

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
301 E Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071



# Th12d

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-22-0738

**Applicant:** Orange County Water District

**Agent:** Shawn Nevill

**Project Location:** Parking lot of Seal Beach Naval Weapons Station, 911 Seal Beach Blvd., Seal Beach, Orange County (APN: 043-162-62)

**Project Description:** Boring and installation of two single-point monitoring wells to facilitate investigation of saltwater intrusion into coastal freshwater aquifers. Drill rig, pipe trailer with drill pipe, mud tank, and shaker unit will be used to advance 10" to 15"-diameter boreholes to respective depths of 160 feet and 250 feet below ground surface at two chosen locations within an existing asphalt parking lot of the Seal Beach Naval Weapons Station. Disturbance will be limited to the areas of the boreholes. After construction, boreholes will be backfilled with concrete and sanitary sealant and restored to existing conditions.

**Staff Recommendation:** Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval with conditions for the installation of two monitoring wells in the parking lot of the Naval Weapons Station in Seal Beach, Orange County, for the investigation of seawater intrusion into coastal freshwater aquifers that serve the Orange County Water District. Staff recommends that Special Conditions be imposed to address known and potential archaeological and cultural resources that may be

uncovered during construction, to maintain water quality via the implementation of construction best management practices (BMPs), and to avoid wildlife disturbance resulting from the proposed development.

The subject site is currently owned and managed by the U.S. Navy, and there is generally no public access allowed in this location without prior consent. The proposed project will not change the public's (in)ability to access the site, nor will it impact the surrounding areas that are accessible to the public.

The proposed project is intended to better understand the hydrogeological conditions within the Orange County Groundwater Basin, which is the main water source for millions of people across Orange County. Within the coastal zone, the Orange County Water District seeks to install two monitoring wells as part of a wider data collection effort. The goal of this project is to study seawater intrusion processes and effects on coastal freshwater aquifers, thereby potentially helping to enhance community water supply security, while also providing valuable regional data on sea-level rise impacts and increases in groundwater elevations for a variety of locations throughout coastal and inland Orange County.

An application was filed on August 28, 2021 (CDP Application No. [5-21-0475](#)) for the same development located approximately 600 feet due west of the Naval Weapons Station site at the parking lot of Gum Grove Park near Heron Pointe. In response to concerns from tribal representatives and interested members of the public about the sensitivity of the location in terms of tribal cultural resources, the applicant withdrew the application and has since revised the project and submitted the subject application to be located at a site understood to be potentially less sensitive. Commission staff thereafter reached out to the affected Tribes for another round of consultations in connection with the current application. Based on the consultation with the Gabrieleno Tongva San Gabriel Band of Mission Indians on November 2, 2022, staff recommends addressing remaining concerns raised with the project site and the applicant's proposed mitigation measures.

The project, as proposed, must be consistent with Coastal Act policies including preservation of water quality, biological resources, and protection of archaeological and tribal cultural resources. Thus, staff is recommending a series of conditions to ensure that such resources are appropriately protected, especially during construction: 1) Permit Compliance, 2) Tribal Cultural Resource Treatment and Monitoring Plan, 3) Construction Staging Plan, 4) Construction Responsibilities and Best Management Practices (BMPs), 5) Biological Monitoring and Protection During Construction, 6) Annual Data Reports, 7) Evidence of Landowner Approval, and 8) Conformance with the Requirements of Resource Agencies.

As conditioned, the proposed project conforms with Chapter 3 of the Coastal Act, which is the standard of review because the City of Seal Beach does not have a certified Local Coastal Program. Commission staff recommends that the Commission APPROVE coastal development permit application 5-22-0738, as conditioned. The motion is on page 4.

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### EXHIBITS

[Exhibit 1](#) – Project Site and Vicinity Map

[Exhibit 2](#) – Project Plans

[Exhibit 3](#) – Summary Mitigation Measures – Tribal Cultural Resources

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-22-0738 pursuant to the staff recommendation.

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:

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.

