CALIFORNIA COASTAL COMMISSION
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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-88

Applicant: City of San Diego Agent: Merkel & Associates, Inc.

Description: Removal and replacement of City of San Diego Lifeguard Headquarters dock with larger boat dock to include an increase in number of boat slips from 4 to 14, increase in the number of piles from 16 to 28 and increase in water coverage area from 2,614 sq. ft. to 9,148 sq. ft. to accommodate emergency and lifeguard watercraft.

Site: 2581 Quivira Court, Mission Bay Park, San Diego, San Diego County.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed boat dock replacement with several special conditions. The primary issues raised by the subject development relate to the loss of open water foraging habitat for Least terns, protection of water quality and public access. To address potential concerns with regard to loss of foraging habitat for sensitive bird species as a result of an increase in covered open water for the larger dock project, mitigation measures acceptable to the U.S. Fish and Wildlife Service are required as a condition of approval. In addition, with implementation of special measures to curb turbidity, construction work is permitted to occur during the nesting season of the Least tern and during the summer season. Conditions are also proposed to minimize water quality impacts as work is being proposed within Mission Bay. As conditioned, no adverse impacts to environmentally sensitive habitat or public access will occur.

Substantive File Documents: Certified Mission Bay Park Master Plan; Marine Biological Resources Assessment dated 5/5/06 by Merkel & Associates, Inc.; Essential Fish Habitat Assessment dated 5/12/06 by Merkel & Associates, Inc.; Letter from Merkel & Associates, Inc. to U.S. Fish and Wildlife Service dated 9/16/06; Design Recommendation/Specifications related to the Fueling Station System for

the Lifeguard Dock Project dated 11/14/06 by the City of San Diego; CCC Files #6-02-156; 6-04-11.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 6-06-88 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. 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 submitted with this application titled *Mission Bay Headquarters – Dock Remodel*, prepared by Platt/Whitelaw Architects, Inc. dated 11/1/05.

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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. <u>Construction Access/Staging Area/Construction Schedule</u>. 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 and a construction schedule for the project. The staging/storage plan and construction schedule shall be subject to review and written approval of the Executive Director and include the following:

a. The staging and laydown for the construction shall be limited to the eastern shoreline of Hospitality Point between the Lifeguard facilities and Driscoll's Boatyard. Use of the sandy beach and public parking areas, including on-street parking, for the interim or overnight storage of materials and equipment shall not be permitted.

b. No construction shall be permitted on weekends and holidays during the summer months (Memorial Day weekend through Labor Day weekend) of any year.

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

3. <u>Mitigation for Loss of Bay Surface.</u> PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final mitigation program for impacts of the proposed development that result in the net loss of 6,534 sq.ft. of bay surface waters. Said plan shall be developed in consultation with the U.S. Fish and Wildlife Service and shall be limited to the following:

a. Removal of 6,534 sq.ft. of structures covering Mission Bay; or

b. Removal of 6,534 sq.ft. of upland fill from Mission Bay; or

c. Creation of 6,534 sq.ft. of eelgrass habitat*; or

d. Using credit of 6,534 sq.ft. from the City of San Diego's Park and Recreation eelgrass mitigation bank**; or

e. Removal of 6,534 sq.ft. of non-functional rip-rap or debris that occurs in intertidal or shallow subtidal habitat in Mission Bay.

* See Special Condition #4 below
** See Special Condition #5 below

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

4. Monitoring Program for Eelgrass Mitigation. If Option "c" of Special Condition #3 is chosen, then **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and written approval a final monitoring program approved by the U. S. Fish and Wildlife Service for the permitted eelgrass mitigation. The monitoring program shall include the following provisions:

a. The mitigation monitoring program, as proposed, shall occur over a five-year period to ensure establishment and to verify that minimum coverage and density requirements are achieved.

b. For each survey, a summary report will be prepared and submitted to the California Coastal Commission, U.S. Army Corps of Engineers, California Department of Fish and Game, National Marine Fisheries Service, U.S. Fish and Wildlife Service and City of San Diego within 30 days of completion of the survey.

c. In the event the monitoring reports indicate that the mitigation efforts have not been successful, the applicant shall implement remedial measures to assure the successful establishment of eelgrass beds in the project vicinity.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Final Approval of Mitigation Credits. If Option "d" of Special Condition #3 above is chosen, then **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the written approval of the Executive Director evidence that the City of San Diego has accepted the applicant's option to use eelgrass mitigation credits from the City's eelgrass mitigation bank in Mission Bay Park. The evidence shall specify the amount of acreage credits which have been withdrawn from the Mission Bay Park Mitigation Bank as a result of the proposed project, and where those credits are geographically located. The permittee shall not

authorize use of these mitigation credits as mitigation for any other project, or sell these mitigation credits in the future.

6. <u>Construction During the Nesting Season of Sensitive Bird Species</u>. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval a program for controlling turbidity generated by in-water construction work performed during the California least tern nesting season from April 1st through September 15th. Said program shall first be approved by the U.S. Fish and Wildlife Service and shall include the following measures to contain turbidity in the immediate project vicinity:

a. During the tern season and while turbidity generating work (e.g., pile driving and jetting, demolition, etc.) is being performed, turbidity curtains extending from the surface to a depth of 10 feet shall be anchored around the project construction area to encompass no more than the dock footprint plus a 50-foot wide work area around the docks. The turbidity curtain shall be delineated on all related project figures.

b. Monitoring shall be conducted continuously by the contractor and intermittently, as needed, by independent environmental monitor or staff of the City Development Services Department, or Field Engineering Department. Intermittent monitoring shall occur at least three times weekly during the completion of turbidity generating work. More frequent monitoring will be performed in the event there is a problem identified with exceeding turbidity containment standards.

c. Monitoring of the effectiveness of containment of turbidity generated by the project shall be performed by visual observations to evaluate turbidity levels within and outside of the containment curtain. Visual evidence of plume escape or expansion outside of the containment shall be considered to exceed of the containment standards.

d. In the event it is determined that containment standards for turbity are exceeded, the project activity shall be stopped until the plume dissipates and the contractor shall alter or stop work and adjust containment curtains or methods to bring the site into compliance with containment standards that prevent additional spread of turbidity outside the turbidity curtain.

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

7. <u>Water Quality/Best Management Practices Program</u>. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall

submit to the Executive Director for review and written approval, a Best Management Practices (BMPs) program. Said plan shall be in substantial conformance with the Best Management Practices Program in the *Marine Biological Resources Assessment for the City of San Diego Lifeguard Headquarters Dock Replacement Project/Mission Bay, San Diego, CA dated 5/5/06 by Merkel & Associates, Inc.* and with the *Design Recommendations/Specifications Related to the Fueling Station System by the City of San Diego dated 11/14/06.* Said plan shall also include, but not be limited to, the following:

A. Boat Cleaning and Maintenance Management Practices
   - Clean boat hulls above the waterline and by hand. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
   - Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
   - Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
   - In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be minimized to the maximum extent practicable.

