

000353

ATTACHMENT 8

BOUNDARIES OF MISSION BAY PARK

SYNOPSIS

The 2000-2001 San Diego County Grand Jury decided to follow up on a recommendation of the 1999-2000 Grand Jury regarding an exact survey to determine the precise dimensions of Mission Bay Park and its leaseholds. This was to be done by the City of San Diego. The Grand Jury also decided to investigate complaints regarding the accuracy of the survey and the implication that the company performing the survey had a possible conflict of interest involving the City and one of the lessees.

Following interviews, reviews of documents, maps, and minutes of the San Diego City Council, the Grand Jury determined that the survey was carried out to the highest degree of practical accuracy. The methodology of the survey was consistent with accepted surveying parameters and approved by federal, state and city agencies.

Concerned citizens, anxious to preserve as much of the public area in the park, contend that wetlands, obviously unsuitable for building and development, should not have been included in the "total land area" from which the 25% "leasable area" is derived.

The contention that a conflict of interest existed could not be supported.

The Grand Jury recommends that all entities contracting with the City of San Diego furnish a Conflict of Economic Interest Statement (FPPC Form 700) as part of their contract agreement.

To address the citizens' concerns the Grand Jury recommends that the San Diego City Council refine the definition of "land" to exclude wetlands in the calculation of land available for lease.

BACKGROUND

Mission Bay Park is one of the most valued recreational assets and tourist attractions of San Diego County. It is for this reason that the citizens of the county have always had a keen interest in its management and preservation. It is for the same reason that the 1999-2000 San Diego County Grand Jury issued an extensive report entitled "*Mission Bay Park-The Truth About 'False Bay'*". This was a wide-ranging report covering several aspects of park management.

000356

The 2000-2001 Grand Jury, being aware of the intense public interest in the Mission Bay Park area, resolved to follow up on one of the items of the previous report-the establishment of an accurate measurement of the entire Mission Bay Park. Special emphasis was placed on the percentage of the area devoted to leasehold improvements. The legal background can be found in the original Mission Bay Park Natural Resources Management Plan (1980) which has since been updated by the Mission Bay Park Master Plan Update of 1994. The 1987 amendment of the City Charter Section 55.1 specifically deals with "RESTRICTIONS UPON COMMERCIAL DEVELOPMENT" in Mission Bay Park (MBP).

The 1987 amendment provides that "the total land and water areas of all leases in Mission Bay Park shall not exceed twenty-five (25%) percent of the total dedicated land area and six and one-half percent (6.5%) of the total dedicated water area, respectively, of the park without such lease being authorized or later ratified by 2/3 of the qualified electors of the City voting at an election for such purpose."

The following were the findings of the 1999-2000 San Diego County Grand Jury:

- 28. The City has not had a survey to determine land and water acreage of Mission Bay Park nor of leased areas since passage of City Charter Amendment 55.1 in 1987.
- 29. The City relies on a 1968 aerial survey, which has missing calculations, to determine the total area of Mission Bay Park.
- 30. The City relies on lessees to provide information of the amount of land included in their lease agreements.
- 31. In some leases the information about the amount of land is missing or incomplete.

The following were the recommendations of the 1999-2000 San Diego County Grand Jury:

- 00-19:** That the City Manager direct the completion of an accurate land and water survey before any new development of leased land and water is approved to ensure compliance with the City Charter.
- 00-20:** That the City Manager require that the survey determine the extent of marshland in Mission Bay Park.
- 00-21:** That the City Manager determine the total land in the park without including marshland.

000357

00-22: That the City Manager include commercial and non-commercial leases and agreements in the list of properties that are subject to the 25% land and 6.5% water limits in Mission Bay Park.

The following were the responses of the City Manager to the above recommendations:

00-19: This recommendation has already been implemented. . . A competitive selection process has resulted in the selection of Project Design Consultants to conduct this survey. . . City Council authorized the City Manager to enter into a contract with Project Design Consultants on June 5, 2000. . . The survey is expected to be completed by September 2000. However, staff will continue to process requests for new development and lease negotiations at the same time as the survey is being processed. It is likely that the survey will be completed before any new development projects are ready for City Council to review (sic).

00-20: This recommendation will not be implemented because it is not warranted and is unreasonable. A separate calculation of marsh in Mission Bay Park will not provide any relevant information for compliance with Charter Section 55.1. In accordance with standard surveying practices and California law, the mean high tide mark will be used to distinguish land from water (sic).

00-21: This recommendation will not be implemented because it is not warranted and is unreasonable. . . see 00-20 (sic).