## II. 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 applicants 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 applicants to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

**1. Permit Compliance.** BY ACCEPTANCE OF THIS PERMIT, the Permittee agrees that all development must occur in strict compliance with the proposal as set forth in the permit application, subject to the standard and special conditions contained herein, and the final plans submitted to the Commission and received on December 15, 2022. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**2. Protection of Archaeological and Tribal Cultural Resources.** The Permittee shall undertake development in compliance with the following mitigation measures to protect archaeological, including tribal cultural resources:

- A. AT LEAST ONE MONTH PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES, the permittee shall (i) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list; (ii) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (iii) arrange for a qualified archaeological monitor and/or any invited Tribal representative that requests to monitor, to observe project activities with the potential to impact archaeological and/or tribal cultural resources. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains.
- B. The permittee shall allow the Native American monitor(s) to spot check drilled soils in the field and monitor sifted soils in the field and in the laboratory. Laboratory results of sifted soils shall be shared with all affected Native American Tribes.
- C. If an area of archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (D) hereof, and the Permittee shall retain and authorize a qualified archaeologist and/or tribal cultural resource specialist to analyze the significance of the find in consultation with the Native American Tribes listed on the NAHC list. The archaeologist shall immediately notify the Tribes on the NAHC list. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone.

- D. A Permittee seeking to recommence construction within the exclusion zone following discovery of the archaeological resources shall submit a Supplementary Archaeological Plan (SAP) prepared by the project archaeologist in consultation with the Native American Tribes listed on the NAHC list for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

**3. Construction Staging Plan.** PRIOR TO ISSUANCE OF THIS PERMIT, the Permittee shall prepare for Executive Director review and approval a Construction Staging Plan, which shall:

- A. Designate a staging area onsite for construction equipment and supplies to be stored during construction.
- B. Upon completion of the investigation, all boreholes shall be sealed or backfilled, and the project site shall be restored to the existing conditions to the extent possible.
- C. The plan shall include but is not limited to construction perimeter and area, construction equipment, final construction BMPs, and hazardous waste disposal procedures (including removal of contaminated soils from site). Mechanized equipment should be limited to existing roads onsite and shall be restricted from storage, placement or operation in vegetated areas, to the greatest extent feasible.

The permittees shall undertake development in conformance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**4. Construction Responsibilities and Best Management Practices (BMPs).** BY ACCEPTANCE OF THIS PERMIT, the Permittee agrees to the following:

- A. No demolition or construction material, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;

- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. 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;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition

or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and

M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**5. Biological Monitoring and Protection During Construction.** BY ACCEPTANCE OF THIS PERMIT, the Permittee agrees to submit a Biological Monitoring Report prepared by a qualified biologist approved by the Executive Director in consultation with other appropriate resource agencies with demonstrated success restoring and monitoring native Southern California coastal habitats. The Biological Monitoring Report, which shall be reported in written form to the Executive Director within 30 days of permit issuance, shall ensure the following:

A. Pre-construction surveys conducted within (7) days before the start of construction to determine the presence of any sensitive wildlife species with the potential to occur near the project site.

B. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as excavation, grading, or other ground disturbing activity with potential to perturb any sensitive species identified. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts that could occur upon nearby sensitive species or habitat areas.

C. No geotechnical borings are permitted that would result in damage or degradation of environmentally sensitive habitat area (ESHA) in nearby Gum Grove Park or similarly designated areas within the wetlands complex. Under no circumstances are the bore sites or other ground disturbance permitted within vernal pools or the littoral zone.

D. If construction activities are to occur between February 1 and September 15, a pre-construction nesting bird survey shall be conducted to determine the presence of active nests within 500 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. All ground disturbance activities within 500 feet of raptor nests or 300 feet of other active bird nests or as otherwise specified shall be halted until the nesting effort is complete.

E. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at the active nest of a listed species, as determined by the



biological monitor. This shall be verified by weekly noise monitoring at an equivalent location conducted by a qualified Acoustical Engineer during the breeding season (February 1 to September 15) or as otherwise determined by a qualified biological monitor based on nesting activity.

F. The biological monitor shall review and verify compliance with these nesting boundaries and shall verify when the nests have been naturally vacated for the season, with no human interference. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to the Executive Director.