B. Fuel Management Practices
   - Provide oil absorbents for catching fuel drips and spills and provide for the collection of saturated absorbent materials.
   - Promote the use of oil-absorbing materials in the bilge areas or engine compartments of all boats with inboard engines.
   - Recycle the oil-absorbent materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations.
   - Follow design recommendations and specifications contained in *Design Recommendations/Specifications Related to the Fueling Station System by the City of San Diego dated 11/14/06.*

C. Hazardous Waste Management Measures
   - Storage areas for hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided.
   - Containers for used anti-freeze, lead acid batteries, used oil, used oil filters, used gasoline, and waste diesel, kerosene and mineral spirits which will be collected separately for recycling shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
   - Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall indicate how to dispose of hazardous wastes and where to recycle certain recyclable wastes.

D. Trash and Marine Debris
- Boat maintenance and cleaning shall be performed above the waterline in such a way that no debris falls into the water.
- Clearly marked designated work areas for boat repair and maintenance shall be provided. Work outside of designated areas shall not be permitted.
- Hull maintenance areas, if provided, shall be cleaned regularly to remove trash, sanding dust, paint chips and other debris.
- Receptacles shall be provided for the disposal or recycling of appropriate waste materials.

E. Staff Training and Emergency Response and Boater Education.
- All staff shall be trained in proper oil and chemical spill procedures.
- An adequate supply of oil spill response materials shall be maintained on site.
- Informative signage describing and/or depicting Best Management Practices for maintenance of boats and boating facilities consistent with those specified herein shall be posted conspicuously.

F. 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 water. 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.

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

8. <u>Other Permits</u>. 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 #6-06-88. 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.

9. <u>Invasive Species.</u> PRIOR TO THE COMENCEMENT OF CONSTRUCTION, the applicant shall provide evidence that the boat dock replacement project can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

a. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit, the applicant shall undertake a survey of the project area (including any other areas where the bottom could be disturbed by project activities) and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga Caulerpa taxifolia. The survey shall include a visual examination of the substrate.

b. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

c. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

1. For the review and written approval of the Executive Director; and

2. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (DFG) (858-467-4218) or Robert Hoffman, National Marine Fisheries Service (NMFS) (562-980-4043).

3. If *Caulerpa* is found, then the NMFS and DFG contacts shall be notified within 24 hours of the discovery.

d. If *Caulerpa* is found, prior to the commencement of in water construction, the applicant shall provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated or that the dock project has been revised to avoid any contact with *Caulerpa*. No changes to the dock project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. <u>Findings and Declarations</u>.

The Commission finds and declares as follows:

1. <u>Detailed Project Description</u>. The City of San Diego proposes to replace existing dock facilities at the City of San Diego Lifeguard Headquarters located on Hospitality Point in Quivira Basin in Mission Bay Park. The dock is about 40 years old

and is in a state of disrepair and no longer serves the needs of the lifeguard vessel berthing and support facilities. The dock was severely damaged in the winter storms of 2004/2005 and has since been condemned, as it is not considered safe. This facility is the only dock designated for lifeguard vessels and equipment in the City and is therefore essential to lifeguard operations. According to the City, presently lifeguard landside facilities are separated from dock facilities as a result of the necessity to use dock space elsewhere in Mission Bay. This has resulted in the potential for lengthened response times for lifeguard services for both on-water and land incidents.

The proposed new facilities will include an enlarged dock which will have an increase in number of boat slips from 4 to 14 as well as other improvements to facilitate the expanded needs of the lifeguard operations. These facilities include a fueling area, a small crane for lifting equipment to and from vessels, storage lockers, an eyewash station, rinse shower, covered maintenance dock and a boat-lift. As only preliminary project plans have been submitted, Special Condition #1 requires that the applicant submit final plans for the development. Below is a table showing the comparisons between existing and proposed improvements:

Structure/Volume	**Existing (to be removed)**	**Existing (to remain)**	**Proposed Additions**	**Net Increase**
Dock & Gangway	2,178 sq.ft.		7,841 sq.ft.	5,663 sq.ft.
Other Water Coverage	436 sq.ft.		1,307 sq.ft.	871 sq.ft.
Total Covered Area	2,614 sq.ft.		9,148 sq.ft.	6,534 sq.ft.
Pile Count		16	12	12
Pile Area		11.1 sq.ft.	8.3 sq.ft.	8.3 sq.ft.
Fill	0 cy.		0 cy.	0 cy.

While the size of the dock facility will be increased, the City has indicated that the proposed project will serve the expanded needs of the lifeguard operations since the existing dock was constructed and is not proposed as a major expansion over current operations. The proposed dock to be removed and replaced is immediately next to an existing small public boat dock to the south that was previously removed and replaced pursuant to CDP No. 6-02-156 (Ref. Exhibit No. 2). In addition, there is another public dock at the north end of Hospitality Point that was also recently renovated pursuant to CDP No. 6-04-11. Because the existing lifeguard boat dock is in disrepair and has been condemned, the City has been using the aforementioned public boat docks to the north south to store emergency watercraft. With implementation of the proposed project, use of the nearby public boat docks for storage of emergency water craft will cease. Immediately next to the lifeguard dock is the City Lifeguard Headquarter's Building and a large parking lot. The site is very close to the entrance channel to Mission Bay (ref. Exhibit No. 1).

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. Marine Habitat/Sensitive Biological Resources. Several policies of the Coastal Act provide for the protection, preservation and enhancement of coastal waters. Those most applicable to the proposed project are as follows:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations 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, controlling runoff...

Quivira Basin is a deep, nearly round embayment located in the southwestern portion of Mission Bay Park, just inland from the Mission Bay Channel that connects Mission Bay to the Pacific Ocean. The basin is approximately fifteen to twenty feet deep for most of its extent, and completely surrounded, except for the channel opening, with steep, riprap-lined shorefront areas; there are no beaches within Quivira Basin, and few shallow spots that could potentially support vegetation (eelgrass).

A biological assessment was performed for the proposed project. The findings of that report indicate that the entire area of the shoreline near the project site is armored with rip rap that extends from intertidal elevations down to –8 ft. MLLW in some areas. The majority of the project area is mud or sandy bottom with some silt settled on the surface and some submerged debris. Invertebrates and fish were not observed within this habitat. No eelgrass was observed. The dock floats exhibited a much richer community of species than the piles (i.e., large mussels, etc.). In the open water areas of the project site there were no fish observed but it was stated that there is likely northern and deepbody anchovy as well as topsmelt in the area. The biology study found that the potential effect of the project on species identified as rare, sensitive, or endangered by the California Department of Fish and Game or the U.S. Fish and Wildlife Service included the California Brown Pelican and the California Sea Lion, both of which were observed at the project during the biological survey.

