

**CALENDAR ITEM
C49**

A)
) Statewide
S)

10/13/16
W 6005.169
R. B. Greenwood

**CONSIDER AN APPLICATION FOR A
NON-EXCLUSIVE GEOPHYSICAL SURVEY PERMIT TO
CONDUCT LOW-ENERGY GEOPHYSICAL SURVEYS
ON TIDE AND SUBMERGED LANDS
UNDER THE JURISDICTION OF THE
CALIFORNIA STATE LANDS COMMISSION**

APPLICANT:

Merkel & Associates, Inc.

BACKGROUND:

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

- Scientific research, including surveys of near-shore sand erosion and deposition, seafloor changes, and seafloor topography and geology
- Surveying existing pipeline 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

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The Low-Energy 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. The use of high-energy equipment, such as airguns or water guns, is expressly prohibited under the permit. This Geophysical Survey Permit requires the Permittee to post a \$50,000 surety bond or equivalent surety and provide Commission staff with advance notification of operations, the specifications of equipment to be employed, a Marine Wildlife Contingency Plan, and a Spill Contingency Plan. Submission of post-survey reports, including records of observations and incidents, are also required. Commission staff may receive copies of all data derived from any and all surveys under the permit upon request.

PROPOSED PERMIT APPLICATION, STAFF ANALYSIS AND RECOMMENDATION:

Public Trust and State's Best Interests Analysis:

Merkel & Associates, Inc., conducts subsea surveys and mapping and its permit application is to acquire multibeam bathymetry, geologic and geophysical information 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* 6 Cal.3d 251, 259-260 (1971)]. The marine research activities to be conducted under this permit are a water-dependent use. Additionally, the permit is limited to 3 years in length and is required to be conducted according to limitations that are protective of the environment, including a Marine Wildlife Contingency Plan, a Spill Contingency Plan, and a Mitigation Monitoring Program. Commission staff believes that granting the permit will not interfere with, and is consistent with, common law Public Trust Doctrine uses at this time, or for the foreseeable term of the permit. For all the reasons above, Commission staff believes the approval of the permit application is in the best interests of the State. Staff recommends approval of this data-gathering permit application.

TERMS OF PROPOSED PERMIT:

Three years, beginning October 13, 2016, through October 12, 2019.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Required fees, expense deposit, and other security have been received.

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STATUTORY AND OTHER REFERENCES:

1. Public Resources Code sections 6005, 6212.3, and 6301
2. Public Resources Code section 21080, subdivision (c)
3. California Code of Regulations, title 2, article 2.9, section 2100
4. California Code of Regulations, title 14, section 15074

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), Commission staff prepared a Mitigated Negative Declaration (MND) identified as CSLC MND 751, State Clearinghouse No. 2013072021. The MND was prepared and circulated for public review pursuant to the provisions of CEQA, and adopted by the Commission together with a Mitigation Monitoring Program ([Calendar Item 120, September 20, 2013](#)).
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; State CEQA Guidelines section 15074, subdivision (b). A Mitigation Monitoring Program was prepared in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6).
3. Commission staff prepared an addendum to the previously adopted MND pursuant to State CEQA Guidelines section 15164, subdivision (b). Commission staff reviewed the proposed changes to the General Permit and Mitigation Monitoring Program and determined that none of the events specified in Public Resources Code section 21166 or section 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 ([Calendar 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., but such activity will not affect those significant lands. Based upon

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staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

6. This action is consistent with Strategy 1.1 of the 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.

EXHIBIT:

- A. Permit Regions

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

1. Find that the MND, CSLC ND No. 751, State Clearinghouse No. 2013072021, and the Mitigation Monitoring Program were adopted by the Commission ([Calendar 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 ([Calendar 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; that in the Commission's independent judgment, the scope of activities to be carried out under the permit to be issued under this authorization have been adequately analyzed; and 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; 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 the public's Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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SIGNIFICANT LANDS

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a 3-year Non-Exclusive General Permit to Merkel & Associates, Inc., to conduct low-energy geophysical surveys from October 13, 2016, through October 12, 2019, within Permit Regions I, II, III, and IV as designated on the attached Exhibit A.

EXHIBIT A PERMIT REGIONS