**6. Annual Data Reports.** BY ACCEPTANCE OF THIS PERMIT, the Permittee agrees to submit a report each year to the Executive Director for the first five years after completion of construction, or for an adjusted time period dependent on the nature of the investigation, which includes a presentation of seawater intrusion monitoring results, assessment of data trends and analysis, and any adaptive management recommendations. The report shall also be concurrently provided to all groups of the Tongva, Gabrielino, and Kizh Native American tribes, as well as regional and state agencies of interest.

**7. Evidence of Landowner Approval.** BY ACCEPTANCE OF THIS PERMIT, the Permittee acknowledges that development may only be undertaken during the time period in which the applicant maintains legal ability to carry out project activities, subject to the terms and conditions of this permit and of the landowner. Not less than thirty (30) days prior to expiration of the applicant's lease with the U.S. Navy, the applicant shall submit proof of an extended or modified lease agreement that allows continuation of the proposed project activities. In such a case that the lease term or landowner approval terminates, the applicant shall submit a plan for the review and written approval of the Executive Director to remove or abandon-in-place the monitoring wells, for which implementation may require an amendment to this permit or a new coastal development permit.

**8. Conformance with the Requirements of Resource Agencies and the Navy.** The Permittee shall, through the acceptance of this permit, agree to comply with all permit requirements and mitigation measures of the resource agencies including the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Navy, and the U.S. Army Corps of Engineers with respect to preservation and protection of water quality and coastal resources. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

## IV. FINDINGS AND DECLARATIONS

### A. Project Location and Description

The applicant, the Orange County Water District, provides public water service to 2.5 million residents across 19 cities in north and central Orange County, and relies on the 270 sq. mi. Coastal Plain of Orange County Groundwater Basin for at least 77 percent of its water supply. This Basin is designated by the State of California as “Critically Overdrafted” (due to historical over-pumping and extraction of groundwater exceeding what could naturally be replenished by rainfall) and has active seawater intrusion occurring. Seawater intrusion has been detected onshore in some of the existing monitoring wells in the basin and along the entire coastline of the District’s service area, which has been confirmed by water quality sampling and geophysical mapping. There are four subterranean geologic erosional gaps along coastal Orange County that can provide a conduit for seawater to flow inland in response to freshwater aquifer pumping by inland and coastal cities, thereby potentially contaminating groundwater supplies.

In an effort to better understand the hydrogeological conditions within the project location and surrounding area and to determine best corrective actions to control seawater intrusion, the applicant is proposing to install and operate five monitoring well clusters within the City of Huntington beach and the City of Seal Beach. The two monitoring wells located within the coastal zone are the subject of this permit application. These two wells would be installed in the existing parking lot of the Seal Beach Naval Weapons Station, located southeast of the intersection of Seal Beach Boulevard and Forrestal Lane in Seal Beach ([Exhibit 1](#)). The Commission has not certified an LCP for the City of Seal Beach, and thus the standard of review for this application is the Chapter 3 policies of the Coastal Act.

The subject site is currently owned and managed by the U.S. Navy. Due to the retention of federal military service interests in the area, there is generally no public access allowed in this location without prior consent. The proposed project does not change the public’s (in)ability to access the site, nor does it impact the surrounding areas that are accessible to the public.

The boreholes will be drilled through the paved asphalt surface at two select pinpoint locations proposed by the applicant ([Exhibit 2](#)). Boring and installation of the two single-point monitoring wells will take approximately two to three weeks. The construction equipment, which will include a truck-mounted drill rig, pipe trailer with drill pipe, mud tank, and shaker unit, will be sited within an approximately 12-foot-wide by 220-foot-long construction area on the asphalt surface of the Naval Weapons Station parking lot. The drilling locations proposed by the applicant are final, except as subject to tribal cultural resource protection required by **Special Condition 2**, and no exploratory borings will be conducted as part of this project. Disturbance will be limited to the areas of the boreholes.