The major elements of the proposed project involve removal of the existing dock and installation of a new dock with additional driven piles to support the larger dock. The potential impact of these project elements on marine resources include the displacement of 8.3 square feet of benthic habitat from the installation of the 12 new piles into the mud bottom area of the project site. However, the impact of the proposed project on this community of the soft bottom is not significant. With regard to dock piles, no dock piles will be removed for the proposed project. Sixteen of the original piles will be re-used in place and 12 new piles will be installed for a total of 28 piles to support the larger dock. It is expected that the new piles will be colonized quickly with the fish, invertebrate, and algal communities that currently exist on and around the existing piles. The increased number of piles after project completion will also result in a larger number of fish, invertebrates and algae that are associated with dock or pier piles.

The driving of piles would have minor impacts on the habitat and associated organisms in the footprint and area immediately around the piles. The installation of piles generally results in the impacts such as: 1) loss of the organisms occurring on adjacent rock as a result of impact damage as new piles are positioned, 2) temporary small-scale increases in turbidity in the area around each driven pile, 3) short-term temporary displacement of some of the riprap fish community due to underwater pressure waves associated with the pile driving and, 4) some limited permanent footprint losses associated with the placement of new piles. However, in his particular case, the potential impacts are expected to be minor as the observed pile biological community at the project site is sparse.

With regard to impacts on open water, the project will result in a permanent loss of open water surface area related to the larger size of the replaced dock. The proposed larger dock includes 7,841 sq.ft of surface area and the existing dock includes 2,178 sq.ft. of surface area for a net loss of open water surface area of 5,663 sq.ft. (7,841 sq. ft. minus 2,178 sq. ft.). Additional structures such as the covered fueling station and covered maintenance slip would add 871 sq.ft. of covered area to that of the docks for a total net loss of open water surface area of 6,534 sq.ft. The applicant's biological study concludes that the increase in covered water surface area is not considered to be a concern because the Quivira Basin is already a highly urbanized basin. It is noted, however, that the increase in covered water surface area could result in a loss of foraging habitat for piscivorous (fish-eating) birds. The impacts to bird foraging may be small since there will still remain large expanses of open water habitat within the Mission Bay area.

According to the applicant's report, the bird species that are commonly found in the project area include the California Brown Pelican, Double-crested Cormorant, and the California Least Tern. Any noise impacts from the project would not affect the Brown Pelican as it does not breed in the mainland California coast. As such, no impacts on nesting will occur related to this species. However, during the breeding season of April to October, the California Least Tern is observed in Mission Bay. This species nests on Mariner's Point, Fiesta Island and the FAAA Island. Mariner's Point, which is the closest nesting site to the project site (just across the Mission Bay Channel), has been the most heavily used nesting site between the years 1997-2003 and 50-60 fledglings were

produced in 2005 according to the San Diego Audubon Society study conducted in 2006. Increased noise and turbidity during the project construction could disturb nesting and reduce foraging ability for bird species. Impacts to Least Terns during construction are not expected to be significant if construction occurs outside of the breeding season. However, permanent impacts would result from the loss of foraging area due to additional coverage open water surface area. No impacts to marine mammals is expected to result from the proposed project. Overall, the biology study concludes that there would be no significant biological impacts to bare bottom, rip rap, open water or dock and pile communities.

The Commission's staff Resource Ecologist has reviewed the proposed project and generally concurs with the biological assessment but indicates that the USFWS has become concerned recently with the *cumulative* loss of foraging habitat for bird species. The USFWS submitted a letter dated 11/3/06 (ref. Exhibit No. 4) which discusses these concerns in more detail. The letter states that they do not concur with the ACOE's determination that the proposed project will not adversely affect federally listed species. In their letter it is stated that they are concerned with the loss of foraging habitat for birds that plunge-dive to capture their fish prey (i.e. least tern and brown pelican). They also indicate that these birds heavily use these areas near the project site. Since these species forage by visually searching for their fish prey, covering the surface water with structures results in the loss of foraging area because they cannot see their prey under the structures or dive to catch the prey. They also indicate that such dock structures reduce light availability in the water which supports other biological communities. USFWS is concerned with the individual and cumulative losses of least tern foraging habitat in Mission Bay, and in particular, the Quivira Basin. This is due to the fact that there are six known potential least tern nesting sites in and around Mission Bay and high levels of least tern foraging have been documented in and around Quivera Basin.

USFWS indicates that the unavoidable impacts to these species should be mitigated. Specifically, the USFWS has indicated that that the net water surface area coverage of 6,534 sq.ft. resulting from the proposed project should be mitigated through one or more options to create replacement habitat or enhance the value of existing shallow marine habitat. USFWS has identified several proposed mitigation measures in their 11/3/06 letter (ref. Exhibit No. 4) to offset the impacts to foraging activity on the bird species. The Commission's staff Resource Ecologist has reviewed the suggested mitigation measures and concurs that removal of 6,534 sq.ft. of structures covering Mission Bay (option a in the USFWS letter), removal of 6,534 sq.ft. of upland fill from Mission Bay (option b) or removal of 6,534 sq.ft. of non-functional rip-rap or debris (option d) that occurs in intertidal or shallow subtidal habitat in the Mission Bay area are essentially in-kind mitigation and are preferred options. The option to fill deepwater habitat (option c) , however, is not a good idea as it would be inconsistent with Coastal Act policies. The Commission staff Resource Ecologist also agrees that mitigating with eelgrass (option d) is acceptable if the National Marine Fisheries Service (NMFS) agrees that there is unoccupied habitat that could be successfully planted with eelgrass (areas that don't have eelgrass may not be suitable for a self-sustaining eelgrass population) or by drawing from the City's eelgrass mitigation bank as the Commission has approved other projects in the

Mission Bay area that required mitigation by permitting applicants to draw credit from existing mitigation banks. Compliance with one of these options, as approved by the USFWS and ACOE, is therefore required as a condition of approval through Special Condition #Nos. 3, 4 & 5. Special Condition #3 allows the applicant to chose one of the options suggested by the USFWS and provide a plan to implement the proposed mitigation. Special Condition #4 requires, that if the option to create eelgrass habitats is chosen, then such habitat creation will need to be monitored for success. Special Condition #5 requires, that if the option to draw from the City's mitigation bank is chosen, then the applicant shall provide evidence to the Executive Director of the amount of acreage credits which have been withdrawn from the Mission Bay Park Mitigation Bank and where those credits are geographically located. With these conditions, the Commission is assured that impacts to foraging habitat for sensitive bird species resulting from the proposed project will be adequately mitigated.

