

CALIFORNIA COASTAL COMMISSION

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Filed: 6/30/22
180th Day: 12/27/22
Staff: A.Llerandi-SD
Staff Report: 10/20/22
Hearing Date: 11/16/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0325

Applicant: City of San Diego

Agent: Kelsey Hall

Location: Kendall Frost Reserve, 2055 Pacific Beach Dr,
Mission Bay Park, San Diego, San Diego County
(APN(s): 424-510-01-00, 424-510-03-00, 424-510-05-00)

Project Description: Native habitat enhancement consisting of removal of debris and invasive vegetation, planting native vegetation, removing 1,000 feet of 6-ft. tall chain link fencing topped with 1 foot of barbed wire at the base of the slope next to Crown Point Drive and erecting new 1,000 feet of 6-ft. tall chain link fencing topped with 1 foot of barbed wire at the top of the slope, and repairing fencing and signage at the Kendall Frost Reserve in Mission Bay Park.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of San Diego is proposing the Kendall-Frost Marsh Reserve (KFR)/Northern Wildlife Preserve (NWP) Native Habitat Enhancement Project (project), located in the northeast corner of Mission Bay Park in the City of San Diego. The project includes the removal of invasive plant species and debris from within the wetlands and uplands, as well as removal of 1,000 feet of existing 6-ft tall chain link fencing topped with an

additional foot of barbed wire located at the base of the slope adjacent to Crown Point Drive on the west side of KFR/NWP, erection of a new 1,000 feet of 6-ft tall chain link fencing topped with an additional foot of barbed wire at the top of the slope next to the sidewalk, and enhancement of 2.2 acres of disturbed upland with native vegetation.

The impetus behind the restoration and fence relocation is compliance with a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2020-0150 (Settlement Order) between the City and the Regional Water Quality Control Board (RWQCB). The Settlement Order is the result of the City discharging untreated raw sewage into Tecolote Creek in January 2016. The City is mandated by the Settlement Order to restore 2.2 acres of habitat in Kendall Frost, which includes the entirety of the slope along Crown Point Drive south of the Crown Point Villas Condominiums.

However, erection of a new 1,000-foot long six-foot tall chain link fence topped by 1 foot of barbed wire along the sidewalk on Crown Point Drive would be loved in the scenic viewshed of the reserve and Mission Bay beyond. Most of the reserve is already surrounded by chain link fence topped with barbed wire abutting the sidewalk, encroaching on public views, but because the existing fence in this segment is at the bottom of an earthen slope, views of the reserve in this area are expansive and unobstructed.

Commission staff conferred with the City regarding an alternate fence design lower in height, as has been done at other preserves such as the Tijuana River National Estuary, or only relocating the fence halfway up the slope so that members of the public would be able to see over the top of it when looking out toward Mission Bay. According to the City, installing the fence only half-way up the slope would impact approximately 2,000 square feet (0.046 acre) of existing native vegetation during installation and reduce the restoration of the project by approximately 0.3 acres, which would not meet the requirements of the Settlement Order. The City further indicated that a six-foot high fence topped with barbed wire is necessary to prevent encroachment by pedestrians, homeless encampments, wind-blown trash, and predation of the nesting birds within.

While protection of the habitat and the wildlife within is a common goal between the Coastal Commission and the City, a fence lower in height can balance the goals of habitat protection and view protection. A four-foot fence should be sufficient notice and deterrent to pedestrians that they should not cross down the steep slope into the reserve. Regarding homeless encampments, while the City of San Diego does have a sizeable transient population, no history of encampments in the reserve, or Mission Bay Park as a whole, has been communicated to the Commission in the past, and to date, the City appears to be vigilant in preventing such encampments from arising in Mission Bay Park. A four-foot fence should also be sufficient to keep wind-blown litter on the sidewalk from entering the reserve.

Regarding predation, monitoring reports have identified predation primarily arises from animals such as raccoons and opossums. To counter this, the nesting platforms within KFR/NWP have covers that the birds can enter but predators cannot. Given the size and dexterity of raccoons and possums, the Commission's staff ecologist, Dr. Laurie

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Koteen, does not believe a six-foot tall fence would be very effective in keeping raccoons out. Thus, a four-foot-tall fence that allows unimpeded view of Mission Bay should not pose a substantial difference in predator control efforts.

