

CALIFORNIA COASTAL COMMISSION

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Hearing Date: August 8-11, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-022

Applicant: SeaWorld of California

Agent: Patrick Owen

Description: Construction of a public pedestrian promenade, ranging in width from ten to fifty feet, along the South Shores area of Mission Bay Park, connecting with existing pathway components at either end.

Site: Extending from the SeaWorld leasehold eastward to the South Shores embayment, then eastward from the embayment to just west of the causeway to Fiesta Island, in the southeastern portion of Mission Bay Park, San Diego, San Diego County. APN 760-037-01

Substantive File Documents: Certified Mission Bay Park and SeaWorld Master Plans

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed development that will close a gap in the Mission Bay Park shoreline public access path. The main issues are protection of nearby biological resources, maintaining good water quality, and potential construction impacts on public access. Special conditions require submittal of final plans, identification of storage and staging areas and prohibitions on work during the summer months and on weekends year round. A revised landscaping plan is also required, since the preliminary plan identifies some invasive species in its plant list, and a revised lighting plan is required to protect birds, fish and benthic organisms.

Standard of Review: Chapter 3 policies of the Coastal Act

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-06-022 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. 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 applicant shall submit for review and written approval by the Executive Director, final site and building plans that are in substantial conformance with the preliminary plans by FLC Flores Lund Consultants dated 10/18/05, and that have been approved by the City of San Diego.

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

2. **Timing of Construction/Storage and Staging Areas/Access Corridors.** **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final plans for the review and written approval of the Executive Director, 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 applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents and have been approved by the City of San Diego. The plans shall indicate that construction access corridors and staging areas shall be located in a manner that has the least impact on public access to and along the shoreline, and shall include the following items as written notes on the plans:

- a. No portion of existing public parking lots or public on-street parking areas shall be used for the interim or overnight storage of construction equipment or materials.
- b. No work shall occur between Memorial Day weekend and Labor Day of any year, or on weekends or holidays throughout the remainder of the year.
- c. The staging site(s) shall be removed and/or restored immediately following completion of the development.
- d. Vehicular and pedestrian access to the existing South Shores Boat Ramp and embayment shall be maintained at all times during construction.

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

3. Revised Landscaping Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans submitted with this application by KTUA Landscape Architecture and Planning, dated September 20, 2005, but shall be revised to include the following:

- a. All landscaping shall be drought-tolerant and (1) native or (2) non-invasive plant species (i.e., no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site). No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. The landscaping shall not include Mexican Fan Palms or ice plant species.
- b. Use of pesticides or rodenticides is prohibited.
- c. A written commitment by the applicant that five years from the date of the

issuance of the coastal development permit for the proposed development, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

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

4. Revised Promenade Lighting Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final lighting plans approved by the City of San Diego and consistent with the lighting study by Merkel & Associates, Inc., dated May 7, 2004. The plans shall include the following:

- a. Lights shall be placed on maximum 2-foot-high bollards.
- b. Lights shall be low-pressure sodium bulbs.
- c. All lights shall be shielded and directed downwards, such that minimal light falls outside the promenade boundaries.
- d. Where lights are required for public safety on only one side of the pathway, they shall be installed on the inland side only.
- e. The total number of lights shall be the minimum necessary for public safety, and shall not generally be spaced closer together than the existing lights at the embayment.

The permittee shall undertake the development in accordance with the approved lighting plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment

to the permit unless the Executive Director determines that no such amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The applicant proposes construction of a public pedestrian promenade along the South Shores area of Mission Bay Park in roughly the alignment of an existing dirt trail. The proposed promenade consists of two components that will connect with existing segments of public pathway. The western component will be ten feet wide and will run approximately 900 feet in length from the eastern edge of the SeaWorld leasehold to the South Shores Boat Ramp and embayment, where an existing 10-foot wide path circles the embayment. The eastern component will begin where the embayment pathway ends and will run eastward approximately 4,700 lineal feet parallel to the shoreline of the Pacific Passage arm of Mission Bay to connect with existing pathway segments running along the eastern shore of Mission Bay and crossing the causeway to Fiesta Island. The eastern component will range in width from ten feet at either end, where connecting with existing ten-foot-wide paths, up to fifty feet in places to provide public gathering areas and space for art displays, etc.

Seating will be provided intermittently, with concrete benches along the narrower portions of the pathway and seatwalls around the wider portions. Trash receptacles will be placed near all public seating areas, and a drinking fountain and bike racks are proposed where the eastern component begins by the embayment. A bioswale will run the entire length of the pathway along its inland edge to filter runoff from the proposed impermeable surfaces. Pathway lighting is proposed in the eastern component, along with landscaping along the entire length of the path.

The South Shores area is one of the few remaining underdeveloped areas of the park. A Master Plan for the area was approved at the local level in the mid-1980's, and the Commission approved a coastal development permit for the first phase of development in 1987. To date, mass grading has occurred, a nine-acre embayment has been dredged, a public boat ramp installed, a small area of sandy beach created, and a restroom, a picnic pavilion, and parking lot constructed. The remainder of the area is still unfinished. The South Shores Master Plan called for grassy play and picnic areas, a second restroom, additional parking area, an amphitheater, and a promenade to host various public art and entertainment shows and events.

