

CALIFORNIA COASTAL COMMISSION

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 Staff: D. Lilly-SD
 Staff Report: January 25, 2007
 Hearing Date: February 14-16, 2007

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-102

Applicant: SDSU Research Foundation Agent: Eric Elson

Description: Construction of three PVC seawater pipelines (two 6-inch supply and one 12-inch return) extending underground from existing aquatic research laboratory into the NTC Boat Channel.

Zoning	OP (Open Space – Park)
Plan Designation	Boat Channel

Site: 4165 Spruance Road at the former Naval Training Center, NTC Boat Channel, Peninsula, San Diego, San Diego County. APN 450-790-08; 450-790-09.

Substantive File Documents: CDP #6-03-128; Pre-Construction Eelgrass and *Caulerpa* Survey by Merkel & Associates, Inc. dated 10/26/06; RWQCB Tentative Order No. R9-2007-0006; Certified Peninsula Community Plan and City of San Diego LCP Implementing Ordinances; Certified NTC Precise Plan and LCP

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed pipeline project. The purpose of the pipelines is to service aquariums where the existing SDSU laboratory will study environmental problems caused by urbanization. Any impacts to existing eelgrass resulting from placement of the pipes will be mitigated consistent with the requirements of the Southern California Eelgrass Mitigation Policy. No impacts to water quality are anticipated. As conditioned, the project is consistent with Chapter 3 of the Coastal Act and the certified City of San Diego NTC LCP.

Standard of Review: Chapter 3 of the Coastal Act with the certified NTC LCP used as guidance.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-06-102 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. Eelgrass Impacts. **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 plan for the eelgrass impacts that includes the following provisions:

- a. Permanent and temporary impacts to eelgrass resources shall be limited to impacts within the footprint of work shown in Figure 2 of the Pre-Construction Eelgrass and *Caulerpa* Survey by Merkel & Associates, Inc. dated 10/26/06.
- b. A post-construction survey shall be completed within 14 days following construction to determine the actual footprint of eelgrass impact. Within 30 days after completion of the post-construction survey, the permittee shall submit a report to the Executive Director that includes the post-construction survey. The report shall

identify the amount of eelgrass impacted by the project based upon comparison of the pre- and post-construction surveys.

c. A follow-up post-construction survey shall be completed 12 months following construction to determine long-term project impacts to eelgrass. Within 30 days after completion of the post-construction survey, the permittee shall submit a report to the Executive Director that includes the post-construction survey. The report shall identify the amount of eelgrass impacted by the project based upon comparison of the pre- and post-construction surveys.

c. If either the 14-day or 12 month post-construction survey identifies that eelgrass impacts have occurred beyond an impact corridor of 1 meter wide, a permit amendment is required to address the identified impacts. Eelgrass impacts shall be mitigated by replanting eelgrass at the project site at a ratio of not less than 1.2 square feet of mitigation area for each square foot of area impacted.

The permittee shall undertake development in accordance with the approved mitigation 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 legally required.

2. Invasive Species. If the start of in-water construction occurs later than March 31, 2007, then prior to the commencement of construction, the applicant shall provide evidence that dredging of the channel 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 dredging, 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 dredging project has been revised to avoid any contact with *Caulerpa*. No changes to the dredging project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The project consists of construction of two 6-inch intake pipelines into the Navy-owned NTC boat channel and one 12-inch discharge line to the channel riprap. The three pipelines are currently stubbed underground on City property, approximately 80 feet from the channel, and were placed during construction of the existing SDSU environmental research laboratory, known as the Coastal Waters Laboratory (CDP #6-03-128). Construction will consist of laying PVC intake pipes along the channel bottom, secured by concrete blocks, to minimize potential disruption of channel sediments. The two 6-inch supply lines will be extended approximately to the midpoint of the boat channel, and the 12-inch discharge pipe will terminate at the riprap along the channel, next to an existing storm drain outlet.

The Coastal Waters Laboratory is a non-commercial aquatic research facility that focuses on environmental and ecological programs caused by urbanization in the coastal environment at the land-water interface. The seawater will be used in maintaining flow-through aquariums used for academic research at the laboratory.

As proposed, no additives, chemicals or non-endemic species would be incorporated into the water prior to discharge, except for possibly natural fish food. The applicant has indicated that the proposed discharge will essentially be the same quality as the source in the channel, and discharge water temperature will be the same as ambient water temperature. The two intake lines will terminate in concrete inlet boxes with grates/screens to ensure debris and various species of aquatic life do not get pulled into the system.

From July 1995 to September 2001, SDSU operated a smaller, more temporary seawater system at the NTC boat channel. This system was essentially a small scale version of the proposed new system, with the main difference being amount of intake/discharge and

diversity of research. At that time, the entire site was still under Navy ownership. On February 28, 1995, the Commission reviewed that project for federal consistency and determined that the project would not affect land and water uses or natural resources of the coastal zone, and issued a “No Effects” letter.