Thus, while the goals and methods of the project are supportable, the proposal of the barb-wired topped fence along Crown Point Drive is not the least impactful feasible design. To address this, **Special Condition No. 1** requires the submittal of revised final plans that delete the proposed six-foot tall, barbed wire topped fence and replacement with a fence no taller than four feet in height with no barbed wire. Because the project site is a coastal wetland reserve, **Special Condition No. 2** requires the submittal of a construction staging and storage plan siting such activity outside of the wetlands and public parking in this coastal destination and within the existing disturbed areas adjacent to the reserve. **Special Condition No. 3** requires the submittal of a final construction pollution prevention plan detailing the methods that will prevent debris and detritus from leaving the project area and entering coastal waters. **Special Condition No. 4** requires the identification of the legal site outside the coastal zone where all material taken off site will be disposed of. Finally, because the reserve serves as an important breeding ground for sensitive bird species, **Special Condition No. 5** requires that for work occurring during the bird breeding season, pre-construction surveys be taken to identify any active nests so as to take appropriate buffer and avoidance actions.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0325, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

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[Exhibit 5 – Tijuana River Valley Site Photos](#)

[Exhibit 6 – Proposed Fence Design](#)

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0325 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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.

I. 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 applicant 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 of 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 applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

1. Revised Final Plans

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and written approval of the Executive Director, a full-size set of the following final plans, modified as required below:

(1) Final restoration and enhancement plan that conforms to the “Work Plan for the Kendall-Frost Marsh Reserve/Northern Wildlife Preserve Native Habitat Enhancement Project,” submitted to the Coastal Commission on July 5, 2022, except that it shall be modified to delete the new six-foot tall fence with barbed wire along Crown Point Drive and replace it with a visually permeable fence no taller than four feet in height and not containing barbed wire, including, but not limited to, railings or post-and-rope.

b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Final Construction Staging and Storage Plans.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and written approval of the Executive Director, a full-size set of the following final plans:

(1) Final construction staging and storage plans that site all construction staging and storage and worker parking outside of public parking, beach area, and coastal waters, and within the existing disturbed areas adjacent to the University of California, San Diego trailer at the corner of Crown Point Drive and Pacific Beach Drive, and the rectangular parcel of City of San Diego land on Pacific Beach Drive.

b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

3. Construction Pollution Prevention Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a Construction Pollution Prevention Plan that demonstrates that all construction,

including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

a) **General Construction-Phase Best Management Practices**

- i. Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction and demolition activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater runoff, and minimize land disturbance and soil compaction, as applicable. The plan shall specify the description and location of all BMPs to be implemented during construction and demolition.
- ii. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training), to protect coastal water quality.
- iii. All BMPs shall be maintained in a functional condition throughout the duration of the construction and demolition activities and shall be promptly removed when no longer required.
- iv. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways, and erosion control.
- v. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.

b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
- ii. Grading shall be avoided during the rainy season (from November 15th to April 15th), unless the Executive Director grants an exemption or extension.
- iii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

- iv. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sediment from construction-related activities from entering coastal waters or the storm drain system.
 - v. Tracking control BMPs (such as a stabilized construction entrance/exit, or street sweeping) shall be installed or implemented as needed to prevent vehicles leaving the construction area from tracking sediment off-site.
 - vi. To minimize wildlife entanglement and plastic debris pollution, the use of temporary erosion and sediment control products that contain plastic netting (such as fiber rolls, erosion control blankets, and mulch control netting) shall be prohibited. Heavy-duty silt fences reinforced by plastic or metal netting shall also be prohibited. Only products that contain natural-fiber netting, or that do not contain netting, shall be allowed.
- c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction and demolition activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
- i. **Stockpile and Debris Management**
 - A. All stockpiles, demolition and construction materials, debris, and waste shall be covered during rain events, protected from stormwater runoff using temporary perimeter barriers, and located a minimum of 50 feet from coastal waters and storm drain inlets.
 - B. Demolition or construction waste and debris shall be removed from work areas as soon as feasible, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters or the storm drain system. Adequate disposal facilities shall be provided for solid waste produced during demolition or construction activities.
 - C. Trash receptacles shall be provided on-site and covered during rain events, and all trash shall be disposed of in the proper trash and recycling receptacles by the end of every construction day.
 - D. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

ii. **Spill Prevention and Equipment Maintenance**

- A. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The discharge of any construction products or materials into coastal waters, drainage courses, or the storm drain system shall be prohibited.
- B. Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as feasible.
- C. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids and shall be serviced immediately if a leak is found.
- D. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other pollutants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- E. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into storm drain inlets. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

iii. **Control of Non-Stormwater Runoff**

- A. Runoff control BMPs (such as a concrete washout facility or a dewatering tank) shall be installed or implemented to retain, infiltrate, or treat non-stormwater runoff resulting from demolition and construction activities.
- d) **Additional BMPs for Construction Adjacent to Coastal Waters.** The permittee shall implement additional BMPs to protect coastal water quality during demolition and construction activities taking place adjacent to Mission Bay, if there is a potential for demolition or construction debris, materials, or chemicals to enter coastal waters, including:

- i. No construction equipment, debris, or materials shall be allowed on the beach or shoreline at any time.
 - ii. Tarps or similar devices shall be used during demolition or construction activities adjacent to Mission Bay to capture and remove debris, oil, grease, rust, sawdust, fine particles, and spills to prevent these materials from entering coastal waters.
 - iii. Vegetable oil-based hydraulic fluids shall be used in heavy equipment used adjacent to coastal waters, if feasible, for demolition and construction activities lasting one week or longer. Standard hydraulic fluids are based on petroleum products, and due to their high aquatic toxicity, they pose a risk if leaked or spilled in or near sensitive aquatic habitats. Vegetable oil-based hydraulic fluids are formulated for rapid biodegradability and low aquatic toxicity, and do not bioaccumulate in aquatic organisms.
 - iv. Biodiesel fuel shall be used in heavy equipment used adjacent to coastal waters, if feasible, for demolition and construction activities lasting one week or longer. Diesel fuel may leak or spill from heavy equipment and vehicles used in construction and demolition, and where these activities take place near coastal waters, diesel poses a risk of aquatic toxicity. Biodiesel is a non-petroleum alternative fuel that is less toxic than diesel fuel and can be used in construction equipment and vehicles operating near sensitive aquatic habitats.
- e) **Construction Site Map and Narrative Description.** The Construction Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
 - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, minimize the discharge of other pollutants resulting from construction and demolition activities, and control non-stormwater runoff. Include calculations that demonstrate proper sizing of BMPs, as applicable.
 - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

4. Disposal of Debris.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location the location for the disposal of all debris. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successor in interest.

5. Sensitive Species Monitoring

PRIOR TO ANY CONSTRUCTION ACTIVITIES during bird breeding season of any year (February 15 – September 15), a qualified biologist shall conduct a survey within 500 feet of the project site for active nests no more than seventy-two hours prior to any scheduled development. If an active nest is located, then a qualified biologist shall monitor the nest daily until project activities are no longer occurring within 300 of the nest or within 500 feet of active birds, or until the young have fledged and are independent of the adults or the nest is otherwise abandoned. The monitoring biologist shall halt construction activities if he or she determines that the construction activities may be disturbing or disrupting the nesting activities. The monitoring biologist shall make practicable recommendations to reduce the noise or disturbance in the vicinity of the active nests or birds. This may include recommendations such as (1) turning off vehicle engines or other equipment whenever possible to reduce noise, and (2) working in other areas until the young have fledged. The monitoring biologist shall review and verify compliance with these avoidance boundaries and shall verify that the nesting effort has finished in the written report. Unrestricted construction activities may resume when no other active nests are found. The results of the site survey and any follow-up construction avoidance measures shall be documented by the monitoring biologist and submitted to the San Diego District office of the California Coastal Commission.

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

The City of San Diego is proposing the Kendall-Frost Marsh Reserve (KFR)/Northern Wildlife Preserve (NWP) Native Habitat Enhancement Project, located in the northeast corner of Mission Bay Park in the City of San Diego. The project includes the removal of invasive plant species and debris from within the wetlands and uplands, as well as removal of 1,000 feet of existing 6-ft tall chain link fencing topped with an additional foot of barbed wire located at the base of the slope adjacent to Crown Point Drive on the west side of KFR/NWP, erection of a new 1,000 feet of 6-ft tall chain link fencing topped with an additional foot of barbed wire at the top of the slope next to the sidewalk, and enhancement of 2.2 acres of disturbed upland with native vegetation. Following implementation of the above project, the project areas will follow two maintenance and monitoring timelines: a 12-month maintenance and monitoring timeline for the Regional Water Quality Control Board, and 25 months for the City of San Diego.

