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Attachment E to Agenda File No. 2020-0279

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

BAE SYSTEMS SAN DIEGO SHIP REPAIR INC., A CALIFORNIA CORPORATION

FOR PROPERTY LOCATED IN

CHULA VISTA, CALIFORNIA

FOR THIRTEEN (13) YEARS, ELEVEN (11) MONTHS AND THIRTEEN (13) DAYS

COMMENCING SEPTEMBER 18, 2020

AND ENDING AUGUST 31, 2034

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LEASE

THIS LEASE, made and entered into this _____ day of _____, 2020, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter "Lessor," and BAE SYSTEMS SAN DIEGO SHIP REPAIR INC., a California Corporation dba BAE SYSTEMS hereinafter "Lessee." Lessee and Lessor are collectively referred to herein as “Parties” or “parties” and individually referred to herein as “Party” or “party”.

RECITALS:

WHEREAS, Lessor and Lessee, on the 1st day of August 2016, entered into a Right of Entry License Agreement, on file in the Office of the District Clerk of Lessor bearing Document No. 65475, “ROE,” to authorize Lessee to conduct certain Work, as more particularly described in the ROE on certain tidelands and submerged waters in the City of Chula Vista, California; and

WHEREAS, Lessee delivered and placed less than 80,000 cubic yards of dredge material and constructed an eelgrass habitat restoration project as described and analyzed in Final Environmental Impact Report (“FEIR”) for the Pier 1 North Drydock, Associated Real Estate Agreements and Removal of Cooling Tunnels Project (collectively, “Pier 1 North Drydock Project”) (UPD #EIR-2014-31, SCH #2014041071) and, as specified in Coastal Development Permit number CDP-2015-03 issued by the District to Lessee on January 27, 2015, Clean Water Act Section 404 permit number SPL-2015- 00312-RRS issued by the United States Army Corps of Engineers “Corps” on May 18,2016, and Clean Water Act Section 401 Water Quality Certification No. R9-2015-0080 issued by the California Regional Water Quality Control Board, San Diego Region “RWQCB” on January 22, 2016 (collectively, “Entitlements”), incorporated herein by reference.

NOW THEREFORE, Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the Lessor by that certain Act of the Legislature of the State of California entitled “San Diego Unified Port District Act,” Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

> Approximately 294,721 square feet of submerged land area located at the former South Bay Power Plant cooling intake channel in the City of Chula Vista, California, more particularly described and delineated as Parcel Nos. 1 and 2 on Drawing No. 032-034 dated May 20, 2020, attached hereto as Exhibits “A” and “B,” and by this reference made a part hereof, hereinafter "Leased Premises".

TO HAVE AND TO HOLD said Leased Premises for the term of the Lease and upon the conditions as follows:

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1. **TERM**

The term of the Lease shall commence on the 18th day of September 2020, hereinafter called the "Commencement Date," and end on the earlier of: a) the date that the lease between Lessor and Lessee dated April 23, 1985 on file in the Office of the District Clerk of Lessor bearing Document No. 18106 terminates or b) the 31st day of August 2034, hereinafter called the "Termination Date," unless sooner terminated as herein provided. At the expiration or earlier termination of this Lease, Lessor will use its best efforts to ensure that the Leased Premises will be maintained without future development or encroachment that could otherwise reduce its functions and values, subject to existing laws and regulations.

2. **USE**

Lessee agrees that the Leased Premises shall be used by Lessee non-exclusively for long-term monitoring and revegetation, if required, as more particularly specified in the Eelgrass Transplant and Monitoring Plan (Exhibit "C"), Post-Construction Eelgrass Survey (Exhibit "D") and the Entitlements, of a minimum of 6.77 acres of eelgrass restoration habitat "Eelgrass Habitat", within and adjacent to the property delineated as the Southern Alternative Mitigation Site, for reasonably necessary ingress and egress to monitor and revegetate, if required, the Eelgrass Habitat and for no other purposes whatsoever. This restriction on use of the Leased Premises absolutely prohibits a change in use or unauthorized uses by Lessee. Any change in use or unauthorized uses on the Leased Premises by Lessee, its agents, contractors or employees whether intentional or unintentional, shall be immediately reported to the Lessor by Lessee. Any subsequent lease with Lessee or its successors in interest for the Leased Premises shall maintain the property as an eelgrass mitigation site unless alternative mitigation measures have been approved by Lessor or the requirement for mitigation no longer exists.

3. **RENT**

Lessee agrees to pay to Lessor rent in accordance with the following:

(a) For the period commencing September 18, 2020 through August 31, 2021 the annual rent shall be the sum of One Hundred Eighty-one Thousand Forty-five Dollars ($181,045) subject to annual adjustments provided in (c) below. Said rent shall be payable annually, in advance, on or before the Commencement Date of this Lease and every September 1st thereafter. Notwithstanding the forgoing, the first annual rent payment shall be made payable within thirty (30) days after the Commencement Date of this Lease.

(b) As consideration for the use of the Leased Premises for the period commencing August 1, 2016 and ending on the day immediately preceding the commencement date of this Lease, Lessee shall pay Lessor a one-time payment in the amount of Four Hundred Seventy-six Thousand Seven Hundred Sixty-three Dollars ($476,763), hereinafter "Other Rent" which shall be in addition to the rent specified in Paragraph 3(a). The Other Rent shall be due within thirty (30) days after the commencement date of this Lease.

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(c) Commencing September 1, 2021 and each September 1st thereafter (hereinafter called "Adjustment Dates"), the rent shall be determined or adjusted as provided below.

On the Adjustment Dates the rent in effect immediately preceding said Adjustment Date ("Base Rent") shall be adjusted by the increase if any, in the Consumer Price Index for All Urban Consumers for Los Angeles, Long Beach, and Anaheim, CA/All Items based on the period 1982-84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, hereinafter "CPI".

The Base Rent of this Lease shall be multiplied by a fraction, the numerator of which shall be the CPI for the calendar month which is three (3) months prior to the Adjustment Date under consideration, and the denominator of which shall be the CPI for the calendar month which is fifteen (15) months prior to the Adjustment Date under consideration. The sum so calculated shall constitute the new monthly rent herein, but in no event shall such new monthly rent be less than two percent (2%), nor more than four percent (4%) greater than the monthly rent payable for the month immediately preceding said Adjustment Date.

In the event the CPI is no longer published, the index for the Adjustment Date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly corresponding to the foregoing description of the CPI. If the herein-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

(d) All payments shall be delivered to Lessor's Finance Department. Checks shall be made payable to the San Diego Unified Port District and mailed to the San Diego Unified Port District, Financial Services Department, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the San Diego Unified Port District, Financial Services Department, 3165 Pacific Highway, San Diego, California. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as herein described, if payments are made by mail.

(e) Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in remitting the rent due in accordance with the rent provisions of this Lease,

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Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] (collectively, "Late Charges"). The parties hereby agree that said Late Charges are additional rent and are not interest, and that said Late Charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment for rent be less than Twenty-Five Dollars ($25). Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The Executive Director of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

(f) All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.

4. **IMPROVEMENTS**

(a) In accordance with the procedures described herein, Lessee may, at its own expense, make other improvements necessary for the authorized use, as set forth in Paragraph 2 herein, on the Leased Premises; provided, however, said improvements shall in no manner interfere with or obstruct the authorized use, as set forth in Paragraph 2 herein, on the Leased Premises or impact the Eelgrass Habitat. Lessee shall submit plans and specifications, including but not limited to working drawings, hereinafter "Plans," to Lessee for any improvements made in accordance with this Paragraph 4, for its review and written approval, in Lessor's sole discretion. All improvements shall be done in accordance with said previously submitted and Lessor approved Plans.

(b) No construction, installation, or removal of any improvement or material upon the Leased Premises shall commence without Lessor's prior written approval. All construction, installations, and removals shall be in accordance with Plans submitted to and approved in writing by Lessor prior to the commencement of any such work. All Plans are subject to changes as may be approved by Lessor, in Lessor's sole discretion. Further, all work shall be in accordance with Lessor's prior written approval and all applicable laws, regulations, ordinances, codes and Lessor's policies.

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(c) Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit license or entitlement pertaining to the Leased Premises; provided, however, Lessee shall not apply for or accept any permits, licenses or entitlements that would interfere with or obstruct the authorized use, as set forth in Paragraph 2 herein, on the Leased Premises or impact the Eelgrass Habitat. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

(d) Lessee shall not enter into any agreement or commitment with any third party that would interfere with or obstruct the authorized use, as set forth in Paragraph 2 herein, on the Leased Premises or impact the Eelgrass Habitat.

5. **TITLE TO IMPROVEMENTS**

For the purpose of this Paragraph, "improvements" shall include, but are not limited to subsurface improvements but shall not include the Eelgrass Habitat. On the Commencement Date of this Lease, all existing improvements, including without limitation the Eelgrass Habitat, located on the Leased Premises are owned by and title thereto is vested in Lessee.. With the sole exception of the Eelgrass Habitat, all said existing improvements, as well as any improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option of Lessor, be removed by Lessee at Lessee's expense. Lessor may exercise said option as to any improvements either before or after the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier; provided, however, Lessee shall not remove any portion of the Eelgrass Habitat and shall not impact any Eelgrass Habitat in removing any structures, buildings, installations, and improvements. Lessee agrees to repair any and all damage occasioned by said improvements removal. Title to any such improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee if Lessee fails to fulfill its obligation to remove and repair within the sixty-(60-) day period.

During any period of time employed by Lessee under this Paragraph to remove improvements, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

Notwithstanding anything to the contrary in this Lease, if Lessee fails to enter into a long-term lease with Lessee for the premises covered by Tideland Use and Occupancy Permit, ("TUOP), Bearing District Document Number 62766, dated January 13, 2015 and Lease

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Bearing District Document Number 12223, dated September 17, 1979, as amended, (collectively, "Other BAE Leases") and improvements on the premises of the Other BAE Leases that required the creation of the Eelgrass Habitat are removed, title, including any mitigation credits, to the Eelgrass Habitat shall vest with Lessor. This Lease in no way extends the terms of the Other BAE Leases and Lessee shall not rely on this Lease in any manner in claiming any rights to the premises covered by the Other BAE Leases.

6. **LIENS**

Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, alterations or revegetation made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the state of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in the event the bond required by this Paragraph has not been deposited with Lessor within thirty (30) days after written request has been delivered to Lessee.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with Paragraph herein.

7. **ASSIGNMENT – SUBLEASE**

Lessee shall not, without the prior written consent of Lessor:

(a) Assign or transfer the whole or any part of this Lease or any interest therein;

(b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises the whole or any part of the Leased Premises;

(c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, dissolution of Lessee, voluntary or involuntary of Lessee's entire corporation to a third party other than Lessee's parent company, subsidiaries or affiliates;

(d) Notwithstanding the provisions contained herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or

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(e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

(f) Contract for the management or operation of the whole or any part of the Leased Premises with the exception of contracts for the maintenance of the Eelgrass Habitat provided the person(s) conducting the maintenance of the Eelgrass Habitat is a qualified biologist or is monitored by a qualified biologist.

Notwithstanding the foregoing, nothing herein shall be construed to prevent the occupancy of said Leased Premises by any employee or business invitee of Lessee; provided, however, said occupancy shall not interfere with or obstruct the authorized use, as set forth in Paragraph 2 of this Lease, on the Leased Premises.

In the event Lessee requests Lessor's consent to any Lease assignment, Lease transfer, Lease amendment, and/or sublease, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment or transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, in Lessor's sole discretion, a Lease amendment shall be executed which will include new or revised lease provisions; provided, however, said new or revised lease provisions shall not amend Paragraph 2 of this Lease or any terms or conditions that may alter the obligation to maintain the Premises as Eelgrass Habitat (iv) the authorized use, as set forth in Paragraph 2 of this Lease, on the Leased Premises shall not be amended or changed; and (v) assignee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Notwithstanding, items (i), (iii), and (v) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 9 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments as provided in Paragraph 3 herein.

In the event Lessor consents to any sublease, said consent shall be conditioned upon the following: (i) if, upon the effective date of any said consented-to sublease, the rent being paid for the sublease area is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent for the sublease area as long as said sublease is in effect; (ii) if deemed

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necessary by Lessor, in Lessor's sole discretion, a Lease amendment shall be executed which shall include new or revised lease provisions; provided, however, said new or revised lease provisions shall not amend Paragraph 2 of this Lease or any terms or conditions that may change the obligation to maintain the Leased Premises as Eelgrass Habitat (iii) the authorized use, as set forth in Paragraph 2 of this Lease, on the Leased Premises shall not be amended or changed and (iv) Lessee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Furthermore, as long as said sublease is in effect, rent for the sublease area shall be subject to adjustments as provided in Paragraph3 herein.

7.1 LESSOR PARTICIPATION FEE

Upon each (i) assignment of this Lease pursuant to this Paragraph 7.1 to a Third Party (as defined below), (ii) a change in the composition of the direct or indirect ownership of Lessee by which a Third Party (as defined below) acquires any direct or indirect interest in Lessee other than pursuant to a transfer of ownership interests traded on a recognized public exchange, or (iii) Sublease of all or substantially all of the Leased Premises to a Third Party, Lessee shall pay to Lessor a fee in an amount equal to One Hundred Thirty Thousand Dollars ($130,000), hereinafter called "Assignment Participation Fee". The Assignment Participation Fee shall be payable in full to Lessor concurrent with the completion of the transaction and shall be a joint and several obligations of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute additional rent.

For the purposes of this Section 7.1, the term "Third Party" shall mean any Person other than (i) BAE Systems, Inc. (the "Approved Parent") or an entity who is directly or indirectly Controlled by, [one or more of] the Approved Parent[s], (ii) a Permitted Lender, (iii) an assignee of a Permitted Lender (whether the Permitted Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease), or (iv) an assignee acquiring less than 10%.

8. DEFAULTS AND REMEDIES

(a) Defaults. The occurrence of any one (1) or more of the following events shall constitute a default hereunder:

(1) Abandonment of the Leased Premises. Abandonment is herein defined as Lessee's ongoing failure to meet the obligations of any of its permits related to the Eelgrass Habitat or the Leased Premises or this Lease.

(2) Failure by Lessee to pay, when due, any Lease-required rent, other payment, and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof is received from Lessee by Lessor. Provided, however, any such notice provided in this Paragraph 8(a)(2) or in subsequent Paragraph 8(a)(3) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

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(3) Failure by Lessee to perform any other express or implied covenants or conditions in this Lease and should such failure continue for thirty (30) days after written notice thereof ("Cure Period"); provided, however, no notice need be given by Lessor to Lessee for any change in use or unauthorized use by Lessee of the Lease Premise by Lessee, or Lessee's agents, employees, invitees or contractors and said Lease shall automatically terminate subject to the Lessor's rights in this Paragraph 8; provided, however, vessels traversing the Leased Premises shall not constitute an unauthorized use.

(4) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidator for all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

This Paragraph 8(a)(4) shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with Paragraph 12 of this Lease, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

(5) Except for Paragraph 8(a)(2), failure by Lessee to comply with all time periods specified in this Lease and after the Cure Period.

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(6) Notwithstanding Paragraph 8(a)(5), failure by Lessee to timely comply with all other provisions of this Lease and after the Cure Period.

(7) Default under the Lease between Lessor and Lessee dated April 23, 1985 on file in the Office of the District Clerk of Lessor bearing Document No. 18106.

(8) Default under that certain Tideland Use and Occupancy Permit between Lessor and Lessee dated November 1, 2014 on file in the Office of the District Clerk of Lessor bearing Document No. 62766.

(b) Remedies. In the event of any default, Lessor may exercise the following remedies:

(1) Termination: Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate, and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to damages as specified in California Civil Code Section 1951.2. Lessee agrees and acknowledges that it has read and understands California Civil Code Section 1951.2 and agrees it shall abide by California Civil Code Section 1951.2.

The worth at the time of award of the amounts referred to in Sections 1951.2 (a)(1) and (a)(2) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The worth at the time of award of the amount referred to in Section 1951.2 (a)(3) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

(2) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 8(b)(1). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of

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the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any lease made pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

(3) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

In the event this Lease is terminated pursuant to the provisions of this Paragraph 8, Lessor shall continue to have all rights provided in Paragraph 5 of this Lease.

Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same use, terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty- (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

9. **BANKRUPTCY**

Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

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The conditions of this Paragraph shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with Paragraph 12 herein.

10. EMINENT DOMAIN

If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall continue in possession of the remainder of the Leased Premises under the then-current Lease terms; provided, however, the Rent shall be reduced in proportion to the value of the portion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold, the value of the Eelgrass Habitat or to the fee of the Leased Premises. Provided, however, Lessor shall not be entitled to any award made for the taking of any of Lessee's installations or improvements on the Leased Premises excluding the Eelgrass Habitat.

11. TERMINATION OF PRIOR AGREEMENT(S)

Except for the Entitlements approved and/or issued by the District, any and all existing permits, leases, or rental agreements between Lessor and Lessee for the Leased Premises, including the ROE, which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations For the purposes of clarity, Lessee's obligation with respect to Pre-existing Contamination as defined herein shall be governed by this Lease, and not the ROE. Further, said statute shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

12. USE OBLIGATION

Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in Paragraph 2, herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, terrorism, and natural disasters. Said active and continuous use and operation enhances the value of the lands within Lessor's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Lessee shall not and is expressly prohibited from using the Leased Premises for any other purpose or use

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whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in Paragraph 2, herein.

13. **MAINTENANCE AND REPAIR**

As part of the consideration for this Lease, Lessee shall assume full responsibility for operation, maintenance of the Leased Premises and restoration of the Eelgrass Habitat, if applicable throughout the term and without expense to Lessor. Lessee shall perform all maintenance necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, reasonably satisfactory to Lessor and in compliance with the Entitlements, Eelgrass Transplant and Monitoring Plan, Post-Construction Eelgrass Survey and all applicable laws, regulations, ordinances, codes and Lessor's policies that are applicable to lessees. Provided, however, prior to Lessee performing any extraordinary maintenance or repairs, Lessee shall submit plans and specifications to Lessor and receive Lessor's approval, pursuant to the procedures provided in Paragraph 4 herein. Notwithstanding any other provision of this Lease and in addition to any waivers which may be contained in this Lease, Tenant waives the provisions of California Civil Code Sections 1932(1), 1941 and 1942 with respect to Landlord's repair duties and Tenant's right of repair.

For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition and for its use as specified in Paragraph 2 herein, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor; provided, however, if inspection discloses that the Leased Premises is not being used in accordance with Paragraph 2 herein, Lessee shall be put in default pursuant to Paragraph 9 herein. Further, if at any time Lessor determines the Leased Premises are not in the condition required herein, Lessor may require Lessee to file and pay for a faithful performance bond to assure prompt correction, without additional notice. The amount of said bond shall be adequate, in Lessor's opinion, to correct all unsatisfactory conditions.

Notwithstanding, Lessor shall not be required to perform any maintenance, restoration of the Eelgrass Habitat, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

The rights reserved in this Paragraph shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

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14. PERFORMANCE BOND

Lessee shall not commence any improvements upon the Leased Premises until performance bonds in the amount of the total estimated cost of the proposed improvements have been secured and submitted to Lessor. In lieu of said performance bonds, the Executive Director of Lessor may, in his or her sole discretion, accept performance and labor and material bonds supplied by Lessee's contractor or subcontractors, performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be in a form acceptable to Lessor and have been issued by a company qualified to do business in the state of California.