00-22: Charter Section 55.1 does not require this change, however, if adopted by City Council as policy direction it will be done (sic).

The purpose of this 2000-2001 San Diego County Grand Jury report was fourfold:

1. **Completion of survey:**
Was the survey completed as directed by the City Manager?
2. **Accuracy of the survey:**
Were there any limitations imposed on the surveying company by the City Manager to deviate from generally accepted surveying standards?
3. **Compliance with the provisions of City Charter Section 55.1 amendment:**
Were the leaseholds of land and water within the limits set by the above?

000358

4. **Conflict of Interest:**

Did the surveyor have any beneficial interest in any of the leaseholds?

Historical Background

Originally, the entire area was marshland deeded to the city by the Tidelands and Coastal Commissions. In 1930, the City of San Diego formulated a plan to create a recreational aquatic park in an area which consisted essentially of tidal mud flats, a racetrack, and some privately owned land.

The boundaries of the tidelands and submerged lands were granted in trust to the City of San Diego by the State of California (Chapter 142 Statutes of 1945). The boundaries of these tideland areas were later revised as a result of a Superior Court decision involving the city, the state, and property owners. (Case No. 84864). This is a static line delineated by the so-called Arnold Line.

Additional land areas, previously held by the California State Parks Department, were granted in trust to the City of San Diego by the legislature.

The above two were augmented by various purchases of land from private property owners and transfers from Caltrans to form the original dimensions of the park.

In 1968, an aerial survey was done and determined the total area of the park to be 4248.93 acres: 1887.02 of land, 2228.18 of water and 133.73 of marshland.

Although several surveys had been conducted by the city since 1968 no metes and bounds survey on the leaseholds had been performed by the City.

As a result of dredging and filling operations, as well as of tidal actions, the original measurements of land and water are no longer representative of the actual state of affairs existing today.

It was important to accurately assess the area of the tidelands since all revenue derived from it must be spent on tidelands.

CITIZENS CONCERNS

The survey was conducted with preconceived parameters which would show the city's leasing practices in a more favorable light.

A survey of wetlands should have been included (This was also recommended by the 1999-2000 San Diego County Grand Jury).

000359
Wetlands were included in the survey as "land" areas to increase the number of acres which can be leased (25% of total land).

The areas of land previously designated were only dedicated to increase the percentage of land on which the city would be able to lease.

Land, which was above the mean high tide mark in the Mission River Flood Channel, was considered as land.

The city tries to maximize leasehold development, at the expense of the public areas, in Mission Bay Park.

Wetlands which are being used for filtration treatment of polluted rainwater runoffs and nature preserves, even though they are above mean high tide levels, are obviously not suitable for leasehold development and should not have been included in the total area of leasable land.

PROCEDURES

The Grand Jury interviewed:

1. Representatives of the City of San Diego
2. An environmental activist as well as a concerned citizen
3. The surveyor

Documents reviewed:

1. City Council Minutes
2. Survey report summary
3. Initial and recent survey maps
4. Mission Bay Park Master Plan (1994 Update)
5. "Recognizing Wetlands-An Information Pamphlet" published by the U.S. Army Corps of Engineers.

All interviewees were cooperative and forthcoming.

FACTS

PERFORMANCE

The Mission Bay Park Survey was completed, as directed, and the final report submitted to the San Diego City Council on March 9, 2001 (Document No. 1654.05).

Preceding the survey, an exacting title search of all the conveyed parcels of land in Mission Bay Park, was performed by Project Design Consultants.

In addition to establishing land and water limits, as well as those of all the leaseholds, a survey to establish the tidelands area was also conducted, since according to California Law, revenues generated by tidelands must be spent on tidelands.

The survey was certified by the Surveyor, accepted by the City Council, and has been recorded as Record of Survey 16891 on February 28, 2001, in the Office of the County Recorder as File Number 2001-011342.

ACCURACY

There were no restrictions placed on the surveyor. They were required to use the most accurate methods presently available.

The mean high water line was used to distinguish land from water. This is the generally accepted standard used by surveyors, defined by California Law and used by California Coastal Agencies.

Two hundred and forty (240) ground control points were placed throughout the park to establish mean high water marks.

Tidal gauges were used to accurately assess the mean high water mark levels. These gauges were specific to this project and independent from those used by the state.

The markers were visible from the air.

Thirty (30) transit flights were made over the area noting the markers on the ground.

This resulted in 250 aerial photographs and 230 stereo models. These photographs were combined into a composite map.

Flights were made at a low altitude of 1000 feet to obtain maximum accuracy.

Weather and visibility were excellent during the transit period.