The KFR/NWP is bordered by Crown Point Drive and Crown Point Villas condominium complex on the west, Pacific Beach Drive to the north, Campland on the Bay recreational vehicle facility to the east, and Crown Point Park and the waters of Mission Bay on the south. The KFR parcel is owned and managed by the University of California, San Diego (UCSD) Natural Reserve System, and occupies the northern portion of the marsh and adjacent habitats, except for a rectangular upland parcel owned by the City in the northeastern corner that is not included in the project. UCSD owns a trailer and shade structure in the northwest corner of KFR, which is primarily accessed through a gate on Pacific Beach Drive near the trailer, but additional gates exist along Pacific Beach Drive, Crown Point Drive, and Crown Point Park. The NWP is immediately adjacent to the south of KFR and is owned and managed by the City of San Diego Parks and Recreation Department as part of the overall Mission Bay Park regional parkland.

The KFR/NWP includes emergent salt marsh habitats at varying elevations, upland habitats, salt pannes, channels, and open water. Upland slopes separate the salt marsh from most of the developed surfaces adjacent to the preserve. A channel originating from a storm drain at Olney Street separates the marsh from Campland on the Bay to the east. Tidal flows enter and exit the marsh from the southeast via a network of channels of varying lengths and sizes, except for the southern end, which is bordered by a section of beach and dune habitat.

In September 1993, the Commission approved Coastal Development Permit (CDP) No. 6-93-96 for the installation of 6-foot-high chain link fence topped with barbed wire around segments of Mission Bay Park Northern Wildlife Preserve and buoys in Mission Bay at the southern end. The approved fence segments were almost entirely at the northwest and northern boundaries of KFR/NWP, with very little overlap with the 1,000-foot southwest segment currently proposed to be removed and replaced with a new fence upslope. CDP Amendment No 6-93-096-A1 was later approved by the Commission.

Land Use Plan

Approximately one half of Mission Bay Park was once state tidelands. Mission Bay Park currently has a certified Land Use Plan, the Mission Bay Park Master Plan, that was first certified in 1994 and was last updated in 2002. Within the master plan is a section entitled “De Anza Special Study Area” that envisions De Anza peninsula as a “flexible planning area in which a number of potential uses, both public and private, can be accommodated under varying intensities and configurations,” though the site is still subject to the goals and objectives established by the master plan. However, the City has not fully certified Mission Bay Park to incorporate it into the certified LCP. Thus, the project site, like Mission Bay Park as a whole, is within an area of retained jurisdiction and deferred certification where the Chapter 3 policies of the Coastal Act are the standard of review with the City’s certified LCP used as guidance.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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 of the Coastal Act states, in relevant part:

(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, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

[...]

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public

access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

[...]

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Mission Bay Park is the largest municipal aquatic park in the country, consisting of approximately 4,235 acres in roughly equal parts land and water, with 27 miles of shoreline, 19 of which are sandy beach with 8 officially designated swimming areas.

While the vast majority of Mission Bay Park is open to the public for recreation, the KFR/NWP are currently fenced off from the public to protect the habitat within. There are no public accessway or trails that cross the reserve, and access from the water is prohibited. There is a modular trailer located at the northwest corner of the reserve that is operated by UCSD and serves as a base for their management of the reserve. In addition, UCSD runs educational programs from the trailer and organizes volunteers to aid in the reserve's maintenance.

Interpretive signs are currently located along the preserve boundary at Crown Point Drive and at the corner of Crown Point Drive and Crown Point Park. These signs will be retained, and new interpretive signs will be installed as part of the project along the segment being relocated. There will be no change in the public access to the reserve, and no new areas beyond the reserve will be fenced off.

Thus, the project as conditioned conforms to the public access policies of the Coastal Act and can be approved.

C. Visual Resources

Section 30251 of the Coastal Act states:

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 landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The preserve is currently bordered by six-foot tall chain link fencing topped by barbed wire around its entire perimeter save for the southern side abutting the waters of Mission Bay Park. While the majority of the fencing is located at the outermost boundary or beyond of KNF/NWP, adjacent to the sidewalks and roads, the 1,000-foot long southwestern segment adjacent to Crown Point Drive is located at the base of the upland slope, along the wetland boundary. The result is that this stretch of public right-of-way is elevated above the KFR/NWP fencing and provides the most scenic views of both the reserve and Mission Bay Park beyond in this part of the park ([Exhibit 4](#)).