15. TAXES AND UTILITIES

This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any improvements of any nature whatsoever by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

16. CONFORMANCE WITH LAWS AND REGULATIONS

Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all applicable laws, regulations, ordinances and codes. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any applicable ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including but not limited to tariffs, Board of Port Commissioners Polices; the San Diego Unified Port Code; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Lessee shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of Lessor Code entitled “Stormwater Management and Discharge Control,” and (ii) the Americans With Disabilities Act of 1990, and (iii) any and all law related to public safety and protection of the environment, including but not limited to regulations promulgated thereunder, and Lessor shall have no such obligations or responsibilities as to the Leased Premises.

17. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age,

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sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

For the purposes and provisions of this Paragraph, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

Lessee's compliance with this Paragraph is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

18. **COMPLIANCE WITH EMPLOYMENT AND LABOR REQUIREMENTS**

Lessee shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, regarding employment and labor practices. Lessee shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize. Additionally, Lessee shall file a “statement of compliance” providing that Lessee shall comply with the above-referenced state and federal labor employment laws. Provided, however, Lessee is only required to file the Statement when the average annual employment exceeds fifty (50) employees.

19. **PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

20. **HOLD HARMLESS**

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officials, officers, representatives, agents, and employees (collectively “Indemnitees”) for any and all liability, claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, orders, directives, provisional relief, fines, penalties, fees, costs including, without limitation, any and all reasonable attorneys’ fees, demands and claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), arising directly or indirectly out of the obligations undertaken in connection with the Entitlements, Eelgrass Transplant and Monitoring Plan and Post-Construction Eelgrass Survey, this Lease, or Lessee’s use, occupancy, possession or operation of the Leased Premises, except (1) Claims arising through the sole negligence or willful misconduct of Lessor, and (2) Claims that result solely and exclusively from Pre-existing Contamination or the acts or failures to act of third parties over which Lessee, or any of its affiliates, agents, contractors, invitees or employees have no control or affiliation.

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It is the intent of this Paragraph 20 that Lessee indemnify and hold harmless Indemnitees for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee or to third parties, except (1) Claims arising through the sole negligence or willful misconduct of Lessor, and (2) Claims that result solely and exclusively from Pre-existing Contamination or the acts or failures to act of third parties over which Lessee, or any of its affiliates, agents, contractors, invitees or employees have no control or affiliation. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

In the event such Claims arise, Lessor may, in its sole and absolute discretion, participate in the defense of any Claims and the Lessee shall reimburse Lessor for said defense, including, but not limited to reimbursement for outside attorneys' and experts' fees and other costs. The Lessor's participation shall not relieve the Lessee of any of its obligations under this Paragraph 20. In the Lessor's sole and absolute discretion, the counsel of the Lessor or its Indemnitees may also jointly represent the Lessee. The Lessor shall promptly notify the Lessee of its receipt of any Claims.

For the purposes of this Lease, Pre-existing Contamination is defined as contamination (1) that is within the boundaries of the Leased Premises, (2) that Lessee, or its affiliates, agents, contractors, invitees or employees have not contributed to or exacerbated in any way, (3) that existed within the Leased Premises prior to the creation of the Eelgrass Habitat, and (4) that now exists within the Leased Premises beneath the Eelgrass Habitat at a depth of eight feet or more below the surface of the Eelgrass Habitat. It shall be Lessee's sole burden to prove that any identified contamination is Pre-existing Contamination.

21. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

22. EASEMENTS

This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

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23. **TITLE OF LESSOR**

Lessor's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Lease is granted subject to the terms and conditions of said Act.

24. **INSURANCE**

Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall provide the following:

(a) Forms of Coverage

(1) "OCCURRENCE" form Marine General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars ($4,000,000) unless a Two Million Dollars ($2,000,000) per location aggregate limit is provided separate by endorsement.

(2) If vessels will be used by Lessee in connection with this Lease, protection and indemnity insurance (including coverage for collision, towers' liability, and bodily injury and property damage), in the amount of not less than Two (2) Million Dollars ($2,000,000).

(3) Evidence of coverage for Lessee's Longshore and Harbor Workers exposure, if applicable, either as part of Marine Insurance Coverage required in this Paragraph 25(a)(3), or an extension of a worker's compensation policy.

(b) General Requirements

(1) All required insurance shall be in force the first day of the term of this Lease and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf.

(2) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its officers, employees, and agents against any

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legal costs in defending claims. All liability policies shall provide cross-liability coverage. Lessee shall not suspend, void, cancel or reduce coverage or limits in coverage without advance written consent from Lessor. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must have an A.M. Best (or equivalent) rating of A- or better.

(3) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(4) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee’s use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

(5) Lessor may require that Lessee obtain and maintain additional or increased insurance from time to time. Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then- existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Lessee agrees that if Lessee does not take out and maintain such insurance or furnish Lessor with renewals or binders in a timely manner, Lessor may (but shall not be required to), procure said insurance on Lessee's behalf and charge

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Lessee the cost thereof, which amount shall be payable by Lessee within thirty (30) days of written demand with interest at the Default Rate from the date such sums are expended.

(6) If Lessee fails or refuses to maintain insurance as required in this Lease or, within ten (10) days after receipt of written notice from Lessor, fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(7) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.

(8) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

25. **COMPLIANCE WITH PREVAILING WAGE LAWS**

Lessee acknowledges and agrees that:

(a) It is the sole and exclusive responsibility of the Lessee, and not Lessor, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with any construction or work of improvement on any land or water areas occupied by Lessee, shall comply with the requirements of California's prevailing wages laws (the “PWL"); and,

(b) It is the sole and exclusive responsibility of Lessee, and not Lessor, to determine whether such construction or work of improvement is subject to the PWL by obtaining a determination by means that do not involve Lessor. If such construction or work of improvement is determined to be subject to the PWL, Lessee shall comply with all applicable provisions of the PWL, and shall ensure that all persons and/or entities who provide any labor, services, equipment

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and/or materials in connection with such construction or work of improvement shall likewise comply with all applicable provisions of the PWL.

26. **WARRANTIES-GUARANTEES-COVENANTS**

Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

27. **DAMAGE TO OR DESTRUCTION OF LEASED PREMISES**

Should the Leased Premises, Eelgrass Habitat or Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or the authorized use as specified in Paragraph 2 herein by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, restoration or reconstruction of the Leased Premises, Eelgrass Habitat or improvements necessary to permit full occupancy and use of the Leased Premises for the authorized uses as specified in Paragraph 2 herein. Repair, replacement, restoration or reconstruction shall be accomplished in a manner and according to Plans approved by Lessor.

In no event shall Lessee be relieved of its obligations to pay all rent and other amounts otherwise due hereunder. Notwithstanding any other provision of this Lease and in addition to any waivers which may be contained in this Lease, Tenant waives the provisions of California Civil Code Section 1932(2) and 1933(4) with respect to the destruction of the Premise.

28. **QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION**

Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after said termination a good and sufficient deed whereby all Lessee's right, title, and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

29. **PEACEABLE SURRENDER**

Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor with a minimum amount of Eelgrass Habitat with 100 percent areal coverage and 85 percent density as required to fully satisfy all compensatory mitigation remaining, following removal of all or some of Lessee's improvements on Other BAE Leases in accordance with Paragraph 5 herein, including those as described in the Pier 1 North Drydock Project as analyzed in the FEIR, and other impacts

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for which this mitigation site Lease was intended to provide ("Minimum Eelgrass at Termination"). If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

30. **WAIVER**

Should either Lessor or Lessee waive any default or breach by the other of any Lease covenant, condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other default or breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

31. **HOLDOVER**

This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy, terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease.

32. **PARAGRAPH HEADINGS**

The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

33. **ENTIRE UNDERSTANDING**

This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this

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Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

34. **TIME IS OF THE ESSENCE**

Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

35. **NOTICES**

All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor
Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To Lessee
Facilities Manager
BAE Systems San Diego Ship Repair Inc.
Post Office Box 13308
San Diego, CA 92170-3308

With a copy to:
General Manager
BAE Systems San Diego Ship Repair Inc.
2205 E. Belt Street
San Diego, CA 92113

Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be personally served, or served by certified letter at such appropriate address designated in writing by the respective party.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

36. **WASTE/NUISANCE**

Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

37. **NUMBER AND GENDER**

Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

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38. **APPLICABLE LAW**

The Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

39. **ATTORNEY FEES**

Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

40. **HAZARDOUS MATERIALS**

(a) Definition of "Hazardous Material." The term "Hazardous Material" as used herein shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, Lessor, or any local government authority having jurisdiction over the Leased Premises.

(b) Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees. Limited quantities of equipment, materials and supplies customarily used in connection with the operation of the Leased Premises consistent with the authorized use, as set forth in Paragraph 2 herein are excluded from this prohibition.

(c) Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.

(d) Lessor Right to Inspect. Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests

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or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties, chosen by Lessor, in its sole and absolute discretion, on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties, chosen by Lessor, in its sole and absolute discretion, on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 40(d) regarding the Leased Premises shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

(e) Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, or invitees, or generated by same, results in contamination of the Leased Premises, adjacent properties or the San Diego Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials; provided, however, if impacts to the Eelgrass Habitat occur during said actions, Lessee shall restore the Eelgrass Habitat and monitor it in accordance with the standards set forth in the Eelgrass Transplant and Monitoring Plan and to the satisfaction of Lessor and other relevant governmental agencies. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 40(e). To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises or the San Diego Bay, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 40(f). The obligations set forth in this Paragraph 40(e) shall survive any expiration or other termination of this Lease.

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(1) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions thereof, then: (A) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (B) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleasable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

(2) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 40(e), whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

(f) Indemnification. Lessee shall, at Lessee's sole expense, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all Claims and losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any environmental law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. In the event such Claims arise, Lessor may, in its sole and absolute discretion, participate in the defense of any Claims and the Lessee shall reimburse Lessor for said defense, including, but not limited to reimbursement for outside attorneys' and experts' fees and other costs. The Lessor's participation shall not relieve the Lessee of any of its obligations under this Paragraph 40. In the Lessor's sole and absolute discretion, the counsel of the Lessor or its Indemnitees may also jointly represent the Lessee. The Lessor shall promptly notify the Lessee of its receipt of any Claims. Lessee's obligations herein shall apply whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This

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Paragraph 40 shall survive the expiration or termination of this Lease. Lessee's obligations herein includes, but is not necessarily limited to:

(1) Losses attributable to diminution in the value of the Leased Premises;

(2) Loss or restriction of use of rentable space(s) in the Leased Premises;

(3) Adverse effect on the marketing of any space(s) in the Leased Premises;

(4) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,

(5) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.

Lessee's indemnity obligations under this Lease do not include (1) Claims arising through the sole negligence or willful misconduct of Lessor, and (2) Claims that result solely and exclusively from Pre-existing Contamination or the acts or failures to act of third parties over which Lessee, or any of its affiliates, agents, or employees, has no control or affiliation.

Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign its rights under this Paragraph 40.

(g) Termination of Lease. Upon the expiration or earlier termination of the term of the Lease, Lessee shall: (i) cause all Hazardous Materials generated, stored or used by Lessee or its affiliates, agents, contractors, invitees or employees to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) while underground or aboveground storage tanks or other containers are strictly prohibited by this Lease, remove any underground or aboveground storage tanks or other containers installed or used by Lessee or its affiliates, agents, contractors, invitees or employees, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil, sediment or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee or its affiliates, agents, contractors, invitees or employees to be decontaminated, detoxified, or

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otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor free of contamination attributable to Hazardous Materials generated or used by Lessee or its affiliates, agents, contractors, invitees or employees in or on the Leased Premises. The obligations set forth in this Paragraph 40(g) shall survive any expiration or other termination of this Lease.

41. **STORAGE TANKS**

Underground Storage Tanks. Underground storage tanks ("USTs") and aboveground storage tanks ("ASTs") are strictly prohibited on the Leased Premises and Lessee shall not seek an application for or install USTs or ASTs on or adjacent to the Leased Premises.

42. **ENVIRONMENTAL DISCLOSURES**

Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent San Diego Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have against Lessor to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal that is attributable to Lessee or its affiliates, agents, contractors, invitees or employees.

Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations. Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have against Lessor to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities,

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losses, damages, costs, and expenses. The obligations set forth in this Paragraph 42 shall survive any expiration or other termination of this Lease.

43. **"AS IS" LEASE AND WAIVERS**

Lessee's execution of the Lease shall fully and finally constitute:

(a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (2) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soils, subsoil media, and groundwaters at or under the Leased Premises; (3) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (4) the development potential of the Leased Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Leased Premises and local market conditions; (6) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (7) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises. The land use; the environmental, biological, physical and legal condition of the Leased Premises; the feasibility of Lessee's intended use and enjoyment of the Leased Premises and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Leased Premises"; and, taking into consideration Lessee's lack of responsibility or obligation for any Pre-existing Contamination of the Leased Premises, without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.

(b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.

(c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and agreement

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that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that **LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEE'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing and except with respect to Pre-existing Contamination, Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.

(d) Waivers, Disclaimers and Indemnity.

(1) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

(2) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 43(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

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(e) Release and Waiver.

Except to the extent of Claims against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, its successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all Claims against Lessor, whether known or unknown, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have, or which may arise or be asserted in the future, arising out of any Pre-existing Contamination and arising out of liabilities that Lessee has expressly assumed under this Lease.

44. JOINT AND SEVERAL LIABILITY

If Lessee, as a party to this Lease, is a partnership; joint venture; or is comprised of more than one party or entity, or a combination thereof; the obligations imposed on Lessee under this Lease shall be joint and several, and each general partner, joint venturer, party or entity of Lessee shall be jointly and severally liable for said obligations. Furthermore, nothing herein shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other entity or party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party or entity.

45. DISPUTE RESOLUTION

Except for (i) a dispute or disagreement as to the amount of rent that Lessee is to pay Lessor or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third-party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

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46. **ELECTRONIC SIGNATURES**

The Parties acknowledge and agree that this Lease may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via "pdf") of an original signature or a computer-based signature accomplished by "DocuSign" or similar computer-based mechanism.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

By: Rebecca Harrington
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Tony Gordon
Director
Real Estate

BAE SYSTEMS SAN DIEGO SHIP REPAIR INC., a California Corporation

By: William B. Biss
Signature

PRINT NAME: William B. Biss

PRINT TITLE: Director of Facilities, BAE Syste

SDUPD D2 No. 1642797

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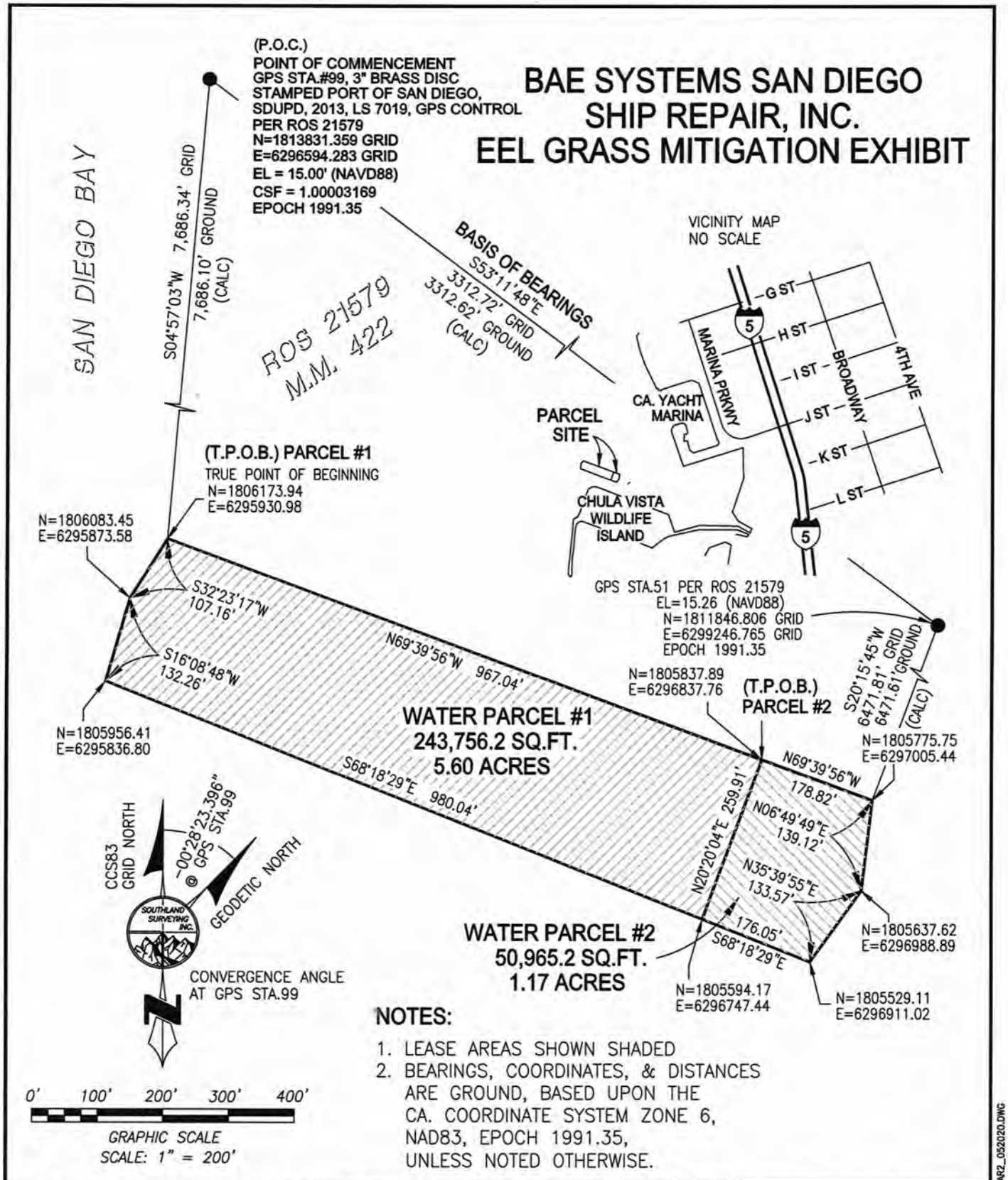
BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
EEL GRASS MITIGATION EXHIBIT



NOTES:

1. LEASE AREAS SHOWN SHADED
2. BEARINGS, COORDINATES, & DISTANCES ARE GROUND, BASED UPON THE CA. COORDINATE SYSTEM ZONE 6, NAD83, EPOCH 1991.35, UNLESS NOTED OTHERWISE.

DRAWN MJV CHECKED SFF REVIEWED SFF	SAN DIEGO UNIFIED PORT DISTRICT TIDELANDS LEASE WITHIN CORPORATE LIMITS OF THE CITY OF CHULA VISTA BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.	DATE MAY 20, 2020 SCALE AS SHOWN REF.
APPROVED SCOTT F. FITCH L.S. 5284		DRAWING NO. 032-034 SHEET 1 OF 1

REF: S1910-EXHIBIT-PAR1-PAR2_052020.DWG

EXHIBIT A

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Legal Description for
BAE EEL GRASS MITIGATION SITE
TIDELAND LEASE
Parcel/Drawing No. 032-034
Within Corporate Limits of CHULA VISTA, CA.