Another issue raised by the proposed development is the impacts of the construction on sensitive bird species from noise and turbidity. Initially the USFWS indicated that to mitigate for construction impacts (in-water construction that generates turbidity), work on the project should occur outside the least tern breeding season to avoid reducing their foraging ability. Although seasonal constraints are often employed in similar projects, the Lifeguard Service has noted that timing constraints would hamper their ability to provide essential response in the most timely way. As such, the USFWS and the applicant's biologist have recently discussed this matter further and reached an agreement. Specifically, the applicant proposes to implement measures to contain turbidity to the immediate project vicinity to minimize impacts to the least tern that are known to utilize habitat in the vicinity of the proposed project. Some of these measures include use of a turbidity curtain extending to a depth of ten feet around the project construction area, monitoring of the work as it is occurring, and in the event that plume escape or expansion outside of the containment is considered excessive, the project shall be stopped until the plume dissipates and the site is brought into compliance. These measures are enumerated in more detail in Special Condition #6. With incorporation of these measures, any potential impacts to the sensitive bird species in the area will be greatly reduced.

An issue in southern California is the eradication program for the invasive green alga, *Caulerpa taxifolia* (referred to hereafter as Caulerpa), that has been discovered within inner Agua Hedionda Lagoon. On August 7, 2000 the Executive Director issued an emergency permit (6-00-99-G) regarding the eradication of Caulerpa found in a small area of the inner lagoon. The program included placement of tarps over the treated sectors and capping the areas to preclude regrowth. Caulerpa is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it

grows on sand, mud and rock surfaces from the very shallow subtidal to about 250-ft depth. Because of toxins in its tissues, Caulerpa is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing.

Because of the grave risk to native habitats, in 1999 Caulerpa was designated a prohibited species in the United States under the Federal Noxious Weed Act. AB 1334, enacted in 2001 and codified at California Fish and Game Code Section 2300, forbids possession of Caulerpa. In June 2000, Caulerpa was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, Caulerpa has been shown to tolerate water temperatures down to at least 50^{o} F. Although warmer southern California habitats are most vulnerable, until better information if available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that Caulerpa poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of Caulerpa infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all Caulerpa infestations.

Eelgrass (Zostera marina) is an aquatic plant consisting of tough cellulose leaves that grow in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. If Caulerpa were allowed to reproduce unchecked within Mission Bay, sensitive eelgrass beds and the wildlife that depend upon them would be adversely impacted. Therefore, eradication of Caulerpa would be beneficial for native habitat and wildlife.

At this time, it appears that the Caulerpa infestation in Agua Hedionda lagoon has been successfully eradicated. However, there are still concerns about its emergence in other aquatic areas, including Mission Bay. If Caulerpa is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of Caulerpa, the Commission imposes Special Condition #9. This condition requires the applicant, prior to commencement of development, to survey the project area for the presence of Caulerpa. If Caulerpa is found to be present in the project area, then prior to commencement of any inwater work, the applicant must provide evidence that the Caulerpa within the project

site has been eradicated (the applicant could seek an emergency permit from the Executive Director to authorize the eradication) or that the dredging project has been revised to avoid any disturbance of Caulerpa. If revisions to the project are proposed to avoid contact with Caulerpa, then the applicant shall consult with the local Coastal Commission office to determine if an amendment to this permit is required.

In summary, the subject development is proposed to provide necessary dock space for the San Diego Lifeguard Service. As conditioned, the proposed development will not adversely affect marine resources or wildlife.

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. However, with implementation of the Best Management Practices Program identified in the biological study for the proposed project, the new dock facility will not have any adverse impacts on the existing water quality of Mission Bay. The proposed replacement of the existing floating dock and associated amenities will increase the size of the facility. The proposed floating dock is significantly larger in size, to accommodate the expanded needs of the lifeguard service since the original dock was constructed. Moreover, the larger dock is over water, such that any additional surface runoff will not result in erosion. In addition, the City proposes installing a new prefabricated concrete deck (which is identical to the type of dock that was reconstructed at the north tip of Hospitality point pursuant to CDP #6-04-11) in place of the existing wooden deck. No plastic materials are proposed in the marine environment; therefore, a concern is allayed regarding possible deterioration of plastic and subsequent increase in marine debris.

According to a biological assessment that was performed for the subject project, Quivira Basin contains the most boating activity of all of the Mission Bay basins. The presence of a bait barge, fuel dock, pump-out station, boatyard and a high concentration of marine facilities may cause elevated concentrations of leaked petroleum products and waste water within the basin. However, the Lifeguard Dock is located in the outermost portion of the Quivira Basin, close to the entrance channel, and therefore receives daily flushing with the tidal ocean water. The assessment also indicates that few changes to the Lifeguard Dock have the potential to have permanent effects on water quality at the project site. A fueling facility currently exists at the dock and therefore, water quality issues greater than those already associated with the present fuel dock are not expected. In addition, the addition of more slips at the dock may produce more boat traffic potentially impacting water quality. However, such impacts could be minimized through participation in the Best Management Practices program. Such a plan would provide guidelines for establishing a clean marina which complies with all environmental laws and regulations. Such measures would require that boat cleaning, solvent and could handling, spill control and waste product handling be documented and monitored. In addition, other practices could also include staff training and emergency response, vessel cleaning and maintenance operations, sewage management, oil and fuel management, hazardous waste management, trash and marine debris and boater education. The City has also submitted an extensive detailed plan of design specifications they will implement for the proposed fueling station system associated with the lifeguard dock. Special Condition #7 requires that City comply with these requirements.

In addition, as noted previously, there may also be temporary construction impacts to water quality related to increased turbidity from the pile-driving operation. The existing dock has 16 pilings, but the proposed dock, which requires additional length to support the numerous watercraft used by the Lifeguard Service, will require a total of 28. The City proposes to reuse the 16 existing pilings, and construct 12 new additional pilings. Although construction equipment has the potential for accidental fuel spillage and/or leaks, implementation of standard construction Best Management Practices (BMPs) during construction would reduce potential accidental spills from construction equipment.

In addition, there will be a maintenance area for the proposed dock facilities. However, the Lifeguard Service has indicated that this area is a covered area to keep mechanics dry and to provide weather protection and a degree of boat protection from the weather elements. As such, it is not an area where extensive boat work would be performed or where chemicals would be used which could discharge to or be disposed of in the marine environment. In addition, the applicant indicates that such an area is currently provided, just not covered.

In summary, although the amount of impermeable surfaces will increase slightly with the larger floating dock, this will not result in runoff or erosion impacts since it occurs over water. Some increased turbidity may occur during construction, particularly from pile-driving operations, but its affect on both sensitive species and the general public is minimized through construction related BMPs and restrictions. The Commission therefore finds that the proposed development overall will not have adverse impacts on

the quality of Mission Bay waters. Therefore, the Commission finds that approval of the development, as conditioned, is fully consistent with the cited Coastal Act policies.

4. Fill of Open Water. The following policy of the Coastal Act is most applicable to the subject development:

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.

