CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-03-63

Applicant: City of San Diego, Public

Buildings and Parks

Agent: Merkel & Associates, Inc.

Description: Demolition/removal of three existing restroom structures and replacement

with ADA compliant restroom structures. Also proposed are docks, floats and ramp upgrades, piers in the bay bottom, construction of a 40 foot long concrete cut-off wall on the sand and in the water, replace signage and parking lot repairs. No net change in the number of parking spaces is

proposed.

Site:

Dana Basin, De Anza Cove, Ski Beach & Santa Clara Point, Mission Bay

Park, San Diego (San Diego County)

STAFF NOTES:

Summary of Staffs Preliminary Recommendation: Staff recommends approval of the proposed project with special conditions addressing construction timing and seasonal restrictions, permits from other agencies, and final plans. Eelgrass resources would be impacted; mitigation requirements are proposed through a withdrawal of credits from the City's Eelgrass Mitigation Bank, at a 1:1 ratio rather than the typical 1.2:1 ratio required in the Southern California Eelgrass Mitigation Policy and the Mission Bay Natural Resources Management Plan. The lower mitigation ratio is proposed because eelgrass within the bank was established more than three years ago and is considered to be ecologically mature. As such a total of 516 square feet of eelgrass credit would be required at the time of project impacts. The Commission's biologist has determined that the proposed mitigation is acceptable. Staff is recommending the proposed cutoff wall be deleted from the plans as it has not been demonstrated that it is necessary or that impacts have been minimized.

Substantive File Documents: Mitigated Negative Declaration 40-0165; Mission Bay Master Plan; Mission Bay Natural Resources Management Plan (1990); Eelgrass Mitigation Program in Support of the Santa Clara and Dana Landing Dock Replacement Projects' Merkel and Associates Report Number M&A #02-101-02,

November 6, 2003 as revised January 5, 2004, CCC Files #6-01-055, #6-01-055-A1 and #6-02-156

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: I move that the Commission approve Coastal Development Permit No. 6-03-63 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

- 1. <u>Eelgrass Mitigation Plan</u>. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit Eelgrass Mitigation plans, subject to review and written approval of the Executive Director, indicating the following:
 - a. An accounting shall be required of the amount of eelgrass available within the mitigation bank prior to the withdrawal of credits for project mitigation. This accounting must be accomplished through field surveys of the existing bank. Based

on the before and after survey required pursuant to Special Condition 1b below, evidence shall be presented that documents the amount of credits which have been withdrawn from the Mitigation Bank as a result of the proposed project. The permittee shall not authorize use of these mitigation credits as mitigation for any other project, or sell these mitigation credits in the future.

b. A'before and after'survey of the study area shall be done to measure the amount of impact. Mitigation credits shall be deducted, at a 1:1 ratio, from the City's Eelgrass Mitigation Bank site.

The permittee shall undertake the development in accordance with the approved mitigation plans. Any proposed changes to the approved plan shall be reported to the Executive Director. No change in the plan shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

2. Construction Access/Staging Area/Project Timing. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit plans showing the locations, both on- and off-site, which will be used as staging and storage areas for materials and equipment during the construction phase of this project. The staging/storage plan shall be subject to review and written approval of the Executive Director. Use of sandy beach and public parking areas, including on-street parking for the interim storage of materials and equipment shall be minimized. The plan shall also indicate that no work may occur at any of the sites between April 15 and September 15 of any year to protect nearby least tern nesting sites.

The permittee shall undertake development in accordance with the approved staging and storage plans and construction schedule. Any proposed changes to the approved plans or schedule shall be reported to the Executive Director. No changes to the approved plans or schedule shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 3. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development authorized by CDP #6-03-63. The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.
- 4. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final, full-size, site and elevation plans for the permitted development, that have been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans titled *Mission Bay Boat Launching Facility*,

received 2/20/04, prepared by Joseph Wong Design Associates, Inc., and submitted with the coastal development permit application, except that they shall be revised as follows:

a. The proposed cut off wall adjacent to the boat launch ramp at Santa Clara Point shall be deleted.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 5. <u>Best Management Practices Program</u>: Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director, a final Best Management Practices (BMPs) program. The program shall include all of the elements contained in the "Water Quality Technical Report for Mission Bay Boat Launching Facilities Site Improvements at De Anza, Dana Basin, Ski Beach, Santa Clara, Mission Bay, San Diego, California," by Flores Lund Consultants, dated October, 2003, plus the following additions:
 - a. Containment Requirements. Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, wood preservatives, other chemicals, etc.) from entering state waters. Where additional wood preservatives must be applied to cut wood surfaces, the materials, wherever feasible, shall be treated at an onshore location to preclude the possibility of spills into state waters. A floating containment boom shall be placed around all active portions of a construction site where wood scraps or other floatable debris could enter the water. Also, for any work on or beneath decks, heavy-duty mesh containment netting shall be maintained below all work areas where construction discards or other material could fall into the water. The floating boom and net shall be cleared daily or as often as necessary to prevent accumulation of debris. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.
 - b. Piling Installation Requirements. Piling installation shall be performed in accordance with Department of Fish and Game recommendations. Generally, the new pilings shall be installed according to the method that results in the least disturbance of bottom sediments. Where feasible, disturbed sediments shall be contained with a flexible skirt surrounding the driven pile. The installation contract and/or specifications shall incorporate the applicable portions of the containment requirements.
 - c. Procedures for Concrete Work. If pile installation, or any other portion of the operations and maintenance program, requires the pouring of concrete in, adjacent to,

or over the water, the following methods shall be employed to prevent uncured concrete from entering the waters of Mission Bay:

- Complete dewatering of the pour site, within a caisson or other barrier; the site to remain dewatered until the concrete is sufficiently cured to prevent any significant increase in the pH of adjacent waters; or,
- By the 'Tremie Method', which involves placement of the form in water, inserting a plastic pipe down to the bottom of the form, and pumping concrete into the form so that the water is displaced towards the top of the form. If this method is selected, the displaced waters shall be pumped off and collected in a holding tank. The collected waters shall then be tested for pH, in accordance with the following California Department of Fish and Game recommendations. If the pH is greater than 8.5, the water will be neutralized with sulfuric acid until the pH is between 8.5 and 6.5. This pH-balanced water can then be returned to the sea. However, any solids that settle out during the pH balancing process shall not be discharged to the marine environment; or,
- An alternative method, subject to review and approval by the Executive Director (in consultation with the California Department of Fish and Game) PRIOR TO THE COMMENCEMENT OF WORK.
- Opportunities for directing runoff from the hardscape features to permeable spaces for infiltration shall be utilized to the maximum extent feasible. Where this is infeasible, maintain post-development peak runoff rate and average volume at levels that are no greater than pre-development levels.
- In each case involving concrete/asphalt pours in or near the waters of the Bay, the
 permittee shall insure that a separate wash out area is provided for the concrete
 trucks and for tools. The wash out area(s) shall be designed and located so that
 there will be no chance of concrete slurry or contaminated water runoff to
 adjacent waters.
- <u>Float Materials</u>. To prevent the introduction of toxins and debris into the marine environment, the use of plastic wrapped floats (PVC wrap or high density polyethylene (HDPE)) shall conform to the following requirements:
 - Inspection and Maintenance Program. The permittee shall exercise due diligence in periodically inspecting floats to be repaired under this permit, and shall immediately undertake any repairs necessary to maintain the wrapping and/or structural integrity of the floats. ON AN ANNUAL BASIS FOR ALL PLASTIC FLOATS THAT MAY COME INTO CONTACT WITH LOGS AND OTHER FLOATING DEBRIS, AND ON A BIANNUAL BASIS FOR THOSE THAT WILL NOT, beginning one and two years (as applicable) following the date that the first float is installed, the permittee shall conduct a float inspection to ensure the integrity of the float, and that all corrective actions have or will be

immediately undertaken to maintain the plastic wrapping and/or integrity of the float. The applicant shall provide to the Executive Director the results of the monitoring, annually for the life of the float (s). The inspections shall be undertaken by boat, during periods of extreme low tides. If the monitoring results indicate repairs are necessary, the applicant shall immediately complete those repairs that are exempt from coastal development permit requirements, and shall apply for an amendment to this permit for those repairs requiring a permit. Alternatively, the permittee may submit a different timeline for the float inspection program that ensures that the plastic wrapping and/or structural integrity of the float is properly maintained; the alternative timeline shall be reviewed and approved by the Executive Director, prior to the issuance of the permit.

