



February 15, 2012

U.S. Nuclear Regulatory Commission, Region I
Attn: Orysia Mansk Bailey
475 Allendale Road
King of Prussia, PA 19406

Subject: Request for Review and Determination of Regulatory Jurisdiction

Dear Ms. Bailey:

Thank you for taking the time to discuss this matter during our recent phone conversation. As you requested, we are submitting this formal request for review and determination of regulatory jurisdiction for the Hunters Point Naval Shipyard Facility ("Hunters Point") located in California.

By way of background, Shaw Environmental & Infrastructure, Inc. (Shaw) is an NRC licensed contractor working for the U.S. Navy at Hunters Point, and is currently attempting to establish the regulatory jurisdiction for that facility. We believe, as do other contractors on site, that the NRC has regulatory jurisdiction over the facility and as such, Shaw should invoke its NRC license to perform its work at the facility. Contrary to this belief, we have recently received verbal notification from a representative of the California Department of Public Health ("CDPH"), specifically that it (CDPH) and not the NRC has regulatory jurisdiction over Hunters Point. This matter is further complicated by the response we received from our client (see attached) which directs Shaw to make its own determination of regulatory jurisdiction. Please let me know if any additional information is needed, we look forward to your response.

Thank you for consideration of this request, please contact Claire Doherty (617.589.6750) with any additional questions.

Sincerely,

Mark O. Somerville, Ph.D., CHP, REA[®]
Director
Environment, Safety, Health & Quality
Shaw Environment & Infrastructure, Federal
(925) 222-0848-Cell
mark.somerville@shawgrp.com
Shaw[™] a world of Solutions[™]
www.shawgrp.com

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DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND SOUTHWEST
1220 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92132-5190

IN REPLY REFER TO:

08D8822
RAQBO.CK
January 30, 2012

SHAW Environmental & Infrastructure, Inc.

1230 COLUMBIA ST STE 1200
SAN DIEGO CA 92101-8517
POC: Neil Hart
Phone #: 619-446-4518

Subject: REGULATORY JURISDICTION AT HUNTERS POINT

Reference: Shaw Group letter SHAW_8822_N/A_0347 dated December 27, 2011

Dear Ms. Safreed:

In response to your letter referenced above, Navy BRAC PMO – West has reviewed your work areas against the Hunters Point Naval Shipyard (HPNS) map. From our team's review, it appears that your work areas are on land that falls under either partial or proprietary jurisdiction.

We recommend that Shaw review the definitions of both partial and proprietary jurisdiction and make its own determination. Full definitions of these terms can be found in the Naval Facilities Engineering Command (NAVFAC) Real Estate Procedural Manual (P-73, Chapter 26). The jurisdictional map and the definitions are attached to this letter.

If you have any questions concerning this letter, please contact me at 619-532-0978.

Sincerely,

A handwritten signature in black ink that reads "Cynthia A. Mafara".

CYNTHIA MAFARA
Contracting Officer

[illegible]

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CHAPTER 26

FEDERAL LEGISLATIVE JURISDICTION OVER NAVY AND MARINE CORPS AREAS WITHIN STATES

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CHAPTER 26

FEDERAL LEGISLATIVE JURISDICTION OVER NAVAL AND MARINE CORPS AREAS WITHIN STATES

SECTION I - GENERAL

1. PURPOSE

This chapter sets forth the Department of the Navy (DON) policy, definitions, rules, general characteristics of Federal legislative jurisdiction and the procedures and responsibilities relating to the acquisition and retrocession of such jurisdiction over land areas within the United States that are under the control of the DON.