Aerial surveys were confirmed by ground measurements using the latest and most accurate technology, the Global Positioning System (GPS), including total static theodolite.

National Oceanographic and Atmospheric Administration (NOAA) representatives, State Land Agency representatives and the city engineer were involved in the survey and approved the methodology.

A metes and bounds survey was made of all leaseholds. The language of Section 55.1 of the City Charter speaks of **land** (as defined above) not **usable land** to establish the number from which the 25% of leaseholds are calculated.

Leasehold area calculations include commercial and non-commercial uses (Boy Scouts, Rowing Club, Yacht Club, Athletic Club, etc).

FINDINGS

SURVEY

The total dedicated land area of Mission Bay Park is 1936.69 acres.

The total dedicated water area of Mission Bay Park is 2298.92 acres.

The total acreage of Mission Bay Park is 4235.61 acres (4248.93 acres on the 1968 survey-a difference of minus 13.65 acres).

The area of marshland (wetlands) was not determined from the air as boundaries have to be determined on the ground.¹

The measurement of wetlands is not included in standard surveying procedures (see below).

Survey was done to the highest degree of accuracy possible. The degree of accuracy over the total area was to within ½ acre.

Title search found that there were ten parcels totaling 26.84 acres of the park, which had been designated to be within the park, but for which no record of City Council action of dedication was found. This area had been included in the park

¹ Definition of Wetlands: "those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." EPA Regulations at 40 CFR 230.3(t).

000362

area and maintained by Park staff. The Grand Jury believes that this was a clerical oversight discovered by a competent surveyor and not a deliberate attempt to increase the land area on the part of the City Council. The city corrected this oversight and formally dedicated these 26.8 acres at a regular council meeting on October 8, 2000.

The largest parcel of previously undedicated land was around the visitors' center and includes areas around the picnic tables, the boat ramp, and part of the parking lot.

Retracement and remeasurement of old survey monuments was performed. Assistance of a retired former city employee, who was involved in previous surveys, was of invaluable assistance in finding old monuments.

A metes and bounds survey determined the exact boundaries of the leased land, which had not been previously established.

COMPLIANCE

The survey established that the large commercial leaseholders were in compliance with their leases.

The survey also found that some leaseholders, adjacent to the Park, mainly in the De Anza Trailer Park area had unwittingly encroached on parkland. The City has notified these leaseholders by letter and corrective action has been initiated.

Some leaseholders were found to be entirely within the Park, some were partially in the Park and partially in tidelands, and some were entirely in the tidelands area.

In order to comply with state law directing that income derived from tidelands has to be spent on tidelands, a fair ratio of tidelands to the total area (4%) had to be established.

There are seven non-commercial leaseholders occupying a total of 14.003 acres of land.

The inclusion of non-commercial leaseholds in the total land area for leaseholds is provided for by amended City Council Policy 700-08, Section 55.1 of the City Charter.

Total commercial and non-commercial lease parcel area is 461.595 acres of land. This represents 23.83% of total land area and leaves some 12 acres for any future development (see chart).

The City is within the limits of the 484.725 acres or 25% of total land available for leasehold as provided by Section 55.1 of the amended Charter, *if the wetlands are included in the total land area* (see chart).

DESCRIPTION	AREA (ACRES)	
Mission Bay Park		
Park Area by Ordinance Prior to October 2000	4,208.77	
Park Area Dedicated Concurrently with this Report	26.84	
Total Park Area (subsequent to Ordinance 18884)	4,235.61	
Land/Water Areas (subsequent to new ordinance)		
Land Area	1,936.69	
Water Area	2,298.92	
Total Land/Water Area	4,235.61	
LEASE PARCEL AREAS	WATER	LAND
Non-Commercial Lease Parcels	5.906	14.003
Commercial Lease Parcels	89.653	447.592
Total Lease Parcel Areas	95.559	461.595
Acres Available for Lease (With Permit Approval)	53.8708	22.5775
Maximum Permitted Leasehold Areas	149.43	484.1725
LEASEHOLD AS A PERCENTAGE OF AREA		
Percent Leased as Non-Commercial Leaseholds	0.26%	0.72%
Percent as Commercial Leaseholds	3.90%	23.11%
Percent Leased	4.16%	23.83%
Percent Available for Lease (With Permit Approval)	2.34%	1.17%
Maximum Permitted Percentages for Leaseholds	6.50%	25.00%

WETLANDS

The U.S. Army Corps of Engineers uses three characteristics of wetlands when making wetland determinations: Soil conditions, Vegetation, and Hydrology. It is not measurable by standard surveying practices and requires the services of specialists in the various fields (Soil Engineers, Biologists, Army Corps of Engineers) to ascertain the precise extent of wetland areas.