The proposed development includes demolition/removal of existing boating facilities and replacement with similar, but larger, facilities that can accommodate the needs of the City lifeguard service. The existing dock has 16 concrete 10-inch dock pilings which will be re-used in place. The larger dock, which is required to accommodate the larger dock to meet the needs of the lifeguard service, will require 12 additional pilings of the same type, which must be driven into the open water of Quivira Basin. The 12 new piles will result in displacement of approximately 8.3 sq. ft. of benthic habitat (subtidal mud bottom).

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 satisfies these criteria. New and expanded boating facilities and associated pilings are allowed uses in open water pursuant to Section 30233(a)(5). The City has indicated that the proposed 12 new pilings, along with the existing 16 piles that will be retained, are the minimum required to support the larger boat dock. As analyzed above, the permit conditions address potential adverse effects of the development. Thus, the displacement of 8.3 sq.ft. of benthic habitat represents the least environmentally damaging alternative.

In summary, the proposed dock replacement will not impact any areas of existing habitat, including eelgrass. Special Condition #8 requires copies of the permits issued by other state or federal regulatory agencies, to be sure those actions are compatible with the subject permit. The condition also advises that any provisions of other permits that require the approved project to be modified could require an amendment to the CDP. Therefore, the Commission finds the proposal, as conditioned, consistent with the cited Coastal Act policies.

5. Public Access and Recreation. The following Coastal Act policies are most pertinent to the proposed development, and state, in part:

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(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 specific project site is located between the first coastal roadway and the bay, with the pier and dock extending out into the bay itself. The dock is nearby the City's Mission Bay Park Headquarters, and a small police facility. There are park facilities nearby (picnic tables, sand volleyball and fishing jetty) that are used by the public. There are two other docks nearby—one at Hospitality Point and a public boat dock just south of the existing lifeguard dock. Both of these other docks are currently used by the City's lifeguards because their existing dock is too small for their needs and has been condemned. After the new dock is constructed, it is not expected that the Lifeguard Service will need to use the other public docks and they shall remain for exclusive use by the public. Thus, the proposed project will result in an overall improvement to public access as existing dock space currently being utilized by the lifeguards will again be available to the public.

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. To address this concern, the Commission typically prohibits all, or selected portions of, construction activity during the summer months (Memorial Day weekend through Labor Day) when public use is at its peak. However, in the case of the proposed development, the City has indicated that the proposed development will take approximately one year to complete and restricting work through the summer months would pose a severe public safety issue as it would lengthen the time it would take to complete this important essential public service facility.

In this particular case, the Commission finds that the typical summer work restriction is not necessary . While overall public use of Mission Bay Park is at its greatest during the summer month, this particular area of Mission Bay Park receives minimal public use as the existing dock to be replaced is not a public dock. Because of its location, construction of the proposed project will not prevent public access to the existing public amenities, such as the picnic ramada, parking lots and fishing jetty, nor the existing public docks and facilities located both north and south of the subject site. In addition, no construction staging or equipment storage is proposed to occur in any of the public parking lots or grassy park areas used by the public. The City has indicated that they will

restrict construction access and storage to the eastern shoreline of Hospitality Point between the Lifeguard facilities and Driscoll's Boatyard, an area that is not generally used by the public. Based on the above discussion, the Commission finds that the needs of the lifeguard service, which is intended to improve public safety throughout Mission Bay Park, outweighs the small inconvenience that may be experienced by the public during the busiest time of season for public use of Mission Bay Park as a result of the construction phase of the proposed project.

However, to minimize public access impacts to nearby recreational facilities, Special Condition #2 limits the work to non-holiday weekdays during the summer and requires that no public facilities, including parking spaces, be used for project staging and access. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the cited Coastal Act policies.

6. Visual Resources. Section 30251 of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

> **Section 30251**
>
> 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 existing facilities will be demolished or removed and new, larger facilities will be constructed. However, the general appearance of the pier, gangway, floating dock and accessory uses will remain the same, as will the function of the dock for mooring of lifeguard watercraft. The new facilities will also include a fueling area, a small crane, storage lockers, eyewash station, shower, covered maintenance dock and boat lift. However, even with these added features, the dock amenities are similar in size and scale to others along the Mission Bay shoreline. The Commission finds the proposed development will have no significant visual impact on the scenic qualities of Mission Bay Park, and is thus fully consistent with Section 30251 of the Coastal Act.