B. New Information. If federal or state regulatory agencies, through new or better scientific information, determine that environmentally less damaging materials or methods are available for float replacement, and are feasible to implement, the permittee shall, after consultation with the Executive Director, revise procedures or use alternative materials consistent with the new information. The Executive Director may authorize the substitution of non-plastic float materials. Other revisions, including the use of other preservative-treated floats, may require an amendment to this permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. <u>Detailed Project Description</u>. The City of San Diego is proposing American with Disabilities Act (ADA) improvements to four existing boat facilities in Mission Bay Regional Park. The projects are located at Santa Clara Point, Dana Basin, De Anza Cove, and Ski Beach (Exhibits 1 and 1a). All four projects are located within the 4,600-acre Mission Bay Regional Park and are described in detail as follows:

DANA BASIN

New Boarding Float and Ramp

The existing ramp and boarding float are in disrepair and do not conform to current barrier free disabled persons standards. The proposed design includes a new boarding float, gangway, and a series of hinged switchback ramp sections to follow the tidal changes and maintain acceptable disabled persons access. The existing float and gangway will be removed and replaced (Exhibit 2). The new boat float will be located in the same area, except it will be approximately 10° farther into the water than was the existing float. The existing piles will be removed with a soft sling from a crane barge in the water. The new concrete piles will be driven from the crane barge. The new float will be 8° wide $x = 80^\circ$ long with a $x = 16^\circ$ section supporting a switchback ramp, and

accessed by a 65 long gangway. The supporting dock piers will be removed and replaced (pile-driven) for the new boarding float.

ADA Accessible Restroom/Parking Lot Improvements

The project also includes demolition of an existing restroom structure and replacement with an ADA accessible restroom structure in a different location within Dana Basin and various parking lot improvements, including the installation of new handicapped parking spaces.

SANTA CLARA POINT

New Boarding Float and Ramp

The existing ramp and boarding float are in disrepair and do not conform to current barrier free disabled persons standards. The proposed design includes a new boarding float and gangway to replace the existing in place, with the addition of a Ramp rider handicapped access ramp system and an additional 14 x 34 landing float (Exhibit 4). The existing piers are to be utilized and new piers as required to be driven from a crane barge in the water. One new pier would be installed at this location.

Boat Launching Ramp-Cut off wall

The existing sloped concrete boat launching ramp has incurred some erosion of the sand, exposing the riprap sub-base under the boat launching ramp during past winter storm seasons, creating concern for the long term viability of the ramp. The proposed design will provide a concrete "cut off" wall at the edge of the existing ramp, which will prevent the continuation of the effects of annual erosion. The concrete wall will be 40 long and extend 4 below the sand level. This should stabilize the boat launching ramp for the foreseeable future. The sand removed to form this cutoff wall is to be excavated and disposed of at an approved location.

SKI BEACH

Replace existing restroom in same location with ADA compliant restroom, replace signage, patch and repair parking lot (Exhibit 5). Also proposed is the installation of new handicapped parking spaces. No net change in the number of parking spaces is proposed.

DE ANZA COVE

Replace existing restroom in same location with ADA compliant restroom, replace signage, patch and repair parking lot (Exhibit 3). Also proposed is the installation of new handicapped parking spaces. No net change in the number of parking spaces is proposed

The Commission certified a land use plan for Mission Bay Park in 1996, the Mission Bay Park Master Plan. However, there are no implementing ordinances for this LCP segment,

so this represents an area of deferred certification. Moreover, the majority of the aquatic park, which is built primarily on tidelands, will remain in the Commission's original jurisdiction permanently. Since Mission Bay Park is currently an area of deferred certification, permit authority remains with the Commission and Chapter 3 of the Coastal Act is the legal standard of review, with the certified master plan used for guidance.

2. <u>Marine Habitat</u>. The following Coastal Act policies are applicable to the subject proposal, and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum population of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment....

Section 30233.

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
- (l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities.

