

STAFF REPORT

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R. B. Greenwood

GENERAL PERMIT TO CONDUCT GEOPHYSICAL SURVEYS

APPLICANT:

Merkel & Associates, Inc.

BACKGROUND:

Merkel & Associates, Inc., has applied for a statewide offshore Geophysical Survey Permit (Permit) pursuant to the Commission's Low-Energy Offshore Geophysical Permit Program (OGPP). A Geophysical Survey Permit is generally issued to qualified companies and organizations to perform low-energy geophysical surveys of the ocean bottom for purposes including, but not limited to:

- Scientific research, including surveys of nearshore sand erosion and deposition, seafloor changes, and seafloor topography and bathymetry
- Surveying existing pipelines routes and assessing any structural damage, or free-spanning
- Identifying and avoiding seafloor faults and hazards when designing pipeline and cable projects, reducing the likelihood of damage due to these hazards
- Surveying existing fiber-optic cables, utilities, and other seafloor structures to determine how well they are buried
- Benthic habitat surveys, hard bottom map development, and mapping of essential fish habitat or cultural resources indicating where the placement of permanent or temporary objects (e.g., cables or anchors) should be precluded
- Searching for the locations of historic shipwrecks, other sunken boats, airplanes, and archaeological sites
- Auditing and supporting dredging of harbors and navigation channels

The OGPP authorizes the use of electromechanical equipment (e.g., echosounders, side-scan sonars, subbottom profilers) and passive equipment (e.g., magnetometers, remotely operated vehicles) to conduct low-energy geophysical surveys.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6212.3, 6216, and 6301; California Code of Regulations, title 2, section 2100.

Public Trust and State's Best Interests Analysis:

Merkel & Associates, Inc., conducts subsea surveys and mapping and has applied for a permit to conduct low-energy geophysical surveys throughout offshore California. Scientific study has been recognized by the courts to be a use consistent with the common law Public Trust Doctrine. (See, for example, *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) The marine research activities to be conducted under this proposed Permit are a water-dependent use. The use of high-energy equipment, such as air guns or water guns, is expressly prohibited under the Permit. The proposed Permit requires the Permittee to post a \$50,000 surety bond or equivalent surety and provide staff with advance notification of operations, the specifications of the equipment to be employed, a Marine Wildlife Contingency Plan, and a Spill Contingency Plan. Submission of post-survey data reports and records of biological observations and incidents are also required. Staff may receive copies of all data derived from any and all surveys under this Permit upon request. Additionally, the Permit is limited to 3 years and is required to be conducted according to limitations that protect the environment, as described in the Mitigation Monitoring Program. Staff believes that granting the Permit is consistent with and will not interfere with common law Public Trust Doctrine uses at this time and for the foreseeable term of the Permit.

For all the reasons above, staff believes the approval of the permit application is in the best interests of the State. Staff recommends approval of this offshore Geophysical Survey Permit.

TERM OF PROPOSED PERMIT:

3 years, beginning December 6, 2019, through December 5, 2022.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15025), staff prepared a Mitigated Negative Declaration (MND) identified as CSLC MND 751, State Clearinghouse No. 2013072021 for the OGPP Update. The MND was prepared and circulated for public review pursuant to the provisions of CEQA, and adopted by the Commission on September 20, 2013 ([Item 120, September 20, 2013](#)).

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2. On September 20, 2013, the Commission found that, based upon the entire record before the Commission, including the Initial Study, the MND, and the comments received in response thereto, there is no substantial evidence that the program may have a significant effect on the environment; California Code of Regulations, title 14, section 15074, subdivision (b). A Mitigation Monitoring Program was prepared in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6).
3. Staff prepared an addendum to the previously adopted MND pursuant to California Code of Regulations, title 14, section 15164. Staff reviewed the proposed changes to the General Permit and Mitigation Monitoring Program and determined that none of the events specified in section 21166 or 15162 of the State CEQA Guidelines had occurred, and therefore, no additional CEQA analysis was required.
4. On April 23, 2014, the Commission adopted an addendum to CSLC MND No. 751, State Clearinghouse No. 2013072021, which revised the General Permit and Mitigation Monitoring Program ([Item C67, April 23, 2014](#)).
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission adopted the MND in 2013, staff concluded that such activity would not affect those significant lands and the Commission found the activity to be consistent with its use classification pursuant to Public Resources Code section 6370 et seq.
6. This action is consistent with Strategy 1.1 of Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
7. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to conduct geophysical surveys on sovereign land. Upon expiration or prior termination of the permit, the applicant has no right to a new permit or to renewal of any previous permit.

EXHIBIT:

- A. Permit Regions

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

1. Find that the MND, CSLC MND No. 751, State Clearinghouse No. 2013072021, and a Mitigation Monitoring Program were prepared by Commission staff and adopted by the Commission on September 20, 2013 ([Item 120, September 20, 2013](#)).
2. Find that the addendum to the MND, including a revised General Permit and Mitigation Monitoring Program, was prepared by Commission staff and adopted by the Commission on April 3, 2014, ([Item C67, April 23, 2014](#)), pursuant to the provisions of CEQA.
3. Find that the Commission reviewed and considered the information contained in the previously adopted MND and addendum; and that in the Commission's independent judgment, the scope of activities to be carried out under the permit to be issued under this authorization has been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 has resulted in any new or substantially more severe significant impacts; and, therefore, no additional CEQA analysis is required.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that approval of the permit application will not substantially interfere with Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a Geophysical Survey Permit to Merkel & Associates, Inc., to conduct low-energy geophysical surveys from December 6, 2019, through December 5, 2022, within Permit Regions I, II, III, and IV as shown on Exhibit A, attached and incorporated by reference herein.

