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March 26, 2009

By Federal Express

Mr. Paul Michel
Superintendent
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

RE: FOIA Request; Request Made October 3, 2008

Dear Mr. Michel:

I am writing to respond to your letter of December 2, 2008 and to clarify the status of the FOIA request by our firm on behalf of the Alliance of Communities for Sustainable Fisheries (ACSF), a non-profit public interest organization that participates in the public dialogue over government ocean management policies along the coast of California in the region. ACSF seeks the public information requested for non-commercial purposes, within the meaning of 15 C.F.R. § 4.11(b)(1), the Department of Commerce regulations governing FOIA fees.

For your benefit, I am enclosing the entire file with regard to our request. Up until recently, I am aware that, at your request, Steve Scheiblauer has been speaking to Mike Eng about our request to try to add background to our request. It now appears that a certain amount of confusion has emerged as to the status of our request, particularly the fee waiver. With this letter, I hope to clarify any misunderstandings.

First, we did make a request for information under the FOIA on ACSF's behalf and hereby reaffirm that request with this letter. Second, the agency responded to the original request by asking that there be a fee payment, upfront, of \$9,000 before documents would be provided. Third, we subsequently requested a waiver of fees given that disclosure of the documents was "likely to contribute" to an understanding of Government activities or operations. 15 C.F.R. § 4.11(k). The documents requested were those supporting a particular conclusion reached by you that an "unmet need" existed for the creation of Marine Protected Areas (MPAs) within the Monterey Bay National Marine Sanctuary. We presume, from the background materials, that this "unmet need," and possible new actions to meet this "need", involves

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restrictions on fishing activity with these MPAs. The request was to obtain documents that supported and clarified the basis for this "unmet need" determination, including the scientific basis for the finding you made, which was announced in very formal fashion to the interested public. Obtaining the supporting documents in the Sanctuary's files would contribute to the public understanding of that determination. I assume that you will surely be able to assemble the documentary information quite readily, given that you made the decision. We are seeking transparency with respect to the basis for the decision.

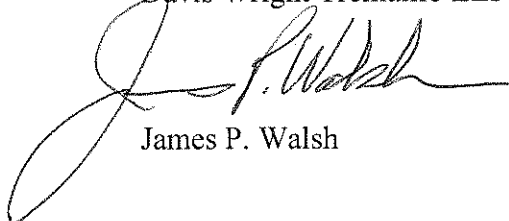
We again request a waiver of any fee. We herewith provide evidence that disclosure will contribute to a reasonably broad audience of persons interested in the subject: a letter from Association of Monterey Bay Area Governments supporting the request and the waiver. ACSF is also, no doubt, known to you and, because of that, you should have no doubt as to the non-commercial nature of its request and application of the fee waiver factors to the circumstances of our request.

As you know, President Barack Obama, one day after taking office, published new policies regarding implementation by Federal agencies of the Freedom of Information Act, making clear that a presumption of disclosure and openness applies. On March 19, 2009, the new Attorney General, Eric Holder, issued a memorandum to all agencies underscoring that commitment and to ensure that the President's policies are carried out. We urge you to apply these new principles of openness to our request. Any doubt as to the applicability of the fee waiver regulations should be resolved in favor of release without a fee.

Finally, I think it would be inappropriate and unnecessarily expensive for me to travel to Monterey to meet with Mike Eng, as suggested in your December letter. That was the purpose for the dialogue with Steve. If Mr. Eng has any further questions, he may surely give me a call. We look forward to the agency's response on the fee waiver request. If the agency is willing to make a significant reduction in the fee request, we can discuss that as well.

Sincerely,

Davis Wright Tremaine LLP



James P. Walsh

Attachments

cc: Aida Pettegrue, FOIA Liaison, Office of National Marine Sanctuaries
Dan Reineman, Office of Congressman Sam Farr