

Staff Report 61

APPLICANT:

Merkel & Associates, Incorporated

PROPOSED ACTION:

Issuance of a non-exclusive Offshore Geophysical Survey Permit

AREA, LAND TYPE, AND LOCATION:

Statewide offshore, from the mean high tide line to 3 miles offshore including granted or ungranted tidelands and submerged lands.

AUTHORIZED USE:

Merkel & Associates, Incorporated has applied for a 3-year General Offshore Geophysical Survey Permit (General Permit) to collect geophysical information throughout offshore California.

TERM:

3 years, beginning December 9, 2022.

CONSIDERATION:

The Applicant has submitted a \$5,000 application fee.

SPECIFIC PERMIT PROVISIONS:

The General Permit requires the permittee to provide staff with a Marine Wildlife Contingency Plan, Oil and General Spill Contingency Plan, and technical descriptions of all survey equipment to be used. Other requirements include: 21-days advance notice of survey activity to the Commission and United States Coast Guard (USCG) Notice to Mariners, the location of the survey, and the specifications of the employed equipment. Staff may obtain copies of all geophysical data derived from any and all surveys under this General Permit upon request.

STAFF ANALYSIS AND RECOMMENDATION:

Merkel & Associates, Incorporated has applied for a General Permit pursuant to the Commission's Geophysical Survey Permit Program. A General Permit is 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 freespanning (an area between points where the pipeline is supported on the seafloor);
- 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.

The General Permit authorizes a permittee to conduct these activities on State sovereign land, including granted or ungranted tidelands and submerged lands, and the beds of navigable waterways. Each permittee must comply with pre-survey, survey, and post-survey requirements to ensure that the survey activities address and minimize potential impacts to aquatic life or to the environment as required by statute.

Activities under the General Permit must also comply with limitations that protect the environment, as described in the Commission's regulations made effective on January 1, 2020, as Article 2.9.1, Permits for Geophysical Surveys (Cal Code Regs., tit. 2 § 2100 et seq.) (Article 2.9.1).

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Merkel & Associates, Incorporated conducts subsea surveys and mapping and has applied for a permit to conduct low-energy geophysical surveys in offshore waters

throughout California. Oceanographic 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 activities conducted under this proposed General Permit are water-dependent utilizing acoustic, noise-generating equipment such as subbottom profilers and multi-beam echosounders at frequencies at or below the hearing range of marine mammals. The use of high-energy equipment, such as airguns or water guns, is expressly prohibited under the General Permit.

The proposed General Permit requires the Permittee to provide staff with advance notification of operations, the specifications of the equipment to be employed, a Marine Wildlife Contingency Plan, and an Oil Spill Contingency Plan. Submission of post-survey data reports and records of biological observations and incidents are also required. Other requirements include: a minimum 21-day advance notice to the Commission and USCG Notice to Mariners of operations, the location of the survey, and the specifications of the employed equipment. Staff may receive copies of all data derived from any and all surveys under this General Permit upon request. Additionally, the General Permit is limited to 3 years. Staff believes that granting this General Permit is consistent with and will not interfere with Public Trust uses at this time and for the foreseeable term of the General Permit.

CONCLUSION:

For all the reasons above, staff believes the approval of the permit application will not substantially interfere with Public Trust needs and is in the best interests of the State. Staff recommends approval of this General Permit.

OTHER PERTINENT INFORMATION:

1. 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.
2. In 2015, the Legislature passed AB 1274, codifying Public Resources Code section 6212.3 (geophysical permits). AB 1274 affirmed the Commission's authority to issue geophysical permits "subject to terms and conditions as the Commission shall specify to ensure public safety and protection of the environment."

3. On January 1, 2020, Article 2.9.1 of title 2 of the California Code of Regulations became effective to accomplish the goals of AB 1274 and establish requirements to ensure that geophysical surveys performed on State sovereign land address and minimize potential impacts to aquatic life or to the environment. The Mitigation Monitoring Program, adopted by the Commission, and all program parameters are codified into these regulations. Permit issuance requirements, specifically, are detailed in California Code of Regulations, title 2, sections 2100.04 and 2100.05.
4. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
5. Pursuant to the California Environmental Quality Act (CEQA), staff prepared a Mitigated Negative Declaration (MND) identified as CSLC MND No. 751, State Clearinghouse No. 2013072021, and a Mitigation Monitoring Program that were adopted by the Commission on September 20, 2013, ([Item 120, September 20, 2013](#)) for implementation of the Low-Energy Offshore Geophysical Permit Program Update. On April 23, 2014, the Commission adopted an addendum to the MND prepared by staff, which revised the General Permit and Mitigation Monitoring Program ([Item 67, April 23, 2014](#)).
6. 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.

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 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 adopted by the Commission on April 23, 2014 ([Item 67, 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 activities authorized by the proposed General Permit will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values for the foreseeable term of the permit; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a statewide General Offshore Geophysical Survey Permit to Merkel & Associates, Incorporated to conduct low-energy geophysical surveys from December 9, 2022 through December 8, 2025.