The proposed monitoring wells would be installed by two drilling methods: 1) direct mud rotary; and 2) rotary sonic. Each monitoring well would have a single 4-inch diameter

schedule 80 PVC casing installed inside a 10- to 15-inch diameter borehole to estimated respective target depths of 160 and 250 feet below ground surface ([Exhibit 2](#)). Once the borehole drilling is completed, the wells would be constructed. The depth of the boreholes and depth of each of the three well casings and associated screened intervals would be determined based on the lithology (general physical characteristics of the soil) observed during drilling and the acquired borehole geophysical logs. The wells would have a 3-foot diameter concrete apron with a 12-inch diameter traffic-rated subgrade protective vault.

Upon initial well development, the boreholes will be backfilled with concrete and silicone-based sanitary sealant and restored to existing conditions. After completion of all construction, monitoring well operation includes the periodic measuring of groundwater elevations and the collection of groundwater samples for laboratory analysis. During a groundwater sampling event, a portable submersible pump would be lowered into each of the two wells. Operation of the submersible pump to lift water from the wells will require the use of a small portable generator, operated by District staff. Groundwater samples will be collected on a semiannual basis and water levels recorded on a monthly basis. The applicant anticipates that the two monitoring well structures will last at least 50 years after initial installation and has proposed ongoing maintenance of the wells every three to five years. This permit does not authorize the ongoing maintenance of the proposed wells, and an amendment to this CDP or a new CDP may be required if the scope of maintenance would include any non-exempt activity including new landform alteration or any activity with risk of adverse impact to coastal resources.

A similar application was filed on August 28, 2021 (CDP Application No. [5-21-0475](#)) for a location located approximately 600 feet due west at the parking lot of Gum Grove Park near Heron Pointe. Tribal representatives and interested members of the public raised concerns that Gum Grove Park is a popular recreational area, contains environmentally sensitive habitat that is intimately connected to the Los Cerritos Wetlands complex, and is listed as sacred land with the Native American Heritage Commission. As discussed in greater detail in Section IV.C. (Archaeological, Paleontological, and Tribal Cultural Resources) of this report, the applicant withdrew the previous application and has since revised the project to be located at the subject site considered herein.

## **B. Legal Ability to Undertake Development**

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior

to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Pursuant to Coastal Act section 30601.5, where the applicant is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the Commission shall not require the holder or owner of the fee interest to join the applicant as co-applicant. In this case, the U.S. Navy has been invited to join as co-applicant on February 7, 2023, but has not responded with a request to be a co-applicant. Regardless of the landowner's degree of involvement in the application process, the applicant must demonstrate its ability to comply with all conditions of approval. For this project, the proposed project activities are subject to an executed Government License No. N62473-22-RP-00085 with the U.S. Navy, which permits the applicant to undertake the proposed development until June 30, 2027, unless sooner terminated. Thus, the applicant has demonstrated that it has a legal right to use the property for the proposed development.

As mentioned previously, the applicant anticipates that the two monitoring well structures will last at least 50 years after initial installation and has proposed ongoing maintenance of the wells every three to five years, subject to additional Commission review and permitting requirements. Accordingly, the Commission is imposing **Special Condition 7**, which requires the applicant to submit evidence of its legal ability to comply with the conditions of approval of this permit for the anticipated life of development. **Special Condition 7** also requires the applicant to submit, not less than thirty (30) days prior to expiration of the applicant's lease with the U.S. Navy, proof of an extended or modified lease agreement that allows continuation of the proposed project activities. In such a case that the lease term or landowner approval terminates, the applicant shall submit a plan for the review and written approval of the Executive Director to remove or abandon-in-place the monitoring wells, for which implementation may require an amendment to this permit or a new coastal development permit. The applicant's evidence of an existing lease and assurances that it will be negotiating a lease extension would adequately ensure that the applicant is able to comply with all permit conditions. Finally, the applicant is also required by **Special Condition 8** to fulfill all obligations imposed by resource agencies and those of the U.S. Navy. Thus, as conditioned, the proposed development conforms with the requirements of Section 30601.5 of the Coastal Act.