South Shores is located within Mission Bay Park in the City of San Diego. It is situated adjacent to the Pacific Passage arm of Mission Bay and consists mostly of undeveloped land. As previously stated, the western area, adjacent to the SeaWorld leasehold, includes a boat ramp, parking lot, pocket beach, restrooms and a picnic pavilion, but the vast majority of the area has no formal public improvements. Mission Bay Park is an area of deferred certification, where the Commission retains jurisdiction and Chapter 3 policies of the Coastal Act are the standard of review. The Commission has certified the Mission Bay Park Master

Plan as the LUP for Mission Bay Park and uses the Master Plan, of which the SeaWorld Master Plan is a component, as guidance.

2. Public Access. 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 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by ... (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ...

Section 30253

New development shall:

... (4) Minimize energy consumption and vehicle miles traveled.

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 park built primarily on tidelands granted to the City of San Diego. The site of the proposed promenade/pathway is located between the first coastal roadway and the sea (in this case the sea is Mission Bay). Although public lateral access is available along most of the Mission Bay shoreline, there is no continuous improved pedestrian and bicycle access along the South Shores area paralleling the shoreline. Pedestrian and bicycle traffic can use an existing narrow path further inland, and bicycles will probably continue to do so, but this is out of sight of the shoreline and is too narrow to provide any seating or similar amenities. The Certified Mission Bay Park Master Plan lists a complete pedestrian access pathway around the bay as a future goal. Some additional public access improvements were also incorporated into the certified update of the SeaWorld Master Plan, reviewed by the Commission in February 2002 as part of an amendment to the Mission Bay Park Master Plan. Those improvements included the proposed public promenade, which was identified as partial mitigation for SeaWorld's Tier I park improvements, including the Journey to Atlantis splashdown ride.

The proposed improvements are consistent with the master plan objective of encouraging alternative transportation methods, such as bicycling and walking, by providing improved pathway and support facilities, and with the goal of closing an existing gap in the shoreline path. The Commission approved bicycle and pedestrian path improvements within the SeaWorld leasehold pursuant to Coastal Development Permit #6-05-075 that will connect with the proposed improvements to the west. In addition, the proposed promenade will provide a public gathering area in this portion of Mission Bay Park, an amenity identified in both the Mission Bay Park and SeaWorld Master Plans. The wider portions of the promenade were identified for possible use as a venue for art displays or craft fairs as well as a place for larger groups to congregate. The proposed bicycle and pedestrian promenade improvements will include numerous seating areas, trash receptacles, bike racks, a drinking fountain, lighting and landscaping. Proposed improvements will be fully accessible.

As with any development project in Mission Bay Park, the actual construction phase has the potential to significantly disrupt public enjoyment of the area. Therefore, Special Condition #2 restricts construction activity to outside the summer season, weekends and holidays, when the area is most heavily used. In addition, the condition prohibits the use of public parking areas for staging or storage of materials.

In summary, the Commission finds that the project improves existing public access and recreation through the South Shores area, and will encourage greater public use of what is now a significantly underutilized portion of Mission Bay Park. Parking and restroom amenities already exist in this area to serve a much larger segment of the public than uses the area now. Therefore, the Commission finds the proposal consistent with all of the cited public access policies of the Coastal Act.

3. Sensitive Habitats/Landscaping and Lighting. The following Chapter 3 policies are most applicable to the proposed development, and state, in part:

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...

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 such areas, and shall be compatible with the continuance of such habitat areas.

The subject site is located in the southeastern portion of Mission Bay Park, a public aquatic park that includes environmentally sensitive habitat areas along with a wide array of public recreational venues. The entire area is currently vacant and primarily unvegetated. What vegetation does exist consists of ice plant and other exotics. Mission Bay Park includes several California least tern nesting sites, including the San Diego River (Southern Wildlife Preserve) and Stony Point on Fiesta Island, which supports a sizeable tern colony this year, for the first time in recent history (twenty years or more). In addition, the waters of Mission Bay support a variety of fish and benthic organisms and eelgrass may be present offshore the project site, although there are no sensitive wetlands or uplands on, or immediately adjacent to, the actual project site.

Two components of the proposed promenade have the potential to adversely impact nearby biological resources, namely lighting and landscaping. The applicants are proposing to install 94 Louis Poulsen AH Hyhavn Area Lights on 12-foot poles. The proposed lighting is intended to make the promenade available for evening use, as is endorsed in the certified Mission Bay Park Master Plan. Since the proposed promenade will be fifty feet wide in places, in order to assure public safety, light fixtures are proposed on both sides of the path in those wider areas but only on one side of the path where it is narrower. There is already existing lighting of the same type on eighteen, twelve-foot poles at the South Shores Boat Ramp and surrounding the embayment and adjacent picnic pavilion.

