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MEMORANDUM

To:	Darlene Walter; SeaWorld San Diego
From:	Scott Gressard, Environmental Specialist/Biologist – Dudek
Subject:	Biological Assessment Memo for 2020 SeaWorld Master Plan Update, San Diego, California
Date:	November 2021
cc:	Asha Bleier – Dudek
Attachment(s):	A – Figures

The 2020 SeaWorld Master Plan Update (2020 Master Plan or proposed project) is a comprehensive update and revision to the 2002 SeaWorld Master Plan Update (2002 Master Plan Update) (City of San Diego 2001a). As with the 2002 Master Plan Update, the proposed project sets forth the long-range conceptual development program, development parameters, and project review procedures for future renovation of the SeaWorld San Diego (SeaWorld) leasehold area. This biological resources memorandum has been prepared to provide information regarding applicable regulations and existing conditions related to the project site, as well as to assess whether the project would result in any potentially significant impacts beyond those already identified in the 2001 SeaWorld Master Plan Update Environmental Impact Report (2001 SeaWorld EIR) (City of San Diego 2001b) prepared for the 2002 Master Plan Update (LDR No. 99-0618).

Project Location

The project site is located in the Mission Bay Park Master Plan, on the approximately 189-acre SeaWorld leasehold (Figure 1, Project Location; see Attachment A for figures). SeaWorld is comprised of approximately 172 acres of land and 17 acres of open water along Mission Bay (study area). The site is fully developed as SeaWorld, which includes attractions, education and conservation facilities, offices, utilities, operational yards, and on-site parking. The project site is designated within the "Urban Area" under the City of San Diego's (City's) Multiple Species Conservation Plan (MSCP) Subarea Plan, and located on previously "Developed" land. The site is not designated as MSCP Multi-Habitat Planning Area (MHPA) by the City's Subarea Plan. The project is within the City's Coastal Zone. The property and surrounding areas currently support recreational and commercial uses.

Topography across the property is relatively level with a slight downward slope in the northwestern direction. Elevations of the site range from approximately 10 to 25 feet above mean sea level.

Project Description

SeaWorld is updating its 2002 Master Plan to provide a comprehensive update that has largely been implemented. As with the 2002 SeaWorld Master Plan Update, the 2020 Master Plan sets forth the long-range conceptual development program, development parameters, and project review procedures for the future renovation and development of the entire leasehold area. The 2020 Master Plan would be part of the City's Local Coastal Program for Mission Bay Park.

SeaWorld's 2020 Master Plan would retain the five designated planning areas—theme park, guest parking, administration and support, SeaWorld Marina, and Perez Cove Shoreline; however, the 2020 Master Plan would transition from a "site-specific" development paradigm as outlined in the 2002 Master Plan to an "area-specific" development paradigm that more closely matches SeaWorld's future renovation needs. The 2020 Master Plan would define each planning area with a description of the existing uses, allowed uses, general development criteria, and project-specific development criteria for all future development within the SeaWorld leasehold. The 2020 Master Plan would not result in the expansion of the leasehold.

The biological reconnaissance survey referenced in this biological memo concentrated on confirming previous mapping of the project site's existing conditions based on available digital aerial imagery, as well as a field visit conducted on January 15, 2020, by Dudek biologist Scott Gressard. The lands within the study area have nearly all been fully developed, so the survey focused on areas closest to the Stony Point U.S. Fish and Wildlife (USFWS)-designated Management Area for California least tern (*Sternula antillarum browni*) (Figure 2, Biological Resources; see Attachment A) and those areas where land cover was not clearly developed based on the aerial signature.

Regulatory Setting

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (16 USC 703 et seq.) is a federal statute that implements treaties with several countries on the conservation and protection of migratory birds. The number of bird species covered by the MBTA is extensive; the species are listed in Title 50 of the Code of Federal Regulations, Part 10.13. The regulatory definition of "migratory bird" is broad and includes any mutation or hybrid of a listed species, and also includes any part, egg, or nest of such birds (50 CFR 10.12). Migratory birds are not necessarily federally listed endangered or threatened birds under the Endangered Species Act.

The MBTA prohibits the any action for which the purpose is the "take" of any migratory bird or any part, nest, or eggs of any such bird. Under the MBTA, "take" is defined as pursue, hunt, shoot, wound, kill trap, capture, or collect, or any attempt to carry out these activities (16 USC 703 et seq.). In December 2017, Department of Interior Principal Deputy Solicitor Jorjani issued a memorandum (M-37050) that interprets the MBTA to only prohibit intentional take. Similarly, the Ninth Circuit Court of Appeals, like the Fifth Circuit and the Eighth Circuit, has held that the MBTA applies only to intended takes. See Seattle Audubon Soc'y v. Evans, 952 F.2d 297, 303 (9th Cir. 1991). Unintentional or accidental take is not prohibited. Additionally, Executive Order (EO) 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, requires that any project with federal involvement address impacts of federal actions on migratory birds with the purpose of promoting conservation of migratory bird populations (66 FR 3853–3856). The EO requires federal agencies to work with USFWS to develop a memorandum of understanding to promote the conservation of migratory bird populations. USFWS reviews actions that might affect these species.