### **C. Archaeological, Paleontological, and Tribal Cultural Resources**

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The California coastal zone has been home to native populations for thousands of years. The largest Native American tribe close to the project site was the Gabrielino/Tongva settlement of Puvunga. The neighboring Hellman Ranch property, on the other side of Seal Beach Boulevard, contains at least eleven cultural resource sites identified by the State of California, including six that may have been previously disturbed.<sup>1</sup>

On the western and southern flanks of the property, abutting Heron Pointe and Gum Grove Park, the project area encompasses a portion of a prehistoric ancestral village of Motuuchevngna. The subject area, known as Landing Hill, has been subject to past archaeological investigations. The California State Historic Preservation Office (SHPO) in 1999 confirmed that the subject site is eligible for listing in the National Register of Historic Places under Criterion D for its retention of integrity and its potential to provide data that can address important research questions about the prehistory of the area. Given the very sensitive nature of this site, the applicant proposes to avoid all known areas of archaeological deposits. The two drilling locations will take place on the tribal sacred land, but are not expected to impact archaeological deposits.

Portions of the project area have sustained substantial ground disturbance related to naval operations and filling of the wetlands. Nevertheless, even a disturbed archaeological deposit has the potential to contain displaced human remains and artifacts. To address the possibility that significant archaeological deposits or materials may be encountered during ground-disturbing activities related to the geotechnical investigation project, given the archaeological sensitivity of the area, the applicant has proposed Summary Mitigation Measures ([Exhibit 3](#)). The Measures include having both an archaeological monitor and Native American monitor present during ground disturbing activities, and, in the event of a discovery, cessation of all work in the vicinity of a discovery, preparation of plan(s) for the appropriate treatment of discovered resources, and compliance with laws protecting Native American remains. However, the applicant's mitigation measures limit Native American monitoring to ground-disturbing activities within the first 15 feet of sediment and only allow one Native American monitor onsite (and the monitor would be selected by one of the several affected Tribes). Thus, to ensure that tribal cultural resources are protected to the maximum extent feasible, the Commission imposes **Special Condition 2** which requires that the applicant invite all affected Tribes to monitor and sift through removed soil material, given the possibility that tribal cultural resources may be found below 15 feet. Also, if tribal cultural resources are discovered, the applicant must establish an "exclusion zone" (where construction must cease) and prepare a Supplemental Archaeological Plan (SAP). The SAP would be subject to review and written approval by the Executive Director and, depending on the scope of the plan, may require an amendment to the permit. **Special Condition 1** requires all work to be conducted consistent with the applicant's proposal subject to the final plans submitted by the applicant and all special conditions.

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<sup>1</sup> [5-97-367](#).

## Tribal Consultation

Ahead of filing for a coastal development permit application, the applicant had conducted AB 52 consultations with affected Native American tribes by letter and/or phone. The applicant received feedback from the Gabrieleno Band of Mission Indians - Kizh Nation regarding the Summary Mitigation Measures on July 20, 2020.

In connection with previous CDP Application No. [5-21-0475](#), Commission staff contacted the Native American Heritage Commission (NAHC) on August 31, 2021 to conduct a search of the Sacred Lands File, in accordance with the Commission's Tribal Consultation procedures. The NAHC provided Commission staff with a list of potential affected tribes in the area for consultation. Staff initiated consultation via letter on October 19, 2021, along with a copy of the proposed plans, narrative description of the proposed project, and maps depicting the described site. After following up on November 23, 2021, staff received consultation requests and written comments from the Gabrieleno Band of Mission Indians - Kizh Nation, Gabrieleno Tongva San Gabriel Band of Mission Indians, and Gabrieleno Tongva Indians of California Tribal Council.

The consultations occurred on November 30, 2021, December 1, 2021, and January 27, 2022, respectively. During the consultation process, Tribes' representatives described the sensitive nature of the area. In response to the concerns raised during the consultations and in coordination with Commission staff, the applicant developed an alternatives analysis that contemplated four potential alternative project locations. The applicant considered the suitability of each site in relation to their proximity to the Newport-Inglewood fault, which is an important hydrogeologic feature necessary for the applicant's data-gathering and research, and the potential for archaeological and/or tribal cultural resources to be impacted. The analysis determined that potential impacts would be minimized if the work were conducted within the Naval Weapons Station; so, the applicant consequently withdrew the previous application and has resubmitted with the newly proposed location within the Naval Weapons Station.