Section 30240 (b)

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

For a project that involves fill of wetlands, estuaries, or open coastal waters to be consistent with Section 30233 of the Coastal Act, the project must be for one of the eight purposes identified in Section 30233, must be the least environmentally damaging alternative, and must include feasible mitigation measures to minimize adverse environmental impacts. As conditioned, the proposed development can satisfy these criteria. New and expanded boating facilities, and pilings to support public recreational uses, are allowed uses in open water pursuant to Section 30233(a)(4).

While much of the proposed work is confined to hardscape areas, the proposed project calls for several improvements within Mission Bay itself, including the construction of docks, floats, and ramps in open water and fill within the bay bottom (four replacement pilings are proposed at Dana Basin and one new pile is proposed at Santa Clara Point). The four replacement pilings at Dana Basin would go in a similar location as the removed pilings and only one new pier is proposed at Santa Clara Point. The City's engineer found the proposed pilings are the minimum required to support the larger boat docks; the Commission's engineer agrees. Thus, the permanent loss of bay bottom represents the least environmentally damaging alternative. The piles will be driven into rocky or sandy substrate and will not cause any significant adverse environmental impacts requiring mitigation. Mitigation measures (silt curtains) are proposed for proposed pier work.

Regarding the proposed cut off wall at the Santa Clara Point Boat Launching Ramp, according to the City, the existing concrete boat ramp and boarding float are in disrepair and do not conform to current barrier free disabled persons standards. Erosion under the boat-launching ramp has exposed the riprap sub-base, creating concern for the long-term

viability of the ramp. The proposed design would provide a concrete cut off wall at the edge of the existing ramp, which would prevent the annual erosion. The proposed concrete wall is 40 long and would extend 4 below the sand level to stabilize the boatlaunching ramp for the foreseeable future. The top of the wall is at approximately elevation +7 MSL and the toe is well into the water. The City found the proposed cut-off wall would not result in any significant environmental impacts. However, the Commission notes it extends 40-feet into the water adjacent to the boat launch ramp. It is proposed to protect riprap that supports the boat launch; however, its purpose has not been adequately justified. Riprap is a shoreline protective device itself and does not need protection if it is adequately engineered. The City's analysis does not address this point. No wave uprush analysis has been done to justify the construction of the wall. The wall would displace bay bottom and impact benthic organisms and alter natural shoreline processes; therefore, it would have an adverse environmental impact. Also no geological report was submitted to support the need for or that the proposed wall could be constructed as proposed in sandy bottom. As such, the Commission finds that adequate information to support the need or design of the proposed cutoff wall has not be presented. As such, Special Condition #4 requires that revised final plans be submitted showing that the cut off wall has been deleted. However, in the future, if additional information is submitted regarding the need and design, the Commission could accept an amendment to review it at that time.

Eelgrass, a marine plant, provides habitat, nursery grounds, and food for many species of juvenile fish and invertebrates and also serves as a foraging area for bird species. Eelgrass itself is not a threatened or endangered species of plant; however, it is protected by the Resources Agencies for its habitat value. The proposed replacement of the existing floating dock at Dana Basin and associated public amenities will increase the size of the facility. The proposed floating dock is significantly larger in size to accommodate two switchback ramps at an appropriate gradient to allow wheelchairs. While the increase in size is offset somewhat by the proposed pier/gangway design, which is narrower than some of the existing facilities, it has resulting adverse shading impacts to nearby eelgrass. Similarly, proposed construction at Santa Clara Point has resulting adverse shading impacts to nearby eelgrass. Shading inhibits growth, thus reducing habitat

In accordance with the Southern California Eelgrass Mitigation Policy and the Mission Bay Natural Resources Management Plan, eelgrass mitigation would normally occur at a ratio of 1.2:1 (newly created area:impacted area). However, because project impacts would be mitigated through a withdrawal of credits from the City's Eelgrass Mitigation Bank, a 1:1 mitigation ratio is proposed. The lower mitigation ratio is proposed because eelgrass within the bank was established more than three years ago and is considered to be ecologically mature. Based on existing surveys, under this scenario, a total of 516 square feet of eelgrass credits would be required to be withdrawn to mitigate project impacts. The mitigation requirements are provided below in Table 1. Final mitigation is proposed to be calculated from the pre- and post-construction surveys.