A lighting analysis was submitted with the permit application to determine if proposed lighting would have any adverse impacts on the two nearest sensitive receptors, the Stony Point least tern site and the San Diego River channel (Southern Wildlife Preserve), which supports least terns and other listed species. Stony Point is approximately one mile (over 5,000 feet) distant from the project site, and the river is approximately a quarter mile away (roughly 1,200 feet) at its closest point. The proposed lighting is identical in type and height to that existing, so an analysis of the existing lighting should provide sufficient information to determine the potential for adverse impacts from the proposed lighting. It was found that the illumination directly under the light fixture dropped by more than half within three meters (approximately ten feet), and was reduced by 99% within 14 meters (less than fifty feet). The lighting analysis therefore concludes that the proposed lighting cannot have any detrimental effects on the study's two identified sensitive receptors, which are approximately 5,000 and 1,200 feet distant respectively.

The lighting study has demonstrated that the two identified sensitive receptors, namely Stony Point and the San Diego River, are far enough removed from the proposed lighting to be unaffected; this conclusion is supported by the wildlife agencies (CA Dept. of Fish and Game and U.S. Fish and Wildlife Service). However, the proposed lighting could illuminate portions of Pacific Passage (part of Mission Bay) closest to the walkway, and potentially impact fish and invertebrates close to shore, or disorient birds, as described in the comment letter on the lighting study from the wildlife agencies (see Exhibit # 4). This is an area of the park identified for active public recreational uses and not for biological resource protection, and the certified Mission Bay Park Master Plan promotes greater public use of this area, including during evening hours. However, such use should still afford as much protection as possible to biological resources in the immediate area. Unlike other lighting projects approved by the Commission for parking lots in other areas of the park, this lighting will be immediately adjacent to the bay.

Lights are not proposed on the western walkway component closest to SeaWorld, but are proposed for the eastern component between the embayment and Fiesta Island. According to the submitted plans, the lights are proposed to be spaced approximately forty feet apart. Nothing identifies how closely spaced the existing embayment lights are, but there are eighteen existing lights at the embayment and ninety-four are proposed for the new promenade, yet the two areas are roughly the same length. Although it is possible that a greater concentration of lights may be needed at the largest gathering areas of the promenade to ensure public safety for evening events, nothing in the submittal supports this, nor does anything suggest that this is the case along the entire length of the promenade.

In their comment letter, the wildlife agencies have stated their preference for no lighting on the promenade at all. However, they also state that if lighting must be provided, they want specific parameters included to minimize potential adverse effects. The Commission has long endorsed greater use of this part of Mission Bay and required that public improvements in this area be the City's first priority. In general, the Commission has also endorsed nighttime use of public recreational facilities by permitting lighting of parking lots and regulating hours of closure of recreation areas. Thus, the Commission

finds it is appropriate for this area to be lit for nighttime use, but incorporates the suggestions of the wildlife agencies into this permit. Special Condition #4 establishes the suggested parameters for lighting to minimize potential adverse effects. It requires low sodium lighting on 2-foot bollards, as opposed to the style and level of existing lighting at the embayment. It also provides that, where lighting is only needed on one side of the promenade for public safety, it shall be located only on the inland side. Finally, it requires that lights be spaced as far apart as possible to still provide public safety, thus reducing the total number of lights associated with the proposed promenade. The condition suggests that lights generally be spaced as far apart as they are at the embayment, but recognizes that the promenade will likely see heavier public use during evening hours than the boat ramp. With this condition, the need for lighting to accommodate nighttime use and public safety are addressed along with greater protection to adjacent coastal resources.

Landscaping is proposed all along both sides of the proposed promenade, and consists of groundcover, shrubs and palm trees. Existing palm trees in the immediate area will be retained. The species proposed are consistent with what little vegetation exists in the area, but are not fully consistent with the Commission's or wildlife agencies direction for appropriate plantings in this region. The proposed species include two types of ice plant and Mexican Fan Palms. All of these are considered highly invasive and should not be used, particularly not adjacent to waters that can carry seed and open spaces where seed can be easily windblown such as the project site. The other proposed plants are not identified as invasives, but they are also not all natives, and could be replaced with native species that serve the same functions.

The Commission recognizes that Mexican Fan Palms are recommended for several landscape groups in the Mission Bay Park Master Plan. However, since the plan was certified in 1996, the dangers of invasive species have become more widely known, and the Commission no longer recommends the use of this species. Special Condition #3 sets the parameters for the landscaping plan for this development. It calls for drought-tolerant, non-invasive or native species, prohibits the use of pesticides and rodenticides, and requires monitoring of the landscape improvements with a report to the Executive Director at the end of five years.

In summary, the project has no direct impacts on any sensitive resources, but has the potential for indirect impacts on nearby resources through the use of lighting and landscaping. Special Conditions Nos. 3 and 4 will decrease or eliminate impacts to sensitive resources by use of the appropriate type and number of lighting facilities and avoidance of invasive plant species. Therefore, as conditioned, the Commission finds the proposed project consistent with the resource protection policies of the Coastal Act.