2. REFERENCES

- (a) 40 U.S.C. § 3112
- (b) 10 U.S.C. § 2683

3. DEPARTMENT OF THE NAVY POLICY CONCERNING THE ACQUISITION OF FEDERAL LEGISLATIVE JURISDICTION

The Department of the Navy (DON) policy governing Federal legislative jurisdiction over lands under its control in the United States is based upon the conclusions and recommendations of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the states, that the President directed be used as a guide by Federal administrators of real properties. Accordingly, it is the policy of the DON to acquire legislative jurisdiction over Federal real property only when the acquisition is essential to the proper performance of military functions, missions, and tasks on the property. When legislative jurisdiction is considered essential, the degree of jurisdiction sought should be limited to the minimum level of jurisdiction required. For example, if it is necessary for the Federal Government to furnish law enforcement service within a particular area, concurrent jurisdiction is all that would be required. Any attempt to obtain exclusive jurisdiction in that case should be avoided. If the state law in question makes no provision for concurrent jurisdiction, consideration should be given to seeking enactment of special legislation by the legislature of the state.

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4. DEFINITIONS/CATEGORIES OF FEDERAL LEGISLATIVE JURISDICTION

a. Legislative Jurisdiction as used in this chapter in connection with a land area means the power and authority of the Federal Government to legislate and to exercise executive and judicial powers within the area. When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, issue, and enforce general legislation within that area whether it chooses to do so or not.

(1) Categories of Legislative Jurisdiction. The Federal Government holds land under varying degrees of legislative jurisdiction. These fall into four distinct types. Each type indicates a different division of authority between the Federal Government and the state Government to exercise the legislative and governmental power within that area. The types are defined as:

(a) Exclusive Legislative Jurisdiction. This term is applied when the Federal Government possesses, by whatever method acquired, all of the authority of the state, in which the state has not reserved to itself the right to exercise any of the authority concurrently with the United States, except the right to serve civil or criminal process in the area for activities that occurred outside the area.

(b) Concurrent Legislative Jurisdiction. This term is applied in those instances where, in granting authority to the United States that would otherwise amount to exclusive legislative jurisdiction over an area, the state reserved to itself the right to exercise, concurrently with the United States, all aspects of the same authority.

(c) Partial Legislative Jurisdiction. This term is applied in those instances where the Federal Government has been granted certain aspects of the state's authority for exercise by the United States over an area in a state, but where the state has reserved to itself the right to exercise, by itself or concurrently with

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the United States, other authority constituting more than merely the right to serve civil or criminal process in the area as for example, the right to tax private property.

(d) Proprietary Interest Only. This term is applied to those instances where the Federal Government has acquired some right or title to an area in a state but has not obtained any measure of the state's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders regarding the area in which it acquired an interest. Further, all of the Federal Government's properties and functions are held or performed in a governmental, rather than a proprietary capacity.

5. BASIC CHARACTERISTICS OF THE SEVERAL CATEGORIES OF LEGISLATIVE JURISDICTION

a. Each of the four categories of Federal legislative jurisdiction has different legal characteristics as follows:

(1) Characteristics of Exclusive Legislative Jurisdiction. Only Congress has the authority to legislate for areas held under exclusive legislative jurisdiction and the Federal Government has the responsibility for law enforcement, civil and criminal. The state cannot enforce its laws and regulations in those areas except as it has reserved, and there is no obligation on the state or on any local subdivision to provide governmental services such as disposal of sewage, trash and garbage removal, road maintenance, and fire protection. In some states, residents in areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the state, such as access to state courts.

(2) Characteristics of Concurrent Legislative Jurisdiction. State and Federal laws are applicable in a concurrent legislative jurisdiction area. Most crimes fall under both Federal and state jurisdiction, and either the Federal or state Government, or both, may take jurisdiction over a given offense committed in the area. The state, subject to the exemption of the Federal Government, retains

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its right to tax. The regulatory powers of the state may be exercised in the area, but not in such a manner that will

interfere with Federal functions. Persons residing in areas under concurrent legislative jurisdiction are not denied important rights and privileges of citizenship such as the right to vote and to have access to state courts.

(3) Characteristics of Partial Legislative Jurisdiction. In an area of partial legislative jurisdiction, the right most commonly reserved by the state is the right to tax.

(a) Administration of the Federal area is the same as if it were under exclusive Federal Jurisdiction for those state powers granted to the Federal Government without reservation. Those powers may be exercised only by the Federal Government.