Table 1: Project Impacts and Mitigation Requirements

Project Site	Eelgrass within Survey Area (sq. ft.)	Estimated Project Impacts (sq. ft.)	Mitigati on Ratio	1.2:1 Mitigation Transplant Requirements (sq. ft.)	1:1 Mitigation Bank Requirements (sq. ft.)
Santa Clara	19,462	152	1.2:1	182.4	152
Dana Landing	18,803	364	1.2:1	436.8	364
Totals	38,265	516		619.2	516

According to the City, this option offers the most cost-effective approach to satisfying mitigation needs. An accounting of the amount of eelgrass available within the bank is proposed prior to the withdrawal of credits for project mitigation accomplished through field surveys of a portion of the existing bank. The Commission's biologist has reviewed the above and has determined that the proposed mitigation is acceptable, provided a before/after survey is done to document impacts to eelgrass and an accounting of the amount of eelgrass available is documented within the mitigation bank prior to the withdrawal of credits for project mitigation. Special Condition #1 reflects these requirements.

In summary, except for the cutoff wall, the project is an allowable use, minimizes impacts and appropriate mitigation is proposed. Special Condition #4 requires final plans indicating the cutoff wall is deleted. Therefore, as conditioned, the project will not have a significant adverse impact on the eelgrass population in this area as a whole or on other marine resources, and the project can be found consistent with the resource protection policies of the Coastal Act.

Endangered Species Protection.

Some construction noise would occur at all four sites. At Dana Basin, construction noise would include pile driving for new piers. One new pier would be installed at Santa Clara Point, therefore, pile driving noise would be a factor at this location as well. The Mission Bay Master Plan provides that "No in-water construction or dredging shall occur during the breeding season of the California least tern from April 1 through September 15." The Dana Basin area has a very high observed frequency of least tern foraging. As such, a mitigation measure is proposed to prohibit in-water construction during the breeding season from April 1 through September 15 to mitigate potential impacts to the least tern to below a level of significance. Additionally, in the event that terns are near the project construction sites, additional mitigation has been proposed to conduct a pre-construction survey to determine if any sensitive bird species might have moved into any of the project areas, including species protected under the Migratory Bird Treaty Act. If any birds are believed to be found, the biologist would specify additional mitigation to minimize impacts. The condition requires that no work may occur at any of the sites between April 15 and September 15 of any year to protect nearby least tern nesting sites.

In summary, the project is consistent with the Coastal Act and the Mission Bay Master Plan in that it will conform to environmental procedures/mitigation adopted in the plan. The project is a permitted use within coastal waters, represents the least environmentally damaging alternative and adequate mitigation has been provided to offset adverse effects of the project.

3. Water Quality. The following Coastal Act policies addressing water quality are most applicable to the subject proposal, and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters..

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum population of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment...

Over the past many years, there have been on-going concerns about the water quality of Mission Bay. The Bay is the 'end of the line' for surface runoff for much of the developed urban areas of San Diego, and thus receives vast quantities of stormwater (some of it polluted) through the City's existing storm drain system that includes numerous outfalls around the bay. In addition, three creeks (Rose, Cudahy and Tecolote) empty into the bay and are a frequent source of both debris and pollutants. Mission Bay is listed as an Impaired Waterbody on the state's 303(d) list (US EPA approved July 2003) for bacteria, eutrophic, and lead conditions. For this project, impacts to water quality in Mission Bay could result from site demolition, paving, and construction activities.

While this project is not proposing dredging, disturbance to bay bottom sediments would occur at Dana Basin (for removal and replacement of the existing dock piers) and at Santa Clara Point (for construction of the cut-off wall and pier). Water quality mitigation measures, erosion control measures and Storm water Pollution Prevention Measures are proposed at each of the four project locations, including a silt curtain/fence or other sediment/siltation control device to be placed around the construction area(s) to protect adjacent habitats and water quality. Additionally, according to the City, although increased turbidity may occur during construction, particularly from pile-driving operations, its effect on both sensitive species and the general public is minimized through proposed seasonal construction restrictions. The Commission notes, however, as indicated below, additional measures are necessary to find the proposed project consistent with water quality provisions of the Coastal Act.