All that certain portion of land conveyed to the City of Chula Vista by that certain Act of Legislature of the State of California pursuant to Chapter 328, Statues of 1961, delineated on that certain Miscellaneous Map No. 422, filed in the Office of the San Diego County Recorder on April 24, 1962, File No. 70430, in the City of Chula Vista, County of San Diego, State of California, and more particularly described as follows:

Parcel No. 1 – Water Area

Commencing at a 3" diameter brass disk monument stamped, "SDUPD-099," as shown on Record of Survey Map No. 21579, filed in the Office of the San Diego County Recorder on September 26, 2003; thence leaving said monument South 04°57'03" West a distance of 7,686.10 feet (calculated) to the **TRUE POINT OF BEGINNING**; thence South 32°23'17" West a distance of 107.16 feet; thence South 16°08'48" West a distance of 132.26 feet; thence South 68°18'29" East a distance of 980.04 feet; thence North 20°20'04" East a distance of 259.91 feet; thence North 69°39'56" West a distance of 967.04 feet to the **TRUE POINT OF BEGINNING** of Parcel No. 1, containing 243,756 square feet or 5.60 acres of water covered area, more or less.

Parcel No. 2 – Water Area

Commencing at a 3" diameter brass disk monument stamped, "SDUPD-099," as shown on Record of Survey Map No. 21579, filed in the Office of the San Diego County Recorder on September 26, 2003; thence leaving said monument South 04°57'03" West a distance of 7,686.10 feet (calculated) to the Northwest corner of Parcel #1 above; thence South 69° 39' 56" East, along the northerly line of Parcel 1, a distance of 967.04 feet to the **TRUE POINT OF BEGINNING**; thence South 20°20'04" West a distance of 259.91 feet; thence South 68°18'29" East, a distance of 176.05 feet; thence North 35°39'55" East a distance of 133.57 feet; thence North 06°49'49" East a distance of 139.12 feet; thence North 69°39'56" West a distance of 178.82 feet to the **TRUE POINT OF BEGINNING** of Parcel No. 2, containing 50,965 square feet or 1.17 acres of water covered area, more or less.

EXHIBIT B

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The above described tidelands areas are delineated on the San Diego Unified Port District Drawing No. 032-034, May 20, 2020 and made a part of this agreement.

This legal description was prepared by me or under my direction in conformance with the Land Surveyors' Act.

Scott F. Fitch 5/21/2020

Scott F. Fitch **Date**
LS 5284

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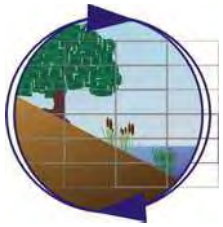
EELGRASS TRANSPLANT AND MONITORING PLAN
IN SUPPORT OF THE
BAE SYSTEMS SAN DIEGO SHIP REPAIR
PIER 1 NORTH DRYDOCK PROJECT
AND
SAN DIEGO SHIPYARD SEDIMENT REMEDIATION PROJECT
NORTH SHIPYARD SITE
SAN DIEGO BAY, CALIFORNIA

Prepared for:

BAE Systems San Diego Ship Repair
P.O. Box 13308
San Diego, CA 92170-3308
Attn: Shaun Halvax
Phone: (619) 557-4210



Prepared by:

Keith W. Merkel, Principal Consultant
Merkel & Associates, Inc.
5434 Ruffin Road
San Diego, CA 92123
(858) 560-5465

January 2016

Keith Merkel, Principal Consultant

EXHIBIT C

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Eelgrass Transplant and Monitoring Plan in Support of the BAE Systems San Diego Ship Repair Pier 1 North Drydock Project and San Diego Shipyard Sediment Remediation Project – North Shipyard Site San Diego, California

Merkel & Associates, Inc.
January 2016

INTRODUCTION

Eelgrass habitat restoration is required to offset impacts of two separate projects occurring within the BAE Systems San Diego Ship Repair Inc. (BAE Systems) leasehold. The first is a drydock project known as the Pier 1 North Drydock Project that is a BAE Systems sponsored capital project. The second is a nearing completion sediment remediation project identified as the San Diego Shipyard Sediment Remediation Project – North Shipyard Site that is a project of the San Diego Bay Environmental Restoration Fund – North, a trust for the implementation of the remediation project.

BAE Systems is proposing to construct facilities for a new floating drydock being constructed to support the current and planned future home-porting of United States (US) Naval assets (ships) in San Diego and allow greater flexibility in the utilization of drydocking facilities. The project is known as the Pier 1 North Drydock Project. The future needs for drydocking of US Naval vessels stationed in San Diego Bay exceeds current drydock capacity. The purpose of the proposed project is to (1) increase BAE Systems' drydock capacity to facilitate required maintenance of existing and future US Naval assets and (2) provide additional capacity for commercial vessel drydock needs that cannot currently be met by existing drydock capacity. The project would result in significant impacts to eelgrass as well as impacts associated with surface coverage of the Bay. Merkel & Associates Inc. (M&A) has been retained by BAE Systems to prepare an eelgrass and bay coverage mitigation plan in support of the Pier 1 North Drydock Project.

Based on 2013 and 2014 eelgrass surveys and environmental impact assessment completed under the California Environmental Quality Act, the proposed BAE Systems drydock would be expected to impact 0.13 acre of eelgrass associated with dredging of a sump within which submergence of the drydock may be conducted. Under the adopted California Eelgrass Mitigation Policy (CEMP) (NOAA Fisheries, West Coast Region 2014), the actual impact of the project will be determined by comparisons between pre-construction and post-construction survey results with consideration of reference site performance. Identified impact will require mitigation by successfully creating replacement eelgrass at a ratio of 1.2:1 (mitigation to impact). However, under the CEMP, the success history for eelgrass restoration in southern California dictates a 1.38:1 minimum restoration effort with a success requirement remaining at the established 1.2:1 ratio.

In addition to the impact to eelgrass, the project results in 4.91 acres of bay coverage associated with the permanently moored drydock, overwater wharves, ramps, and breasting dolphins. This coverage area includes both immediately constructed elements and elements of the northern wharf and ramp, as well as the intermediary wharf between the north and south ramps that must be deferred pending removal of the existing decommissioned SDG&E cooling tunnels that conflict with construction of these facilities. Bay coverage is anticipated to result in significant impacts to habitat function as a result of reduced primary productivity and reduction in avian foraging opportunity. However, this impact is somewhat offset by increased secondary productivity of the structures themselves.

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Mitigation for bay coverage is different from that of bay fill impacts in that one results in reduction in marine habitat function, while the other results in complete loss of the habitat. The reduction of productivity and function, without complete loss of value, has been mitigated using one of three different measures: 1) expand the bay, 2) remove other bay coverage, or 3) enhance productivity of other areas of the Bay to offset the functional reductions occurring as a result of impacts at the site. These measures are implemented on a 1:1 ratio basis.

There are no large bay area expansion opportunities currently available; as such, this option was not considered viable. Because the project follows closely behind the Pier 4 replacement project, the opportunities for bay coverage removal as mitigation have been substantially depleted on site, and some credits were even drawn from the Port's coverage ledger to cover the mitigation needs of the Pier 4 replacement. However, 1.04 acres of the Pier 1 North Drydock project's bay coverage is being offset by the removal of the BAE Systems Pier 2 and the removal of the existing smaller drydock (AFDL/Diligence) from the Bay. Beyond these bay coverage offsets, it is not practical to achieve further bay coverage reductions for a project of the scale of the drydock. As such, a residual coverage impact of 3.87 acres remains, and enhancement of function is the preferred mitigation method for this residual.

Of the measures available for bay impact, development of eelgrass within unvegetated bay areas is the most ecologically preferred of the available options as it provides the greatest functional lift in terms of the resources affected (productivity, fish, birds, etc.). Other options include removal of non-functional rubble from intertidal mudflats and shallow subtidal flats to make them more available as foraging areas for diving, swooping, and skimming birds, or construction of fish enhancement structures to increase productivity over that occurring on bare mud bottom. The scale of the project makes removal of non-functional revetment unsuited to the work because there are not enough locations around the Bay where this enhancement could be effectively implemented. An additional functional lift option has been the development of fish enhancement structures. However, these are generally less desired by resource agencies than eelgrass, and there are some locational siting considerations for enhancement structure development that limits opportunities for mitigation at the scale required for the drydock.

As a result, the drydock mitigation is planned to be eelgrass mitigation for eelgrass impacts and eelgrass mitigation for bay coverage impacts. The eelgrass impact mitigation is separate and distinct from the bay coverage mitigation requirements. Specifically, impacts to eelgrass vegetated bottom must be addressed independent of bay coverage. This means that the mitigation requirements are additive. As a result the project mitigation for eelgrass impacts is estimated to require the development of 0.16 acres of eelgrass for eelgrass mitigation (1.2:1 for impacts to 0.13 acre of impact) and 3.87 acres of eelgrass for bay coverage mitigation for a total mitigation requirement of 4.03 acres in the form of established eelgrass. While the impacts of bay coverage are known by engineered design, the impacts to eelgrass are estimated based on anticipated effects associated with work and would be dependent upon final impact determinations from surveys.

In addition to the project impacts, the present shipyard sediment remediation project is underway within BAE Systems San Diego Ship Repair yard. This work has been expected to result in impacts to 1.08 acres of eelgrass as a result of contaminated sediment removal (Merkel & Associates 2013). As such, the resultant mitigation needs for this work are expected to be approximately 1.30 acres, subject to post-construction surveys. To address this anticipated mitigation requirement in an efficient manner, there is a desire to complete both project mitigation obligations at the same location. This would result in a cumulative mitigation need of approximately 5.33 acres of restored eelgrass (Table 1).

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Table 1. Eelgrass and Bay Coverage Mitigation Needs Summary

Element and Impact Type	Impact	Mit: Impact Ratio	Mitigation Area
Pier 1 North Drydock			***4.03 acres***
Eelgrass impact	0.13 acre*	1.2:1	0.16 acre
Bay Coverage	3.87 acres	1:1	3.87 acres
Shipyard Sediment Remediation			***1.30 acres***
Eelgrass impact	1.08 acres*	1.2:1	1.30 acres
TOTAL			**5.33 acres**

*Estimated impact to be ultimately determined based on pre-construction/post-construction surveys in accordance with the SCEMP (Shipyard Sediment Remediation) and the CEMP (Pier 1 North Drydock).

The 5.33-acre mitigation need represents an estimate based on predicted impacts to eelgrass. However, because impacts may vary from the estimate, both the SCEMP and CEMP rely on impact assessments that are based on pre-construction to post-construction changes in eelgrass extent and distribution patterns to ultimately determine the final scale of impacts. As a result, the final mitigation need may vary from this estimated mitigation need and the distribution of impacts between the two overlapping projects may vary as well.

TRANSPLANT SITE

TRANSPLANT SITE LOCATION

The selection of an eelgrass mitigation site has been driven by a number of factors. These include compatible land and water uses, proximity to existing eelgrass beds, and logistics and cost of site construction. Several sites were initially considered to achieve the mitigation goals for the two projects. These included raising the bay floor at the former A-8 Anchorage, creating two potential shallow water extensions of the south bay shallows located south of the Sweetwater River channel, backfill of portions of the former South Bay Power Plant (SBPP) cooling water intake channel, and expansion of the fills within the South Bay Borrow Pit that was partially filled to generate eelgrass in association with the Port's National City Wharf Extension Project. For many reasons, including adequate size of the mitigation site, limited jurisdictional issues, no navigation conflicts, limited risk of failure, and strong environmental community support, the selected mitigation site is located within the abandoned intake channel of the former SBPP (Figure 1). The approximately 300-foot wide channel was excavated in approximately 1954 to draw cooling water through the SBPP steam condensers. The channel was dredged through shallow bay and mudflat environments of the south bay. Subsequent to channel construction, one round of maintenance dredging was performed within the channel in 1992.

With the closure and removal of the power plant, the Port, agencies, and environmental groups have turned their focus to restoration of some of the original modifications that were made in the Bay to accommodate the power plant activities. One such opportunity that was identified by the Port, environmental groups, and resource agencies is the backfill of the SBPP intake channel to bring the elevations back in line with the historic elevations of the Bay. In total, such a backfill could restore approximately 30 acres of eelgrass as well as several acres of mudflats and marshlands. The present mitigation would initiate this restoration effort.

An ongoing planning effort is underway on the Chula Vista Bayfront that is examining opportunities to restore habitat connectivity throughout the Chula Vista Bayfront and surrounding habitat areas. One

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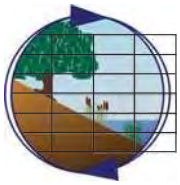

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Eelgrass and Bay Coverage Mitigation Site

BAE Systems Pier 1 North Drydock Project

Figure 1

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such opportunity under consideration is the connection of the waters on the north side of the Chula Vista Wildlife Island, located along the levee that separates the SBPP intake and discharge channels. If this were done, some configurations would favor maintaining the intake channel depths at the eastern, shoreward end of the channel. As such, the selected mitigation area is located at the western end of the channel so as not to foreclose any options under consideration on the Chula Vista Bayfront.

Coordination with National Marine Fisheries Service, including both the Protected Resources Division and the Southwest Fisheries Science Center turtle experts have determined that the presently proposed channel restoration to eelgrass is appropriate, but the continued use of the channel by green sea turtles may limit the full restoration of the channel.

The SBPP intake channel is surrounded by eelgrass on both long axis sides and at the west end of the channel. The channel was excavated to a floor elevation of approximately -11 to -12 feet MLLW but has subsequently accreted approximately 3 feet of unconsolidated sediment in the channel bottom, thus resulting in channel bottom depths of -8 to -9 feet MLLW. Along the channel margins, eelgrass has extended down the channel slopes slightly to depths that generally extend to around -5 feet MLLW. The distribution of eelgrass around the mitigation site is severely limited as a function of depth. In general, water shallower than -4.5 feet support eelgrass. However, a precipitous decline in percent cover of eelgrass occurs between -5 feet (97 percent eelgrass) and -7 feet (2 percent eelgrass) (Figure 2).

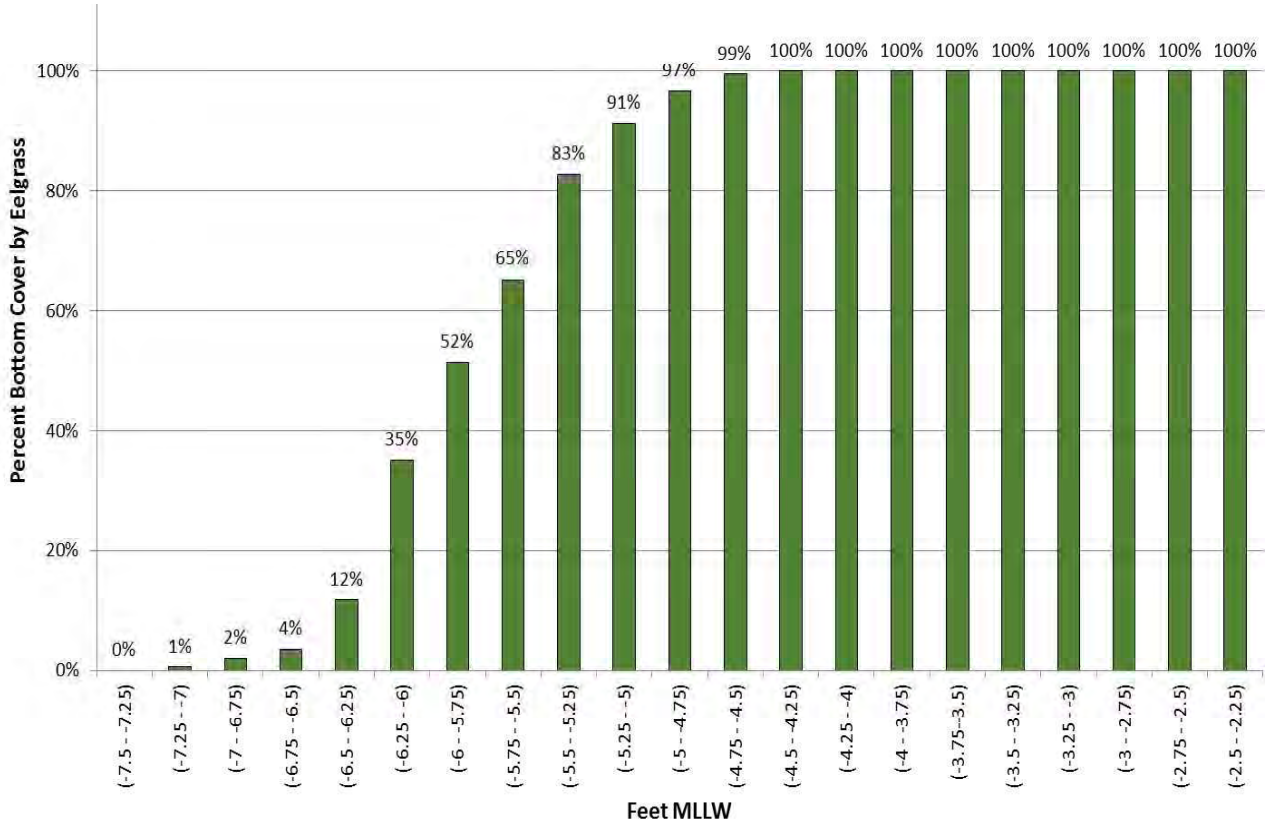

Figure 2. Natural Eelgrass Depth Distribution at South Bay Power Plant Intake Channel

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TRANSPLANT SITE DREDGING/GRADING

Design

The proposed site would be constructed by raising the bottom elevations from an average of approximately -8.5 feet MLLW to a consolidated elevation of -4 feet MLLW over an area of slightly more than 7 acres. The site is oversized for the mitigation needs in order to ensure that the mitigation required is achieved (see further discussion below). The site would be constructed by placing approximately 80,000 cubic yards of clean sediment dredged from the outermost portion of the Pier 1 North drydock sump to raise the bay floor to elevations equal to the elevation of the adjacent bottom that supports eelgrass to the south and north of the site (Figure 3). Because of the presence of unconsolidated fine silts in the bottom of the channel, as well as the required slopes, a greater amount of sediment is required to construct the site then is suggested by the depth of fill and plantable area.