4. Water Quality/Landfill Concerns. The following Chapter 3 policies are most applicable to the proposed development:

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, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed public promenade will create new impervious surfaces within the nearshore area of South Shores in Mission Bay Park. To address runoff concerns from these surfaces, the project includes a bio-swale on the inland side of the pathway, running the entire length of the development. Runoff will flow into the swale, which will filter out sediments and pollutants as the water drains into the ground. The swale is designed to intercept all anticipated runoff from the promenade, such that no site runoff will enter Mission Bay. Minor grading is associated with construction of the promenade, to level the area, build the bio-swale and install light standards, and three-foot-high retaining walls are required in several areas and will form the proposed seatwalls. The existing shoreline is ripped along this portion of Mission Bay. To address any potential for erosion due to any proposed project features or construction methods, the project plans include both construction and post-construction BMPs to assure that all erosion is controlled during construction and operation of the public access improvements.

The City of San Diego operated the old Mission Bay landfill, in the general vicinity of the project site, from approximately 1952 until 1959. The landfill reportedly accepted municipal solid waste and some liquid industrial wastes (including acids, alkaline solutions, solvents and paint wastes). The U.S. Environmental Protection Agency has estimated in the past that up to 737,000 gallons of industrial wastes may have been disposed at the landfill during its operation. A more recent study by SCS Engineers, a firm hired to study the landfill as further described below, has identified the current landfill volume to be approximately 786,600 cu.yds., and indicates the landfill covers an area of 113 acres. After closure of the landfill, dredged material from Mission Bay (consisting of mostly fine-grained material) was placed on top of the former landfill surface to a depth of approximately 15 feet in most locations.

In addition to routine monitoring, several additional soil and groundwater investigations were conducted in and around the landfill through 1997. The results of these investigations and continued routine monitoring indicate that low levels of chemicals are detected in soils and groundwater beneath and adjacent to the landfill. According to the RWQCB, these low levels of chemicals do not represent a significant threat to public health or the environment. Furthermore, the California Department of Toxic Substances Control (DTSC) and U.S. EPA previously evaluated the site in 1987 and 1993, respectively, and determined that the site did not pose a significant threat. Moreover, although the Mission Bay Landfill was considered for listing on the EPA's Superfund National Priorities List in the early 1990's, it was determined that the site did not qualify for inclusion on the list.

A few years ago, a group of citizens raised concerns that the landfill was more extensive than previous mapping showed, that it might be leaking into groundwater or Mission Bay, and that it might pose a public health hazard. Based on these concerns, the group opposed any development that would encourage more public use of the area. In 2002, responding to these concerns, the City convened a Technical Advisory Committee (TAC) to investigate the landfill. The TAC hired SCS Engineers to do extensive testing to determine the exact boundaries of the landfill, whether it was leaking or migrating, and to determine whether the landfill posed a public health risk. In August, 2005, SCS released a draft report of their findings, which the TAC members have been reviewing since that time. Member comments have been directed primarily at the format of the report, rather than the substance. When the TAC completes its review, the report will be sent to agencies such as the Regional Water Quality Control Board (RWQCB) and Department of Toxic Substance Control (DTSC), who have oversight responsibilities for the landfill. After their review, a final version of the report will be published.

Portions of the area south of the proposed promenade are within 1,000 feet of the Mission Bay Landfill, although none of the proposed improvements are directly over the landfill's boundaries. This proximity requires concurrence from the Local Enforcement Agency (LEA), which deals with landfill concerns, among other things. A letter from the LEA is attached as Exhibit #5, demonstrating their approval of the proposed development. Exhibit #6 shows the landfill boundaries based on the draft report from SCS, which has been studying the landfill for the past three years, with the proposed project delineated as well. At its closest point, near the eastern end of the proposed development, the project is approximately 150 feet from the boundary, but, for most of the project, it is 500 feet or more distant, and approximately 700 feet at its furthest point.

Commission staff has attended many TAC meetings, and has raised questions about two pending proposals from SeaWorld, the promenade that is the subject of this application, and paving of a parking lot, that will come before the Commission in the future. Staff was advised by TAC members that the TAC will neither endorse or oppose any specific projects, as that is not their function, and that the draft report should provide sufficient data for staff to draw its own conclusions. Based on review of that document, the Commission's Water Quality Unit agrees that extensive testing was conducted, that the landfill boundaries have been correctly mapped, that the proposed promenade is far

removed from the identified landfill boundaries and that construction of the proposed promenade will not result in any public health concerns. Moreover, the project does not include any deep footings or excavations and only minimal grading is required to prepare the site.

In summary, the Commission finds that the proposed development has addressed runoff from new impermeable surfaces with a bioswale designed to capture and filter all runoff from the proposed improvements. The proposal also includes appropriate construction and post-construction BMPs to address any concerns in that regard. Finally, the Commission finds that the construction and operation of the promenade, which is not located on, or immediately adjacent to, the Mission Bay landfill, will not create a public health issue. Therefore, the Commission finds the proposal, as conditioned, consistent with the cited Chapter 3 policies of the Coastal Act.

5. Visual Impacts. Section 30251 of the Coastal Act addresses visual 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....