The relocation of a six-foot tall fence with another foot of barbed wire would significantly affect the scenic quality of this segment, introducing a visual impediment. What is currently an open and expansive view of Mission Bay Park will become fenced and degraded. The City argues that a six-foot tall chain link fence will still be visually permeable, as it is elsewhere along the reserve's boundaries where the Commission approved fencing in 1993. However, most of those areas, such as along Pacific Beach Drive, are at the same grade as the adjacent sidewalk, and thus there was no alternate location to place that fencing to avoid visual impact.

As discussed in the Biological Resources section, alternate fencing designs such as a lower height and alternate locations such as halfway upslope were rejected by the City as being inadequate to meet the goals of limiting encroachment and predation in the reserve or because it would occupy upland habitat. However, there does not appear to be a human encroachment issue within the reserve, and other reserves with even more area to manage, such as the Tijuana River National Estuary have implemented low-lying barriers providing uninterrupted views of the wetlands with no major issues reported thus far ([Exhibit 5](#)). Thus, while places such as Tijuana River National Estuary are successfully operating with very low railing and post-and-rope barriers, in light of the City's desire for barriers that are not easy to scale, a feasible design that does that while protecting views for pedestrians, bicyclists, and drivers is a four-foot tall fence, as most people will be able to look over such a fence unobstructed.

To ensure that a visually compatible fence is erected along Crown Point Drive, **Special Condition No. 1** requires the submittal of revised plans that delete the new six-foot plus barbed wire fence and instead erect a visually permeable fence no taller than four feet in height and without barbed wire along the sidewalk on Crown Point Drive. With the project so conditioned, it can be found in conformance with the visual resources policies of the Coastal Act.

D. Biological Resources

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

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

With the initiation of dredging of Mission Bay by the City in the 1950's to create today's Mission Bay Park, the University of California system acquired parcels of the upper wetland from the Kendall and Frost families, and the resulting reserve was incorporated in the Natural Lands and Waters Reserve System in 1965. The KFR/NWP together protect the last 40 acres of the approximately 2000 acres of wetlands found in Mission Bay in the early 20th century.

The project area has been subjected to past disturbances. Non-native species present include Brazilian pepper trees, tree tobacco, and several species of ice plant including freeway ice plant, crocea ice plant, and crystalline ice plant. Concrete and asphalt debris are found adjacent to the rectangular City parcel in the northeastern corner of the project, as well as partially buried fence materials. Debris also washes in from Mission Bay and stormwater culverts.

One of the reasons behind the restoration and new fence location is compliance with a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2020-0150 (Settlement Order) between the City and the Regional Water Quality Control Board (RWQCB). The Settlement Order is a result of the City discharging untreated raw sewage into Tecolote Creek in January 2016. The City is mandated by the Settlement Order to restore 2.2 acres of habitat in Kendall Frost, which includes the entirety of the slope south along Crown Point Drive south of the Crown Point Villas Condominiums.

In addition, the City of San Diego is currently undertaking the analysis and planning for a future wide-scale habitat restoration in northeast Mission Bay Park. However, due to the long timeline required of such an effort, the City identified the enhancement and restoration actions in the current project as being more feasible in the shorter term, achieving some of the longer-term plan goals sooner. The proposed project is described in the "Work Plan for the Kendall Frost-Marsh Reserve/Northern Wildlife Preserve Native Habitat Enhancement Project" (work plan) included in its application to the Commission. Many of the project's actions would supplement actions already being taken by volunteers at UCSD and by the City.

The project area is dominated by salt marsh, with salt pannes in the middle marsh. Coastal sage scrub and maritime succulent scrub occur on slopes and raised areas bordering the marsh. A stand of non-native Brazilian pepper trees follows the western boundary between the condominiums and the reserve. Several sensitive species occur in the area of KFR/NWP, including light-footed Ridgeway rail, Forster's tern, and Belding savannah sparrow. The vegetation community in the project area supports a diverse range of species, including southwestern spiny rush, San Diego marsh-elder, woolly seablite, and California boxthorn ([Exhibit 3](#)).

Work crews will remove non-native plants from the project area through a combination of hand removal and herbicide application. Perennial non-native species, such as ice plant and Brazilian pepper trees, will be treated with herbicide and the biomass will be removed from site after the herbicide has taken effect.