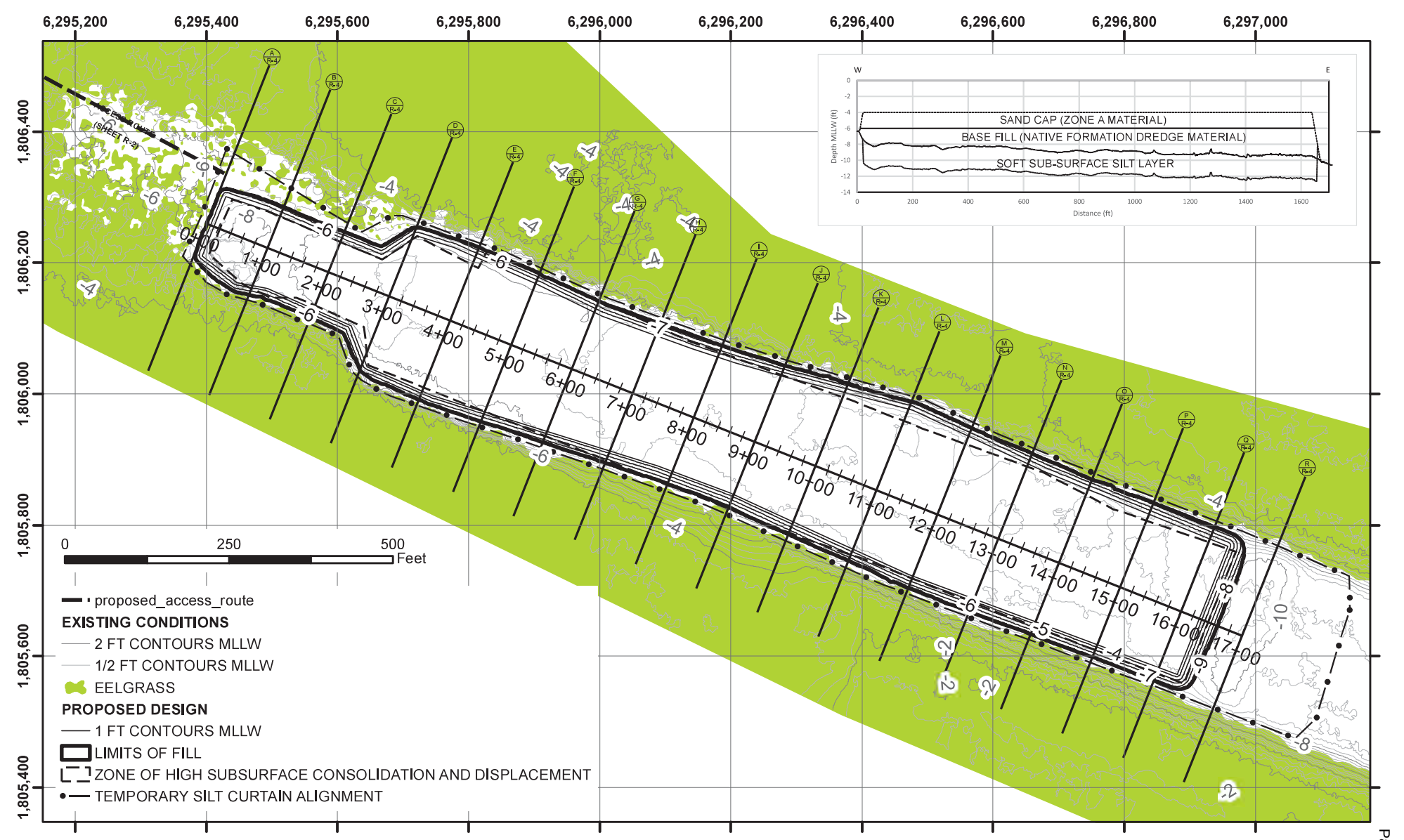
The mitigation site fills are depicted in multiple cross-sections (Figure 4). The fill would be buttressed against the slopes of the dredged intake channel. The fill varies along the slope edge slightly to avoid covering existing eelgrass. The fills to be placed within the mitigation area consist of a bottom layer comprised of cut formational material (approximately 48,000 cubic yards) capped by unconsolidated sands (estimated at 32,000 cubic yards) that dominate the top layers of sediment within the outer portion of the drydock sump excavation.

Fill material used to construct the mitigation site have been determined to be chemically and biologically suited for the beneficial reuse of constructing the eelgrass mitigation site in accordance with testing criteria under joint EPA and USACE manuals titled “Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. – Testing Manual” (EPA and ACOE, 1998) (AMEC 2015).

Construction

Speed limits in the South Bay are limited to 5 mph south of the Sweetwater River Channel. Access to the mitigation site is complicated by virtue of a shallow shoal that separates the excavated intake channel from the deeper waters that run down the center portion of the south San Diego Bay. To address the access issues, a tightly defined access route has been identified and is to be marked along a 100-foot wide corridor. Contractor access shall be limited to accessing the site with work skiffs other work platforms when there is adequate clearance to avoid existing eelgrass. Vessels will only be allowed to transit over the shallows when at least 2 feet of clearance is accommodated beneath the vessel. A floating pipeline will be extended down the designated access corridor and into the site from a hydraulic offloader facility placed in the deeper water to the west of the site (Figure 5). This pipeline would allow for at least 1.5 feet of clearance over existing bottom even at the lowest of tides (-2.2 fee MLLW). It is anticipated that site construction will be accomplished by use of a clamshell dredge at the excavation site at Pier 1 in the BAE yard. The material would be hauled by scows to a temporarily moored hydraulic offloader placed approximately 2,000 feet west of the intake channel restoration site. The offloader would pump dredged material from the scows down a floating pipeline to the restoration site where it would be discharged from a spill barge that would move the end of the pipe around as needed to fill the channel to the desired elevations to support eelgrass.

Example of large hydraulic unloader in San Francisco Bay. The hydraulic unloader for the Pier 1 North sediment placement would be smaller than that illustrated here.



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Eelgrass Restoration Site Plan View
Sediment Placement Plan
BAE Systems Pier 1 North Drydock Project

Figure 3

Merkel & Associates, Inc.

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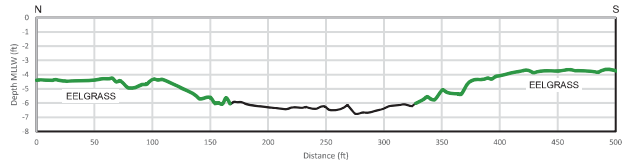

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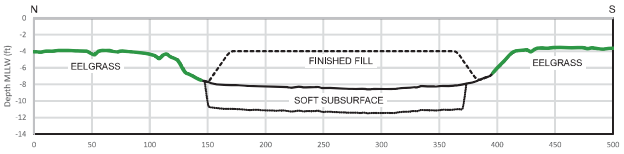

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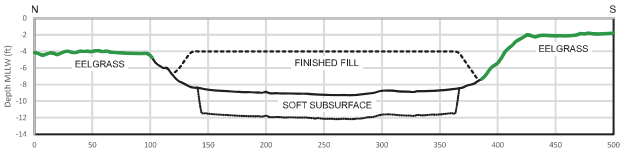

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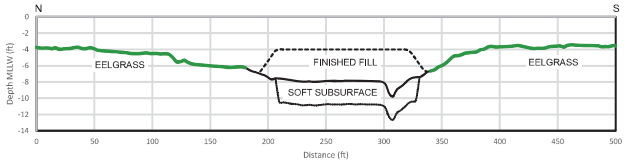

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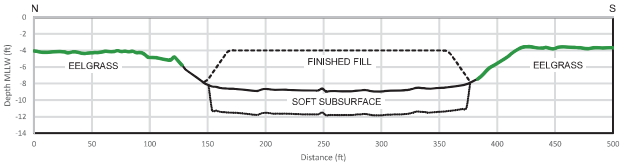

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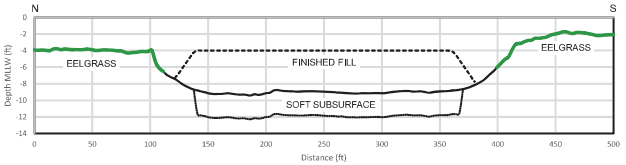

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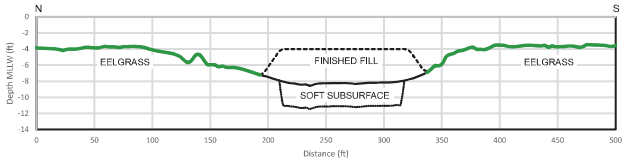

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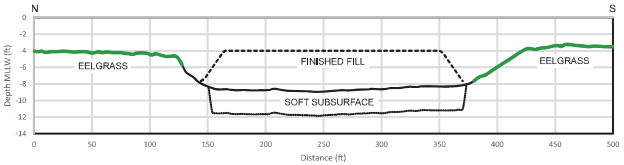

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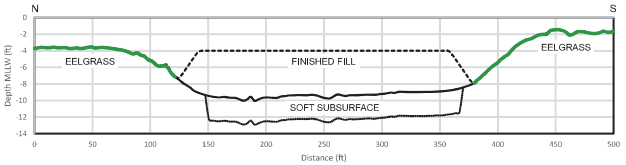

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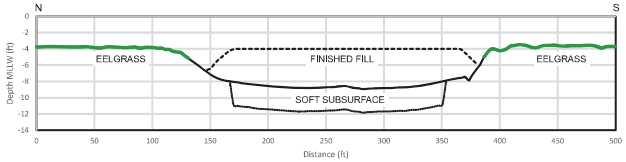

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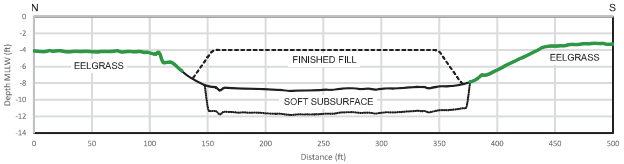

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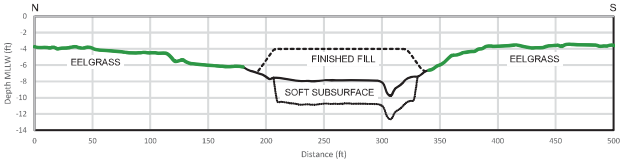

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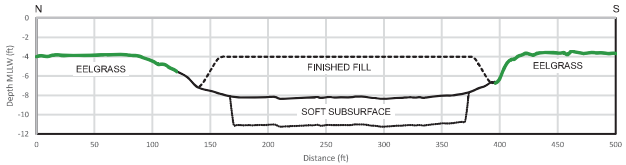

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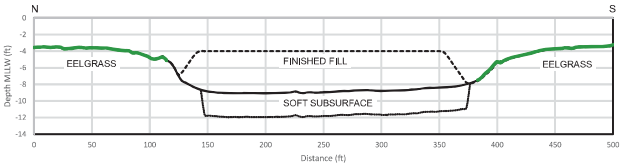

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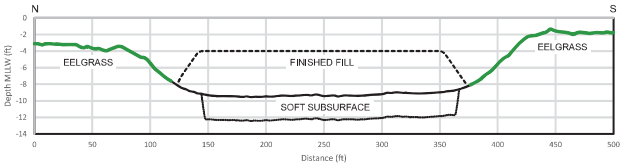

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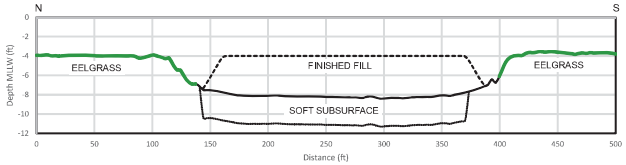

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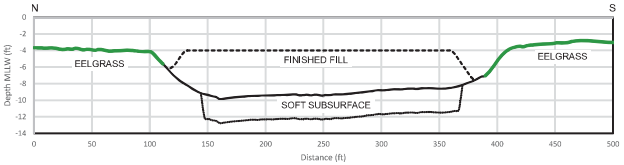

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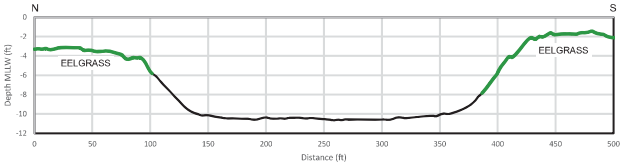

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Eelgrass Restoration Site
Cross-sections

BAE Systems Pier 1 North Drydock Project

Figure 4

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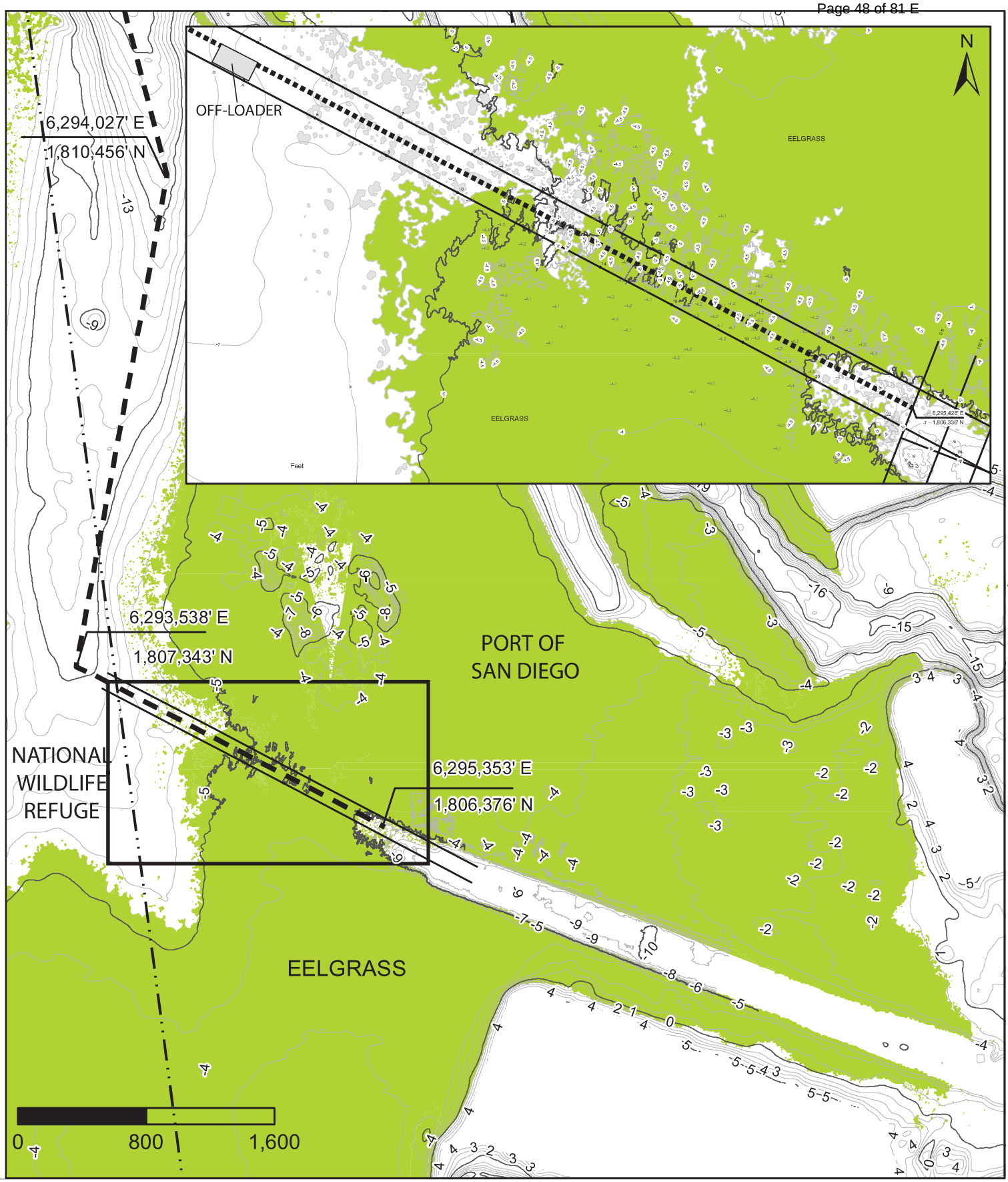

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South Bay Access Route Into Eelgrass Restoration Site

BAE Systems Pier 1 North Drydock Project

Figure 5

Merkel & Associates, Inc.

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The placement of fill at the site by hydraulic means provides protection against potential damage of eelgrass that could be associated with bringing scows across the shallow, eelgrass laden shoals. However, to avoid adverse effects of drift turbidity on eelgrass adjacent to the restoration area, tight turbidity control is required.

Example of pipeline with floatation buoys.

To protect eelgrass adjacent to the mitigation site during construction, a turbidity curtain adequate to extend to the bottom at all tides is to be placed along the entire boundary of the active fill area outside of existing eelgrass beds. This curtain differs from the standard turbidity curtain in that it will not be allowed to drift back and forth with changing tides but rather will be anchored along with its alignment using a number of vertical pipes driven into the bottom approximately every 50 feet along the northern and southern boundaries of the fill site (Figure 6). All curtain support posts are to be placed by the contractor prior to initiation of fill work. The curtain must be secured to the bottom by a weighted toe that fully encloses fills and also precludes entry to the area by green sea turtles. If the turbidity curtain is breached, all placement work shall stop until the curtain has been fully re-secured.

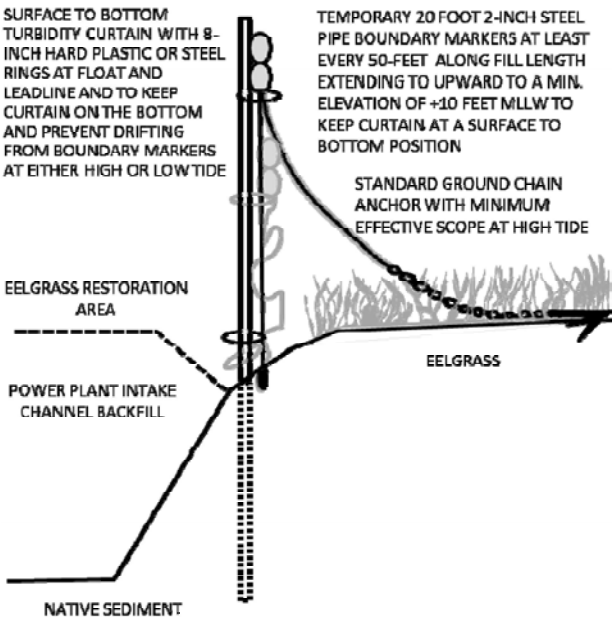

Figure 6. Boundary Marker and Turbidity Curtain

Because the work area is within proximity of the existing eelgrass beds for a length of approximately 1,600 feet, it may be necessary to close off shorter segments of the site to contain the fill while filling the site. The curtains would then be repositioned as needed to maintain a barrier between the eelgrass and the work area. This filling in segments would be determined by logistical considerations. If smaller segments of the fill placement areas are to be filled in phases, a settling time will be provided to allow water clarification prior to removing the turbidity curtain and replacing the curtain for the next fill placement. The curtain will remain in place until sediment inside the curtain settles to the point that contained water achieves a turbidity level that does not exceed 20 percent of natural turbidity levels measured at least 100 feet from the curtain. Turbidity will be measured as nephelometric turbidity units (NTUs). At the completion of filling, the same standards would remain prior to final removal of the turbidity curtain and support posts.

The curtains would include a heavy weighted ground chain that would keep the toe of the curtain affixed to the bay floor. This would assist in maintaining a small footprint of turbid water and would also provide for exclusion of green sea turtles from the habitat fill area. With the closed turbidity curtain a

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maximum temporary turtle exclusion area and containment turbidity plume would be 0.3 percent of the 3,000 acre South Bay ecoregion, or less than 0.1 percent of the total waters of San Diego Bay.

Placement of material by hydraulic pumping can be accomplished with less potential risk of damaging eelgrass as a result of access but may result in a greater water content in the placed material, and thus greater uncertainty with respect to settlement post construction. This can be controlled by monitoring the construction and the early post-placement settlement of material to develop consolidation curves to predict the extent of over overfilling of the site required to accommodate the bulking and subsequent consolidation over time. Because the final surface is to be capped with sand, hydraulic pumping is anticipated to provide a smooth, consistent, and ideal surface for eelgrass planting. While the proposed site design has a setback from existing eelgrass along the mitigation site margins, it is anticipated that slopes will relax and flatten and that the eelgrass on the mitigation plateau may likely merge with that of the surrounding bottom over time.

Areas around the mitigation site, including the access route, will require surveys prior to and following construction to ensure no additional impacts to eelgrass occurred. Any additional impacts that may occur in association with mitigation site construction would require further mitigation in accordance with the provisions of the CEMP.

Vertical tolerances of the plateau surface shall be limited to +/- 0.5 foot over 80 percent of the surface with not more than +/- 1.0 foot over 100 percent of the finished surface. The planting plateau surface will not be allowed to have variation in surface rugosity (surface roughness or unevenness) in excess of 8:1 slopes between high and low points on the planting surface. Depressed areas generally capture detritus and tend to not support eelgrass establishment. Over time, depressions generally silt in and will ultimately support eelgrass establishment but this may be delayed for several years. Given the vertical tolerances and surface variability requirements, the contractor may be required to drag the surface with an I-beam or segments of weighted chain-link fence to achieve acceptable surface conditions.