California Fish and Game Code

According to California Fish and Game Code Sections 3511 and 4700, which regulate birds and mammals, respectively, a "fully protected" species may not be taken or possessed without a permit from the California Fish and Game Commission, and "incidental takes" of these species are not authorized.

According to Section 3503, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. Finally, Section 3513 states that is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

For the purposes of the state regulations, California Department of Fish and Wildlife (CDFW) Regulation 681.2(a) for California Fish and Game Code Sections 3503 and 3503.5 currently defines an active nest as one that is under construction, preparing for use, or in use for egg laying. This definition includes existing nests that are being modified. For example, if a hawk is adding to or maintaining an existing stick nest in a transmission tower, then it would be considered to be active and covered under these California Fish and Game Code sections.

Methods

A reconnaissance level field survey of the study area was conducted on January 15, 2020, by Dudek biologist Scott Gressard during an escorted tour led by SeaWorld staff. The biological survey was conducted in accordance with the City's Guidelines for Conducting Biological Surveys (Appendix II, City of San Diego 2018) and included the mapping of vegetation communities and land covers present in the study area. Survey conditions are presented in Table 1.

Table 1. Survey Conditions

Date	Time	Personnel	Survey Conditions
01/15/2020	0900–1045	Scott Gressard	Partly Cloudy; 1–2 mph winds; 65˚F

The area and vicinity were surveyed on foot and potential constraints were noted. The study area was evaluated for general land covers or vegetation communities present and its potential to support special-status wildlife and plant species. Vegetation community and land cover classifications follow the City MSCP and Biology Guidelines, which are derived primarily from Holland (1986), as adopted in the City Land Development Code, Biology Guidelines (City of San Diego 2018). In some cases, Oberbauer et al. (2008) was also utilized as a reference, especially with regards to land cover types. Areas on site supporting less than 20% native plant species cover were mapped as disturbed land.

Results

Vegetation Communities/Land Cover Types

Three land covers were identified within the project site, including developed land, disturbed land, and open water. These land covers are described in detail below, the acreages are presented in Table 2, and the spatial distributions are presented on the Biological Resources map (Figure 2, Attachment A). Also included in Table 2 is the designation of vegetation community sensitivity, based on rarity and ecological importance, as identified by the City's Land Development Manual Biology Guidelines (City of San Diego 2018).

Table 2. Vegetation Communities and Land Covers on Project Site

Vegetation Community/Land Cover Type	MSCP Subarea Plan Tier[2]	Acreage
Developed Land	IV	168.71
Disturbed Land	IV	5.71
Open Water	Wetland	11.98
	Total[1]	**186.40**

1 Overall project site rounded to 189 acres in Project Description
2 City Subarea Plan tiers from City Biology Guidelines (City of San Diego 2018).

In accordance with the City's Biology Guidelines (City of San Diego 2018), any impacts to disturbed or developed land (Tier IV) would not be considered significant. Impacts to open water were previously analyzed and identified in the 2001 SeaWorld EIR, and mitigation would consist of permits from the appropriate resource agency prior to construction of any in-water projects as stated in Section 4.6.5 of the 2001 SeaWorld EIR (City of San Diego 2001b). Additionally, potential impacts to eel grass were also analyzed in the 2001 SeaWorld EIR, and the previously identified mitigation measures (Mitigation Measures 4.6-1 and 4.6-2) would be carried forward to ensure impacts remain below a level of significance. (City of San Diego 2001b).

Open Water is primarily used to describe areas of open ocean water, according to Oberbauer et al. (2008). The mapped open water is associated with the aquatic habitats of Mission Bay. This subtidal habitat extends from the upper limit of the unvegetated shore to the ocean. These habitats are considered aquatic systems and are adjacent to and down-slope from intertidal estuarine wetlands. Open water is considered a wetlands community according to the City's Biology Guidelines (City of San Diego 2018). Open water occurs in Mission Bay surrounding the study area (Figure 2, Attachment A).