All of Mission Bay Park is a highly scenic public recreational resource, such that protection and enhancement of visual amenities is a critical concern in any proposed development in the park. The South Shores area of the park is adjacent to the Pacific Passage arm of Mission Bay, and affords panoramic views of bay waters, Fiesta Island, and portions of San Diego in the distance. The proposed promenade will bring more people to this area to enjoy such views. The proposed development is primarily comprised of at-ground improvements, but does include seawall structures approximately three feet in height and, as proposed, 12-foot light standards, although Special Condition #4 would reduce the light standards to two feet in height. These intermittent features are not anticipated to adversely impact the views. The nearest public street, Sea World Drive, is far enough distant that none of these views is readily available from that vantage point, nor will the proposed access improvements be visible from the street. Therefore, no foreseeable adverse effects on the existing scenic coastal area are anticipated, and the Commission finds the project consistent with Section 30251 of the Act.

6. Local Coastal Planning. Mission Bay Park is primarily unzoned. As a whole, Mission Bay Park is a dedicated public park, and SeaWorld, adjacent to the project site, is one of many designated commercial leases in the presently-certified Mission Bay Park Master Plan (land use plan). The Commission has certified a Mission Bay Park Master Plan amendment, incorporating the SeaWorld Master Plan as a component. The plan identifies the South Shores area for general public recreational improvements, including shoreline, the

proposed promenade, other walkways, picnic areas, lawn play areas, etc. The proposed development is thus consistent with the Mission Bay Park Master Plan, including the mitigation requirements of the SeaWorld component. Moreover, it has been found consistent with all applicable Chapter 3 policies of the Coastal Act. No other local discretionary actions are required as a result of the improvements proposed herein. Therefore, the Commission finds that approval of the project will not prejudice the ability of the City of San Diego to prepare a fully certifiable LCP for its Mission Bay Park segment.

7. 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, as conditioned, 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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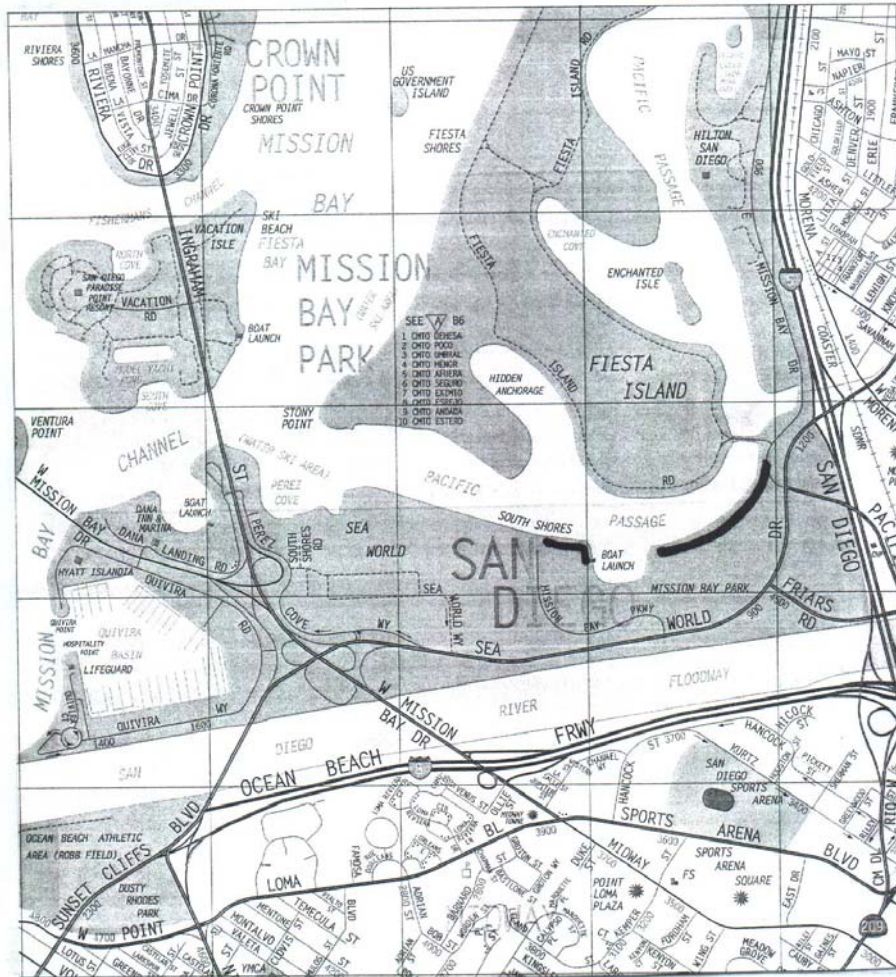


EXHIBIT NO. 1
APPLICATION NO.
6-06-022
Location Map
California Coastal Commission