(b) For those powers granted to the Federal Government with a reservation by the state to exercise the same powers concurrently, administration of the area is exercised as though it was under concurrent legislative jurisdiction.

(c) For powers reserved by the state for exercise only by itself, administration of the area is exercised the same as if the United States had no jurisdiction whatever.

(4) Characteristics of Proprietary Interest Only. The state retains all of the civil and criminal legislative jurisdiction over the Federal area that it would have if a private individual rather than the United States owned the land. The Federal Government has no legislative jurisdiction over lands it holds in a proprietary interest only, but has the same rights in those lands as any other landowner. However, a right exists in the Federal Government to perform the functions delegated to it by the Constitution without interference from any source. Additionally, the state may not impose its regulatory power directly upon the Federal Government, and may not tax Federal land. The state may not regulate the actions of the residents of the land in any way that might constitute interference with the performance of a Federal function. Persons residing on the land remain residents of the state with all of the rights, privileges, and obligations that attach to residency.

Regardless of the legislative jurisdictional status of the property concerned, the United States may exercise in all places (Federally owned or not) whatever jurisdiction is essential to the performance of its constitutional functions without interference from any source. Thus, no state may exercise any authority that would in any way interfere with or restrict the United States in the use of its property or obstruct it in the exercise of any of the powers that the states have relinquished to the United States under the Constitution. One of the powers expressly surrendered by the states under the Constitution is the power "To provide and maintain a Navy." It follows that enforcement of a state law may not be permitted to interfere with any authorized naval functions.

SECTION II - ACQUISITION OF LEGISLATIVE JURISDICTION

7. HOW A STATE CEDES LEGISLATIVE JURISDICTION TO THE UNITED STATES

a. The Federal Government cannot acquire legislative jurisdiction over any areas within the boundaries of a state solely by unilateral action. Assent by the state and acceptance by the Federal Government are essential elements to the transfer of legislative jurisdiction to the Federal Government.

(1) State Assent to Transfer of Jurisdiction. The general method by which states have assented to the transfer of legislative jurisdiction to the Federal Government is by statutory enactment. State statutes provide for transfer of ("ceding") varying degrees of legislative jurisdiction.

(2) Acceptance of Legislative Jurisdiction by the Federal Government. Reference (a) states that "When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously

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obtained. The individual shall indicate acceptance of

jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated."

8. PROCEDURE FOR ACQUISITION OF LEGISLATIVE JURISDICTION

a. Matters involving legislative jurisdiction over Navy and Marine Corps areas normally originate with the Commanding Officer of the installation. Final determination of the necessity of legislative jurisdiction and the degree of jurisdiction to be sought will be made by the Assistant Secretary of the Navy (Energy, Installations and Environment (ASN) (EI&E)) based on appropriate background information and recommendation by the Commander, Naval Facilities Engineering Command (COMNAVFACENGCOM). Therefore, each request for acquisition of legislative jurisdiction should be reviewed under DON policy and forwarded to COMNAVFACENGCOM via the following addressees for comment and recommendations:

- (1) cognizant Facilities Engineering Command (FEC)
- (2) Naval District Commandant
- (3) Cognizant Commander through Echelon Two
- (4) The Chief of Naval Operations (CNO) or the Commandant of the Marine Corps (CMC), as appropriate.

b. COMNAVFACENGCOM will review the request and forward comments and recommendations together with appropriate background information to ASN(EI&E) through the Deputy Assistant Secretary of the Navy (Installations and Facilities). Upon approval of a request by ASN(EI&E), COMNAVFACENGCOM will prepare an appropriate notice of acceptance of jurisdiction and take any other action to comply with the laws of the state.

9. INFORMATION TO DELIVER WITH REQUEST FOR ACQUISITION OF JURISDICTION

a. Each request to ASN(EI&E) for acquisition of legislative jurisdiction should include, but need not be

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limited to, the following:

(1) The present jurisdictional status of the area over which it is proposed to acquire legislative jurisdiction.

