



**CEQA and COASTAL DETERMINATIONS
and
NOTICE OF APPROVAL**

Project: Tidelands Use and Occupancy Permit for HyperKelp Pilot Project
Location: Mouth of San Diego Bay, west of Zuniga Point
Shelter Island, tied to a dock near La Playa Anchorage
Former A-8 Anchorage, west of National City Marine Terminal
South Bay, west of Chula Vista Wildlife Refuge
Imperial Beach, anchored offshore of Imperial Beach Pier

Parcel No.: Various
Project No.: 2023-124
Applicant: Graeme Rae, PhD, HyperKelp CEO, HyperKelp Inc., 1084 N. El Camino Real, Encinitas, CA, 92024
Date Approved: November 14, 2023

PROJECT DESCRIPTION

The proposed pilot project would involve a Tidelands Use and Occupancy Permit (TUOP) for the use of water area to deploy five buoys (approximately ten square feet of water area per buoy) for the proposed smart buoy technology. The proposed pilot project would include the Kelp Smart Buoy (the hardware) and Ocean Data as a Service dashboard (the software), in which the Applicant (HyperKelp) would develop, test, and validate a tailored smart buoy platform for various District monitoring applications. It is anticipated that the TUOP would have a minimum term of two years. The TUOP may be terminated by the District or Tenant as a matter of right and without cause at any time upon providing thirty-day notice in writing to the other party of such termination. A “Blue Economy Agreement” by and between the District and the Applicant is also proposed, and other similar agreements may also be required.

The Kelp Smart Buoy supports advanced acoustic, photographic, video, and other real time sensor feeds. It features a rugged solar array that generates power, is waterproof, and open water tested. The aim of the proposed pilot project is to develop, validate, and deploy custom sensor data payloads that enable real time and remote monitoring of a target set of parameters important for District monitoring activities, including dissolved copper concentrations, underwater noise levels, atmospheric carbon dioxide concentrations, and water quality. Upon successful customization and integration, the smart buoy platform would be field validated at approximately five deployment sites during the term of the TUOP. During this deployment phase, through a series of remote updates, the Applicant would continue to work with the District’s subject matter experts to expand and optimize the system’s sensing capabilities to achieve the relevant accuracy requirements set for the monitoring parameters.

Each of the proposed locations could have a combination of the following types of sensors, including but not limited to: Underwater Noise, Chlorophyll A, Dissolved Copper, Dissolved Oxygen, Oceanographic, Turbidity, pH, Temperature, Salinity, and Atmospheric CO2.

Installation and removal of the buoy systems from the project locations would require approximately one day for each buoy (five days total). The project locations would be accessed by a small boat or via floating dock for the Shelter Island location for buoy installation, maintenance, and removal. A maximum of two people would be required to deploy, and later remove, the buoy system at the beginning and end of the pilot project at each of the project locations.

The sensors would be located inside the bouys and the bouys would be floating at the surface, with a rope that connects from the bouy to an anchor, with the exception of Shelter Island, where it would be tied to a dock near La Playa Anchorage. Generally, the same bouy system would be installed at each location. The four bouy locations utilizing an anchor, would be connected to up to two 50-pound steel

anchors (one cubic foot each) that would be placed on the seafloor. Most mooring setups would use nylon to connect to the anchor, but chains may be utilized. In total, the buoy system would have an approximate total radius of up to ten square feet at the surface and a bottom radius of three to four feet for the steel anchors on the seafloor.

The Applicant would return to each deployment site by vessel on a monthly basis to carry out sensor calibration, hardware repairs, replacements, and diagnostic tests as needed. The Applicant would continue to communicate with the District to identify desired customizations to the “Ocean Data as a Service” dashboard interface, an Application Programming Interface (API), and on-edge software hosted by the buoys. The Applicant would receive feedback from the District on success of payloads at the halfway mark (approximately twelve months after deployment). Feedback may include potential swapping of payloads to display different data collection, changes to the dashboard, or removing payloads that may not provide value. Throughout the deployment period, the Applicant would provide the District with “Ocean Data as a Service” dashboard services. This collection of data products would include historic measurements of target parameters collected on an hourly basis by each of the deployed buoys in the fleet. The Applicant would also provide an API that enables the District to add fleet data into its existing databases in real time. Over the course of the pilot project, the Applicant anticipates this pilot project to consist of approximately 118,000-197,000 data points collected by the sensors of atmospheric carbon dioxide concentrations, dissolved copper concentrations, water quality parameters, and underwater sound spectra.

The Applicant would be responsible for compliance with all laws and regulations associated with the activities on or in connection with the above-described premises, and in all uses thereof, including those regulating stormwater and hazardous materials, as well as acquiring necessary permits from relevant resource agencies, such as the California Coastal Commission, Army Corps of Engineers, and Regional Water Quality Control Board, including the necessary real estate or access agreements, or coastal development permitting for the proposed project sites that are not within the District’s permitting or coastal jurisdiction.

The area proposed for use under this TUOP is proposed to be used only and exclusively for the purpose of analyzing the feasibility of the proposed pilot project and for no other purpose whatsoever without the prior written consent of the Executive Director of District in each instance. The applicant would be responsible for compliance with all laws and regulations associated with the activities on or in connection with the above-described premises, and in all uses thereof, including those regulating stormwater and hazardous materials. No new development, construction, or increase in the size of the property is proposed or authorized as part of the TUOP.