Several types of debris will be removed from the restoration and enhancement areas, including old fencing, concrete pieces, asphalt, wood, palm trunks, and objects that have washed into the preserve ([Exhibit 3](#)). Most of the debris consists of pieces of concrete and asphalt along the northern boundary of the preserve on a slope leading up the rectangular piece of City property on Pacific Beach Drive that is not part of KFR/NWP. Approximately 3,000 cubic feet of concrete will be removed, disturbing 0.15 acre, with the smaller parts being removed by hand and, if necessary, light machinery will be used for the heavier pieces. The machinery would access the site along a single access route identified by the supervising biologist that stays within existing disturbed areas. All debris removed will be disposed of at a legal site outside the coastal zone.

The City will flag the project boundaries as well as sensitive plants and buffer areas around bird nesting sites. If work occurs during the bird breeding season, pre-work biological surveys will be conducted to identify active nests. To prevent predation during the project, the new 1,000 feet of fencing along Crown Point Drive will be installed before the existing downslope fencing is removed. Temporary silt fencing will be installed at the limits of the restoration areas in a manner that minimizes impacts to existing vegetation, and tarps will be placed under parked vehicles. Equipment will be sterilized before and after use on site. Staging will occur in currently disturbed areas.

The work plan will involve retention of a qualified wetland restoration specialist to oversee the entire installation and monitoring of the restoration program and a qualified installation contractor. After the 25-month maintenance and monitoring period concludes, maintenance responsibilities will be handled by UCSD and City of San Diego Parks and Recreation Department.

Removal of non-native and invasive plant species will provide immediate benefits to the KFR/NWP and to Mission Bay Park overall by providing additional habitat area for local wildlife and removing the threat of further propagation of non-native plants to elsewhere in the park. Similarly, cleaning out trash and debris that enters the KFR/NMW and relocating portions of the existing perimeter fencing from out of wetland areas will increase the area for native habitat. The relocation of fencing to the top of the upland

slope adjacent to Crown Point Drive will allow wildlife within the wetlands below to retreat uphill during times of extreme tide events when the wetlands are inundated.

Due to the visual impacts arising from relocating 1,000 feet of chain link fencing from the bottom of the slope along Crown Point Drive to the top of the slope adjacent to the sidewalk, as described further in the Visual Resources section of the staff report, Commission staff conferred with the City regarding an alternate fence design lower in height, as has been done at other preserves such as the Tijuana River National Estuary, or only relocating the fence halfway up the slope so that members of the public would be able to see over the top of it when looking out toward Mission Bay. The City responded that a six-foot high fence topped with barbed wire is necessary to prevent encroachment by pedestrians, homeless encampments, wind-blown trash, and predation of the nesting birds within. The City also stated that a fence halfway up the slope would occupy approximately 0.3 acre of the proposed 2.2 acre of upland enhancement, reducing the amount of enhancement area and preventing the City from meeting its requirements pursuant to a separate settlement agreement with the Regional Water Quality Control Board.

While protection of the habitat and the wildlife within is a common goal between the Coastal Commission and the City, a fence lower in height can balance the goals of habitat protection and view protection. A four-foot fence should be sufficient notice and deterrent to pedestrians that they should not cross down the steep slope into the reserve. Regarding homeless encampments, while the City of San Diego does have a sizeable transient population, no history of encampments in the reserve, or Mission Bay Park as a whole, has been communicated to the Commission in the past, and to date, the City appears to be vigilant in preventing such encampments from arising in Mission Bay Park. A four-foot fence should also be sufficient to keep wind-blown litter on the sidewalk from entering the reserve.

Regarding predation, the City submitted a 2020 monitoring report of the Light-footed Ridgway's Rail in California, which observed among its statewide sites the KFR/NWP. The report found that historically, the number of nesting pairs in KFR/NWP fluctuates greatly, from annual lows of two to five nesting pairs in the 1990s to fourteen pairs in 2005 to two pairs in 2008 to thirty-three pairs in 2015 to seven pairs in 2020. While the report mentioned the location of the KFR/NWP within a heavy residential and recreational area as a factor in this volatility, it did also find that the area suffers from heavy predation from animals such as raccoons and opossums. To counter this, the nesting platforms within KFR/NWP have covers that the birds can enter but predators cannot. Yet while fencing can aid in keeping predators out of an area, given the size and dexterity of raccoons and possums, the Commission's staff ecologist, Dr. Laurie Koteen, does not believe a six-foot tall fence would be very effective at keeping raccoons out. Thus, a four-foot-tall fence that allows unimpeded view of Mission Bay should not pose a substantial difference in predator control efforts.