Commission staff reached out to the affected Tribes for another round of consultations on October 25, 2022 and consulted with the Gabrieleno Tongva San Gabriel Band of Mission Indians on November 2, 2022. As a result, **Special Condition 2** has been imposed to address concerns raised with the project site and the applicant's proposed mitigation measures. **Special Condition 2** requires that if cultural resources are discovered during construction, the applicant is required to submit a Supplemental Archaeological Plan and establish an "exclusion zone" around the discovery area. Typically, preservation in-situ is the preferred treatment method if it is feasible to select alternative locations for drilling. If the Executive Director determines that tribal cultural resources can be feasibly avoided, the applicant may be required to apply for a permit amendment.

Therefore, as conditioned, the proposed project is consistent with Coastal Act Section 30244, as the development will include reasonable mitigation measures to ensure that the development will not result in adverse impacts to archaeological resources.

## D. Public Access

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.

The subject site is currently owned and managed by the U.S. Navy. Due to the retention of federal military service interests in the area, there is generally no public access allowed in this location without prior consent. The proposed project does not change the public's (in)ability to access the site, nor does it impact the surrounding areas that are accessible to the public. To ensure that the proposed project does not impact the operations of the U.S. Navy and will remain protective of coastal resources, the Commission imposes **Special Condition 3**, which requires the applicant to submit a Construction Staging Plan detailing the locations and methods for storing construction equipment and materials onsite.

Therefore, the Commission finds that, as proposed and conditioned, the project is in conformity with the coastal access and recreation policies of the Coastal Act.

## E. Biological Resources and Environmentally Sensitive Habitat Area

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat or ESHA as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240(b) of the Coastal Act states, in relevant part:

(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.

According to the Mitigated Negative Declaration (MND) prepared by the applicant pursuant to CEQA, no biological resources are present in the parking lot or the surrounding grassy area within the Naval Weapons Station.

However, within 400 feet of the subject site are located Gum Grove Park and the Los Cerritos Wetlands, and the Seal Beach National Wildlife Refuge is within 1/3-mile of the project area, all of which host an impressive variety of plant, bird, and invertebrate species, some of which are rare and/or sensitive. In the Los Cerritos Wetlands, six plant

communities have been identified and constitute ESHA: southern coastal salt marsh, southern coastal brackish marsh, southern willow scrub, mule fat scrub, alkali meadow, and eelgrass beds. For example, southern tarplant (*Centromadia parryi* ssp. *australis*) is a rare annual plant that has been found in non-tidal wetlands and upland areas of the site. Two other annual plant species, Lewis' evening primrose (*Camissoniopsis lewisii*) and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*) occur in limited locations in the Gum Grove Park area. Plant species that have been identified in the area in previous Commission actions include slender wild oat, ripgut grass, Italian ryegrass, telegraph weed, bristly ox-tongue, Australian saltbush, five-hooked bassia, and white sweet clover.

The park and surrounding wetlands complex contain ESHA, as they support a large array of avian and invertebrate species. In the last several years, a thriving riparian forest has established in a bioswale just to the north and west of Gum Grove Park. Riparian forests, historically present along the San Gabriel River, are now extremely rare in the area. The bioswale site, specifically, is supporting rare nesting birds and intercepting stormwater runoff before it gets to saline wetlands. There are various bird species which nest and/or forage at the Seal Beach National Wildlife Refuge, as well. In addition, these open space areas provide potential habitat for the monarch butterfly (*Danaus plexippus*).