The measurement of the wetlands area was not required by the City in the surveying contract and was not done.

SPIRIT OF THE MASTER PLAN

The spirit of the Master Plan for Mission Bay Park calls for a maximum use of the park for public recreations and enjoyment.

Page 51 of the 1994 Update of the Mission Bay Park Master Plan suggests that **"419.45 acres in dedicated leases should be considered a practical maximum"** (there are, in fact, 461.595 see chart) and creating wetlands **"would raise the dedicated lease percentage"**, implying that the original planners did not consider wetlands as areas which could be considered for development.

000364

Since wetlands are unsuitable for development, in any case, it would, therefore, seem reasonable to subtract the area of wetlands from the total land area available for commercial development.

THE FUTURE

Three parcels totaling 5.6 acres, which are extensions to existing leaseholds, are in the planning stage.

There is a possibility that some Caltrans land (area K on the aerial photograph) of 1.38 acres will be added to the total park area.

When the Trailer Park lease expires on November 3, 2003, some leased land (approximately 17 acres) may revert to public use if they are not leased.

CONFLICT OF INTEREST

The survey contract was awarded after an advertised and competitive bidding process. Qualified bidders did not need to prove expertise in surveying wetlands.

The city did not supply documents that a Conflict of Economic Interest (FPPC Form 700) had been filled out by the surveying company as part of the contract and claims that the company was exempt from doing so.

Another company, which had been contracted to do environmental work for one of the large leaseholders, later merged with the surveying company.

The time of the merger was after the surveying work had been in progress. (Contract awarded in June 2000, merger concluded in October 2000)

There was no change in the area of the involved leasehold as a result of the survey.

The Grand Jury concluded that no conflict of interest existed.

RECOMMENDATIONS

- 01-128:** That the City Manager require that all parties, which have contracts with the City, furnish a Statement of Economic Interest, as part of their contract, to prevent the perception of a possible conflict of interest by the public.
- 01-129:** That the San Diego City Council review and refine the definition of land and wetlands in the calculation of the total land available for

000365

lease in Mission Bay Park within the spirit of the Mission Bay Master Plan Update of February 1994. This can be accomplished by an amendment to the City Charter which refines the definition of wetlands in order that they are not included in the total amount of land available for leasehold development.

- 01-130: That the San Diego City Council consult with the Natural Resources and Cultural Committee and other groups of concerned citizens who are committed to preserving the maximum of Mission Bay Park for public use.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the grand jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. *Such comment shall be no later than 90 days after the grand jury submits its report to the public agency.* Also, every ELECTED county officer or agency head for which the grand jury has responsibility shall comment on the findings and recommendations pertaining to matters under the control of that county officer or agency head, as well as any agency or agencies which that officer or agency head supervises or controls. *Such comment shall be made within 60 days to the Presiding Judge of the Superior Court with an information copy sent to the Board of Supervisors.*

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of

000366

the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 is required from the:

San Diego City Manager

Recommendation: 01-128

San Diego City Council

Recommendations: 01-129, 01-130

000367

ATTACHMENT 9

000369



THE CITY OF SAN DIEGO

RECEIVED

AUG 21 2001

August 20, 2001

RECEIVED

AUG 22 2001

SAN DIEGO
COUNTY GRAND JURY

Honorable Wayne L. Peterson
Presiding Judge, San Diego County Superior Court
220 W. Broadway, Department SD-P
San Diego, CA 92101

Dear Judge Peterson:

Subject: Response to San Diego County Grand Jury Report

In compliance with California Penal Code §933.05, the City of San Diego has thoroughly reviewed the May 24, 2001 report from the San Diego County Grand Jury entitled "Boundaries of Mission Bay Park." Responses are enclosed for all findings and recommendations contained in the report and are consistent with the requirements and instructions of enclosed California Penal Code §933.05.

The City values the effort put forth by the Grand Jury in following up on a recommendation of the 1999-2000 Grand Jury regarding a survey to determine the exact dimensions of Mission Bay Park and the leaseholds within its boundaries. Also, in investigating complaints regarding the accuracy of the survey and the implication that the company performing the survey had a possible conflict of interest. The City is in general agreement with the "Facts" and "Findings" section of the Grand Jury report. However, there are a number of corrections to these sections which are noted in the attached responses to the findings and recommendations.

Mission Bay Park is an unique and diverse recreational resource that is well balanced between commercial development and public parks that is enjoyed by more than 15 million visitors a year. The recently completed survey determined, among other things, the boundaries of Mission Bay Park and the ratio of leased land and water to the total amount of dedicated land and water that comprises Mission Bay Park. The survey was performed with the highest degree of integrity and accuracy.