EELGRASS MITIGATION REQUIREMENTS

The mitigation site is designed to support slightly over 7 acres of eelgrass transplant with the potential for some expansion along the fringes where shallow slopes below -4 feet MLLW would support additional eelgrass planting. The final yield of eelgrass bed development is expected to be less than the designed restoration site. However, it will meet the mitigation requirements if it achieves 5.33 acres of new eelgrass. Given the site location and robust nature of natural eelgrass within the same elevations adjacent to the site, the 76 percent coverage of the site required to meet the mitigation needs is anticipated to be achieved.

EELGRASS PLANTING PLAN

TRANSPLANT SITES

The transplant site to be used for mitigation purposes is shown in Figure 1. The proposed transplant area is slightly larger than 7 acres and would be planted at a density of one planting unit per square meter.

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DONOR SITES

Donor eelgrass for the transplants of eelgrass is to be derived from natural eelgrass beds located adjacent to the Chula Vista Bayside Park (Figure 1). These donor beds have been primarily selected based on a number of factors:

1) Proximity to the transplant receiver site that favors both logistic convenience and selection of appropriate plant materials for the area;
2) Suitability of donor site size and eelgrass density to provide necessary transplant materials;
3) Recovery potential for the donor site;
4) Accessibility of the donor site; and,
5) Capacity to ensure safety to workers and the public while completing harvest work.

REFERENCE SITE

An eelgrass reference site has been established in an adjacent area to the north of the transplant site (Figure 1). This site has been selected based on proximity to and similarity in physical and biological characteristics to the proposed transplant site. Monitoring of the reference site should be conducted coincident with the monitoring of the transplant site. Changes in the reference site over time will be considered to represent natural environmental variability when evaluating the performance of the transplant site (see Monitoring Program sections).

RESTORATION METHODS

LETTER OF AUTHORIZATION AND NOTIFICATIONS

Prior to commencing eelgrass transplantation work, an amendment will be obtained from the California Department of Fish and Wildlife (CDFW) for the Scientific Collector's Permit (SCP) under which the transplant will occur. The SCP will authorize the collection of eelgrass from natural donor sites. In addition, a letter of authorization to plant eelgrass will be obtained from the California Department of Fish and Wildlife (CDFW) pursuant to §6400 of the California Fish & Game Code. The 7-acre planting program will require 28,336 planting units to be planted. The units will be comprised of approximately 6 turions each.

Following receipt of the planting authorization letter, a minimum five-day notification and a preliminary transplanting schedule must be provided to CDFW prior to commencement of the transplant work.

PLANT COLLECTION

Bare-root eelgrass plant material will be salvaged from the donor bed by "raking" rhizomes out of the surface sediment layers and loosely filling a mesh bag with salvaged material. In collecting eelgrass, care will be taken to work the rhizomes free as opposed to ripping the plants free of the sediment. This will preserve as much root material as possible. Salvaging is a mobile exercise and divers will move systematically through an area and collect/groom no more than 10% of the turions and associated rhizome and root material from any given square meter of the donor bed. Salvaged materials should consist of no less than three healthy internodal segments with well-developed root initiates and vigorous shoots. More intact rhizome segments and roots are preferred for use in the planting unit bundles.

Where donor material is removed, rhizomes of the donor plants almost always separate at rhizome nodes. Where this occurs, nodes generally scar over and rebud from meristem tissues within the node. Where damage at the severed node is more severe or the meristem is removed, the preceding node

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typically branches. The result is initiation of more extensive rhizome branching at the locations of plant material collection.

Collected material will be held in a flow-through seawater source or mesh bags suspended in the harbor until it is processed into planting units. No material will be stored for over 12 hours from harvesting to unit preparation. Once units are prepared, they will be stored in open water for no longer than 24 hours prior to planting.

TRANSPLANT UNITS

The proposed mitigation plan will utilize anchored bare-root transplant units. Bare-root transplants are the preferred means of transplanting eelgrass in most situations, and anchored bare- root units are the principal planting units used in large-scale restoration projects at the current time. The survival of such planting units has been shown to be quite high when properly prepared (Fonseca *et al.* 1982; Merkel 1987, 1990a). Similarly, bare-root units have shown an ability to rapidly expand and colonize bare substrate (Merkel 1990b). In addition to offering high unit survival and rapid expansion rates, bare-root units can be prepared with limited damage to the donor bed. Unlike plug extractions, bare-root units can be prepared using materials collected without substantial sediment disturbance. Each transplant unit for the project work will consist of approximately 6 turions.

The anchors used in this program will be biodegradable and pliable anchors such as those developed initially for transplants in Mission Bay's Sail Bay (Merkel 1987) and which have subsequently been used in more than 65 eelgrass restoration projects throughout California, Oregon, Washington, and Alaska.

PLANTING EELGRASS UNITS

A grid system will be used to control planting on the site. The grid will be laid out to control plant distribution, track progress on the restoration effort, and assist in completion of quality control inspections. The plant materials will be planted by excavating a hole in the sediments with a small trowel or by hand. The anchor will be planted parallel to the sediment surface and the root/rhizome bundle will be planted approximately 1 to 2 inches below the sediment surface with the anchor being placed approximately 5 inches below the sediment surface. During planting, spot checks of the plantings will be made to ensure proper planting depth and firmness of the anchoring system.
Planting unit spacing is typically determined by balancing the rate of bed establishment with the cost of the transplant project. In some instances, rapid bed establishment is required to minimize potential storm damage or scouring of unconsolidated rhizome mats. In other cases, rapid recovery rates are desirable to meet bed establishment milestone objectives. Taking into account the rate of eelgrass growth, a planting unit spacing of one meter on center will be used for the present transplant.

TIMING OF THE RESTORATION WORK

The proposed mitigation project will be implemented in two phases, followed by a monitoring program scheduled to extend over a 5-year post-planting period. The first phase of work is the construction of the mitigation site. Site construction work will be conducted concurrent with the dredging of the drydock sump. Site construction is anticipated to require approximately six to eight weeks to complete.

Once graded, a period of site stabilization and fill consolidation would be allowed. The site planting would occur within approximately 90 days following construction or the first spring following completion of site preparation, assuming that the site has adequately stabilized to accept planting units

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within this timeframe. Planting is anticipated to require 4 to 6 weeks to complete, based on the offshore location of the planting area that adds some complexity to the planting effort.

Monitoring would be initiated following planting and would extend for a 5-year period as outlined below.

MONITORING PROGRAM

ESTABLISHMENT MONITORING

Upon completion of the planting effort, a monitoring program would be initiated and continued for a 60-month (5-year) period as outlined in both the SCEMP and CEMP. Areal extent and density of the transplanted eelgrass, adjacent fringing portions of the native beds, and the natural reference site will be monitored using interferometric sidescan sonar acoustic survey techniques. The spatial distribution of eelgrass derived from acoustic survey will be supplemented with bed condition data collection including turion density, leaf length, epiphytic loading, and disease observations. Surveys would be conducted over the planting area and surrounding bay bottom within 100 feet of the transplant site, temporary access corridor, and donor beds, as well as surrounding the reference site (Figure 7). The assessment of eelgrass gains would be made within the channel restoration area. However, surveys of the buffer areas and other project work areas would be used to assess potential for any secondary eelgrass impacts of the mitigation site construction. The access corridor and buffer around the corridor as well as the donor bed sites would be examined for construction period impacts to determine if any adverse effects occurred from the project. The buffer around the restoration site would be monitored to determine if secondary impacts to eelgrass occur with construction, or develop subsequent to placement of fill material.

The monitoring program would be conducted at intervals of 0, 6, 12, 24, 36, 48, and 60-months post-transplant. When monitoring dates fall outside of the normal eelgrass-growing season, dates will be shifted to coincide with the growing season to ensure that valuable information on growth and survival is collected. For each monitoring interval, a summary report will be prepared and submitted to the BAE, resource agencies, regulatory agencies, and Port District within 30 days of completion of the monitoring survey.

Monitoring reports will include information from previous monitoring intervals, including numerical comparisons and graphical presentations of changing bed configurations. The monitoring report will include an analysis of any declines or expansions in eelgrass coverage based on physical conditions of the site, as well as any other significant observations. Finally, the monitoring report will provide a prognosis for the future of the eelgrass bed and will identify the timing for the next monitoring period.

MITIGATION SUCCESS CRITERIA

Mitigation will be deemed successful when it has met the success criteria outlined in the SCEMP and CEMP. Criteria for determination of transplant success will be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the reference sites and the transplant sites. The extent of vegetation cover is defined as the area where eelgrass is present and where gaps in coverage are less than one meter between individual turion clusters. Density of shoots is identified as the number of turions per meter, as measured from representative areas within the control or transplanted beds. Key success criteria are as follows:

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A) A minimum of 70 percent areal coverage and 30 percent density should be achieved after the first year.
B) A minimum of 85 percent areal coverage and 70 percent density should be achieved after the second year.
C) A minimum of 100 percent areal coverage and 85 percent density should be achieved for the third, fourth, and fifth years.

Areas that do not meet the above success criteria may be revegetated, and monitored for an additional 5 year period until the final goal is achieved. Should replanting of the areas at the project site fail to meet the success criteria; reconstruction of portions of the mitigation site may be required to carry out this revegetation.

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Eelgrass Restoration Monitoring Plan Survey Area
BAE Systems Pier 1 North Drydock Project

Figure 7

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APPENDIX A.
CONSTRUCTION PLANS
PIER 1 NORTH DRY DOCK PROJECT
SOUTH BAY EELGRASS RESTORATION SITE

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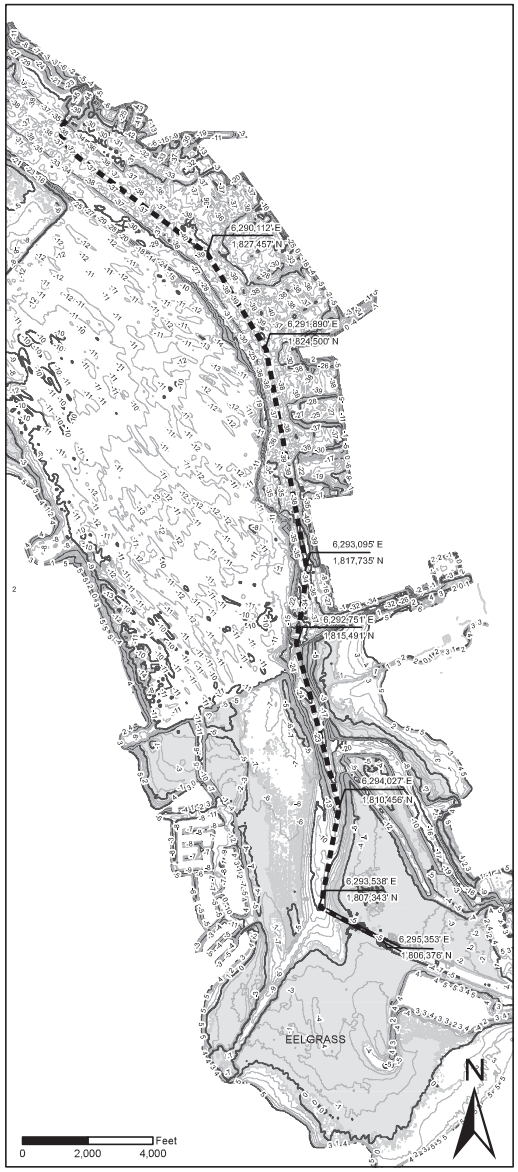
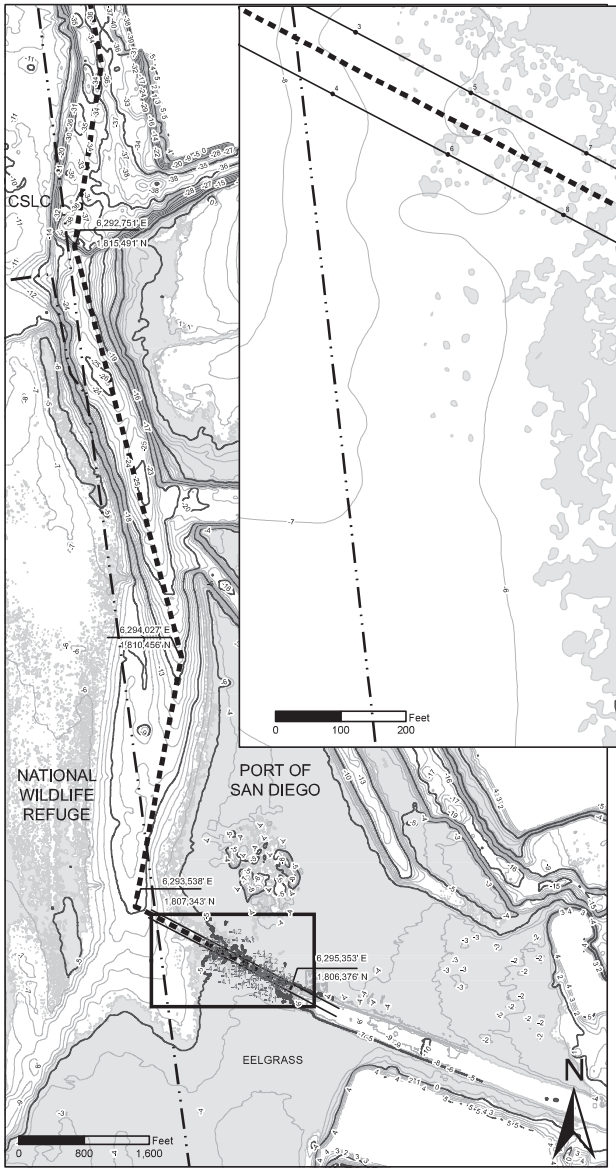
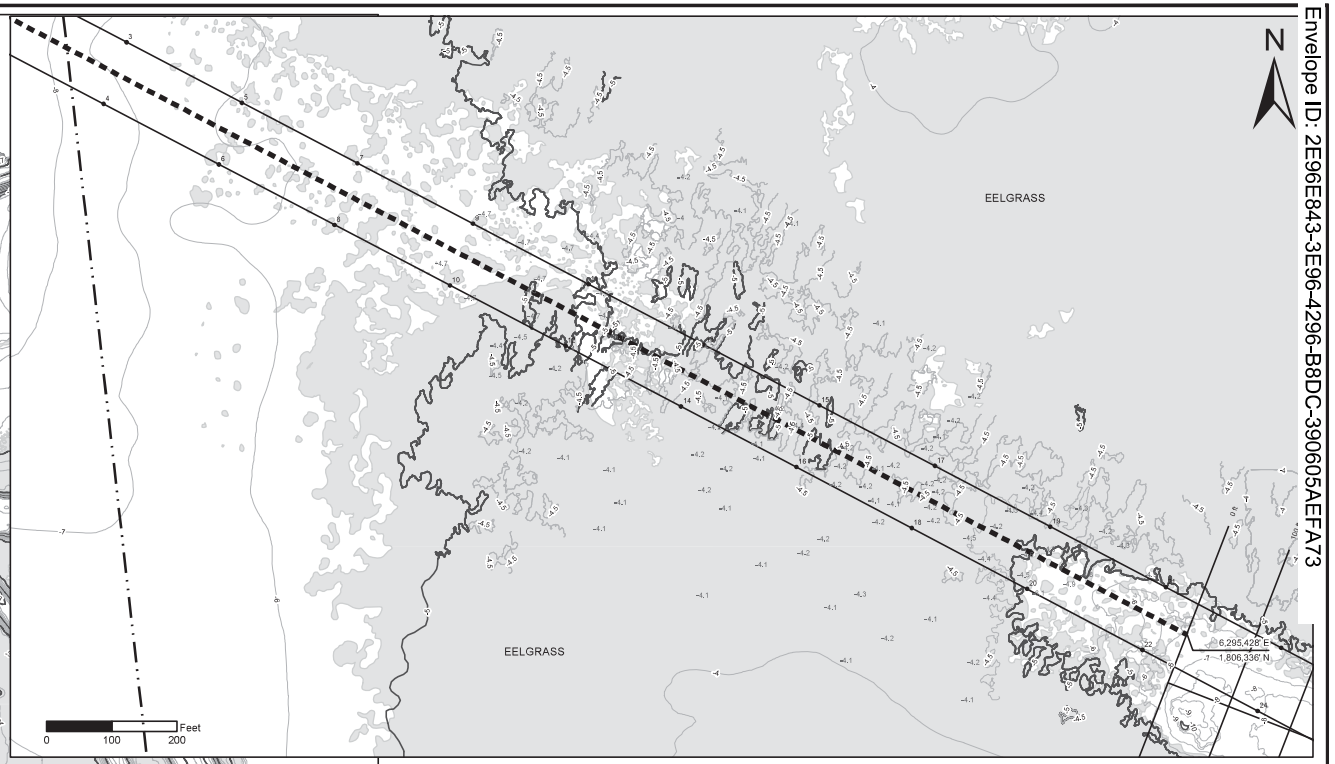






SOUTH BAY EELGRASS RESTORATION SITE ACCESS NOTES:

1. THE SOUTH BAY EELGRASS RESTORATION AREA IS LOCATED 5.6 MILES SOUTH OF THE PIER 1 DRYDOCK DREDGE SITE. APPROXIMATELY 4.5 MILES OF THE ROUTE OCCUR IN MAINTAINED NAVIGATION CHANNELS. THE REMAINDER OF THE ROUTE EXTENDS THROUGH UNMARKED AND UNMAINTAINED BAY SHALLOWS. CONTRACTOR SHALL LIMIT COURSE DEVIATIONS FROM ACCESS PATH SHOWN BEYOND NAVIGATION CHANNELS. THE SPEED LIMIT OF 5 MPH APPLIES TO ALL OF SOUTH BAY SOUTH OF THE SWEETWATER RIVER AND SHALL BE ADHERED TO FOR ALL WORK.
2. ACCESS TO THE EELGRASS RESTORATION SITE REQUIRES CROSSING A SHALLOW SHOAL SUPPORTING EELGRASS BEDS FOR A DISTANCE OF APPROXIMATELY 2,000 FEET. IN THIS AREA CONTRACTOR SHALL TEMPORARILY MARK A 100 FOOT WIDE ACCESS CHANNEL USING VERTICAL POSTS AND TEMPORARY RANGE MARKERS AS WELL AS TIDE BOARDSAT BOTH ENDS OF THE ACCESS CORRIDOR TO ASSIST CONTRACTOR AND INSPECTORS IN GAUGING CLEARANCE DEPTHS.
3. ACCESS SHALL BE TAKEN ONLY DURING TIDE CONDITIONS THAT ENSURE A MINIMUM OF 2-FOOT OF VESSEL HULL CLEARANCE AND 2-FOOT OF DRIVE PROPELLER CLEARANCE OVER THE SHALLOW SHOAL. SHALLOW DRAFT VESSELS AND TIDAL CONDITIONS TIMING MAY BE REQUIRED TO CROSS OVER THE SHALLOWS.
4. CONTRACTOR SHALL COORDINATE WITH U.S. COAST GUARD REGARDING HAUL PLAN AND ANY SPECIAL LIGHTING OR MARKING REQUIREMENTS FOR TEMPORARY NAVIGATION AIDS. SOUTH BAY TEMPORARY NAVIGATION AIDS ARE INCLUDED IN PERMIT AUTHORIZATIONS. CONTRACTOR SHALL BE RESPONSIBLE FOR LOCAL NOTICE TO MARINERS POSTING.
5. A TEMPORARY HYDRAULIC UNLOADER FACILITY MAY BE STAGED WITHIN THE DEEPER WATERS WEST OF THE INTAKE CHANNEL (APPROXIMATELY -7 FEET MLLW). ANY SUCH UNLOADING OPERATION SHALL BE SUBMITTED FOR REVIEW AND APPROVAL AS PART OF THE CONTRACTOR'S SEDIMENT HANDLING AND MANAGEMENT PLAN (DIVISION 35 SECTION 358000). A FLOATING PIPELINE SHALL BE EXTENDED BETWEEN THE UNLOADER AND THE EELGRASS RESTORATION SITE TO AVOID ANY PIPELINE CONTACT WITH THE BOTTOM AT ANY TIDE LEVEL.
6. SCOWS/BARGES MAY BE REQUIRED TO BE SHORT LOADED WITH SEDIMENT TO ACCESS THE TEMPORARY HYDRAULIC UNLOADER AT ALL TIDE LEVELS.
7. SCOWS/BARGES MAY BE STAGED NORTHWEST OF THE SHALLOW SHOAL OUTSIDE OF EELGRASS IN ORDER TO OPTIMIZE THE OPERATION OF THE UNLOADER.