6-06-022

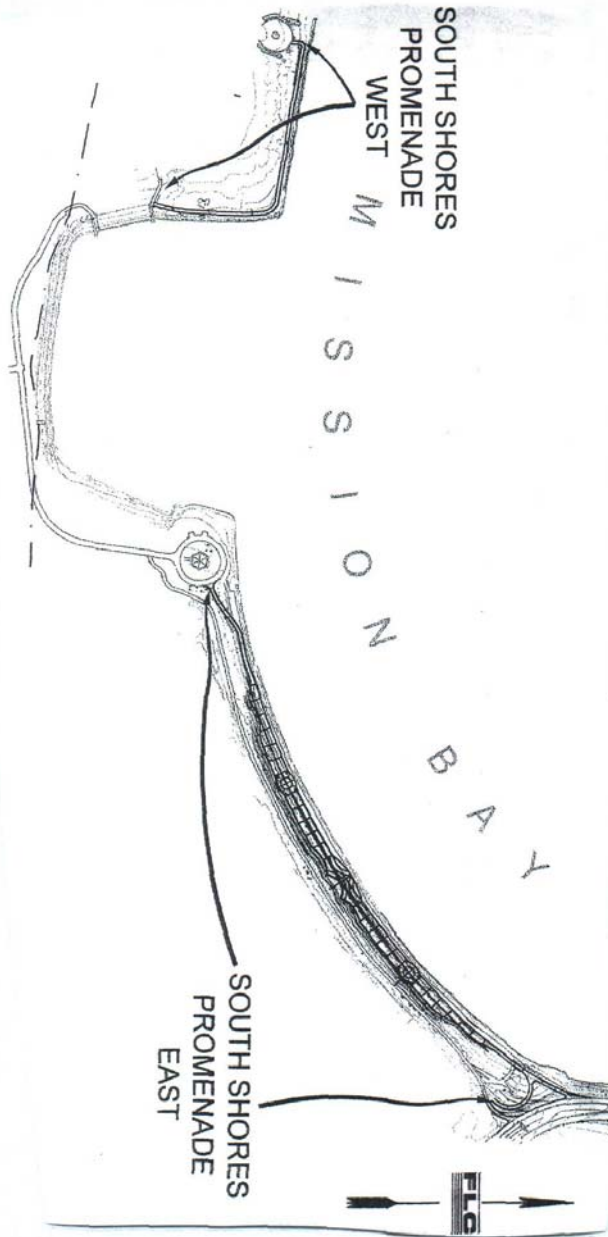
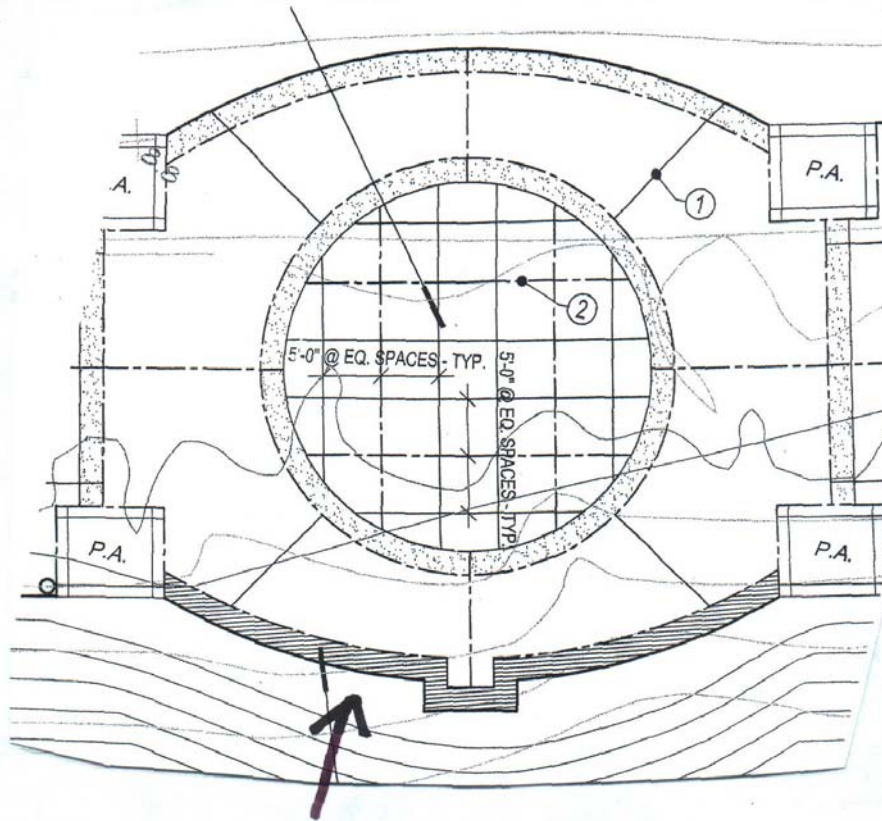


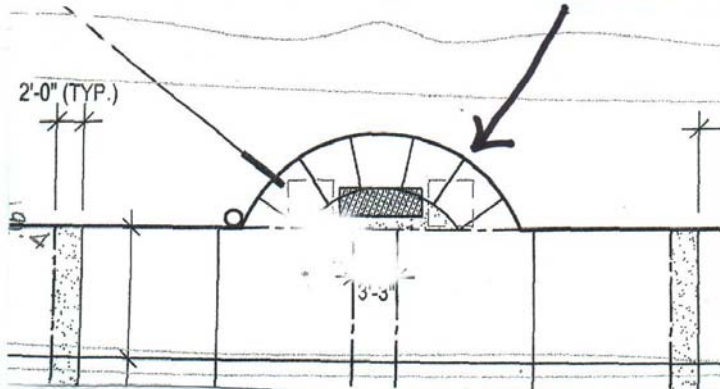
EXHIBIT NO. 2
APPLICATION NO. 6-06-022
Site Plan
 California Coastal Commission