Many findings in the Grand Jury report reinforced the City's belief that the survey was conducted in a consistent manner according to the direction of the City Manager. There were no limitations set on the surveyor by the City Manager to deviate from generally accepted standards. The standards used by the surveyor were approved by Federal, State and local agencies. The report also found the City is in compliance with City Charter Section 55.1.



Office of the City Manager

202 C Street, MS 9A • San Diego, CA 92101-3869

Tel (619) 236-6363 Fax (619) 236-6067

Page 2

000370

Honorable Wayne L. Peterson
August 20, 2001

The Grand Jury report made several suggestions that will help the City look for ways in which to improve the quality of the Mission Bay Park experience.

Sincerely,



Michael T. Uberuaga
City Manager

MU/CA/TR

Enclosures

000371

**CITY OF SAN DIEGO RESPONSE TO GRAND JURY REPORT
BOUNDARIES OF MISSION BAY PARK**

Pursuant to Penal Code §933.05, the City of San Diego provides the following responses to the above entitled Grand Jury Report.

FINDINGS

SURVEY

1. **The total dedicated land area of Mission Bay Park is 1936.69 acres.**

The Respondent disagrees with this finding. The total dedicated land area of Mission Bay Park is 1936.36 acres.

2. **The total dedicated water area of Mission Bay Park is 2298.92 acres.**

The Respondent agrees with this finding.

3. **The total acreage of Mission Bay Park is 4235.61 acres (4248.93 acres on the 1968 survey-a difference of minus 13.65 acres).**

The Respondent disagrees with this finding. The total acreage of Mission Bay Park is 4235.28 acres.

4. **The area of marshland (wetlands) was not determined from the air as boundaries have to be determined on the ground.**

Respondent partially disagrees with this finding. The boundaries of the wetlands could be determined by ground surveys only as well as with a combination of ground and aerial surveys.

5. **The measurement of wetlands is not included in standard surveying procedures.**

The Respondent partially agrees with this finding. Standard surveying procedures establish methods of measuring defined areas on the ground, including what would be defined as wetland areas. Boundaries of any wetland areas would need to be defined and delineated on the ground independently by qualified biologists, hydrologists, or other geotechnical professionals.

000372
6.

Survey was done to the highest degree of accuracy possible. The degree of accuracy over the total area was within $\frac{1}{2}$ acre.

The Respondent agrees with this finding.

7. Title search found that there were ten parcels totaling 26.84 acres of the park, which had been designated to be within the park, but for which no record of City Council action of dedication was found. This area had been included in the park area and maintained by Park staff. The Grand Jury believes that this was a clerical oversight discovered by a competent surveyor and not a deliberate attempt to increase the land area on the part of the City Council. The city corrected this oversight and formally dedicated these 26.8 acres at a regular council meeting on October 8, 2000.

The Respondent agrees with this finding.

8. The largest parcel of previously undedicated land was around the visitors' center and includes areas around the picnic tables, the boat ramp, and part of the parking lot.

The Respondent agrees with this finding.

9. Retracement and remeasurement of old survey monuments was performed. Assistance of a retired former City employee, who was involved in previous surveys, was of invaluable assistance in finding old monuments.

The Respondent agrees with this finding.

10. A metes and bounds survey determined the exact boundaries of the leased land, which had not been previously established.

The Respondent disagrees partially with this finding. Most of the leases in the Mission Bay Park had a metes and bounds description of the leaseholds prior to this survey.

COMPLIANCE

11. The survey established that the large commercial leaseholders were in compliance with their leases.

The Respondent agrees with this finding.

000373

12. **The survey also found that some leaseholders, adjacent to the Park, mainly in the De Anza Trailer Park area has unwittingly encroached on parkland. The City has notified these leaseholders by letter and corrective action has been initiated.**

The Respondent agrees with this finding.

13. **Some leaseholders were found to be entirely within the Park, some were partially in the Park and partially in tidelands, and some were entirely in the tidelands area.**

The Respondent agrees partially with this finding. All leaseholds were within the Park with some leaseholds occupying tidelands areas only as well as others that are located on areas of the Park that are not tidelands.

14. **In order to comply with state law directing that income derived from tidelands has to be spent on tidelands, a fair ratio of tidelands to the total area (4%) had to be established.**

The Respondent partially disagrees with this finding. An accurate determination of the acreage associated with leaseholds contained within tidelands was determined by the survey in order to calculate the income derived from the leaseholds that must be spent on tidelands.