Since that time, the City of San Diego prepared a certified NTC Precise Plan and Local Coastal Program (LCP) covering the 361 acres of NTC that was conveyed to the City. The LCP includes the land portion of the site, but the boat channel is still Navy property. However, the entire site is located on public trust lands, and is thus within the Commission's original jurisdiction. Chapter 3 of the Coastal Act is the standard of review, with the certified NTC Precise Plan used as guidance.

2. Sensitive Resources/Visual Quality/Public Access. Several policies of the Coastal Act provide for the protection, preservation and enhancement of the marine environment and coastal wetlands and species that depend on those wetlands as habitat. 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..

Section 30233 states, in part:

(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:

(1) 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.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.
[...]

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 NTC Boat Channel is an extension of San Diego Bay ranging in depth from intertidal conditions to approximately -24 feet mean lower low water. The Negative Declaration for construction of the existing laboratory describes the area as one of limited tidal

exchange and mixing, yet one that supports a dense, healthy, continuous eelgrass meadow.

The placement of pipes for research purposes is a permitted use under Section 30233 of the Act, which allows for impacts to open coastal waters and wetlands for nature study. The project has been designed to minimize impacts to sensitive habitat. In-water construction will be minimized by assembling the pipes on land prior to placing the pipes in the channel.

A pre-construction eelgrass and *Caulerpa* survey was performed at the site in October 2006. The survey did not find any evidence of the invasive green alga *Caulerpa taxifolia*. Typically, the Commission requires that testing for *Caulerpa* occur no sooner than 90 days prior to the commencement of dredging. The proposed project is scheduled to begin construction in March, approximately 120 days after the survey date. However, Commission staff consulted with staff at the National Marine Fisheries Service, who indicated that while 90 days is the typical requirement, alga growth is slow during the winter months, and the potential for new alga growth to have occurred between October and March is minimal. Thus, there is no need for an additional survey as long as water construction begins during March. Should the start of construction be delayed beyond the end of March, however, then a new survey must occur.

Special Condition #2 requires that if in-water construction commences after March 31, 2007, prior to commencement of development, the applicant must survey the project area and any other areas where the bottom could be disturbed by project activities, for the presence of *Caulerpa*. If *Caulerpa* is found to be present in the project area, then prior to commencement of any dredging, 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.

The pre-construction survey determined the project could have minor impacts on eelgrass from placement of the pipes and the concrete blocks. However, the project has proposed to comply with the Southern California Eelgrass Mitigation Policy. This policy allows for an exclusion from mitigation requirements, which states “placement of single-pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than 1 meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies.” The exclusion only applies after a post-construction survey required at 30 days and 12 months after construction ensure impact to eelgrass beds do not exceed the 1 meter corridor. The applicant has indicated that staff at the Army Corps of Engineers have concurred with this approach for the proposed project, and the Commission’s ecologist similarly does not object. Consistent with typical Commission eelgrass monitoring practice, Special Condition #1 requires submittal of an eelgrass monitoring plan that includes a requirement to perform post-construction surveys at 14 days post-construction, and submit the survey to the Executive

Director by 30 days post construction. If the surveys determine that more than the 1 meter-wide impact corridor has been affected, an amendment to this permit is required to mitigate for the impacts.

The California Regional Water Quality Control Board (RWQCB) has issued a tentative order approving the proposed discharge as a minor discharge. The Order is scheduled to be adopted by the Board on February 14, 2007. The Order includes detailed limits on the amount and content of the allowed discharge in order to ensure no impacts to water quality result from the project. The Commission's water quality staff has reviewed the project and determined that the project is consistent with the Coastal Act requirements for the protection of water resources, and no impacts related to or caused by the use of PVC pipes are expected.

The proposed intake pipes will be located on the channel floor, and will not be visible from surrounding areas. The proposed discharge pipe will be located in the riprap channel, and must be located above the mean high tide line to operate effectively. However, the proposed discharge pipe location is next to an existing City storm drain and just bayward of an existing gas pipeline. The addition of one a 12-inch pipeline in the riprap channel will not substantially impact the visual quality of the shoreline.

The subject site is adjacent to the area being redeveloped as a public esplanade as part of the overall NTC redevelopment. The esplanade is a separate legal lot from the subject site. The proposed project would not encroach upon or impact the esplanade improvements, or impede public access, consistent with Section 30604(c).

Therefore, as conditioned, the Commission finds the project consistent with the resource, public access, and visual protection policies of the Coastal Act.