Corridor Boundary Markers

Points	Easting	Northing	Points	Easting	Northing
1	6,293,634 E	1,807,349 N	15	6,294,870 E	1,806,691 N
2	6,293,598 E	1,807,255 N	16	6,294,834 E	1,806,596 N
3	6,293,811 E	1,807,255 N	17	6,295,046 E	1,806,596 N
4	6,293,775 E	1,807,161 N	18	6,295,010 E	1,806,502 N
5	6,293,987 E	1,807,161 N	19	6,295,222 E	1,806,502 N
6	6,293,951 E	1,807,067 N	20	6,295,186 E	1,806,407 N
7	6,294,164 E	1,807,067 N	21	6,295,399 E	1,806,408 N
8	6,294,128 E	1,806,973 N	22	6,295,362 E	1,806,312 N
9	6,294,340 E	1,806,973 N	23	6,295,575 E	1,806,314 N
10	6,294,304 E	1,806,879 N	24	6,295,538 E	1,806,217 N
11	6,294,517 E	1,806,879 N	25	6,295,752 E	1,806,220 N
12	6,294,481 E	1,806,785 N	26	6,295,714 E	1,806,123 N
13	6,294,693 E	1,806,785 N	27	6,295,928 E	1,806,125 N
14	6,294,657 E	1,806,691 N	28	6,295,890 E	1,806,028 N

ONE INCH
AT FULL SIZE. IF NOT ONE INCH SCALE ACCORDINGLY

Merkel & Associates, Inc

CONSTRUCTION PLANS

REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

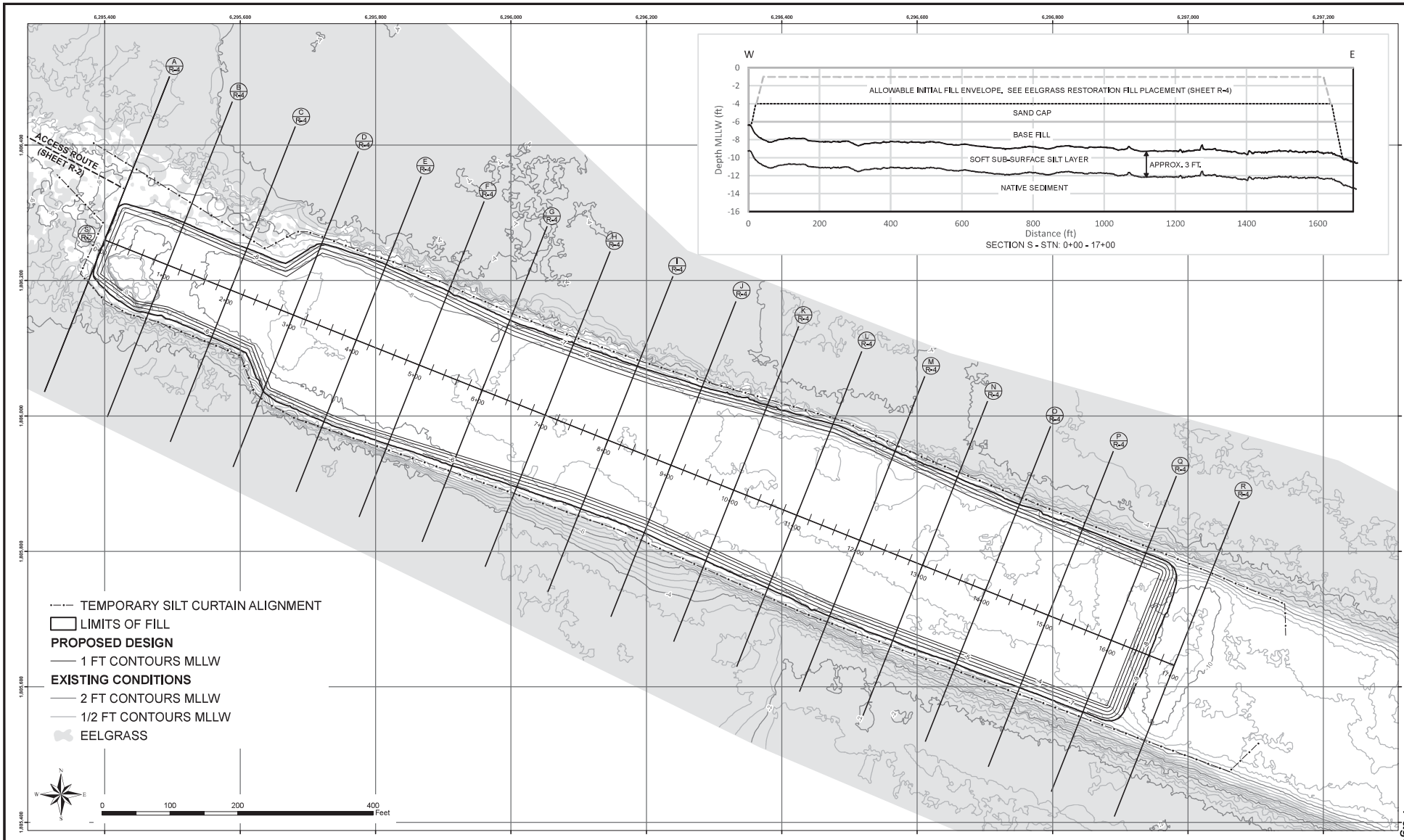
DESIGNED BY: R. PETRUCCELLI
DRAWN BY: L. MURAIR. PETRUCCELLI
CHECKED BY: K. MERKEL
APPROVED BY:
SCALE: AS INDICATED
DATE: AUGUST 27, 2015

PIER 1 NORTH DRY DOCK PROJECT

SOUTH BAY EELGRASS RESTORATION SITE ACCESS ROUTE

R 1 E

SHEET NO. 13 OF 16



Merkel & Associates, Inc

CONSTRUCTION PLANS

REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: L MURAI
DRAWN BY: L MURAI / S PETRUCCELLI
CHECKED BY: K MERKEL
APPROVED BY: K MERKEL
SCALE: AS INDICATED
DATE: AUGUST 27, 2015

PIER 1 NORTH DRY DOCK PROJECT

BENEFICIAL REUSE EELGRASS RESTORATION SITE PLAN VIEW SEDIMENT PLACEMENT PLAN

R-2

SHEET NO. 14 OF 16

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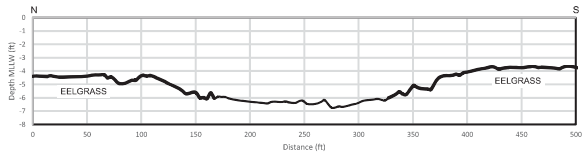

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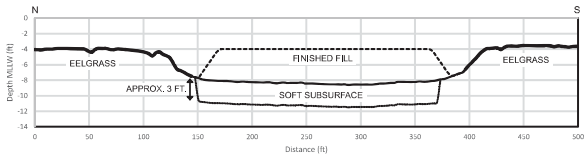

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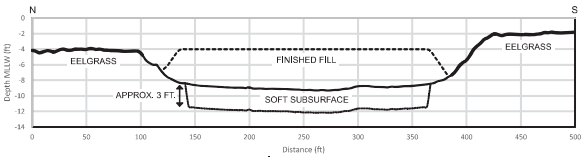

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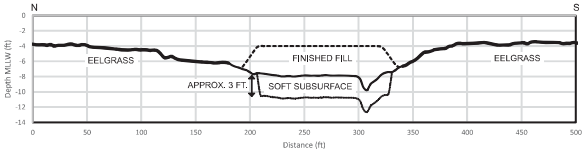

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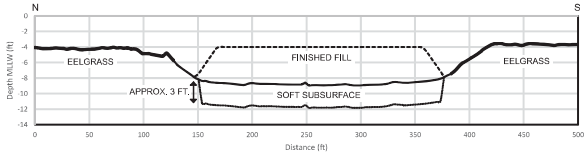

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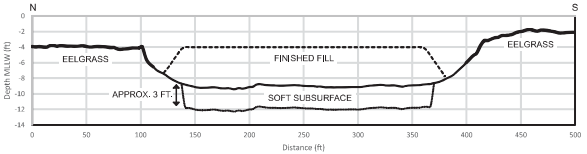

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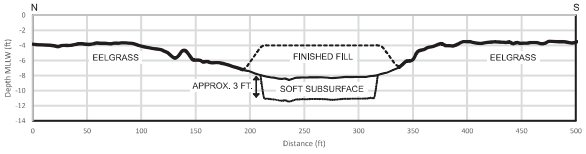

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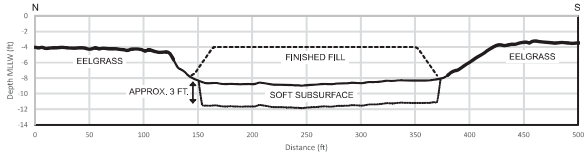

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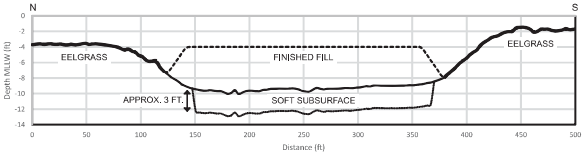

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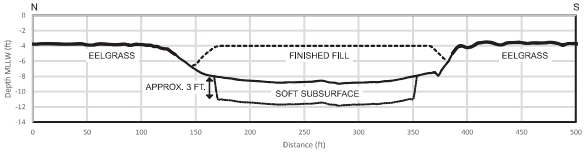

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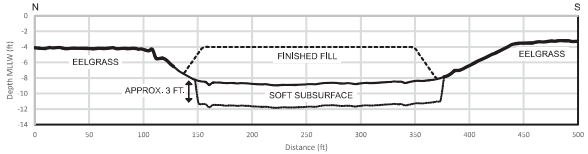

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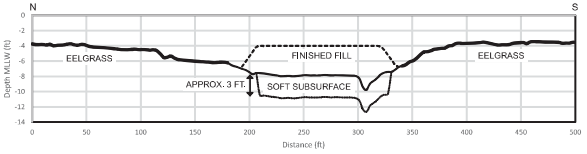

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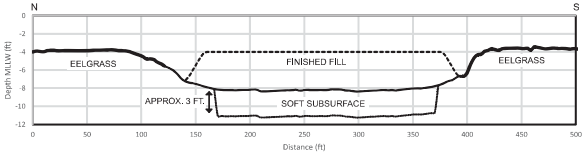

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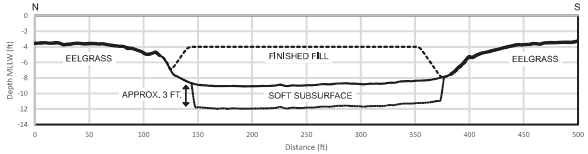

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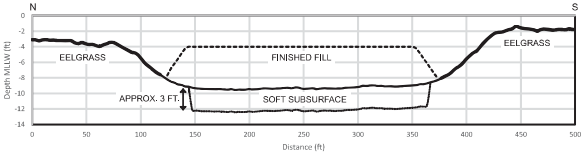

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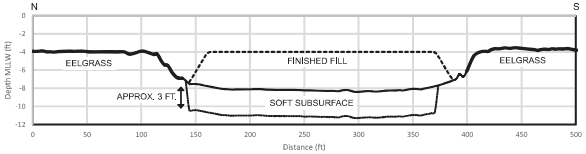

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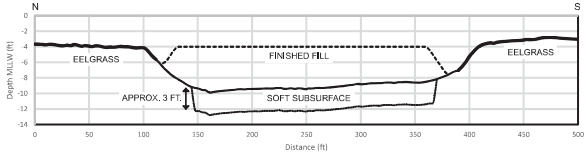

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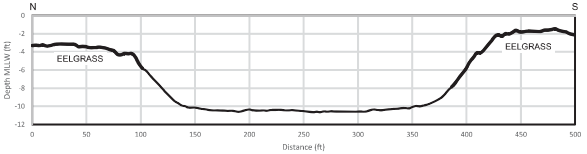

SECTION R - STN: 17+00

Merkel & Associates, Inc

CONSTRUCTION PLANS

REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: L MURAI
DRAWN BY: L MURAI / S PETRUCCELLI
CHECKED BY: K MERKEL
APPROVED BY: K MERKEL
SCALE: AS INDICATED
DATE: AUGUST 27, 2015

PIER 1 NORTH DRY DOCK PROJECT

SOUTH BAY EELGRASS RESTORATION SITE
CROSS SECTIONS

R-6

SHEET NO. 15 16

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SPECIAL ENVIRONMENTAL NOTES:

EELGRASS PROTECTION

1. EELGRASS HABITAT OCCURS ADJACENT TO THE NORTH WESTERN EDGE OF THE DRYDOCK DREDGE AREA AND ADJACENT TO THE SOUTH BAY EELGRASS RESTORATION SITE. EXISTING EELGRASS SHALL BE PROTECTED BY THE CONTRACTOR.

2. THE OWNER RETAINED PROJECT BIOLOGIST WILL COMPLETE PRE-CONSTRUCTION AND POST-CONSTRUCTION EELGRASS SURVEYS PRIOR TO AND FOLLOWING CONSTRUCTION. THE RESULTS OF THESE SURVEYS WILL BE PROVIDED IN DIGITAL FORMAT TO THE CONTRACTOR FOR USE IN SETTING WORK BOUNDARIES.

3. TO MINIMIZE EELGRASS IMPACTS THE CONTRACTOR SHALL ESTABLISH TEMPORARY WORK BOUNDARY MONUMENTS AND SHALL DEPLOY TURBIDITY CURTAINS ALONG THE EDGE OF EELGRASS TO REMAIN DURING AND FOLLOWING CONSTRUCTION.

   a. THE EELGRASS BOUNDARY MARKERS SHALL BE POSITIONED AT LEAST EVERY 50 FEET ALONG THE EDGE OF EELGRASS HABITAT AT LOCATIONS TO BE NOTED BY TEMPORARY PVC PIPES OR SELF CENTERING BUOYS PLACED BY THE OWNER'S PROJECT BIOLOGIST.

   b. CONTRACTOR SET MARKERS SHALL CONSIST OF AT LEAST 2-INCH STEEL POSTS SET INTO THE BOTTOM TO A DEPTH ADEQUATE TO RETAIN TURBIDITY CURTAIN HYDRODYNAMIC LOADING AND PERSIST THROUGHOUT THE CONSTRUCTION PERIOD.

   c. TURBIDITY CURTAINS PLACED ALONG THE SITE BOUNDARY SHALL EXTEND A MINIMUM OF 200 FEET BEYOND ANY ACTIVE SEDIMENT PLACEMENT LIMITS. NOT ALL OF THE TURBIDITY CURTAIN MUST BE IN POSITION DURING THE WORK, BUT BOTH THE NORTH AND SOUTH SIDES OF THE FILL AREA MUST BE BOUNDED DURING FILL PLACE-MENT EXTENDING ALONG THE CHANNEL SUCH THAT A MINIMUM OF 200 FEET OF CURTAIN LENGTH EXISTS BEYOND ANY PLACEMENT AREA.

   d. CURTAINS MUST BE FULLY CLOSED DURING THE PUMPING PERIOD.

   e. CONTRACTOR AND PROJECT BIOLOGIST SET MARKERS SHALL BE REMOVED AT COMPLETION OF THE PROJECT WORK. THE CURTAINS SHALL BE KEPT IN PLACE FOR FILL PLACEMENT UNTIL SUCH TIME AS THE TURBIDITY WITHIN THE CURTAIN ACHIEVES TURBIDITY LEVELS THAT ARE LESS THAN 15 PERCENT ABOVE AMBIENT LEVELS OUTSIDE OF THE CURTAIN.

4. EELGRASS OCCURS OVER A SHALLOW SHOAL ALONG THE ACCESS ROUTE INTO THE SOUTH BAY EELGRASS RESTORATION SITE (THE FORMER SOUTH BAY POWER PLANT COOLING WATER INTAKE CHANNEL TO BE BACKFILLED TO RESTORE EELGRASS). REFER TO "SOUTH BAY EELGRASS RESTORATION SITE ACCESS NOTES." TURBIDITY MONITORING SHALL BE PROVIDED BY THE OWNER'S PROJECT BIOLOGIST.

EELGRASS RESTORATION FILL PLACEMENT

5. THE CONTRACTOR SHALL PROVIDE AN EELGRASS HABITAT SITE CONSTRUCTION PLAN TO THE PROJECT ENGINEER AND PROJECT BIOLOGIST FOR REVIEW AND APPROVAL AT LEAST 4 WEEKS PRIOR TO CONSTRUCTION. HABITAT RESTORATION CONSTRUCTION SHALL NOT BEGIN UNTIL THE PROJECT ENGINEER AND PROJECT BIOLOGIST APPROVES THE PLAN. THE PLAN SHALL OUTLINE THE METHOD OF CONSTRUCTION FOR PLACEMENT OF LOWER BASE AND UPPER CAP MATERIALS. THE PLAN SHOULD PROVIDE A MEANS TO CONTROL MATERIAL PLACEMENT AND WATER QUALITY, TO MONITOR FILL QUALITY DIRECTED TO THE SOUTH BAY, PLACEMENT HEIGHT AND SETTLEMENT, AND EFFECTIVENESS OF PROPOSED TURBIDITY MEASURES, AND ANY REMEDIAL MEASURES THAT THE CONTRACTOR WILL TAKE TO ENSURE PROJECT AND PERMIT COMPLIANCE. THE PLAN SHALL ALSO INDICATE EQUIPMENT PROPOSED TO FULFILL THE CONSTRUCTION. IF STAGING FOR SCOWS/BARGES, OR DEVELOPMENT OF AN UNLOADING FACILITY OUTSIDE OF THE FILL SITE IS REQUIRED, CONTRACTOR SHALL PROVIDE A STAGING AND MANAGEMENT PLAN FOR THIS WORK.

6. IDEAL CONDITIONS FOR EELGRASS GROWTH IN SOUTH SAN DIEGO BAY OCCUR WITHIN A NARROW ELEVATION RANGE WITH THE MAXIMUM EELGRASS COVER RANGING BETWEEN -1 FOOT MLLW AND -4 FEET MLLW. TO ACHIEVE THIS DESIRED BATHYMETRIC RANGE, A FINAL CONSOLIDATED TARGET HABITAT ELEVATION OF NOT LESS THAN -4 FEET MLLW IS REQUIRED. ELEVATIONS MAY VARY UPWARD UP TO -3 FEET MLLW.

7. THE UNCONSOLIDATED FILL ELEVATION NECESSARY TO ACHIEVE A FINAL CONSOLIDATED FILL AT -4 FEET MLLW IS DEPENDENT UPON MATERIAL EXCAVATION AND PLACEMENT METHODS. FOR THIS REASON, FILL VOLUMES HAVE BEEN CALCULATED AS BANK VOLUMES AS IT IS DERIVED FROM THE DREDGE EXCAVATION SITE.