15. **There are seven non-commercial leaseholders occupying a total of 14.003 acres of land.**

The Respondent agrees with this finding.

16. **The inclusion of non-commercial leaseholds in the total land area for leaseholds is provided for by amended City Council Policy 700-08, Section 55.1 of the City Charter.**

The Respondent agrees partially with this finding. City Council Policy 700-08 as amended provides for the inclusion of non-commercial leaseholds in the calculation of leaseable land in Mission Bay Park. However, City Council Policy 700-08 is not part of Section 55.1 of the City Charter.

17. **Total commercial and non-commercial lease parcel area is 461.595 acres of land. This represents 23.83% of total land area and leaves some 12 acres for any future development (see chart).**

The Respondent disagrees with this finding. Currently, there is a total of 464.095 acres of land encumbered by leaseholds. This represents 23.9% of the total land in Mission Bay Park. There are 19.995 acres remaining under the 25% of total land cap. These numbers reflect a 2.5 acre leasehold expansion of Dana Inn as approved by the City Council in November 2000.

0003748.

The City is within the limits of the 484.725 acres or 25% of total land available for leasehold as provided by Section 55.1 of the amended Charter, if the wetlands are included (see chart).

The Respondent agrees partially with this finding. The City is within the 25% limit of total lands for development of leaseholds in Mission Bay Park. There are up to 484.09 acres of land available for leasehold development in Mission Bay Park under Charter Section 55.1. However, the amount of land associated with wetlands has not been determined, therefore, no definitive statement can be made as to their impact.

The Respondent disagrees with the following values contained in the chart included in the Findings Section of the Grand Jury Report:

<u>Description</u>	<u>Chart Value</u>	<u>Correct value</u>
Park area by ordinance Prior to October 2000	4208.77	4208.44
Total Park Area (subsequent to Ordinance 18884)	4235.61	4235.28
Land Area	1936.69	1936.36
Total Land/Water Area	4235.61	4235.28
Acres Available for Lease (with permit approval) - Land	22.5775	22.495
Maximum Permitted Leasehold Areas - Land	484.1725	484.09

The corrected values in the chart reflect the status of leaseholds in Mission Bay Park prior to the 2.5 acre leasehold expansion of Dana Inn as approved by the City Council in November 2000.

WETLANDS

19. The U.S. Army Corps of Engineers uses three characteristics of wetlands when making wetland determinations: Soil conditions, vegetation, and hydrology. It is not measurable by standard surveying practices and requires the services of specialists in various fields (Soil Engineers, Biologists, Army Corps of Engineers) to ascertain the precise extent of wetland areas.

The Respondent agrees partially with this finding. As stated in the response to Finding number 5, standard surveying procedures establish methods of measuring defined areas on the ground, including what would be defined as wetland areas. Boundaries of any wetland areas would need to be defined and delineated on the ground independently by qualified biologists, hydrologists, or other geotechnical professionals.

20. The measurement of the wetlands area was not required by the City in the surveying contract and was not done.

The Respondent agrees with this finding.

000375

SPIRIT OF THE MASTER PLAN

21. **The spirit of the Master Plan for Mission Bay Park calls for a maximum use of the park for public recreations and enjoyment.**

The Respondent agrees with this finding. It is the City's priority in maintaining Mission Bay Park as a premier attraction and maximizing its use for the enjoyment of the public. The Mission Bay Master Plan clearly provides for a balance of recreational and commercial use geared toward visitors and tourists. Commercial leases are visitor-serving and therefore enhance the public enjoyment of the Park.

22. **Page 51 of the 1994 Update of the Mission Bay Park Master Plan suggests that "419.45 acres in dedicated leases should be considered a practical maximum" (there are, in fact 461.595 see chart) and creating wetlands "would raise the dedicated lease percentage", implying that the original planners did not consider wetlands are areas which could be considered for development.**

Respondent disagrees with this finding. Section 24 on page 51 of the Master Plan states that "...450.46 acres in dedicated leases should be considered a practical maximum." This value refers to the practical maximum once the total development recommended in the Master Plan is completed. The 419.46 acre figure is found below the chart on the same page and is inconsistent with the development recommended in the controlling text of the Master Plan. While there are currently 464.095 acres leased in Mission Bay Park, staff has determined that if all of the development recommended in the Master plan is completed, there would be a total of 450.602 acres developed into leaseholds.