6-06-022



Seat Wall

Bench





U.S. Fish and Wildlife Service
 Carlsbad Fish and Wildlife Office
 6010 Hidden Valley Road
 Carlsbad, California 92009
 (760) 431-9440
 FAX (760) 431-5902 + 9618



CA Dept. of Fish & Game
 South Coast Regional Office
 4949 Viewridge Avenue
 San Diego, California 92123
 (858) 467-4201
 FAX (858) 467-4299

In Reply Refer To:
 FWS-SDG-4122.1

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AUG 03 2004

AUG 06 2004

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

Ms. Ellen Lirely, Coastal Planner
 California Coastal Commission
 7575 Metropolitan Drive, Suite 103
 San Diego, CA 92108-4402

Re: Comments on the South Shores Promenade Lighting Study for Coastal Development
 Permit Application No. 6-03-068 (Sea World San Diego)

Dear Ms. Lirely:

The California Department of Fish and Game (Department) and the U.S. Fish and Wildlife Service (Service), collectively the "Wildlife Agencies," have reviewed the South Shores Promenade Lighting Study (Study) prepared by Merkel & Associates, Inc., dated May 7, 2004. The study area is located along the south shore of Mission Bay, off Sea World Drive, east of the South Shores Boat launch, in the City of San Diego, California. There are currently 18 light fixtures present along the sidewalk at the South Shores boat launch area. Ninety-four additional light fixtures, of the same specifications as the existing lighting, are proposed further east along the South Shores Promenade (walkway). The new lights would be positioned closer to one another, creating a higher illumination than at the boat launch area.

The Study used a Licor Photometric Sensor to measure radiation at various distances away from the existing lights at the boat launch area. The Study also measured ambient light radiation levels at the following sensitive biological areas: (1) the nesting colony of the federally and state listed California least tern (*Sterna antillarum brownii*) at Stoney Point, which is across the bay at Fiesta Island and approximately 5,280 feet away from the walkway; (2) the Southern Wildlife Preserve located 1,300 feet south of the walkway; and (3) the San Diego River located 4,260 feet south from the walkway. A model, based on the degradation of light intensity with distance from discrete point sources, was used to predict the additive effects of lighting by the proposed lights. The model utilized the degradation curves measured in the field from the existing lighting as depicted in Figure 2 of the Study. On the night of the sampling, which had scattered low clouds, the ambient light at Stoney Point was measured to be between 0.00013 and 0.00026 lux, while the ambient light at the San Diego River sensitive site was measured to be 0.00023 lux. Based on the model, the Study indicates that the illumination would range between 0.0004 and 0.0036 lux within the expected sphere of influence of the proposed lighting (91 feet) (Figure 3 of the



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California Coastal Commission

Ms. Lirely (FWS-SDG-4122.1)

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Study). Assuming the new lights would be the same as the existing lights at the boat launch area (i.e., Louis Poulsen AH Nyhavn lights on 12-foot high poles), the Study concludes that the proposed lighting at the walkway "will have such a limited sphere of influence that it is not expected to have a negative impact on sensitive biological receptors identified near the project site."

While we agree that the proposed lighting is not likely to illuminate Stony Point, the Southern Wildlife Reserve, or the San Diego River, we disagree that the lighting will not have any negative impacts on sensitive resources. Artificial lighting generally threatens wildlife by disrupting biological rhythms and otherwise interfering with the behavior of nocturnal animals (see contributions from Artificial Night Lighting Conference, 2002). Nocturnal and migrating birds, migrating bats, insects, fish, and sea turtles are particularly impacted by artificial night lighting (Evans Ogden 1996 and citations therein). Nocturnal birds use the stars and moon for navigation during migrations. These birds can become disoriented when they fly through a brightly lit area, which can lead to injury and/or death. Artificial night lighting also disrupts the behavior of fish and amphibians, and billions of moths and other insects are killed from the lights each year. Artificial lighting can also affect aquatic invertebrates that are prey for other animals. Some zooplankton migrate vertically in response to lighting. In the evening, they rise in the water column to feed on drifting microscopic plants (phytoplankton). When daylight approaches they migrate down to avoid predators. However, artificial lighting may keep them from rising and feeding (Moore et al. 2000). Reduced predation on the phytoplankton can result in phytoplankton blooms which deplete the dissolved oxygen in the water and shade aquatic vegetation (Harder. 2004). Reduced oxygen levels can then negatively affect fish or other organisms depending on dissolved oxygen in the water column.

Because of the potential negative impacts on sensitive resources, we are concerned about the increased area and intensity of illumination that will result from adding 94 lights to the walkway. The number of lights to be added to the walkway seems excessive in comparison to the boat ramp area since the walkway is not much longer than the launch ramp area currently lit with only 18 lights (Figure 3 of the Study). We request an explanation as to the need for the proposed lighting. The walkway has been there for some time, presumably serving its functions well without lighting. We also are concerned that the installation of the proposed lighting may lead to installation of additional lighting further east along the path that continues along the southern shore of Mission Bay, east of Tecolote Creek. If there are plans for additional lighting further east, we suggest that all proposed lighting be analyzed simultaneously with consideration of the concerns identified in our comments.