The issue of the fence notwithstanding, the proposed project does represent a significant improvement to the quality of the habitat within KFR/NWP, as it will replace invasive plants with native plants, as well as remove debris that has accumulated in

parts of the reserve. In order to address the issue of the fencing along Crown Point Drive, **Special Condition No. 1** requires that the project be revised to install fencing no taller than four feet in height along the sidewalk. To ensure that staging and storage for the project does not encroach into the wetland or occupy public parking next to one of the most popular coastal destinations, **Special Condition No. 2** requires submittal of a staging and storage plan that avoids public parking and sites it on the already disturbed areas along Pacific Beach Drive. Due to KFR/NWP's role as an important nesting site for sensitive species, **Special Condition No. 5** requires that the project conduct pre-construction nesting surveys before any work occurring during the bird breeding season so that any identified nests can be marked and sufficiently buffered from project activity. Thus, as conditioned, can the project be found consistent with the habitat protection policies of the Coastal Act.

E. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

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 of the Coastal Act states:

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Mission Bay and its tributary Rose Creek, located a short distance east of KFR/NWP, are Section 303(d) listed bodies of water under the Clean Water Act, with bacteria/pathogens, nutrients, and heavy metals identified as water quality problems, for which Total Maximum Daily Loads (TMDLs) for various pollutants such as nutrients and heavy metals have been established. Due to its location near to the mouth of Rose Creek, which drains a substantial portion of the City of San Diego waterways located

outside of the coastal zone, combined with the muted tidal flushing arising from being in the opposite corner from the bay's entrance channel, the water quality this segment of the bay tends to be poorer quality compared to the western portions of the bay closer to the ocean.

Stormwater enters the KFR/NWP via several storm drain outlets, including two along the northern boundary of the marsh at the ends of Noyes Street and Olney Street, and three along the marsh's western boundary at Honeycutt Street, at the end of the alleyway one block west of Honeycutt Street, and at the interception of Crown Point Drive and Lamont Street. The same network of channels that allow tidal inflow also convey flood flows from the surrounding urban watershed. Besides bringing flows with impaired water quality, the outlets often accumulate trash that is washed down from upland urbanized areas.

The project will remove invasive wetland and upland vegetation and replace it with native wetland vegetation to further enhance the reserve's ability to retain and filter water. The enhanced uplands and relocated fencing along Crown Point Drive will be able to buffer and hold trash that might otherwise blow into the reserve. Removal of existing trash and concrete debris from the perimeter of the reserve will prevent it from scattering further into the habitat and restore area for native vegetation.

No grading is proposed as part of the project, and the majority of soil disturbance will result from the installation of approximately 2,500 one-gallon container plants, occupying approximately 0.18 acre, within existing habitat on the transitional slope adjacent to Crown Point Drive, as well as the 0.15 acre from the removal of concrete debris at the northeast corner of KFR. Best Management Practices will include the use of fiber rolls, gravel bags, and jute matting within and along the boundaries of the work area.

Because the project will occur within and adjacent to tidal wetlands, **Special Condition No. 3** requires that the City submit a construction pollution prevention plan detailing the best management practices that will be implemented to prevent work material and debris from entering the reserve. **Special Condition No. 4** requires the City to identify the off-site location outside of the coastal zone at which debris will be disposed. Thus, as conditioned, the project can be found consistent with the water quality protection policies of the Coastal Act.

F. Local Coastal Program

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.

The LUP for the Mission Bay Park LUP segment of the City of San Diego LCP was certified on May 11, 1995, but no implementation plan has been developed as yet, and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the

certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

G. California Environmental Quality Act

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 City of San Diego deemed this project exempt from CEQA pursuant to California Code of Regulations, Title 14, Sections 15301, 15304, and 15333 [CEQA Guidelines].

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 construction staging and storage, water quality, and public views 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Work Plan for the Kendall-Frost Marsh reserve/Northern Wildlife Preserve Native Habitat Enhancement Project, prepared by Recon Environmental Inc., dated January 24, 2022
- Final Report to US Fish and Wildlife Service and California Department of Fish and Wildlife: Light-footed Ridgway's (Clapper) Rail in California 2020 Season, by Richard Zembal, Susan M. Hoffman, and John Konecny, dated November 27, 2020
- California Regional Water Quality Control Board San Diego Region: In the matter of City of San Diego January 2016 Sanitary Sewer Overflow – Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2020-0150 Place ID 631631, dated July 7, 2020