Development in Open Coastal Waters

The proposed floats are PVC plastic, the proposed docking is Brazilian hardwood and the proposed piers are concrete. The project involves "filling" (through the installation of pilings) in open coastal waters. Section 30233(a)(4) of the Coastal Act allows such activities for new or expanded boating facilities "where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects." The no project alternative is not considered feasible because it will not upgrade support facilities for ADA accessibility. In addition, the applicant has demonstrated that proposed project impacts have been minimized. Therefore, the proposed project, as conditioned by this permit, is considered the least environmentally damaging feasible alternative available.

Protection of Marine Resources

With respect to Coastal Act requirements that mitigation measures be provided to minimize adverse environmental effects (Coastal Act Section 30233), and that marine resources and the biological productivity of coastal waters be maintained (Coastal Act Sections 30230 and 30231), the project has been designed in a manner which strives to avoid or reduce adverse impacts on such resources. The potential impacts, and the measures required by the conditions of this permit to avoid such impacts, are summarized below.

Containment of Hazardous Materials

Coastal Act Section 30232 requires that development provide protection against the spillage of crude oil, gas, petroleum products, or hazardous substances. The subject project includes development activities which involve the use and transport of materials hazardous to marine resources, including concrete, asphalt, plastics, as well as fluids and oils associated with mechanized equipment. In order to ensure that the hazardous substances associated with the proposed development activities are adequately contained, consistent with Coastal Act standards, Special Condition #5 requires prevention of foreign materials from entering the water. Specifically, it requires that:

- floating containment boom is placed around all active portions of a construction site
 where wood scraps or other floatable debris could enter the water. The floating boom
 and net shall be cleared daily or as often as necessary to prevent accumulation of
 debris; and,
- project contractors insure that the work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills.

The project proposes installing concrete piles at two locations (Dana Basin and Santa Clara Point). Generally, the new pilings should be installed according to the method that results in the least disturbance of bottom sediments to avoid or reduce potential impacts resulting from suspension of sediments and turbidity and impacts to benthic organisms. Additionally, the site should remain dewatered until the concrete is sufficiently cured to

prevent any significant increase in the pH of adjacent waters; or, the tremie method, which involves placement of the form in water, inserting a plastic pipe down to the bottom of the form, and pumping concrete into the form so that the water is displaced towards the top of the form should be used. If this method is selected, the displaced waters shall be pumped off and collected in a holding tank. The collected waters should then be tested for pH, in accordance with the following California Department of Fish and Game recommendations. If the pH is greater than 8.5, the water will be neutralized with sulfuric acid until the pH is between 8.5 and 6.5. This pH-balanced water can then be returned to the sea. However, any solids that settle out during the pH balancing process shall not be discharged to the marine environment.

With respect to the docking, the applicant is proposing to use untreated Brazilian wood for replacement of existing dock structures. Because of its natural density, it resists cracking and is long lasting. It does not contain any preservatives that could adversely affect water quality; therefore, it constitutes the least environmentally damaging feasible alternative available.

The use of the proposed plastic floats in the marine environment is a concern due to their possible deterioration and subsequent increase in marine debris. However, a completely benign float alternative has yet to be discovered. Each alternative has demonstrated a range of costs and benefits. Plastic wrapped chemically treated wood has proved to cause greater damage to the water environment than purely plastic materials. Therefore, it appears that pure plastic floats are superior to plastic wrapped chemically treated wood. As such, the Commission finds that the proposed plastic floats constitute the least environmentally damaging feasible alternative available.

Additional water quality concerns are raised with the new paving of the parking lots and the new concrete and restroom structures. Fertilizers and pesticides associated with landscaping could result in polluted run-off in the form of nutrients and organic phosphates into Mission Bay. In addition, the use of non-native, invasive plant species could adversely affect the environmentally sensitive habitat of the Bay or other coastal waters if seeds from these plants species were introduced via runoff or bird feces into coastal waters.