Disturbed Land is a land cover type characterized by a pre-dominance of non-native species, often introduced and established through human action. Oberbauer et al. (2008) describes disturbed land as areas that have been physically disturbed by human activity and are no longer recognizable as a native or naturalized vegetation association, but continue to retain a soil substrate. Typically, vegetation, if present, is nearly exclusively composed of non-native plant species such as ornamentals or ruderal exotic species (i.e., weeds). Specifically within the study area, disturbed habitat consists mostly of filled soils that have recruited non-native plant species including Russian thistle (*Salsola tragus*), black mustard (*Brassica nigra*), and iceplant (*Carpobrotus edulis*), with some native species intermixed (below 20% total cover). Disturbed land is considered a Tier IV land cover according to the City's Biology Guidelines (City of San Diego 2018) and it occurs along Sea World Drive and the eastern portion of the study area (Figure 2, Attachment A).

Developed land refers to areas that have been constructed upon or disturbed so severely that native vegetation is no longer supported. Developed land includes areas with permanent or semi-permanent structures, pavement or hardscape, landscaped areas, and areas with a large amount of debris or other materials (Oberbauer et al. 2008). Examples of these areas may include graded landscapes or areas, graded firebreaks, graded construction pads, construction staging areas, or areas that are repeatedly used in ways that prevent revegetation (e.g., parking lots, trails that have persisted for years). Although not listed in the City's Biology Guidelines, developed land is assumed to be a Tier IV land cover (City of San Diego 2018). Developed land is the dominant land cover in the study area (see Figure 2, Attachment A).

Special-Status Plants

A search of USFWS and California Natural Diversity Database records showed that Nuttal's acmispon (*Acmispon prostratus*), and Coulter's goldfields (*Lasthenia glabrata* ssp*. coulteri*) have known occurrences within the project vicinity, but these are outside the project footprint and these species were not identified during the field reconnaissance survey (CDFW 2018; USFWS 2018). No other sensitive plant species were directly observed within the study area or would have a moderate to high potential to occur, therefore no significant impacts to sensitive plants would be expected in the study area.

Special-Status Wildlife

Sensitive wildlife species are those listed as federal/state endangered or threatened, proposed for listing, fully protected by CDFW, California Watch List (WL), California SSC, or MSCP Covered Species. A search of USFWS and California Natural Diversity Database records, showed that California least tern and California black rail (*Laterallus jamaicensis coturniculus*) have been recorded within the vicinity of the project (CDFW 2018; USFWS 2018). California least tern breeding has also been documented at the City-designated Stony Point California least tern nesting site, which is approximately 800 feet north of the project location, by CDFW (CDFW 2006, 2009, 2015). The results of these nesting surveys at Stony Point indicated that, while 136 nests were identified in 2006, there were no breeding pairs in 2009, and only one successful pair in 2015 (chicks were depredated). Based on analysis conducted under the Mission Bay Park Natural Resource Management Plan (MBNRMP) (City of San Diego 1990) and the Biological Resources Report of the SeaWorld Master Plan Update (City of San Diego 2001a), this reduction in breeding pairs would not have occurred due to the presence of the SeaWorld leasehold.

Other special-status species with a moderate potential to occur on the site include Cooper's hawk (*Accipiter cooperii*) and American peregrine falcon (*Falco peregrinus anatum*). Given the developed nature of the study area and since the study area is more than 500 feet from the Stony Point City-designated California least tern nesting site (Figure 2, Attachment A), any potentially significant direct impacts to these sensitive species would be avoided through compliance with the MBTA, California Fish and Game Code Sections 3503 and 3503.5, the City's Biology Guidelines (City of San Diego 2018), the MBNRMP (City of San Diego 1990), the Mission Bay Park Master Plan Update (MBMPU) (City of San Diego 2002), the 2020 Master Plan, as well as through implementation of the City's current regulations including the Outdoor Lighting Regulations per San Diego Land Development Code (LDC) Section 142.0740 and mitigation measure 4.6-3 in the 2001 SeaWorld EIR as follows (City of San Diego 2001b):

Mitigation Measure 4.6-3: Prior to construction of a new development project on the Sea World leasehold, a determination shall be made as to whether the Stony Point Preserve has been recolonized by the California least tern. If it is has not been recolonized then implementation of the following mitigation measure would not be required. Should the Preserve be recolonized, a determination shall be made as to whether the new development project would provide a clear line-of-sight from perching opportunities on the proposed structure to the Stony Point Preserve.

If it would not provide a clear line-of-sight then no mitigation would be necessary. Should a clear line-of-sight be available from perching locations on the new structure, then the structure would be required to include appropriate design features to eliminate the perching opportunity.

Project activities within disturbed land and mature ornamental trees (on developed land) or other noise-generating work occurring during the avian breeding season from February 1 through September 15 would avoid impacts to other nesting bird species through adherence to the MBTA, California Fish and Game Code 3503 and 3503.5, and the City's Biology Guidelines (City of San Diego 2018).