7. Local Coastal Planning. 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 and requires no local discretionary permits. The proposed development represents replacement of existing facilities and additions to address water quality and public access concerns. 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 has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing public access and biological resources 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.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. 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. Expiration. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. 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. Terms and Conditions Run with the Land. 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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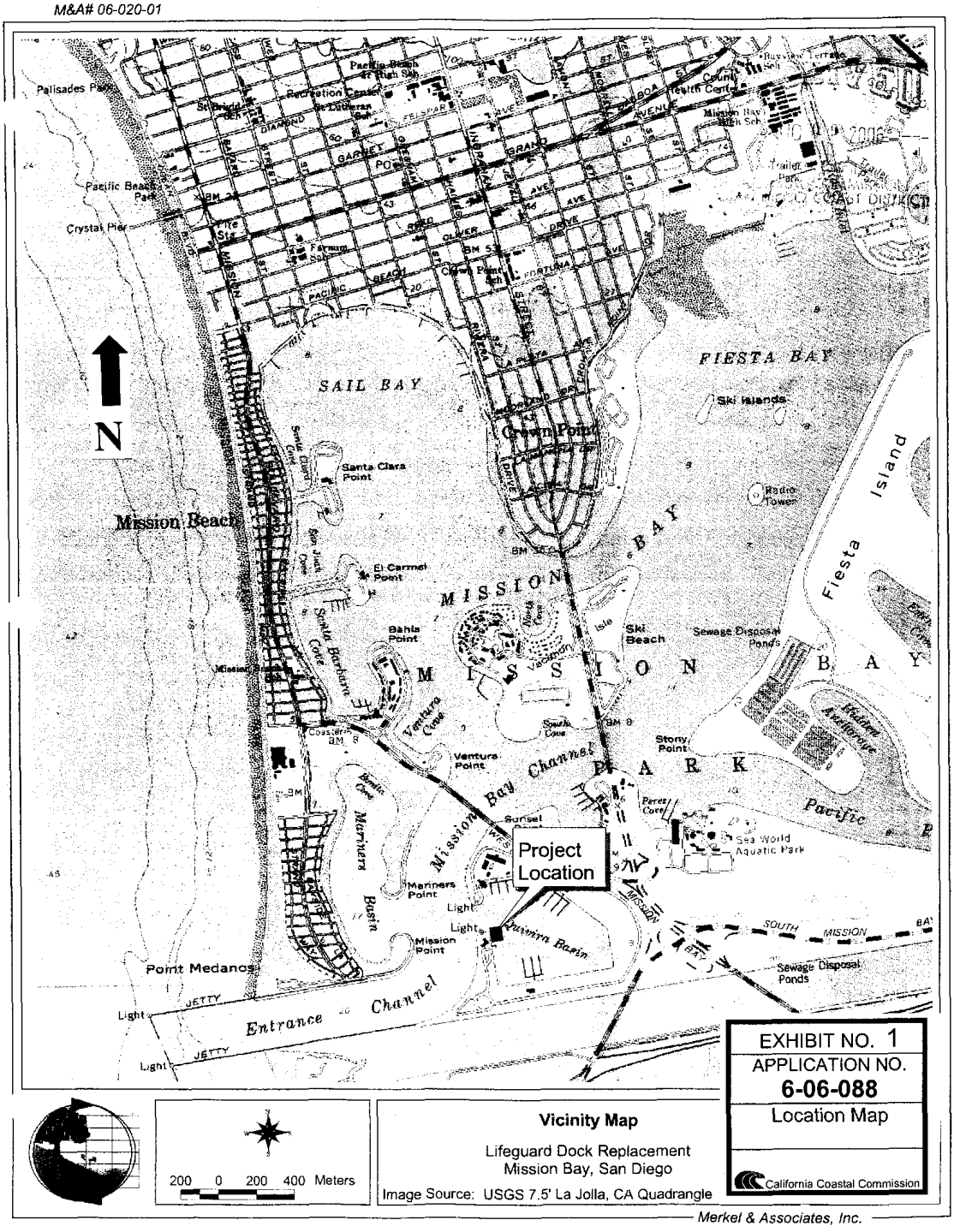
M&A# 06-020-01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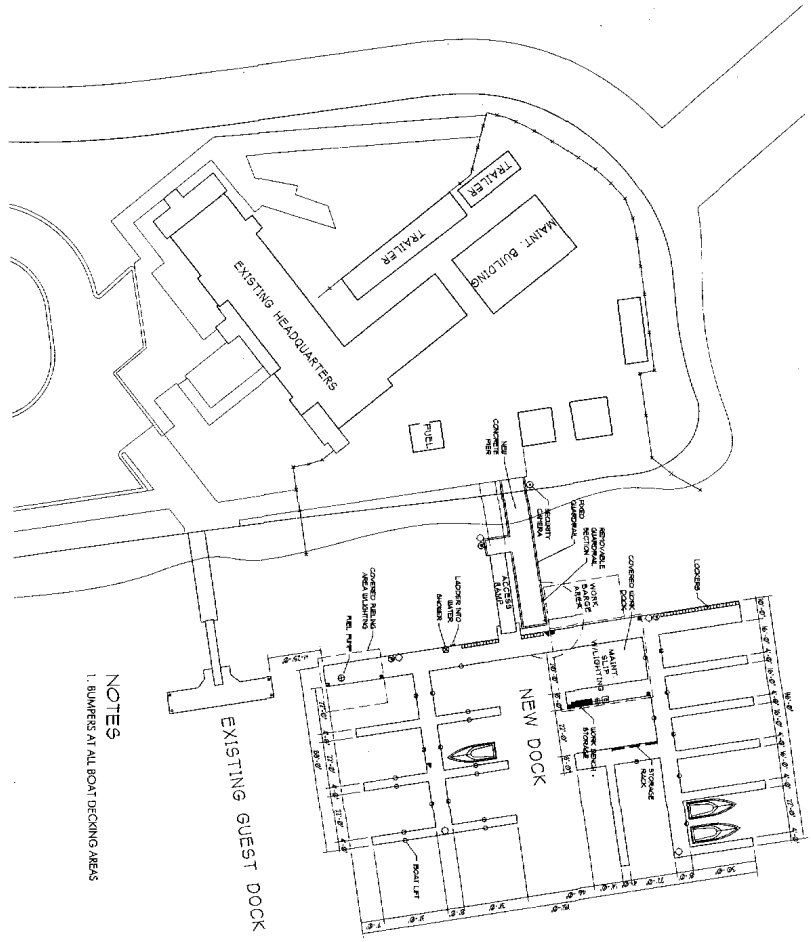
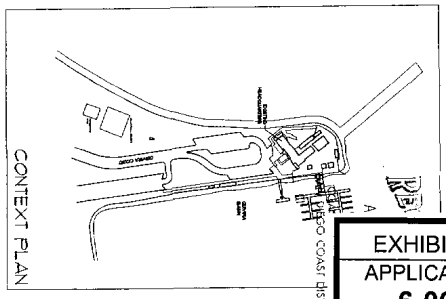
Project Location
SAIL BAY
FIESTA BAY
MISSION BAY
MISSION BAY PARK
Mission Beach
Crown Point
Santa Clara Point
El Carmel Point
Bahia Point
Ski Islands
Ski Beach
Fiesta Island
Sewage Disposal Ponds
Ventura Point
Stony Point
Sunset
Mariners Point
Mission Point
Point Medanos
Entrance Channel
Bay Channel
Mariners Basin
Quivira Basin
Sea World Aquatic Park
Pacific Beach Park
Crystal Pier
Pacific Beach Hi High Sch
Mission Bay High Sch
Pacific
SOUTH MISSION BAY
JETTY
Light
200 0 200 400 Meters
Vicinity Map
Lifeguard Dock Replacement
Mission Bay, San Diego
Image Source: USGS 7.5' La Jolla, CA Quadrangle
EXHIBIT NO. 1
APPLICATION NO.
6-06-088
Location Map
California Coastal Commission
Merkel & Associates, Inc.





LEGEND

- FUEL PUMP WITH GAS AND DIESEL FUEL
- OUTDOOR SHOWER
- PHONE W/PAGING + INTERCOM
- SECURITY CAMERA ON 20' POLE
- W/24 HOUR RECORDING LOOP
- BOAT LIFT @ SLIPS FOR 22' BOAT (1 TOTAL)
- LIGHT, 2-20W DOCK STORAGE BOX (PV, CA, 110V 3a POWER, LOWER LEVEL
- OPERATIONS LIGHT ON POLE
- FIRE EXTINGUISHING EQUIPMENT
- JIB CRANE (2000 LB) W/20' JIB
- STORAGE RACK FOR SURFBOARD & KAYAKS
- WATERPROOF LOCKERS FOR TURNOUT GEAR
- EYEWASH STATION
- LADDER 24" WIDE W/ABILITY TO RAISE OUT OF WATER
- SUPPORT FOR ROOF STRUCTURES
- WORK BENCH + STORAGE

