatory is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over land or natural resources.
- B. Nothing in this MOA binds the Navy or CSLC to perform beyond their respective authorities.
- C. Nothing in this MOA requires the Navy or CSLC to assume or expend any funds in excess of available appropriations authorized by law.
- D. The mission requirements, funding, personnel, and other priorities of the Navy or CSLC may affect their respective abilities to fully implement all of the provisions identified in this MOA.
- E. Specific activities that involve the transfer of money, services, or property between or among the Parties may require execution of separate agreements or contracts.
- F. Nothing in this MOA is intended to or shall be construed to restrict the Navy, or other federal agencies or departments, or the State of California, whether through CSLC or other agencies or departments, from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. Any information furnished between the Parties under this MOA is potentially subject to the Freedom of Information Act, 5 U.S.C § 552, et seq. ("FOIA") and the

California Public Records Act, Gov. Code §6250, et Seq. (“CPRA”). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by FOIA and CPRA.

- H. Each and every provision in this MOA is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- I. All cooperative work under the provisions of the MOA will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.
- J. Amendments or supplements to the MOA may be proposed by any Party to this MOA, and shall become effective upon written approval of all Parties.
- K. This MOA shall become effective upon signature by the Parties, and shall be binding upon, all assigns, transferees and/or other successors in interest. This MOA may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.
- L. This MOA shall be in effect from the date of execution until termination by mutual agreement of the Parties. At any time that the Parties determine that the purposes set forth in this MOA have been satisfied, the MOA may be terminated. In the event either Party wishes to withdraw from the MOA, that party must give the other party notice 180 days prior to withdrawal. Termination of the MOA shall have no effect on any surface access agreements existing at the time of termination of the MOA.
- M. This MOA is intended to facilitate cooperation among the Parties and to lay out the understanding of the Parties to this agreement. It is not a contract for acquisition of supplies or services, and it does not create any legal obligation of or between any of the Parties or create any private right or cause of action for by any person or entity.
- N. Nothing in this MOA may be the basis of any third party challenges or appeals. Nothing in this MOA creates any rights or causes of action in persons not parties to this agreement.

VIII. CONTACTS

The primary points of contact for carrying out of the provisions of this MOA are:

- A. United States Department of the Navy: David B. Bixler
- B. California State Lands Commission: Jennifer Lucchesi

IX. APPROVALS

DAVID B. BIXLER
Department of the Navy

Date

J. D. HANLON
COL. USMC, Chief of Staff, G-3

Date

Jennifer Lucchesi, Executive Officer
California State Lands Commission

Date