4. Local Coastal Planning. The subject site is located at the former Naval Training Center (NTC), now known as Liberty Station. The former NTC was operated as a military facility by the federal government from 1922 to 1997. In July 1993, the U.S. Navy declared its intention to close the base under the terms of the Base Closure and Realignment Act of 1990, and the City of San Diego began planning for the reuse of the site in 1993.

The NTC Precise Plan designates the upland portion of the subject site for use as MWWDC complex, and the site is zoned "Commercial Community," which is for community-serving commercial services, retail uses, and limited industrial uses. The water area is designated "Boat Channel" and zoned OP (Open Space – Park). The subject site is located on public trust lands and is thus within the Commission's original jurisdiction. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for NTC.

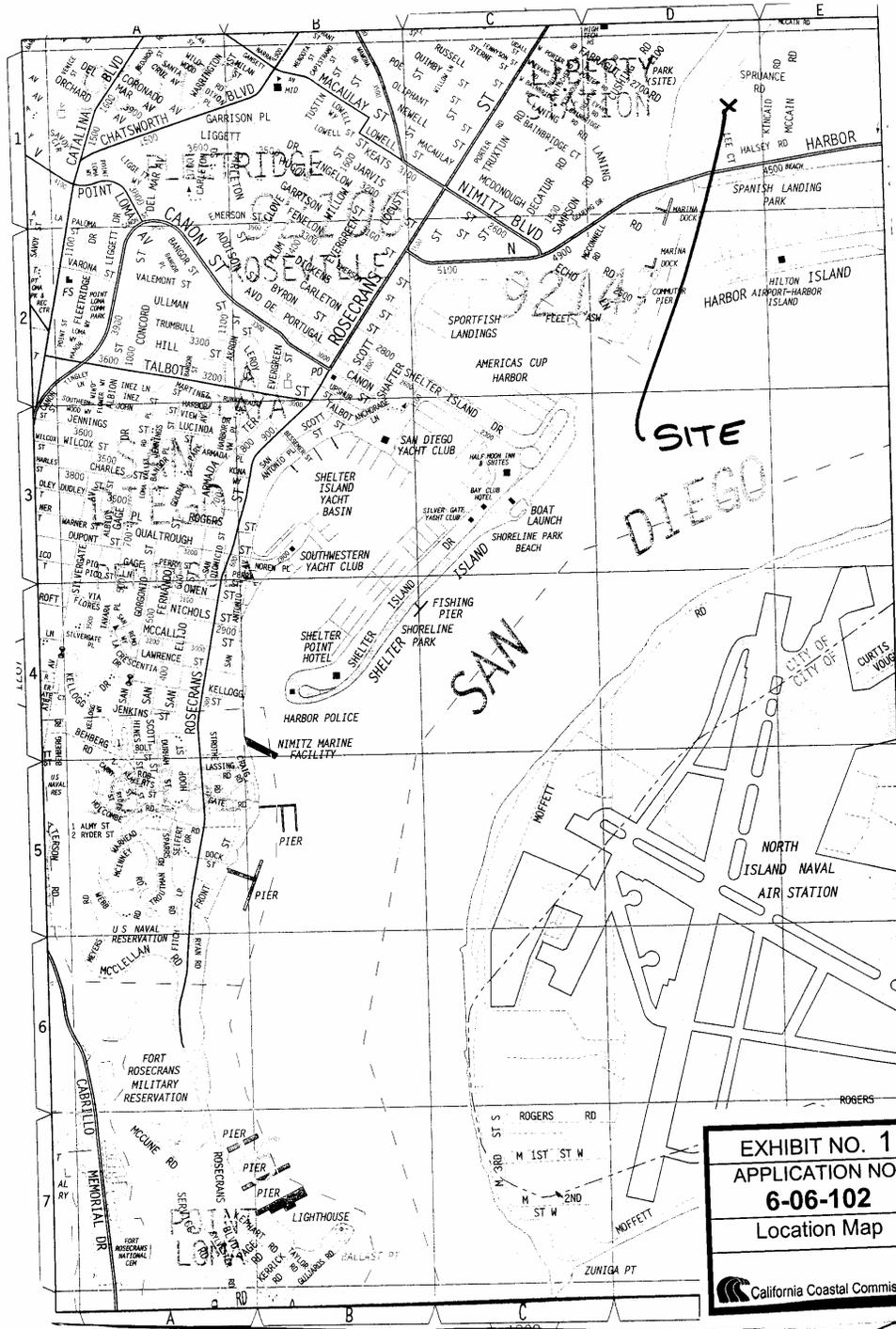
5. Consistency with the California Environmental Quality Act (CEQA).

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 eelgrass monitoring and mitigation, 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.





VIEW OF PROPOSED CONSTRUCTION SITE (EAST BANK OF NTC BOAT CHANNEL) LOOKING NORTH