MISSION BAY HEADQUARTERS - DOCK REMODEL

SITE PLAN

2581 QUIVIRA COURT, SAN DIEGO, CALIFORNIA

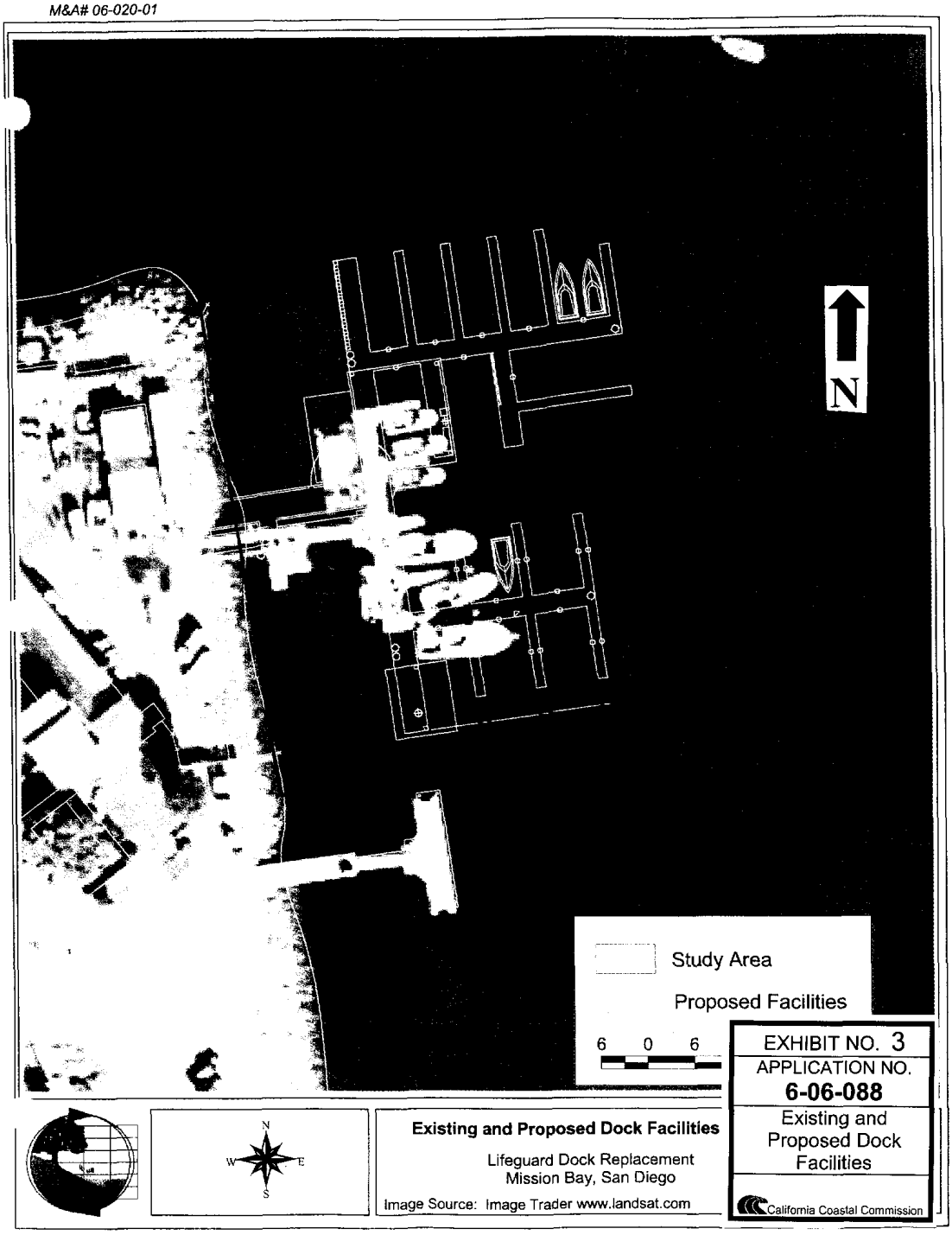
0 10 20 40 80

NOVEMBER 1, 2005

EXHIBIT NO. 2
APPLICATION NO.
6-06-088
Site Plan

California Coastal Commission

M&A# 06-020-01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Study Area
Proposed Facilities
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Existing and Proposed Dock Facilities
Lifeguard Dock Replacement
Mission Bay, San Diego
Image Source: Image Trader www.landsat.com
EXHIBIT NO. 3
APPLICATION NO.
6-06-088
Existing and Proposed Dock Facilities
California Coastal Commission

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-5090.1

Nov 3 2006

Mr. Terry Dean
U.S. Army Corps of Engineers, Los Angeles District
ATTN: CESPL-CO-R-200600091-TCD
16885 W. Bernardo Drive, Suite 300-A
San Diego, California 92127

Subject: Public Notice of a U.S. Army Corps of Engineers Permit for the City of San Diego Lifeguard Headquarters Boat Dock Replacement Project (200600091- TCD).

Dear Mr. Dean:

The U.S. Fish and Wildlife Service (Service) has reviewed the Public Notice (PN) of a U.S. Army Corps of Engineers (Corps) Permit for the City of San Diego Lifeguard Headquarters Boat Dock Replacement Project (Project) (200600091-TCD). Our comments on the proposed Project have been prepared under the authority, and in accordance with the provisions of the Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401, as amended, 16 U.S.C. 661 et seq.), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), and other authorities mandating Department of Interior concern for environmental values. In a telephone conversation between the Service and the Corps on October 30, 2006, the Corps granted the Service an extension until November 3, 2006, to provide comments on the PN. We appreciate the extension.

The proposed Project consists of replacement and expansion of the existing lifeguard vessel berthing and support facilities in Quivira Basin within Mission Bay, City of San Diego, California. The City of San Diego (applicant) proposes to demolish and remove an approximate 2,178 square foot, four-slip, pile-supported, timber dock and gangway and construct a new 7,841 square foot, 14-slip, pile supported, timber dock with a concrete pier (gangway) and an access ramp, as well as several other facilities. These facilities will include a fueling area, a small access platform pier with a job crane for lifting equipment to and from vessels, storage lockers, an eyewash station, rinse shower, covered maintenance dock, and a boat lift. Overall, the project will result in a net increase of 6,534 square feet of structures covering Mission Bay waters. No shoreline restructure, dredging, or discharge of dredged or fill material are proposed with this project.

The PN states that preliminary determinations indicate that the Project may affect, but will not adversely affect, the federally listed as endangered California least tern (*Sterna antillarum browni*, least tern) and brown pelican (*Pelecanus occidentalis*). The Corps has requested concurrence from the Service of its preliminary

determination and that formal consultation under Section 7 of the Endangered Species Act is not required.