23. **Since wetlands are unsuitable for development, in any case, it would, therefore, seem reasonable to subtract the area of wetlands from the total land area available for commercial development.**

Respondent disagrees with this finding. A separate survey was not conducted of the wetland areas in Mission Bay Park. Therefore, since wetlands contain both land and water areas, the amount of land associated with wetlands has not been determined and, therefore, no definitive statement can be made as to their impact. Moreover, the City Charter and all relevant Council Policies do not speak to the quality of the land in Mission Bay Park. These provisions clearly refer to the quantity of land for determination of leasehold development limits. In addition, there are many other different types of land areas that exist within Mission Bay Park, similar to the land associated with wetlands, that could not easily be developed into leaseholds (sandy beach areas, least tern nesting areas, dedicated park streets, rock areas above the mean high tide line, land associated with required setbacks, public playgrounds, public rights of way, etc.). These areas are all part of the total land area that constitutes Mission Bay Park.

THE FUTURE

000376

24. Three parcels totaling 5.6 acres, which are extensions to existing leaseholds, are in the planning stage.

The Respondent agrees with this finding.

25. There is a possibility that some Caltans land (area K on the aerial photograph) of 1.38 acres will be added to the total park area.

The Respondent partially agrees with this finding. While it may ultimately be possible to obtain this parcel from CALTRANS in the future, the City has no plans to enter into negotiations with CALTRANS for this land.

26. When the Trailer Park lease expires on November 3, 2003, some lease land (approximately 17 acres) may revert to public use if they are not leased.

The Respondent agrees partially with this finding. The De Anza Harbor Resort (trailer park) lease expires on November 23, 2003. Furthermore, substantial acreage would be turned into public park including a bike/walking path along the parameter of the leasehold.

CONFLICT OF INTEREST

27. The survey contract was awarded after an advertised and competitive bidding process. Qualified bidders did not need to prove expertise to surveying wetlands.

The Respondent agrees with this finding. Qualified surveyors did not need to prove expertise in surveying wetlands because the scope of the survey did not require a wetland survey.

28. The city did not supply documents that a Conflict of Economic Interest (FPPC Form 700) had been filled out by the surveying company as part of the contract and claims that the company was exempt from doing so.

The Respondent agrees with this finding. The City complied with all requirements and policy in contracting with the surveyor.

29. Another company, which had been contracted to do environmental work for one of the large leaseholders, later merged with the surveying company.

The Respondent agrees with this finding.

000377³⁰

The time of the merger was after the surveying work had been in progress.
(Contract awarded in June 2000, merger concluded in October 2000)

The Respondent agrees with this finding.

31. There was no change in the area of the involved leasehold as a result of the survey.

The Respondent agrees with this finding.

32. The Grand Jury Concluded that no conflict of interest existed.

The Respondent agrees with this finding.

RECOMMENDATIONS

- 01-128: That the City Manager require all parties, which have contracts with the City, furnish a Statement of Economic Interest, as part of their contract, to prevent the perception of a possible conflict of interest by the public.

This recommendation will be implemented for all contracts where such statements are currently required as well as all contracts for which it is recommended by the City Attorney's Office or other City Departments that deal with these types of contracts.

- 01-129: That the San Diego City Council review and refine the definition of land and wetlands in the calculation of the total land available for lease in Mission Bay Park within the spirit of the Mission Bay Master Plan Update of February 1994. This can be accomplished by an amendment to the City Charter which refines the definition of wetlands in order that they are not included in the total amount of land available for leasehold development.

This recommendation has been implemented to the extent that a review was considered by the San Diego City Council Natural Resource and Culture Committee at their May 30, 2001 meeting. The Committee considered refining the definition of land and wetlands and conducting additional surveys of wetlands as well as the possibility of amending the City Charter. The resulting action by the Committee did not include a new survey or a revision of the definition of land under City Charter Section 55.1. A copy of the minutes from the May 30, 2001 meeting of the Committee on Natural Resources and Culture is attached.

000378

01-130: That the San Diego City Council consult with the Natural Resources and Cultural Committee and other groups of concerned citizens who are committed to preserving the maximum of Mission Bay Park for public use.

This recommendation has been implemented. The San Diego City Council Natural Resource and Culture Committee reviewed and discussed issues surrounding the Mission Bay Park survey at their May 30, 2001 meeting. There was public testimony provided by numerous groups and individual citizens at this meeting.

000379

ATTACHMENT 10



000381

THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: May 23, 2001 REPORT NO. 01-105
ATTENTION: Natural Resources and Culture Committee
 Agenda of May 30, 2001
SUBJECT: Mission Bay Park Boundary Survey

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE CITY COUNCIL.