Conclusion

Based on the analysis provided herein, the proposed project would not result in any potentially significant impacts beyond those already identified in the 2001 SeaWorld EIR prepared for the 2002 Master Plan Update (City of San Diego 2001b).

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Attachment A

Figures

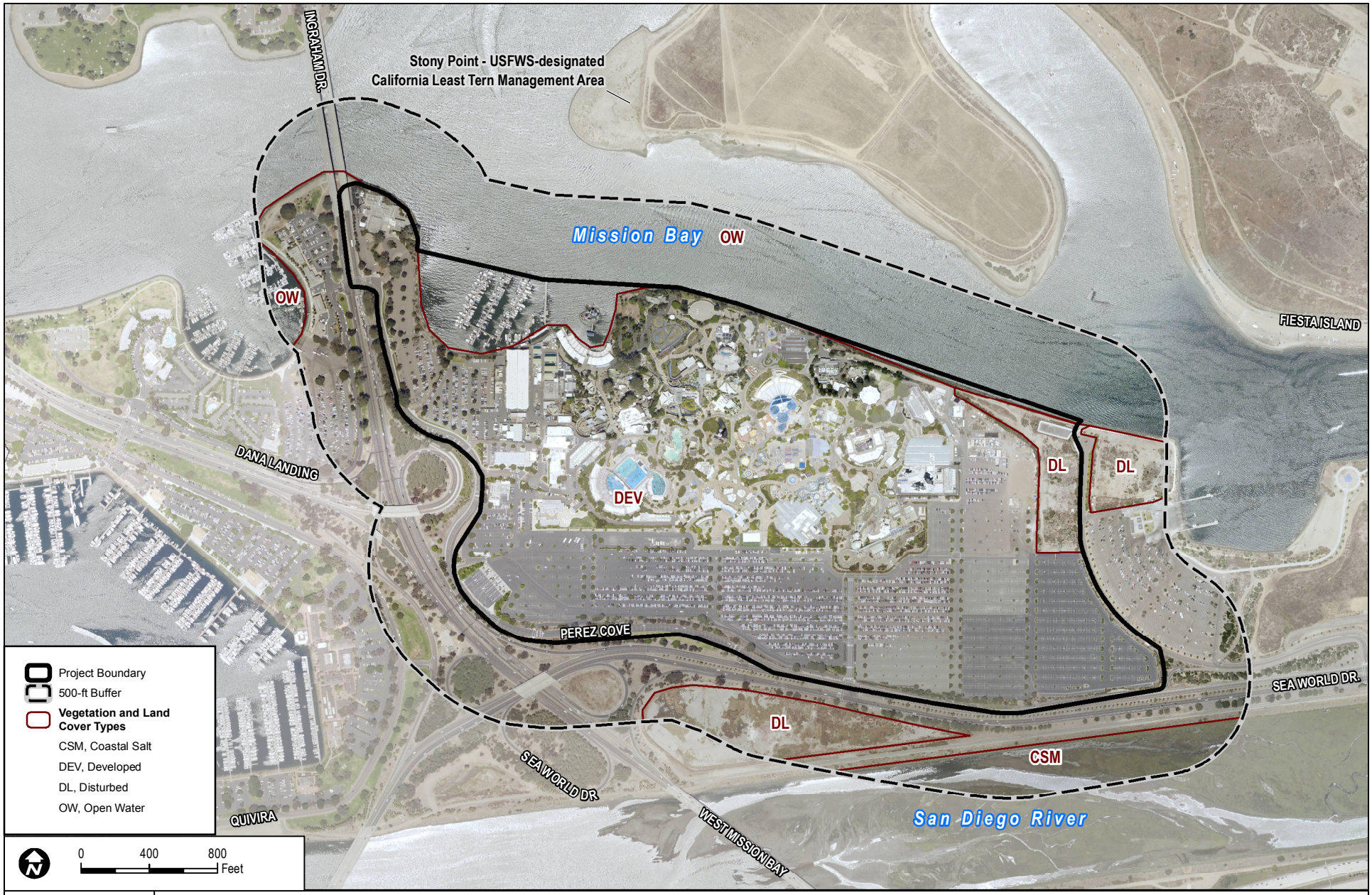
SeaWorld

Project Location

Environmental Analysis Section Project No. 646353

CITY OF SAN DIEGO - DEVELOPMENT SERVICES

FIGURE 1



SeaWorld

Biological Resources

Environmental Analysis Section Project No. 646353

CITY OF SAN DIEGO - DEVELOPMENT SERVICES

FIGURE 2