Special Condition #5 requires the applicant to submit a revised BMP program which includes all of the elements contained in the City's program, but also includes the above additional BMPs to make sure the potential for water quality impacts is reduced to the greatest extent feasible. Any modifications to the proposed BMPs will require a new permit or amendment to this permit. The condition also requires vegetation selected for landscaping to be native drought-tolerant species or adapted non-invasive material. The use of drought-tolerant vegetation greatly reduces the need for intensive irrigation, which in turn reduces the potential for excessive irrigation to result in nuisance runoff from the site. Additionally, any irrigation system utilized is required to be efficient technologically, which will serve to prevent excess irrigation and resulting nuisance runoff from occurring. Further, native or adapted plants are well suited to regional conditions, and therefore do not have to be sustained with heavy fertilizer or pesticide

applications. Minimizing the need for topical agents such as fertilizer and pesticides should reduce or eliminate their application, thereby minimizing pollutants susceptible to stormwater and nuisance runoff from the site.

As noted, plastic pvc floats are proposed in the water. While found to be the least environmentally damaging alternative, they are still a concern due to their possible deterioration and subsequent increase in marine debris. For this reason Special Condition #5 requires on an annual basis for all plastic piles that may come into contact with logs and other floating debris, and on a biannual basis for those that will not, beginning one and two years (as applicable) following the date that the first pile is repaired, the permittee shall conduct a piling inspection to ensure the integrity of the pile, and that all corrective actions have or will be immediately undertaken to maintain the plastic wrapping and/or integrity of the pile. If federal or state regulatory agencies, through new or better scientific information, determine that environmentally less damaging materials or methods are available for piling replacement, and are feasible to implement, the preceding procedures may be revised consistent with the new information.

In summary, although increased turbidity may occur during construction, particularly from pile-driving operations, its affect on both sensitive species and the general public is minimized through seasonal construction restrictions. As conditioned, the proposed project will not result in the water quality of Mission Bay being significantly harmed or compromised either during construction or operation of the proposed facilities, and the project can be found consistent with the Coastal Act marine resource protection policies Sections 30230 and 30231.

4. <u>Public Access and Recreation</u>. The following Coastal Act policies are most pertinent to the proposed development, and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

<u>Section 30212</u>

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby.

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Mission Bay Park is a public aquatic facility of statewide, and even national, significance. It was created prior to passage of the Coastal Act, and is built primarily on tidelands granted to the City of San Diego by the state. The project sites are located between the first coastal roadway and the bay. With the exception of the Ski beach restroom, the footprints of the existing restrooms and boat launches are generally the same. The parking lot improvements will provide handicapped parking with no decrease in existing parking. As is often the case with projects in nearshore areas, it is the construction phase of the project which poses the greatest likelihood of impacts on public access. This is especially a concern when construction requires the closure of traffic lanes on coastal access routes, usurps public parking spaces in beach or park lots, or excludes the public from high-use areas. Although none of these circumstances apply, the project will close the facilities to public use during the construction phase. In situations like this, the Commission typically applies a condition prohibiting all, or selected portions of, construction activity during the summer months (Memorial Day weekend to Labor Day) when public use is at its peak.

As noted, the City is restricting construction activities from April 15th to September 15th to protect endangered species that nest nearby. Since this restriction encompasses the entire summer beach season, no construction impacts will occur while Mission Bay is receiving its highest use. Special Condition #4 requires submittal of final plans delineating both the staging/storage areas at each location and a final construction schedule. As conditioned, the Commission finds that the proposed public improvements are consistent with the cited Coastal Act policies.

In summary, the Commission finds that the proposed development will increase public use and enjoyment of certain areas of the park by providing new and improved ADA accessible facilities in various areas of the park. The attached special condition provides that construction activities are prohibited between Memorial Day weekend and Labor Day, to avoid access impacts during the prime summertime beach season. As proposed by the applicant and reinforced through the special condition, the Commission finds the development consistent with the cited policies of the Coastal Act.

5. <u>Visual Resources</u>. Section 30251 of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to

minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The site is located in Mission Bay Park, a highly scenic public recreational resource of national significance. The Mission Bay Master Plan provides:

Restroom Facilities

Restroom facilities should be placed to the rear of the parkland zone, proximate to parking areas for easy service and maintenance and to minimize their obstruction of the water.

The Commission notes the restrooms are located near the water (i.e., away from the parking areas) in the *front* of the parkland zone which conflicts with the above policy. The City provides the below justification.