8. CONTRACTOR SHALL PLACE FILL TO ELEVATIONS NECESSARY FOR THEIR DREDGE AND FILL METHODOLOGIES TO ENSURE CONSOLIDATED ELEVATIONS ARE ACHIEVED OVER THE EELGRASS RESTORATION SITE.

9. CONTRACTOR MAY INITIALLY OVERFILL ELEVATIONS UP TO A MAXIMUM OF -1 FOOT MLLW IF REQUIRED TO ACHIEVE FINAL SETTLEMENT ELEVATIONS AT OR ABOVE -4 FEET MLLW.

10. CONTRACTOR SHALL PERFORM A DEMONSTRATION OF THEIR BASE FILL PLACEMENT METHODOLOGY AND SHORT-TERM SETTLMENT IN PLACED FILLS.

    a. THE CONTRACTOR SHALL DEMONSTRATE MANAGEMENT OF VESSEL DRAFT AND ACCESS OVER THE EELGRASS COVERED SHOAL TO AVOID EELGRASS DAMAGE.

    b. THE CONTRACTOR SHALL DEMONSTRATE TURBIDITY CONTROL MEASURES DURING MATERIAL PLACEMENT.

    c. THE CONTRACTOR SHALL PLACE BASE FILL TO AN ELEVATION THE CONTRACTOR BELIEVES NECESSARY TO MEET FINAL FILL GRADES MINUS A STABILIZED 2.0 FOOT SAND SURFACE CAP. THE PLACED MATERIAL SHALL BE MONITORED BY MULTIBEAM BATHYMETRIC SURVEYS FOR 20 DAYS TO TRACK CONSOLIDATION DETERMINE HOW FILL IS LIKELY TO PERFORM THROUGH LONG-TERM CONSOLIDATION. SURVEYS SHALL BE CONDUCTED ON DAYS 0, 1, 2, 3, 5, 10, 15, AND 20, POST PLACEMENT

    d. THE CONTRACTOR MAY PROGRESS WITH BASE FILL PLACEMENT ELSEWHERE DURING THIS CONSOLIDATION MONITORING PERIOD BUT MAY BE REQUIRED TO SUBSEQUENTLY RAISE THE FILL ELEVATIONS IF REQUIRED BASED ON THE OUTCOME OF THE MONITORING PROGRAM.

    e. THE INITIAL MONITORING SHALL BE USED TO DETERMINE IMMEDIATE SETTLEMENT AND EARLY PRIMARY CONSOLDATION SETTLEMENT. IT WILL ALSO ASSIST IN UNDERSTANDING DISPLACEMENTS OF THE SOFT MUD LAYER WITHIN THE CHANNEL. IF SEDIMENT IS DISPLACED AS FILL IS PLACED, ACTION SHALL BE TAKEN TO ENSURE THAT THE DISPLACE-MENT DOES NOT RESULT IN OVERRUN OF EXISTING EELGRASS. THIS LIKELY CAN BE ENSURED BY FILLING WEST TO EAST; HOWEVER OTHER METHODS MAY EXIST IF MANAGEMENT OF DISPLACED MUD IS REQUIRED.

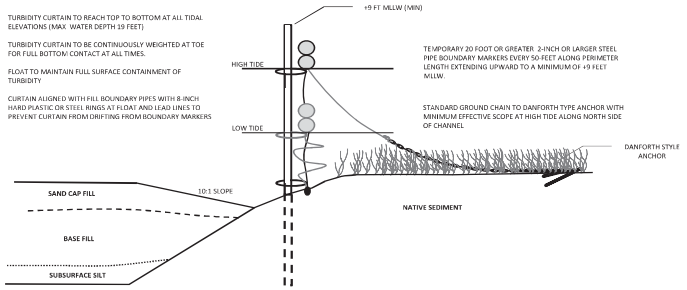
    f. BASED ON THIS DEMONSTRATION PROJECT, CONTRACTOR SHALL ESTABLISH ITS TARGET FOR BASE FILL PLACEMENT ALLOWING FOR A 2.0 FOOT FILL OF ZONE A SAND OVER THE FINAL FILL AREA.

11. THE LOWER BASE FILL SHALL BE CAPPED WITH A SAND LAYER (UPPER CAP),DERIVED FROM THE WESTERN DREDGE AREA. THE THICKNESS OF THE CAP SHALL BE 2-FEET (+/- 0.5 FEET).

12. THE FINAL SURFACE ELEVATION SHALL BE -4 FEET MLLW WITH VARIANCE OF +1 FOOT (I.E. UP TO -3 FEET MLLW), AND SHALL HAVE NO SLOPES GREATER THAN 10:1 (RUN:RISE). THE SURFACE SHALL NOT HAVE ANY AREAS BELOW -4 FEET MLLW AT THE "DEMONSTRATION PROJECT" PREDICTED FINAL ELEVATION.

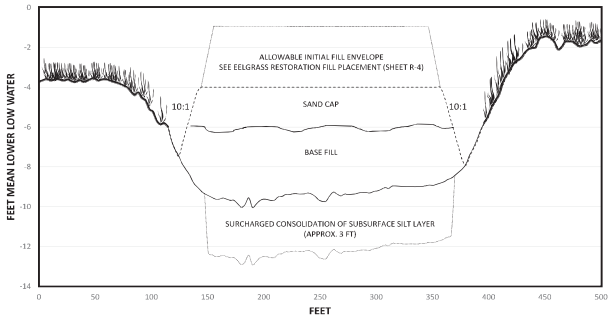
13. THE CONTRACTOR SHALL FINISH THE UPPER CAP LAYER TO MAKE SURE THAT IT MEETS THE SLOPE REQUIREMENTS AND HAS NO EXPOSED CONSOLIDATED SEDIMENT BLOCKS FROM THE BASE FILLS, OR ROUGH SURFACE CONDITIONS AREAS WHERE THE TOPOGRAPHY VARIES EXTENSIVELY (+/- 0.5 FEET) WITH SLOPES LESS THAN 10:1, THE CONTRAC-TOR MUST SMOOTH THE CAP USING A DRAG, BUCKET SWEEP, OR OTHER MEANS TO ACHIEVE PLANTABLE CONDITIONS. THE SURFACE WILL BE INSPECTED BY THE PROJECT BIOLOGIST TO VERIFY ACCEPTABLE CONDITIONS FOR EELGRASS RESTRATION.

BOUNDARY MARKER AND TURBIDITY CURTAIN ATTACHMENT DETAIL:



FILL DETAIL:

TYPICAL FILL PLACEMENT SECTION



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Merkel & Associates, Inc	CONSTRUCTION PLANS	REVISIONS: REV. / DATE / BY / APP'D / DESCRIPTION	DESIGNED BY: L MURAI DRAWN BY: L MURAI / S PETRUCCELLI CHECKED BY: K MERKEL APPROVED BY: K MERKEL SCALE: AS INDICATED DATE: AUGUST 27, 2015
			PIER 1 NORTH DRY DOCK PROJECT SPECIAL ENVIRONMENTAL NOTES
			SHEET NO. 15 OF 16

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Post-Transplant (0-Month) Eelgrass Survey for the South San Diego Bay Eelgrass Restoration in Support of the BAE Systems San Diego Ship Repair Pier 1 North Drydock and San Diego Shipyard Sediment Remediation-North Shipyard Site San Diego Bay, CA

Prepared for:

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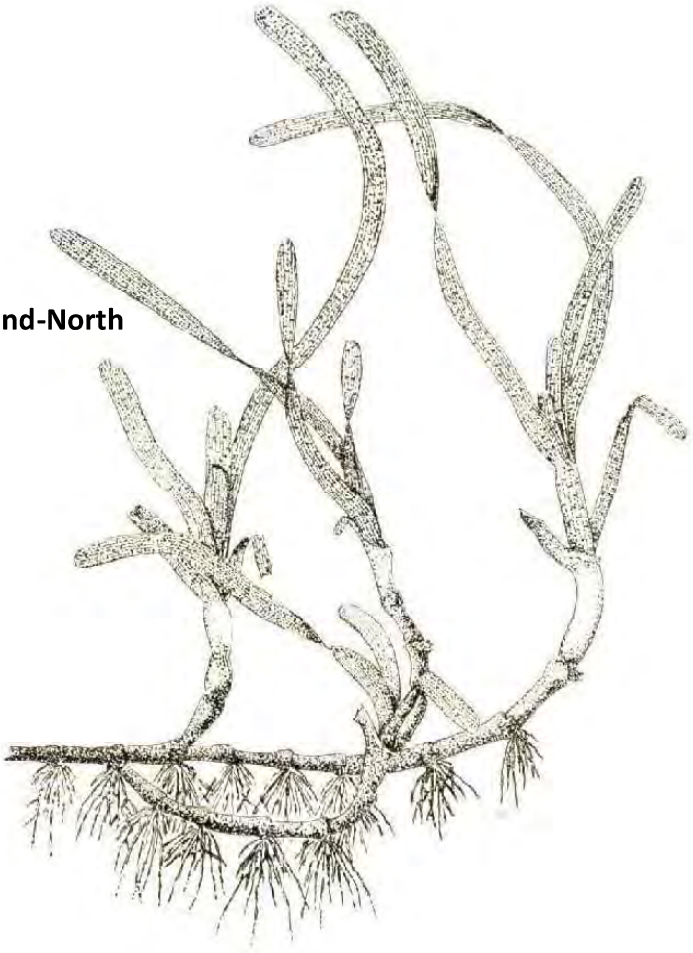

Prepared by:

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July 2017

Keith W. Merkel, Principal Consultant

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INTRODUCTION

M&A was contracted by BAE Systems San Diego Ship Repair, Inc. (BAE Systems) and the San Diego Bay Environmental Restoration Fund – North (North Trust) to prepare and implement a mitigation plan for impacts to eelgrass associated with the San Diego Shipyard Sediment Remediation Project - North Shipyard Site Project (Sediment Remediation Project) and impacts to eelgrass as well as impacts of bay coverage associated with the BAE Systems Pier 1 North Drydock Project (Drydock Project). The Sediment Remediation Project was authorized in 2014 with eelgrass mitigation requirements falling under the Southern California Eelgrass Mitigation Policy (SCEMP) (NMFS 1991 as amended, Rev. 11).

The subsequent Drydock Project was authorized in 2016 under the California Eelgrass Mitigation Policy (CEMP) (NMFS 2014). Because the CEMP is strongly based on the SCEMP, the requirements are very similar. The primary difference applicable to the present projects is the CEMP requirement for an initial restoration planting effort of 1.38:1 (initial restoration area to impact area) rather than at the required ultimate success ratio of 1.2:1 that is common to both the CEMP and SCEMP. Under the SCEMP, no minimum restoration target was set, although successful restoration has been achieved by restoration efforts that buffer against shortfalls by oversizing the initial restoration effort to account for less than full bed coverage within the mitigation area. For mitigation of bay coverage, there is no initial restoration ratio that applies to the mitigation site and the final mitigation ratio is set at a 1:1 (eelgrass area to bay coverage area).

The BAE Systems Pier 1 North Drydock Project involved the construction of facilities for a new floating drydock to support the current and planned future home-porting of United States (US) Naval assets (ships) in San Diego and allow greater flexibility in the utilization of drydocking facilities. The purpose of the project was to (1) increase BAE Systems' drydock capacity to facilitate required maintenance of existing and future US Naval assets and (2) provide additional capacity for commercial vessel drydock needs that could not be met by the previous drydock capacity. The project resulted in an impact of 3.87 acres of bay coverage. The CEMP calls for mitigation for this type of impact to be completed at a 1:1 ratio. Additionally, 0.40 acre of eelgrass was impacted within the project work area during mitigation site construction. The CEMP calls for an initial restoration planting effort at a ratio of 1.38:1, which results in the need for a minimum of 0.55 acres to be planted. The ultimate CEMP required mitigation for this impact is determined at a 1.2:1 ration, which results in the need for 0.48 acre of eelgrass to be developed. Thus, the total mitigation need for the Pier 1 North Drydock project is 4.35.

The San Diego Shipyard Sediment Remediation Project - North Shipyard Site Project involved the remediation of marine sediments containing pollutants within the BAE Systems San Diego Ship Repair yard. The work was conducted in response to Waste Discharge Requirement Order (WDR) No. R9-2013-0093 issued by the Regional Water Quality Control Board (RWQCB) in July 2013. The work was expected to result in impacts to 1.08 acres of eelgrass as a result of contaminated sediment removal (Merkel & Associates 2013). However, the final impacts from this work were determined to be 1.02 acres (Merkel & Associates 2016). Thus, the SCEMP required initial restoration effort to be a minimum of 1.22 acres, and the final SCEMP required mitigation needs for this work to be 1.22 acres (Table 1).

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Table 1. Eelgrass and Bay Coverage CEMP Required Mitigation Needs Summary

Element and Impact Type	Impact (acres)	Initial Restoration Ratio (Planting:Impact)	Minimum Planting Area (acres)	Required Success Ratio (Mit:Impact)	Mitigation Area Required (acres)
Pier 1 North Drydock	***4.27***		***4.42***		***4.35***
Eelgrass impact const. damage	0.40	1.38:1	0.55	1.2:1	0.48
Bay Coverage	3.87	1:1	3.87	1:1	3.87
Shipyard Sediment Remediation	***1.02***		***1.22***		***1.22***
Eelgrass impact	1.02	1.2:1	1.22	1.2:1	1.22
EFFECTIVE REQUIREMENT	***5.29***		**5.64**		**5.57**
RISK MITIGATED SITE SIZING*	***5.29***		**6.77**		**5.57**

*Risk mitigated mitigation site sizing is based on an assessment of potential for partial site failure or transitory gaps that depress the overall areal coverage of eelgrass within the mitigation area. This is a non-regulatory scaling of the mitigation based on best professional judgment, site location, and design conditions.

To address the mitigation requirement for both projects in an efficient manner, an eelgrass mitigation and monitoring plan was developed to complete both project mitigation obligations at the same location (M&A 2016). The mitigation need to be satisfied at the South Bay eelgrass mitigation site is successful restoration of 5.57 acres of eelgrass (Table 1). Because eelgrass dynamics can result in fluctuations in eelgrass areal extent through time, expanded eelgrass restoration is a good way to buffer against potential shortfalls due to transitory gaps in mitigation eelgrass coverage. However, for the present restoration, much of the mitigation demand is driven by impacts that do not have a required initial buffer (i.e., 1.38:1 to achieve the mitigation objectives). As a result, the mitigation plan for the work took into consideration the risks of shortfall and scaled the initial site design and eelgrass transplantation up from the final mitigation need to provide a buffer. The final mitigation site was constructed to be 6.77 acres (approximately 122 percent of the ultimate mitigation need). This extent of buffer between site size and mitigation need is expected to be adequate to protect against bed fluctuations in the mitigation site.

Upon approval of the mitigation plan, construction of the mitigation site, and receipt of a Letter of Authorization (LOA) from the California Department of Fish and Wildlife (CDFW 2017), the eelgrass transplant was completed in accordance with the transplant plan. Transplantation was conducted during May and June 2017. The 6.77 acres of eelgrass mitigation site was planted with eelgrass planting units at 1-meter on center spacing. Unvegetated slopes and the fill settlement trough between the mitigation site and the adjacent eelgrass was planted at a lower density to repair site damage and to stabilize slopes of the mitigation site. This increased the total planted area to 7.7-acres. The restoration site is located within the western end of the abandoned intake channel of the former South Bay Power Plant in South San Diego Bay (Figure 1). The oversizing of the transplant site provides capacity for some eelgrass losses to occur while still achieving the ultimate mitigation objectives.

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RESTORATION METHODS

SITE PREPARATION

The eelgrass transplant site was constructed by raising the bottom elevations from an average of approximately -8.5 feet MLLW to a consolidated elevation of -4 feet MLLW. This was accomplished by filling the channel with clean sediment dredged from the outermost portion of the Pier 1 North drydock sump. The sediment was placed within the transplant site to raise the bay floor to elevations equal to the elevation of the adjacent bottom that supports eelgrass to the south and north of the site.

DONOR BEDS

Donor eelgrass for the transplant was derived from natural eelgrass beds located adjacent to the Chula Vista Bayside Park (Figure 1). These donor beds were primarily selected based on a number of factors: 1) Proximity to the transplant receiver site that favors both logistic convenience and selection of appropriate plant materials for the area; 2) Suitability of donor site size and eelgrass density to provide necessary transplant materials; 3) Recovery potential for the donor site; and, 4) Accessibility of the donor site and diver safety.

Prior to the transplant, the total areal extent of eelgrass within the Northern Donor Bed amounted to approximately 47,081 m^2 (11.6 acres), and the total areal extent of eelgrass within the Southern Donor Bed amounted to approximately 65,018 m^2 (16.1 acres) (M&A 2017). Eelgrass turion densities (± 1 SD) within the Northern Donor Bed were 128.0±51.9 shoots per m^2 (n=20) and 125.6±36.4 shoots per m^2 (n=20) within the Southern Donor Bed.

As required by the CDFW LOA, the GPS coordinates (WGS84 UTM Zone 11) for the center points of the donor beds are:

North Donor Bed	489,883mE, 3,609,964mN
South Donor Bed	490,140mE, 3,609,153mN

EELGRASS RESTORATION

The eelgrass restoration took place between May 3, 2017 and June 19, 2017. A 6.77 acre eelgrass mitigation site was planted at 1-meter on center spacing. Surrounding site slopes and the gap between the site and adjacent eelgrass was planted at a lower density to fill the gap between the native eelgrass beds and the restoration site in order to stabilize the mitigation site slope and repair construction period damage. A total of 28,855 eelgrass planting units were planted within the site (Figure 2). This eelgrass transplant was performed using transplant methods discussed in the final eelgrass mitigation and monitoring plan for the project.