We question if a California Environmental Quality Act document has been or will be prepared for this project. Page 3 of the Study states, "The amount of light that will be generated by the promenade lighting is minimal, and much less than other existing sources of light in the area." If an environmental impact report were done for this project, it would have to analyze the indirect and cumulative impacts of the proposed lighting. One potential cumulative effect of artificial night lighting is sky glow (illumination of the night sky from anthropogenic light reflecting off moisture and particles in the atmosphere), which can result in potentially deleterious effects on biological resources. The Study does not address sky glow as light levels were measured at ground level, measurements were focused on individual light sources, and only direct illumination (i.e., direct effects) was addressed.

Ms. Lirely (FWS-SDG-4122.1)

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In conclusion, we suggest that the applicant demonstrate a need for the proposed project. If the project proceeds, we recommend the following measures to minimize the impacts of artificial lighting.

1. Place lights only where needed and reduce the number of lights to the minimal amount necessary for lighting the walkway.
2. Place the lights on low-standing (e.g., 2-foot tall) bollards, rather than on the 12-foot tall light standards.
3. Shield all lighting fixtures and utilize flat-bottomed lights so illumination is directed downward onto the walkway and does not scatter.
4. Use low-pressure sodium bulbs that emit only a narrow range of yellow light. This monochromatic yellow light minimizes ecological disruptions because it is not perceived as "natural" light. According to Darlene Walter, Design and Engineering, Sea World San Diego, the types of lights proposed for the project are high-pressure sodium bulbs.

We thank you for the opportunity to review this project. Please contact Marilyn Fluharty of the Department at (858) 467-4230 or Carolyn Lieberman of the Service at (760) 431-9440 if you have any questions or comments concerning this letter.

Sincerely,



Therese O'Rourke
Assistant Field Supervisor
U.S. Fish and Wildlife Service



Donald Chadwick
Habitat Conservation Planning Supervisor
California Department of Fish and Game

cc: Ms. Libby Lucas, Department of Fish and Game, Region 5
Ms. Darlene Walter, SeaWorld, San Diego

References

Artificial Night Lighting Conference, 2002. Ecological Consequences of Artificial Night Lighting. The Urban Wildlands Group, <http://www.urbanwildlands.org/conference.html>

Evans Ogden, L.J.E. 1996. Collision course: The hazards of lighted structures and windows to migrating birds. A special report for the World Wildlife Federation Canada and the Fatal Light Awareness Program.

Harder, Ben. 2004. *Degraded Darkness in Conservation in Practice*, a publication of the Society for Conservation Biology. Spring, 2004. Vol 5 no.2

Ms. Lirely (FWS-SDG-4122.1)

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Moore, M. V., Pierce, S. M. Walsh, H. M. Kvalvik, S. K., and J. D. Lin. 2000. Urban light pollution alters the diel vertical migration of *Daphnia*. *Verh. Internat. Verein. Limnol.* 779-782.



THE CITY OF SAN DIEGO



May 16, 2006

Ms. Darlene Walter
SeaWorld Adventure Parks
500 Sea World Drive
San Diego, CA 92109-7904

Dear Ms. Walter:

Subject: South Shores Promenade, Mission Bay Landfill Postclosure Land Use

On April 13, 2006, the City of San Diego Solid Waste Local Enforcement Agency (LEA) received a copy of the most current *South Shores Promenade at Mission Bay* drawings dated October 18, 2005. In addition, the submittal included a copy of the April 6, 2006, URS Corporation letter confirming the *Construction Work Health & Safety Guidelines and Community Health and Safety Plan, Public Promenade Project, SeaWorld Adventure Park, San Diego, California* dated November 24, 2003 and *Community Health and Safety Plan, Public Promenade Project, SeaWorld Adventure Park, San Diego, California* dated May 17, 2004, remain applicable to the project and did not require revision.

The LEA completed its review and approves the proposed South Shores Promenade at Mission Bay project with the following conditions:

1. Notify LEA 48 hours prior to construction start up and provide name and emergency phone number for Site Safety Manager (reference: Community Health and Safety Plan section 2.3).
2. Though it is not anticipated that any buried wastes will be encountered during any of the subsurface/grading activities, in the event that waste is inadvertently exposed, immediate notification to the LEA is required.

Should you have any questions or concerns regarding the above conditions, please contact me at (619) 533-3694.

Sincerely,

Rebecca Lafreniere, REHS
Solid Waste Inspector III

cc: John Odermatt, RWQCB
Ellen Lirley, CA. Coastal Commission
Steven Fontana, City of San Diego ESD
Div Brasted, City of San Diego P&R
Ray Purtee, City of San Diego ESD
Martha Blake, City of San Diego DSD-EAS



Solid Waste Local Enforcement Agency (LEA) • Development Ser

1010 Second Avenue, Suite 600, MS 606L • San Diego, CA 92101-4998
Tel (619) 533-3688 Fax (619) 533-3689

EXHIBIT NO. 5
APPLICATION NO.
6-06-022
LEA Letter
California Coastal Commission