The Service does not concur with the Corp's determination that the proposed project will not adversely affect federally listed species for the following reasons. The Project will result in a net loss of 6,534 square foot of foraging habitat for birds that plunge-dive to capture their fish prey (e.g., least tern and brown pelican). High levels least tern foraging behavior occurs in and near Quivira Basin (Southwest Research Associates Incorporated 1994) and brown pelican loaf approximately 300 feet to the north of the proposed dock. Both species forage by visually searching for their fish prey (Thompson et. al. 1997). Therefore, covering surface water with structures results in a loss of foraging habitat because these sight foraging birds cannot see their prey under structures or plunge-dive through structures to catch their prey. Additionally, covering open water habitats types with docks would reduce light availability in the water column and introduce hard substrate which will likely support a different species composition and biological community. In essence, there could be an ecological type conversion where piers are introduced.

We are concerned with individual and cumulative losses of least tern foraging habitat in Mission Bay in general, and Quivira Basin in particular. This is because there are six known potential least tern nesting sites in or adjacent to Mission Bay (i.e., North Fiesta Island, Stony Point, Western South Shores, Cloverleaf, Mariner's Point, FAA Island, and the San Diego River Mouth), of which least terns have recently nested on five (i.e., North Fiesta Island, Stony Point, FAA Island, Mariner's Point, and San Diego River Mouth), and high levels least tern foraging behavior have been documented in and near Quivira Basin (Southwest Research Associates Incorporated 1994). Reduced food availability can negatively affect the reproductive success of the least tern by reducing clutch sizes, lowering weights of chicks, and increasing levels of egg abandonment and non-predator chick mortality (Atwood and Kelly 1984, Massey 1988, Massey et. al. 1992). For example, the low productivity or reproductive success of least terns in recent years has been attributed to shortages of their fish prey (Marschalek 2005 and 2006).

The proposed project will increase docking capacity of the Lifeguard Headquarters and thereby increase boating activity in and around Quivira Basin. Increased boating can displace waterbird access to feeding areas and result in a subsequent loss of production of young (Drent and Guiguet 1961, Conservation Committee Report 1978, Huffman 1999, Manning 2002). Increased boating activity, particularly high speed boating, can reduce foraging by least terns. Increased disturbances to foraging habitat could negatively affect the stability of the adjacent least tern colonies because disturbance-free foraging areas to obtain food for chicks are important (Rodgers and Smith 1997). The Navy (2003) found that least terns tended to forage in areas with relatively less boating activity. Bailey (1995) suggests that heavy boat activity in an estuary near Alameda Naval Air Station dissuades least terns from foraging in suitable habitat. Although the least terns could fly to other areas to avoid highly disturbed foraging habitat, such behavioral adaptations can increase the numbers of flights and flight times between foraging and loafing, resulting in energy deficiencies that could translate to reduced productivity and fitness (Manning 2002). The likelihood of this increase in boating activity disrupting least tern foraging is greatest during those years when least tern prey populations are most limited.

Under the authorities listed above, we are advising the Corps of the importance of bay waters in proposed Project area to fish and wildlife resources in general, and to the federally listed least tern and brown pelican in particular. Unavoidable impacts to these resources should be mitigated under the Corps authority pursuant to section 10 of the Rivers and Harbors Act and regulations regarding Regulatory Programs of the Corps of Engineers (33 CFR Parts 320 through 330), independent of requirements that may arise out of section 7 consultation under the ESA. The decision whether to issue a Corps permit should be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. All factors which may be relevant must be considered, including general wildlife concerns and fish and wildlife values [33 CFR Part 320.4(a)]. The impacts identified above are significant, specifically identifiable, reasonably likely to occur and of importance to the aquatic environment. As such, these impacts should be mitigated [33 CFR Part 320.4(r)(2)]. It is our opinion that issuance of a Corps permit without mitigation for impacts to general wildlife concerns and fish and wildlife values would be contrary to the public's interest.

We concur with the mitigation measure proposed in the PN that project construction, particularly all in-water construction that generates turbidity (e.g., demolition, pile jetting or driving, etc...) should occur outside the least tern breeding season to avoid reducing their foraging ability. However, no appropriate mitigation is proposed for permanent impacts to bay water foraging habitat. The PN states that the applicant "has stated that ample adjacent foraging area and the foraging attraction of the adjacent bait barge compensate for the increase in water coverage, and therefore the project would not result in a significant change in forage fish availability." However, Quivira Basin already has significant cumulative coverage of bay waters and there is no guarantee that the bait barge will remain in the future. Even if the bait barge did remain, bait barges are not appropriate mitigation for least terns. A 1997 foraging study in San Diego Bay (Baird 1997) concluded that:

> *California least terns do not frequent the bait barge. They are not kleptoparasites nor are they ship followers as are many other species of gulls and terns. Thus, providing bait fish for them would most likely not be a worthwhile mitigation measure. In support of this, the size of fish on which California least terns feed is smaller than can be purchased as bait or easily captured, for they are juvenile or sometimes even larval fish.*

To help ensure that proposed mitigation is implemented, and to mitigate permanent impacts to bay waters, we recommend the following Special Conditions be incorporated into the Corps permit.

Proposed Special Conditions for LOP No. 200600091-TCD

1. The permittee shall not perform in-water construction (e.g., demolition, jetting or pile driving, etc...) during the California least tern (*Sterna antillarum browni*) nesting season from April 1 to September 15. This condition is necessary to avoid potential impacts to this federally listed as endangered species that is known to utilize habitat in the vicinity of the

proposed project.

2. To mitigate the impact of a 6,534 square feet net loss of bay surface waters, the permittee shall submit a proposal to offset impacts to the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Corps for review and approval at least 30 days prior to initiating project impacts that will be implemented prior to, concurrently, or prior to the next least tern breeding season of project impacts.

   Potential measures to mitigate impacts include, but are not limited to, the following:

   a. Remove 6,534 square feet of structures covering Mission Bay;

   b. Remove 6,534 square feet of upland fill from Mission Bay;

   c. Shallow-up 6,534 square feet of deep, subtidal habitat to shallow, subtidal habitat;

   d. Create 6,534 square feet of eelgrass habitat or credit 6,534 square feet at the City's Park and Recreation eelgrass mitigation bank;

   e. Remove 6,534 square feet of non-functional rip-rap or debris that occurs in intertidal or shallow subtidal habitat in the Mission Bay; or

   f. Conduct a combination of the measures listed above that total 6,534 square feet.

In summary, the Service would not object to the Corps issuing a permit for the Lifeguard Headquarters Boat Dock Replacement Project and would concur that the project may affect but is not likely to adversely affect federally listed species provided our proposed Special Conditions are added to the permit. We appreciate the opportunity to review and comment on the PN. If you have any questions concerning this letter, please contact Carolyn Lieberman of my staff at (760) 431-9440 extension 240.

Sincerely,

//s//David Zoutendyk, for
Therese O'Rourke
Assistant Field Supervisor

cc:
California Department of Fish and Game, San Diego, CA (Attn: Marilyn Fluharty)
National Marine Fisheries Service, Long Beach, CA (Attn: Bob Hoffman)
California Coastal Commission (Attn: Ellen Lirley)

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