

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA DEPARTMENT OF FISH AND GAME  
OFFICE OF SPILL PREVENTION AND RESPONSE  
AND  
CALIFORNIA COASTAL COMMISSION  
REGARDING UNOCAL AVILA BEACH CLEANUP PROJECT**

This Memorandum of Understanding (MOU) is between the California Coastal Commission (hereinafter "the Commission") and the Department of Fish and Game – Office of Spill Prevention and Response (hereinafter "OSPR"). Each party is an agency of the State of California.

WHEREAS, the OSPR intervened in a lawsuit entitled Avila Alliance, et al. v. Unocal Corporation, et al Case Number #CV079728; and

WHEREAS, a settlement was reached in the above captioned matter and a settlement agreement and judgment was filed in San Luis Obispo County on June 25, 1998; and

WHEREAS, the OSPR pursuant to the settlement agreement and judgment will receive the sum of \$3.5 million and all accrued interest for compensation for lost use and enjoyment of natural resources, public beaches, and other public facilities in the Avila area impacted by the oil release (Government Code § 8670.56.5(g)(7)); and

WHEREAS, the OSPR as Trustee intends to utilize the above mentioned sum for the planning and implementation of restoration projects that will enhance and benefit the public beach and recreational activities in the Avila area; and

WHEREAS, the OSPR pursuant to the settlement agreement and judgment will receive the sum of \$2.5 million and all accrued interest for impacts to biological resources in the marine environment (Government Code 8670.56.5(g)(3)); and

WHEREAS, the OSPR as trustee intends to utilize the above mentioned sum for studies concerning impacts to biological resources in the marine environment and the planning and implementation of restoration projects relating to injuries to biological resources impacted by the oil release at Avila Beach; and

WHEREAS, the excavation and removal of contaminated soil which the settlement agreement obligates Unocal to carry out 1) is located within the "coastal zone" of the

State of California as that term is defined in Public Resources Code § 30103, and 2) constitutes “development” within the meaning of that term as it is defined in Public Resources Code § 30106; and

WHEREAS, Public Resources Code § 30600 requires that any person desiring to carry out development within the coastal zone of the State of California must first obtain a coastal development permit under the California Coastal Act (Public Resources Code § 30000 *et seq.*); and

WHEREAS, on June 25, 1998, the County of San Luis Obispo issued a coastal development permit for the above-described remediation project; and

WHEREAS, on July 16, 1998, pursuant to Public Resources Code § 30603, two Commissioners of the Commission appealed the County’s coastal development permit to the Commission, thus removing to the Commission Coastal Act jurisdiction over Unocal’s remediation project; and

WHEREAS, the Commission may not either 1) pursuant to Public Resources Code § 30625(b)(2), dismiss its appeal of, or 2) pursuant to Public Resources Code §§ 30604(b) and (c), issue a permit for Unocal’s remediation project, unless it can find that the impacts of that project on coastal public access, recreation and coastal biological resources have been fully mitigated; and

WHEREAS, the Commission pursuant to Chapter 3 policies and the regulatory requirements of the California Coastal Act has jurisdictional authority to require sufficient and specific mitigation for adverse impacts to public access, recreational resources and biological resources in the Avila Beach area; and

WHEREAS, the Commission and the OSPR wish to provide criteria for the OSPR to use in selecting under the terms of the settlement agreement projects which will be reasonably certain to mitigate the impacts of Unocal’s remediation project on coastal public access, recreation and biological resources, so as to enable the Commission to make the findings it must make in order to either dismiss its appeal or issue a permit for Unocal’s project.

NOW THEREFORE, the parties hereto agree as follows:

(1) The OSPR and the Commission shall jointly hold a series of public workshops to solicit public access, beach enhancement, and visitor serving project proposals from the members of the Avila Beach Community, the local Avila Valley Advisory Committee (AVAC), Port San Luis Harbor District, and other interested parties. The input and comments from these workshops will be fully considered by OSPR prior to any final decisions on project selection and funding.

Consistent with the provisions of the California Coastal Act and the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act, funded projects must 1) be of a benefit to the Avila Beach area and 2) provide substantial improvements for public beach use, coastal access, and/or public visitor serving facilities.

The types of projects that would satisfy the above-described criteria include:

- Beach access
- Improvements to publicly operated visitor-serving facilities
- Bikepaths that provide coastal access
- Alternative beach transportation programs (such as a beach shuttle program)

Projects that may be beneficial in their own right, but do not provide any significant enhancement for public coastal access or visitor serving needs, shall not be funded from this \$3.5 million.

The OSPR agrees that it shall consult closely with Coastal Commission and its staff in selecting projects to be funded in accordance with the criteria specified herein.

(2) Actual construction of the approved projects will follow normal regulatory processes and may require a separate coastal development permit from San Luis Obispo County and/or the Coastal Commission. The Coastal Commission commits to an expeditious processing of any necessary Commission permits for the selected mitigation projects.

(3) The OSPR will work closely with the Coastal Commission and its staff — especially the Commission's marine ecologist — to develop marine biological studies and technically feasible marine resource restoration projects in the Avila area that address impacts from the oil release and cleanup in a manner consistent with the Coastal Act.

(4) By December 1, 2000 (RWQCB's Cleanup or Abatement order no. 98-37 deadline for Unocal's project completion), the OSPR shall have granted approval of all projects to be funded with the \$3.5 million and the \$2.5 million. All approved projects shall include an expeditious implementation schedule and in no case shall be completed later than December 1, 2002 unless extended by written agreement between the parties.

(5) As soon as possible after the execution of this agreement the OSPR and the Commission shall designate staff members who shall function as contact persons for the consultation to be conducted under this MOU.

(6) It is understood between the parties that the OSPR is receiving the sum of \$3.5 million and all accrued interest as trustee for the loss of beach use and recreational resources and receiving \$2.5 million and all accrued interest for impacts to biological resources in the Avila area. It is further understood that under the terms of the settlement agreement, the OSPR has the ultimate authority for determining the appropriate projects to be funded by these monies, subject to terms of this MOU including full consultation with the Coastal Commission. Due to similarity between regulatory standards in California Coastal Act and in the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act, respectively, the parties do not anticipate conflicts as to which projects are to be funded.

This Memorandum of Understanding is executed on \_\_\_\_\_ in  
Sacramento, and on \_\_\_\_\_ in San Francisco, California.

\_\_\_\_\_  
PETER DOUGLAS  
EXECUTIVE DIRECTOR  
CALIFORNIA COASTAL COMMISSION

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PETE BONTADELLI  
ADMINISTRATOR  
OFFICE OF SPILL PREVENTION AND RESPONSE

\_\_\_\_\_  
DATE