The following categorical determinations are based on the project submittal and all project information known to the District as of the date of this determination.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CATEGORICAL DETERMINATION

Categorical Exemptions: SG §15301, Class 1/Section 3.a: Existing Facilities; SG §15303, Class 3/Section 3.c: New Construction or Conversion of Small Structures; SG §15304, Class 4/Section 3.d: Minor Alterations to Land; SG §15306, Class 6/Section 3.f: Information Collection; SG §15311, Class 11/Section 3.i: Accessory Structures

- 3.a. Existing Facilities (SG § 15301) (Class 1): Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

- (1) Repair, maintenance, or minor alteration of existing mooring facilities, floats, piers, piles, wharves, bulkhead, revetment, buoys, or similar structures; marine terminal facilities; airport facilities; and commercial industrial, or recreational facilities.

AND/OR

- 3.c New Construction or Conversion of Small Structures (SG § 15303) (Class 3): Includes construction of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and conversion of existing small structures from one use to another with minor modifications to the exterior of the structure.

AND/OR

- 3.d. Minor Alterations to Land (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including, but not limited to:

- (6) Minor temporary use of land having negligible or no permanent effects on the environment.

AND/OR

- 3.f. Information Collection (SG § 15306) (Class 6): Includes basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for information gathering purposes, or as part of a study leading to an action which has not yet been approved, adopted, or funded.

AND/OR

- 3.i. Accessory Structures (SG §15311) (Class 11): Includes construction or placement of minor structures accessory to (appurtenant to) existing facilities including:

- (1) Construction or placement of minor mooring facilities, floats, buoys, or similar structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities.

The proposed project is determined to be Categorical Exempt pursuant to the CEQA Guidelines and the Sections of the District's *Guidelines for Compliance with CEQA* as identified above. These are appropriate for the proposed pilot project because it would result in no permanent effects on the environment, and would not involve the removal of mature, scenic trees and is for the purpose of basic data collection/research/experimental management/resource evaluation activities which would not result in a serious or major disturbance to an environmental resource. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

Pursuant to CEQA Guidelines Section 15062, a 35-day statute of limitations for this CEQA exemption shall apply from the date a Notice of Exemption is posted with the San Diego County Clerk, or a 180-day statute of limitations for this CEQA exemption shall apply if no Notice of Exemption is filed.

CALIFORNIA COASTAL ACT

PORT MASTER PLAN CONSISTENCY

Planning Districts: 1 - Shelter Island/La Playa (Precise Plan Figure 4); 7 - Chula Vista Bayfront (Precise Plan Figure 19); and Imperial Beach Oceanfront (Precise Plan Figure 25)

Water Use Designations: Marine Services Berthing; Estuary; and Open Ocean

The portion of the proposed project located within the District's Coastal Act approval authority conforms to the certified Port Master Plan because it would involve a TUOP for the use of water area to deploy five buoys for the proposed smart buoy technology in which the Applicant would develop, validate, and

deploy custom sensor data payloads that enable real time and remote monitoring of a target set of parameters important for District monitoring activities including, dissolved copper concentrations, underwater noise levels, atmospheric carbon dioxide concentrations, and water quality, consistent with the existing certified Water use designations. The proposed project would not change the use of the site nor would it interrupt or expand the existing conforming uses of the site.

CATEGORICAL DETERMINATION

Categorical Exclusions: Section 8.a: Existing Facilities; Section 8.c: New Construction or Conversion of Small Structures; Section 8.d: Minor Alterations to Land; and Section 8.e: Information Collection.

8.a. Existing Facilities: The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(10) Repair, maintenance, or minor alteration of existing mooring facilities, floats, piers, bulkhead, revetment, buoys, or similar structures.

AND/OR

8.c. New Construction or Conversion of Small Structures: Construction and location of limited numbers of new, small facilities or structures and installation of small, new equipment and facilities, involving negligible or no change of existing use of the property, including but not limited to:

(3) Accessory structures, including, but not limited to, on-premise signs, small parking lots, fences, walkways, swimming pools, miscellaneous work buildings, temporary trailers, small accessory piers, minor mooring facilities, buoys, floats, pilings, or similar structures; and seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar structures.

AND/OR

8.d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees.

AND/OR

8.e. Information Collection: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major significant disturbance to an environmental resource.

The proposed project is determined to be Categorically Excluded pursuant to the Sections of the District's *Coastal Development Permit Regulations* as identified above. These are appropriate for the proposed project because it would involve negligible or no expansion of use beyond that previously existing, would involve negligible or no change of existing use of the property, would not involve the removal of mature, scenic trees, and would not result in a serious or major significant disturbance to an environmental resource.

Pursuant to California Coastal Act Section 30717, there is a 10-working-day period to appeal this "Coastal Act Categorical Determination of Exclusion" to the California Coastal Commission.

For the portions of the proposed project located outside of the District's Coastal Act approval authority, additional approvals may be required from other agencies.

CALIFORNIA PUBLIC TRUST DOCTRINE

The proposed project complies with Section 87.(a)(1) of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings,

facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

RANDA CONIGLIO
Acting President/CEO

Determination by:

Sureena Basra
Senior Planner
Planning and Environment

Signature: *Sureena Basra*
Date: 11/15/2023

Shiraz Tangri
Deputy General Counsel

Signature: *Shiraz D. Tangri*
Date: 11/15/2023