The transplant made use of biodegradable soft anchors to fasten bare-root units to the bottom. Eelgrass was salvaged from natural donor beds located adjacent to the Chula Vista Bayside Park. Eelgrass was harvested by hand and processed into planting units of 8 turions (leaf-shoots) per unit. These planting units were processed the same day that harvesting was completed and were planted within 24 hours. Harvesting and planting were accomplished by SCUBA divers, planting each unit

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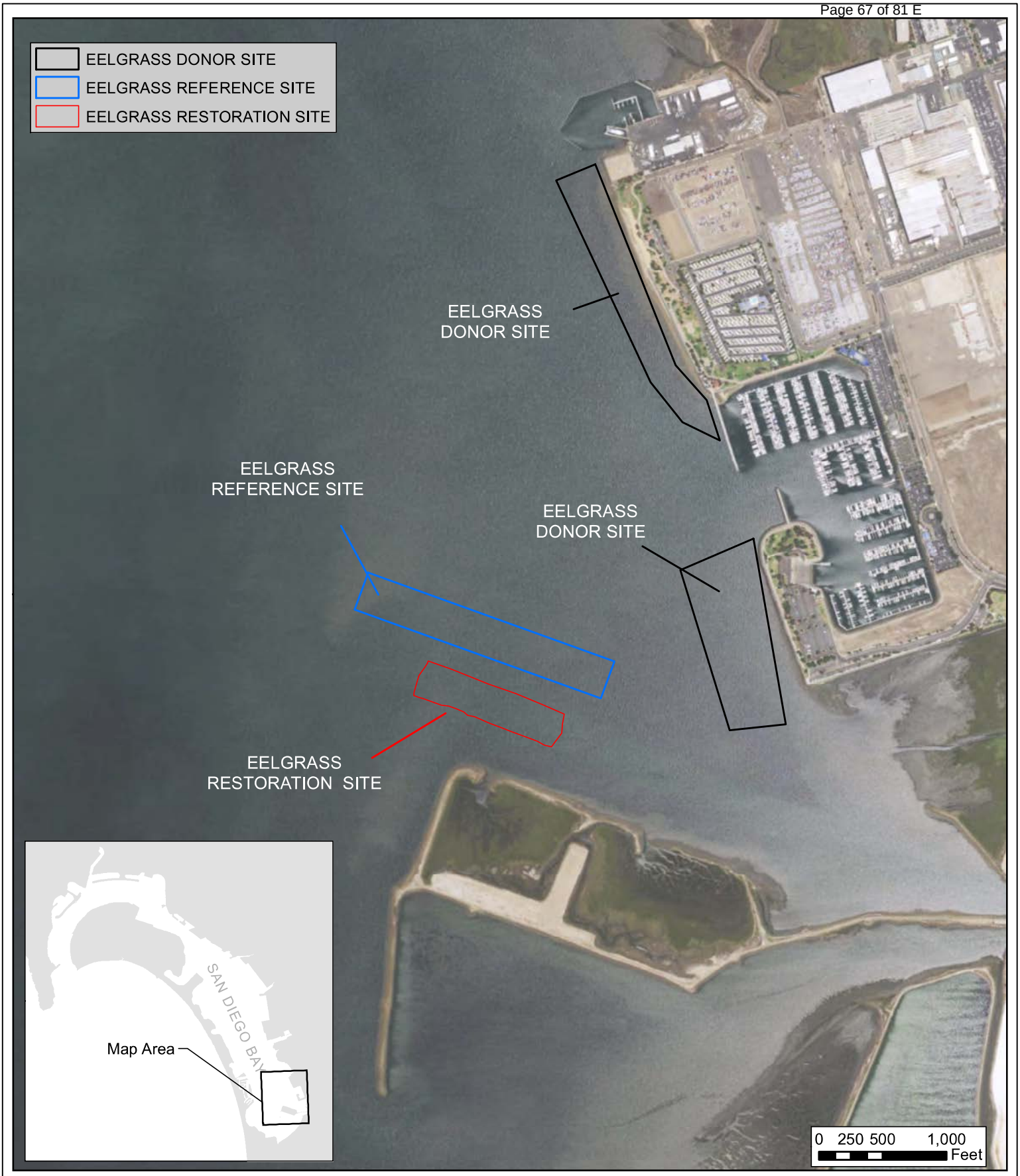

Project Locator Map
Donor Beds, Reference Site, and Restoration Site
South Bay Restoration
BAE Systems Pier 1 North Drydock Project
San Diego Shipyard Sediment Remediation Project

Figure 1

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on 1-meter centers for the core eelgrass transplant area and more sparsely to the extent of the constructed mitigation site.

As required by the CDFW LOA, the GPS coordinates (WGS84 UTM Zone 11) for the center point of the restoration area the:

Eelgrass Restoration Site 489,551mE, 3,608,987mN

REFERENCE SITE

A 14.5-acre eelgrass reference site was established in an adjacent area to the north of the restoration site (Figure 1). The site was selected based on proximity to and similarity in physical and biological characteristics to the proposed restoration site. Monitoring of the reference site will be conducted coincident with the monitoring of the restoration site. Changes in the reference site over time will be considered to represent natural environmental variability when evaluating the performance of the restoration site (see Monitoring Program sections).

EELGRASS MONITORING PROGRAM

As outlined in the Eelgrass Mitigation Plan, upon completion of the planting effort, a monitoring program has been initiated and will continue for a 60-month (5-year) period as outlined in the CEMP. Areal extent and density of the transplanted eelgrass and natural reference sites will be monitored using interferometric sidescan sonar acoustic survey techniques that have been applied to eelgrass mapping within the harbor and impact assessment. The spatial distribution of eelgrass derived from acoustic survey will be supplemented with bed condition data collection including turion density, leaf length, epiphytic loading, and disease observations.

The monitoring program will be conducted at intervals of 0, 6, 12, 24, 36, 48, and 60 months post-transplant. For each monitoring interval, a summary report will be prepared and submitted to BAE Systems and *de maximis, inc.* for review and submittal to the resource and regulatory agencies within 30 days of completion of the monitoring survey.

Monitoring reports will include information from previous monitoring intervals, including numerical comparisons and graphical presentations of changing bed configurations. The monitoring report will include an analysis of any declines or expansions in eelgrass coverage based on physical conditions of the site, as well as any other significant observations. Finally, the monitoring report will provide a prognosis for the future of the eelgrass bed and will identify the timing for the next monitoring period.

Monitoring of the restoration area commenced with the post-transplant (0-month) monitoring. The 6-month monitoring interval would fall in December 2017. As this is outside of the normal eelgrass-growing season (March - October), the survey will be shifted to October 2017 to coincide with the end of the growing season to ensure that valuable information on growth and survival is collected. The overall monitoring schedule anticipated at this time is outlined in Table 2.

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Table 2. Mitigation monitoring schedule.

ACTIVITIES	TIME PERIOD	REPORTING PERIOD
1. Complete Eelgrass Transplant	June 2017	
2. Complete 0-Month Survey	June 2017	July 2017
3. Complete 6-Month Survey	October 2017	November 2017
4. Complete 12-Month Survey	June 2018	July 2018
5. Complete 24-Month Survey	June 2019	July 2019
6. Complete 36-Month Survey	June 2020	July 2020
7. Complete 48-Month Survey	June 2021	July 2021
8. Complete 60-Month Survey	June 2022	July 2022

The mitigation requirements for the project work require the successful establishment of 1.2:1 replacement to impact areas for eelgrass lost due to the project implementation. This requires 5.57 acre of eelgrass to be successfully restored to compensate for the loss of approximately 5.29 acre of eelgrass impacted by the projects. It is anticipated that this goal will be met.

MITIGATION SUCCESS CRITERIA

Mitigation will be deemed successful when it has met the success criteria outlined in the CEMP. Criteria for determination of transplant success will be based upon a comparison of areal extent of eelgrass and density (leaf shoots per square meter) between the reference sites and the restoration sites. Key success criteria are as follows:

Month 0 Monitoring should confirm the full coverage distribution of planting units over the initial mitigation site as appropriate to the geographic region.

Month 6 Persistence and growth of eelgrass within the initial mitigation area should be confirmed, and there should be a survival of at least 50 percent of the initial planting units with well-distributed coverage over the initial mitigation site. For seed buoys, there should be demonstrated recruitment of seedlings at a density of not less than one seedling per four (4) square meters with a distribution over the extent of the initial planting area. The timing of this monitoring event should be flexible to ensure work is completed during the active growth period.

Month 12 The mitigation site should achieve a minimum of 40 percent coverage of eelgrass and 20 percent density of reference site(s) over not less than 1.2 times the area of the impact site.

Month 24 The mitigation site should achieve a minimum of 85 percent coverage of eelgrass and 70 percent density of reference site(s) over not less than 1.2 times the area of the impact site.

Month 36 The mitigation site should achieve a minimum of 100 percent coverage of eelgrass and 85 percent density of reference site(s) over not less than 1.2 times the area of the impact site.

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Month 48 The mitigation site should achieve a minimum of 100 percent coverage of eelgrass and 85 percent density of reference site(s) over not less than 1.2 times the area of the impact site.

Month 60 The mitigation site should achieve a minimum of 100 percent coverage of eelgrass and 85 percent density of reference site(s) over not less than 1.2 times the area of the impact site.

Areas that do not meet the above success criteria may require subsequent restoration with an associated extended five-year monitoring period, until the final goal is achieved.

POST-TRANSPLANT (0-MONTH) SURVEY METHODOLOGY

M&A conducted the 0-month post transplant survey on June 19, 2017. The survey consisted of eelgrass areal coverage investigations within the eelgrass restoration and reference sites, as well as the donor sites. Data were collected using interferometric sidescan sonar, which provided an acoustic backscatter image of the seafloor within the project area. Interpretation of the backscatter data allowed for an assessment of the distribution of eelgrass. Sidescan backscatter data were acquired at a frequency of 468 kHz scanning out 31 meters on both the starboard and port channels for a 62-m wide swath. The rigid hull mounted interferometric sidescan system integrates motion sensors to control for heave pitch, and roll as well as a dual antenna positioning system and electronic compass to control for vessel position and yaw. This rigid integration of the interferometric sidescan transducers within the positioning sensors provides significantly increased precision and accuracy over conventional towfish sidescan sonar equipment.

The survey was conducted by navigating parallel tracklines, spaced to allow for overlap between adjoining sidescan swaths. Survey swaths were navigated until the entirety of the survey area was captured in the survey report. All data were collected in latitude and longitude using the North American Datum of 1983 (NAD 83), converted to the Universal Transverse Mercator system in meters (UTM), and plotted on a geo-rectified aerial image of the project site. Following completion of the survey, sidescan sonar traces were joined together and geographically registered. Eelgrass was digitized as a theme over an aerial image of the project site to calculate spatial metrics defining the extent and distribution of eelgrass. Metrics determined for eelgrass from the acoustic survey include: spatial distribution, areal extent, and percent vegetated cover within the areal extent of the beds.

Following the sidescan survey, the restoration site, reference site, and donor beds were examined by SCUBA to assess the eelgrass quality, verify the sidescan data, and measure the density of actively growing leaf shoots by conducting shoot counts within a 1/16-m^2 quadrat. Twenty replicate quadrats were randomly placed within the eelgrass bed of the APE and reference areas to obtain a mean shoot density for the eelgrass beds.

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The reported metrics for eelgrass followed the definition of survey parameters to be included as discussed under the California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP; NOAA 2014). These are as follows:

- **Spatial Distribution**
  The spatial distribution of eelgrass habitat should be delineated by a contiguous boundary around all areas of vegetated eelgrass cover extending outward a distance of 5 m, excluding gaps within the vegetated cover that have individual plants greater than 10 m from neighboring plants. Where such separations occur, either a separate area should be defined, or a gap in the area should be defined by extending a line around the void along a boundary defined by adjacent plants and including the 5 meter perimeter. The boundary of the eelgrass habitat should not extend into areas where depth, substrate, or existing structures are unsuited to supporting eelgrass habitat.

- **Areal Extent**
  The eelgrass habitat areal extent is the quantitative area (e.g., square meters) of the spatial distribution boundary polygon of the eelgrass habitat. The total areal extent should be broken down into extent of vegetated cover and extent of unvegetated habitat. Areal extent should be determined using commercially available geo-spatial analysis software. For small projects, coordinate data for polygon vertices could be entered into a spreadsheet format, and area could be calculated using simple geometry.

- **Percent Vegetated Cover**
  Eelgrass vegetated cover exists when one or more leaf shoots (turions) per square meter is present. The percent bottom cover within eelgrass habitat should be determined by totaling the area of vegetated eelgrass cover and dividing this by the total eelgrass habitat area. Where substantial differences in bottom cover occur across portions of the eelgrass habitat, the habitat could be subdivided into cover classes (e.g., 20% cover, 50% cover, 75% cover).

- **Turion (Shoot) Density**
  Turion density is the mean number of eelgrass leaf shoots per square meter within mapped eelgrass vegetated cover. Turion density should be reported as a mean ± the standard deviation of replicate measurements. The number of replicate measurements (n) should be reported along with the mean and deviation. Turion densities are determined only within vegetated areas of eelgrass habitat and therefore, it is not possible to measure a turion density equal to zero. If different cover classes are used, a turion density should be determined for each cover class.

The spatial distribution of eelgrass habitat was then determined by extending a consistent 5-meter (16-foot) buffer outward from all mapped eelgrass and then refining the buffered area to exclude areas where existing shoreline infrastructure, unsuitable depths, steep slopes, or substrate conditions would naturally preclude eelgrass establishment. The methods applied in this manner result in eelgrass distribution calculation allows for monitoring eelgrass trends at the project site with a substantial degree of accuracy and repeatability over time.

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In order to ensure consistency in analyses and reporting through time, the quantification of all metrics, inclusive of spatial extent and areal extent of beds that map extend beyond the bounds of the reference and transplant areas, is limited to areas within the initially established monitored sites. This precludes potential for either the reference or transplant areas to extend beyond the initially established boundaries.

POST-TRANSPLANT (0-MONTH) MONITORING RESULTS

RESTORATION AND REFERENCE SITES

Bed spatial and density metrics for the eelgrass restoration and reference sites are summarized in Table 3a. The 6.77 acre eelgrass mitigation site was planted at 1 meter centers. Additional areas were planted at a lower density to stabilize the mitigation site margins. The total areal extent of eelgrass within the reference site amounted to approximately 58,749 m^2 (14.5 acres) (Figure 2, Table 3a).

Table 3a. Post-Transplant (0-Month) Eelgrass bed metrics as defined under the CEMP.

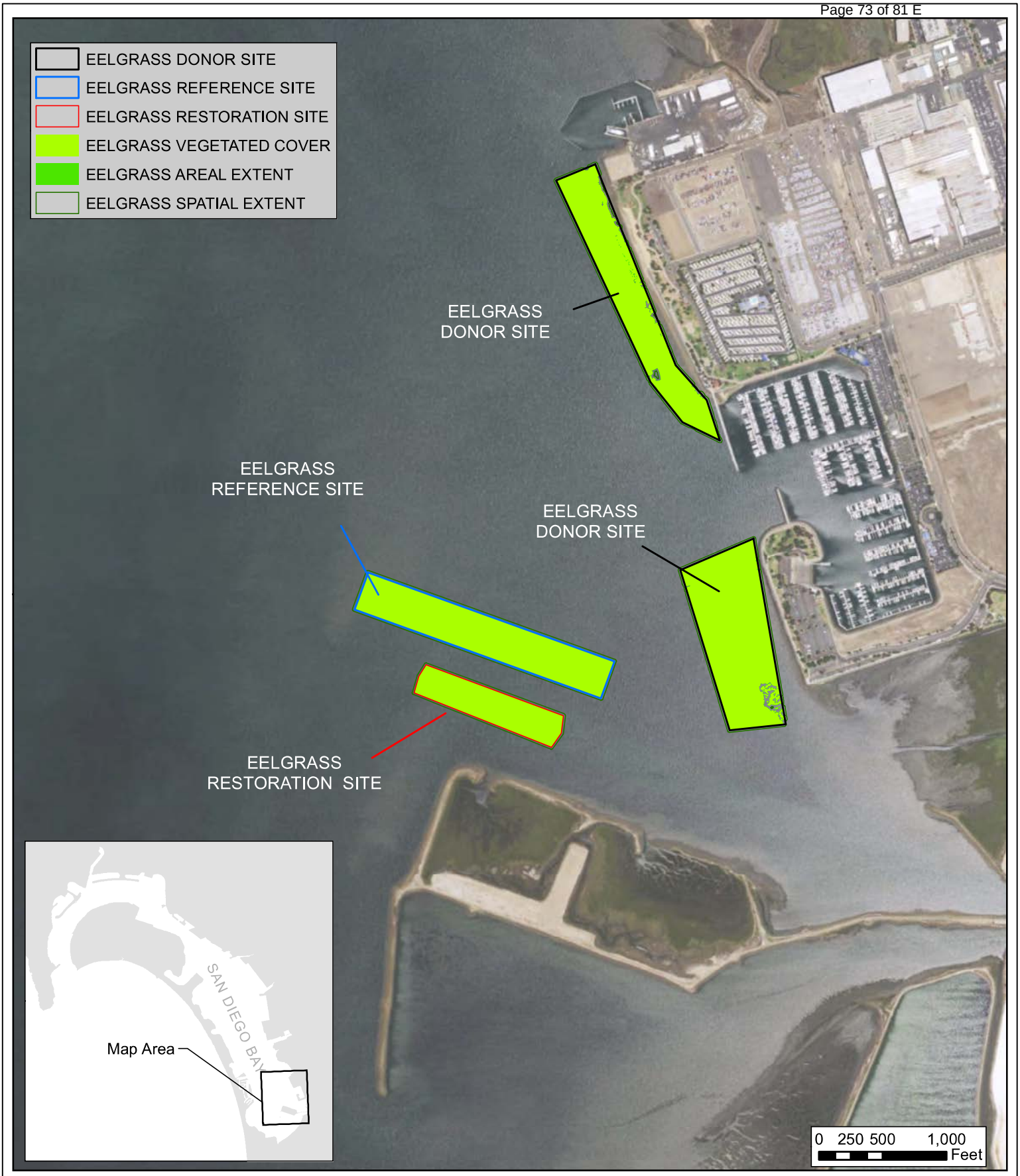
Location	Spatial Distribution (m^2)	Eelgrass Areal Extent (m^2)	Vegetated Cover (m^2)	Percent Vegetated Cover	Density (turions/m^2) (# of replicates)
Eelgrass Mitigation Site	27,382 m^2 (6.77 ac)	27,382 m^2 (6.77 ac)	27,382 m^2 (6.77 ac)	100 %	8.0
Reference Site	58,749 m^2 (14.5 ac)	58,749 m^2 (14.5 ac)	58,749 m^2 (14.5 ac)	100 %	114.3±37.6 (n=20)

DONOR SITES

Bed spatial and density metrics for the northern and southern donor sites are summarized in Table 2b. The total areal extent of eelgrass within the northern donor site amounted to approximately 55,920 m^2 (13.5 acres), and the total areal extent of eelgrass within the southern donor site amounted to approximately 67,197 m^2 (16.6 acres) (Figure 2, Table 3b).

Table 3b. Post Transplant (0-Month) Eelgrass bed metrics as defined under the CEMP.

Location	Spatial Distribution (m^2)	Eelgrass Areal Extent (m^2)	Vegetated Cover (m^2)	Percent Vegetated Cover	Density (turions/m^2) (# of replicates)
Northern Donor Site	64,099 m^2 (15.8) ac	55,920 m^2 (13.8) ac	54,722 m^2 (13.5 ac)	97.9 %	172.6±48.3 (n=20)
Southern Donor Site	73,991 m^2 (18.3 ac)	67,197 m^2 (16.6 ac)	66,183 m^2 (16.4	98.5 %	138.3±31.8 (n=20)



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0-month Post Transplant Eelgrass - June 2017
South Bay Restoration
BAE Systems Pier 1 North Drydock Project
San Diego Shipyard Sediment Remediation Project

Figure 2

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DISCUSSION

A May/June 2017 transplant of the 6.77 acre mitigation site was completed to satisfy mitigation requirements of the 5.57-acre eelgrass replacement needs under the CEMP. Concurrent with the transplant of the site, slopes were planted around the site to stabilize the mitigation area and to repair damage associated with the initial site construction. The post-transplant quality control inspection survey revealed that the planting units are well spaced and anchored in the bottom sediments in accordance with standard planting practices. The planting units exhibited a healthy appearance, with the eelgrass leaves appearing green and floating vertically.

This document constitutes the eelgrass transplant completion report. A 6-month post-transplant monitoring will be scheduled for October 2017.

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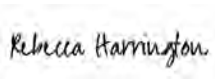
Rebecca Harrington rharrington@portofsandiego.org Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 72.197.229.241	Sent: 7/31/2020 9:47:27 AM Viewed: 7/31/2020 9:48:27 AM Signed: 7/31/2020 9:49:15 AM
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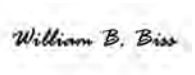
William B. Biss william.b.biss@baesystems.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 149.32.192.40	Sent: 7/31/2020 9:50:07 AM Viewed: 8/3/2020 4:39:29 AM Signed: 8/3/2020 4:50:59 AM
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