

CITY OF SAN DIEGO SHORT-TERM RIGHT-OF-ENTRY PERMIT

THIS CITY OF SAN DIEGO SHORT-TERM RIGHT-OF-ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and UNITED STATES NAVY – NAVAL FACILITIES ENGINEERING COMMAND SOUTHWEST ("PERMITTEE"), to be effective as of **August 1, 2013** (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean all or part of that certain CITY-owned real property located at El Capitan Reservoir and located in the City of Alpine, California, and more particularly described in **Exhibit A: Permit Area**, attached hereto
- B. **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Seven Hundred-Twenty-Seven (\$727.00).
- C. **"Permit Use"** shall mean the non-exclusive use of the Permit Area for testing instruments that measure water speed. All use pursuant to this Permit shall be limited to the days of **Tuesdays and Wednesdays** of each week during the Term when the general public is not using the facility.
- D. **"PERMITTEE'S Address for Notices"** shall be:

NAVAL FACILITIES ENGINEERING
CMD SW ASSET MANAGEMENT (AM1)
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190
Attn: Howard Diaz, Realty Specialist
(619) 556-6906
- E. **"Rent"** shall mean monetary consideration to CITY in the amount of One Hundred – Twenty-Five Dollars (\$125.00) per month.
- F. **"Term"** shall mean one year (1) years from the Effective Date.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.
2. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance. **PERMITTEE shall notify CITY'S Water Department representative (currently: Joe Weber, Lakes Program Manager, CITY Water Department, at (619) 668-2030) one (1) week prior to using the Permit Area, in each instance of use.**
3. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
4. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided or required by law. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
5. Term. The Term shall commence on the Effective Date. The Term shall not exceed one (1) (years.
6. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon three (3) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense, burden or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
7. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis using up to two (2) times the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by an appraiser selected by CITY in its sole discretion. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.
8. Termination. PERMITTEE may terminate this Permit at any time and for any reason.

9. Restore and Vacate. Prior to the expiration or PERMITTEE'S earlier termination of this Permit, for any damages or adverse impacts caused by PERMITTEE, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY'S termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable thereafter restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.
10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
11. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon execution of this Permit.
12. Rent. PERMITTEE shall pay the Rent to CITY upon execution of this Permit, made payable to "City Treasurer," and delivered to CITY'S Real Estate Assets Department at 1200 Third Avenue, Suite 1700 (MS 51A), San Diego, California 92101.
13. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the Permit Use. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter caused by the Permit Use. PERMITTEE hereby acknowledges that the Permit Area is a vital public work providing benefit to the public. PERMITTEE hereby agrees that PERMITTEE'S use of and activities in the Permit Area shall not compromise or otherwise interfere with the integrity or function of the Permit Area or any portion thereof.
14. Inspection. CITY may at all times enter and inspect the Permit Area.
15. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
16. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

17. Insurance. PERMITTEE represents and warrants that it is a Federal Agency and is self-insured. If requested by CITY, PERMITTEE shall deliver to CITY evidence of such insurance in form and content reasonably satisfactory to CITY
18. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
19. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the PERMITTEE'S use of the Permit Area, and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
20. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
21. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent.
22. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.
23. Encumbrances. PERMITTEE shall keep the Permit Area and any CITY-owned property of which the Permit Area is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall release and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area.
24. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S use of the Permit Area.
25. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or disability in PERMITTEE'S use of the Permit Area,

including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

26. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area by reason of PERMITTEE'S use of the Permit Area, including without limitation licenses and permits. PERMITTEE'S payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
27. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a breach shall not be a waiver of any other breach. Any waiver of a breach must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any breach shall not waive the use of any other right or remedy for the same breach or for another or later breach. CITY'S acceptance of any rents shall not be a waiver of any breach preceding the rent payment. CITY'S failure to discover a breach or take prompt action to require the correction of any breach shall not result in an equitable estoppel, but CITY may at any and all times require the correction of the breach.
28. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
29. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
30. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
31. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
32. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S use of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

33. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attn: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

34. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

35. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefor.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 18 Jan 2013

UNITED STATES NAVY - NAVAL FACILITIES
ENGINEERING COMMAND SOUTHWEST

BY: Karen P. Ringel
Name: Real Estate contracting officer
Title: Karen P. Ringel

Date: 7/2/13

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: BOB FILNER
Name: Bob Filner
Title: Mayor

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt by CEQA pursuant to State of California CEQA Guidelines Section 15301, Existing Use.

Date: 5/8/13

BY: Melyd Hernandez
Name: Melyd Hernandez
Title: Senior Planner

Approved as to Form and Legality:

Date: 7/11/13

JAN I. GOLDSMITH, City Attorney

BY: Jeremy Fonseca
Name: Jeremy Fonseca
Title: Deputy City Attorney

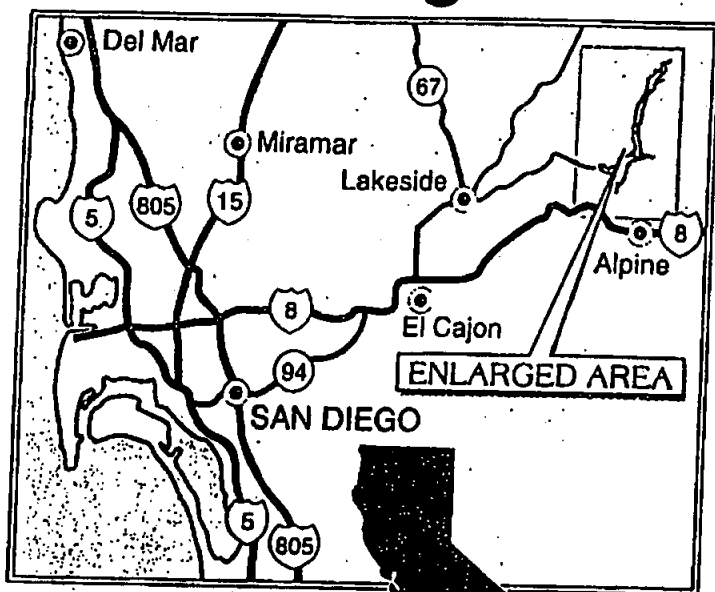
I:\Support Staff Group\WPO\2013\ZOLEZZI\RIGHT OF ENTRY - NAVY .doc

Exhibit A: Permit Area

Exhibit B: City Lakes Pamphlet

Exhibit A: Permit Area

[TO FOLLOW BEHIND THIS PAGE]



F&H MAP KEY

- * Bass
- Restricted Area
- High Water Line
- Paved Road
- == Dirt Road
- ▢ Boat Ramp
- P Parking

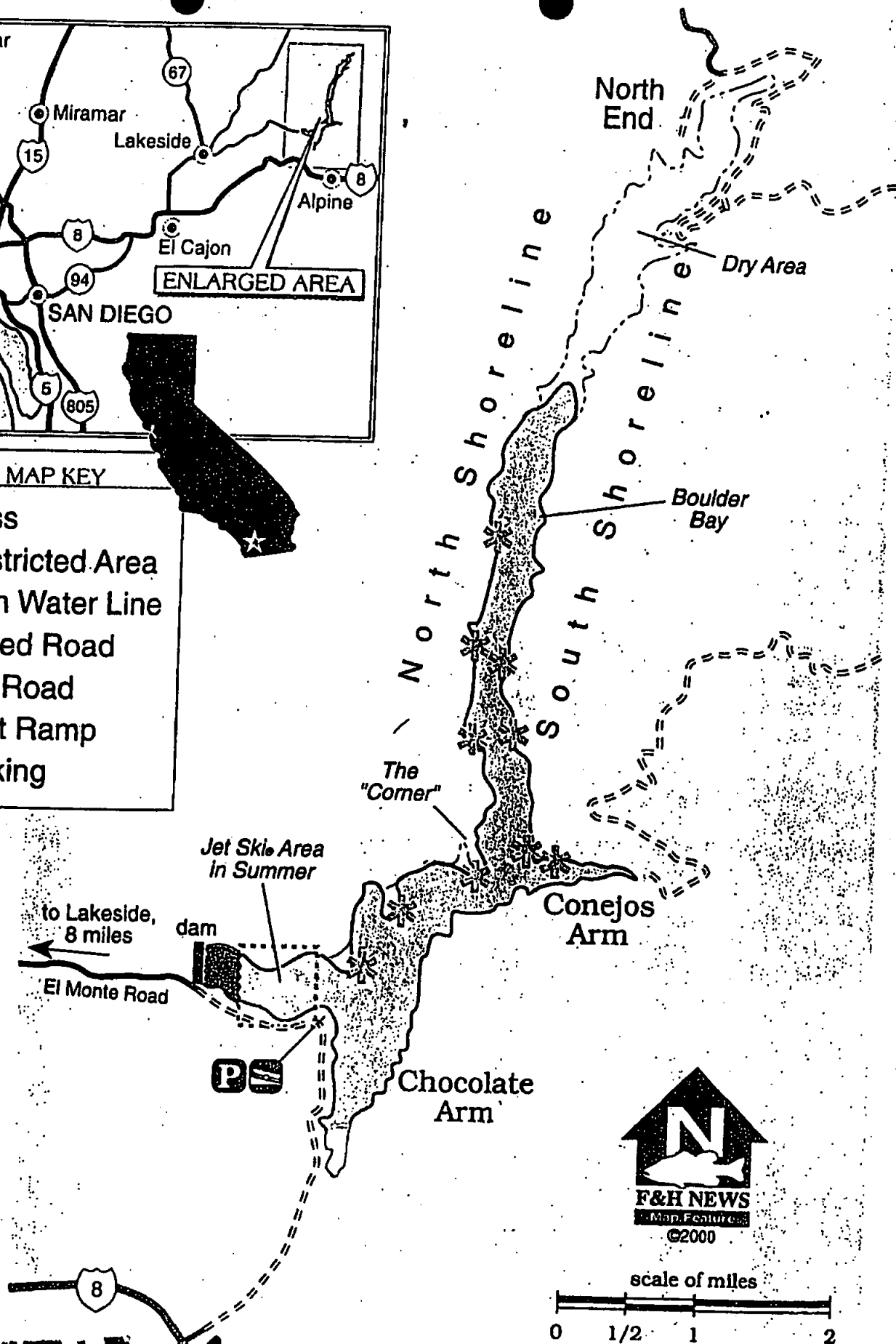


EXHIBIT A-4

EL CAPITAN LAKE