The proposed location of the bathrooms is primarily driven by the main purpose of this project which is to provide ADA facilities to Mission Bay users--many of which are in wheel chairs and cannot travel long distances. The restrooms in Dana Basin & De Anza Cove are proposed to be replaced in place. The proposed structures have been located to observe and exceed specific setbacks from the shoreline recommended by the geotechnical consultant (as outlined in reference report: Geocon Inc., 6/25/03). While Geocon recommended a minimum of 10' setback from the top of the slope to provide mitigation of potential lateral spread toward the bay, Dana Basin is about 20' away & De Anza Cove is about 80' away from the top of the slope. We are building the restroom in Ski beach in a new location closer to the existing boating facility which is still 60' away from the top of the slope. All 3 restrooms are located in higher elevation than the surrounding parking lot and street. The intent of the restrooms being where they are is to have them as close as possible (having all the design requirements in mind) to the boating facilities for users with disability. It should be noted that no restroom facilities are proposed to be located within or adjacent to environmentally sensitive resources. As already noted, setbacks recommended from the shoreline have been observed. Finally, it should also be noted that the proposed restrooms do not constitute principal and/or habitable structures and, as such, would not qualify for shoreline protection devices in the future.

The location of the restrooms, as well as the complete project as proposed, have been reviewed and approved by all applicable advisory panels and finally approved by the Park & Recreation Board. The Sub-Committee for the Removal of Access Barriers, the Design Review Committee and the Mission Bay Committee have lent their support to the project as evidenced by their members' votes which have been overwhelmingly in support of the project.

The Commission notes that although the proposed siting of the restrooms is not strictly consistent with the LUP policy, the LUP is not the standard of review and is only used as guidance. The policies on Chapter 3 of the Coastal Act, including section 30251 listed

above, constitute the standard of review. Section 30251 requires the protection of scenic and visual quality in coastal areas. For the proposed project, no existing public views will be blocked by the restrooms and they are sited near parking areas to provide ADA facilities to Mission Bay users. The restrooms are approximately 11-feet high at the roof pitch and setback from the shoreline so there is not a visual problem. The restrooms, parking and improvements are proposed near each other to promote ADA accessibility. Thus, while not strictly consistent with the above policy, the Commission finds that because the proposed development will have no significant visual impact on the scenic qualities of Mission Bay Park, consistent with Section 30251 of the Coastal Act.

6. Geologic Conditions and Hazards. Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In addition, Section 30253 of the Coastal Act states, in part:

New development shall:

- (l) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or hard'solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. Section 30253 addresses new development and requires that it be sited and designed to avoid the need for protective devices that would substantially alter natural landforms along bluffs and cliffs. In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing principal structures. The submitted geology report has found that the restrooms will be safe in the proposed locations.

As noted, the cut off wall at Santa Clara Point is proposed to address on-going erosion and undermining of the ramp apron after every rainfall. According to the City, there has been a concern of the neighboring Aquatic Center whose customers include a large

number of persons with disabilities. The City found the proposed cut-off wall would not result in any significant environmental impacts. However, the Commission notes it extends 40-feet into the water beyond the boat launch ramp and as found above has an adverse environmental impact and must be denied. Additionally, without proper justification, the Commission is not assured it is not an unnecessary and inappropriate shoreline protective device. Special Condition #1 requires it be deleted from the permit. However, in the future, if additional information is submitted regarding the need and design is presented, the Commission could accept an amendment to allow it. Therefore, as conditioned, the Commission finds the project is consistent with the new development and hazard policies of the Coastal Act.

7. <u>Local Coastal Planning</u>. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

Mission Bay Park is an existing aquatic playground. It is primarily unzoned, and the subject site is designated as Parkland in the certified Mission Bay Park Master Plan. The proposal is consistent with that designation. The proposed development represents primarily replacement of existing facilities and updating to improve ADA accessibility. As conditioned, the proposal has also been found consistent with all applicable Coastal Act provisions. Therefore, the Commission finds that approval of the permit will not prejudice the ability of the City of San Diego to complete and implement a certifiable LCP for this area.

8. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, as conditioned, is consistent with Chapter 3 policies of the Coastal Act. The herein proposed and required mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

- 1. <u>Notice of Receipt and Acknowledgment</u>. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. <u>Terms and Conditions Run with the Land</u>. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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