The proposed project will drill two monitoring wells in a paved parking lot using mechanical equipment, which will not directly occur within designated ESHA. Nonetheless, ground disturbing activities may impact sensitive nesting bird species which may be found in the vicinity, particularly at nearby Gum Grove Park. The Commission finds that in order to assure the continuance of sensitive habitat in the general vicinity of the subject site, the applicant must take special care during construction, especially if it occurs during the nesting season (February 1 – September 15 of any year). Therefore, the Commission imposes **Special Condition 5**, which requires the applicant to submit a Biological Monitoring Report and to adhere to a necessary buffer area, as well as noise abatement measures, to lessen potential disturbance to wildlife. **Special Condition 3** further requires the applicant to submit a final Construction Staging Plan for the review and written approval of the Executive Director, which shall ensure that BMPs in **Special Condition 4** are fully implemented and provide for the safe storage of construction materials, drainage controls, and safe removal of potentially contaminated soils. Finally, the applicant is also required by **Special Condition 8** to comply with all permit requirements and mitigation measures of the resource agencies including the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Navy, and the U.S. Army Corps of Engineers with respect to preservation and protection of water quality and biological resources.

As conditioned, the Commission finds that the proposed project will not impact on the site's sensitive biological resources and is therefore consistent with Section 30240 of the Coastal Act.



## F. Marine Resources, Water Quality, and Flood Hazards

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

Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The proposed project has the potential to adversely impact the water quality of nearby sensitive areas, including the Seal Beach National Wildlife Refuge, Gum Grove Park, the Los Cerritos Wetlands complex, and the Pacific Ocean. Many of the pollutants entering the ocean come from land-based development. During construction, sediment, including construction materials (e.g., concrete and sanitary sealants), discharged into groundwater may cause contamination of coastal freshwater aquifers or contaminate the surrounding sensitive habitat. Thus, to protect water quality and biological productivity of the nearby groundwater aquifers, wetlands, and coastal waters, the Commission imposes **Special Condition 4**, which outlines construction-related requirements to provide for the safe storage of construction materials, minimization of runoff, and safe disposal of construction debris. **Special Condition 3** further requires the applicant to submit a final Construction Staging Plan for the review and written approval of the Executive Director, which shall detail the manner in which the boreholes will be backfilled upon completion of the investigation, and which shall ensure that BMPs in **Special Condition 4** are fully implemented.

Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of

water quality to promote the biological productivity of coastal waters and to protect human health.

Section 30270 requires the Commission to consider effects of sea-level rise in coastal resources planning and management policies to avoid and mitigate the adverse effects of sea-level rise. The proposed project, and the Water District's larger seawater intrusion monitoring project, is consistent with the intent of Section 30270. Given that the site is located in an area where dynamic and unpredictable coastal hazards may occur, and the investigation studies the effects of sea level rise, the Commission also imposes **Special Condition 6**, which requires the applicant to share the findings of this investigation with the Commission to elucidate ongoing issues of seawater intrusion in freshwater aquifers within the Orange County Groundwater Basin.

## **G. Local Coastal Program**

Section 30604(a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development 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 (commencing with Section 30200).

The proposed project is located on federally-owned lands within the City of Seal Beach. On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed project is subject to the jurisdictional authority of the United States Navy, and thus the Commission may elect to undertake Federal Consistency review through separate action (or may cite this action as the equivalent) in accordance with the Coastal Zone Management Act (CZMA) of 1972.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

## **H. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit (CDP) applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA (14 CCR § 15251(c)).

The applicant, Orange County Water District, is the lead agency, and the Commission is a responsible agency for the purposes of CEQA. The Water District prepared a Mitigated Negative Declaration on August 26, 2020 and found the proposed development to be consistent with CEQA on October 21, 2020. The applicant prepared an addendum to the Mitigated Negative Declaration in November 2022 to address the relocation of the monitoring well cluster from Gum Grove Park to the Naval Weapons Station.

The preceding findings in this staff report have discussed the relevant coastal resource issues, and the permit conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. The Commission incorporates these findings as if set forth here in full. As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact, individual or cumulative, which the proposed project would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – Substantive File Documents**

Coastal Development Permit Application No. 5-97-0367 and associated file documents.

Coastal Development Permit Application No. 5-21-0475 and associated file documents.

Coastal Development Permit Application No. 5-22-0738 and associated file documents.

Orange County Water District Sunset Gap Monitoring Wells Project Draft Initial Study/Mitigated Negative Declaration (and addendum dated November 2022), prepared by Orange County Water District, August 2020.