(2) An outline of the circumstances that make it necessary to acquire legislative jurisdiction.

(3) The degree of legislative jurisdiction considered necessary and a full justification for it in light of DON policy.

(4) Whether the degree of legislative jurisdiction considered necessary is available under the laws of the state. (If the laws of the state do not offer concurrent jurisdiction, recommendation should be made concerning enactment of special legislation by the legislature of the state.)

(5) The estate held by the United States in the area, how and when acquired, and an accurate legal description of the area over which it is proposed to acquire legislative jurisdiction.

(6) A letter from the local U.S. Attorney stating his/her position on the proposed change in jurisdiction, which includes a statement that the proposed change in jurisdiction has been coordinated with the Director, Office of Enforcement Operations, Criminal Division, Department of Justice, who concurs with the recommendation.

(a) When the letter is sent to the local U.S. Attorney asking for his/her position on the proposed change, a letter should also be sent to the Director, Office of Enforcement Operations, Criminal Division, Department of Justice, requesting his/her coordination with the local U.S. Attorney.

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(7) A letter from the local governmental entity that will be rendering services to the property, concurring with the proposed change in jurisdiction.

SECTION III - LEGISLATIVE JURISDICTION

10. ADJUSTMENTS/RELINQUISHMENTS
ADJUSTMENTS IN JURISDICTIONAL STATUS

a. The Report of the Inter-Departmental Committee considered that a major and immediate need existed to adjust the legislative jurisdictional status of many Federal installations to facilitate:

- (1) Better Federal-state relations;
- (2) More efficient management of Federal installations;
- (3) Clarification of the rights of residents residing in those areas; and
- (4) Legalization of major acts occurring in these areas that are currently of an extra-legal nature.

b. However, the Inter-Departmental Committee noted that without special legislation enacted on a case-by-case basis, neither Federal nor state statutory authority was available that would permit the adjustment of jurisdictional status of land previously acquired. For this reason, the Inter-Departmental Committee recommended enactment of both Federal and state statutes that would authorize the appropriate officials of the state and Federal Government to proceed with the needed adjustments. The second principal Committee conclusion stated:

(1) "With respect to the large bulk of federally owned or operated real property in the several States . . . it is desirable that the Federal Government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest status only, with legislative jurisdiction remaining in the several States."

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c. It was the view of the Committee that the most immediate need was to make provision for the retrocession of unnecessary jurisdiction to the states.

d. Subsection (a) of reference (b) relates to retrocession of legislative jurisdiction and reads "Notwithstanding any other provision of law, the Secretary of a military department may, whenever he considers it

desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands and interest under his control in the State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, Territory, or possession may otherwise provide."

11. PROCEDURE FOR RETROCESSION OF LEGISLATIVE JURISDICTION

a. Each request to ASN(EI&E) for the retrocession of legislative jurisdiction by DON should be processed according to paragraph 8 and should include, but need not be limited to, the following:

(1) The present jurisdictional status of the area over which it is proposed to retrocede legislative jurisdiction to the state.

(2) An outline of the circumstances that make it desirable to relinquish legislative jurisdiction.

(3) The degree of legislative jurisdiction considered necessary and full justification for it in light of DON policy.

(4) Whether the state acceptance of retrocession of Federal legislative jurisdiction will require an act of the state legislature. (If the laws of the state does not allow for state acceptance of Federal legislative jurisdiction, recommendation should be made concerning enactment of special legislation by the legislature of
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the State concerned.)

(5) The estate held by the United States in the area, how and when acquired, and an accurate legal description of the area over which it is proposed to retrocede legislative jurisdiction.

(6) A letter from the local U.S. Attorney stating his/her position on the proposed change in jurisdiction,

which includes a statement that the proposed change in jurisdiction has been coordinated with the Director, Office of Enforcement Operations, Criminal Division, Department of Justice, who concurs with the recommendation. When this letter is sent, also send a letter to the Director, Office of Enforcement Operations, Criminal Division, Department of Justice, requesting his/her coordination with the local U.S. Attorney.

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