BACKGROUND

On June 5, 2000, the Mayor and Council authorized the City Manager to enter into a contract with Project Design Consultants (PDC) for a boundary survey of Mission Bay Park. The purpose of the survey was to determine the precise area of the dedicated land and water inside the park, the land and water leasehold areas, and to determine if the City was in compliance with Charter Section 55.1, which limits leasehold development in Mission Bay Park. The total cost of the survey was approximately \$468,000.

PDC completed the survey calculations on October 5, 2000. During the course of the survey it was determined that several areas within Mission Bay Park had not been dedicated as parkland. These parcels, totaling 26.84 acres, were historically considered part of Mission Bay Park and maintained as parkland. An ordinance dedicating these acres was adopted by the Mayor and Council on November 14, 2000. As part of the introduction of this ordinance, the Mayor and Council directed that the Manager return to Committee for a discussion of the policy issues associated with the results of the survey.

DISCUSSION

000382
Survey Methods

The exterior boundary of Mission Bay Park is defined by metes and bounds land descriptions contained in dedicating ordinances approved by the City Council. Lease parcel boundaries are defined by descriptions contained in lease agreement documents. The survey team researched these documents, together with numerous record survey maps, survey field notes, private survey records, and court cases referenced in these documents which define the legal evidence of the Mission Bay Park and lease parcel boundaries. Field survey crews searched on the ground for physical evidence of boundary locations. This physical evidence most commonly consisted of property corner monuments but also included the mean high water line, historic mean high water lines, retaining walls, and other identifying features.

The most modern technologically advanced equipment was utilized to measure the positional location of all physical evidence of boundary locations found. This included Global Positioning Systems (GPS) and precise electronic total station survey instrumentation. The precision and accuracy standards for land surveys established by the American Land Title Association and the American Congress of Survey and Mapping (ALTA/ACSM) were met or exceeded. Final boundary line locations were set by evaluation of all evidence per accepted legal principles of boundary location. A record of survey map consisting of seventy-one (71) map sheets has been filed with the County Recorder and a final report has been submitted to the City. These documents detail in great depth the final results of the survey and are available for public inspection and review.

The legal principle for delineating and quantifying the area of land and the area of water within the tidal influenced areas of the Park are founded in the United States Supreme Court case of *Borax vs. Los Angeles*. This principle is also established and supported in numerous subsequent court cases, the California Public Resources Code, and as opined by the City Attorney's Office in a 1988 Memorandum of Law regarding this topic specifically as it applies to Mission Bay Park. All of the above-cited law establishes the Mean High Water Line as the delineating boundary between land and water in tidal areas. The Mean High Water Line is the height (or elevation) of the average of all high waters (tides) over an 18.6-year tidal cycle as established by the National Ocean Services (NOS), a division of the National Oceanographic and Atmospheric Administration (NOAA). The NOS establishes and Congress approves a National Tidal Epoch Datum approximately every nineteen (19) years.

To establish the current elevation of the mean high water line in Mission Bay Park, PDC installed tide gauges and established tide staffs in three locations within Mission Bay. An NOS Simultaneous Observation Method of calculation was used to transfer an 18.6-year tidal epoch datum (1999 epoch) from NOS's permanent tide station in San Diego Bay to Mission Bay. NOS staff reviewed the tidal datum survey procedures and calculations performed by PDC. NOS staff stated in an official letter that the methods and procedures utilized and the

000283

mean high water values derived should be within anticipated levels of accuracy. PDC used a highly precise level of aerial photographic mapping to map the location of the 47-mile long mean high water line and ordinary high water mark line within Mission Bay Park. All dedicated Park area above these lines was quantified as land and all dedicated Park area below these lines was quantified as water. These lines and areas are detailed in the record of survey and final report and are available for public inspection and review.

The legal principle for delineating land from water in non-tidal areas is the Ordinary High Water Mark. This principle was applied in the Park in the easterly most reach of the San Diego River (approximately the easterly 1,200 feet). From review of a series of historic survey maps of the San Diego River dating back as far as 1850, the character and nature of the San Diego River as mapped is very consistent with the results of this survey. These maps record a well-defined channel 100 feet to 200 feet wide, which typically divided into a main channel and several smaller channels as the River approaches the area of transition to tidal waters. The River has a long history of its changing course and of levies being constructed to control it. The first levy was constructed by the U.S. Army in the 1870s. The current Army Corp. of Engineers levies were constructed in the late 1940s. Historic maps consistently show a defined channel 100 feet to 200 feet wide even after the construction of any levy or any other man-made alteration of the San Diego River. This method of mapping the San Diego River appears to be consistent with way the City has historically mapped the River and quantified land and water areas. The City Mission Bay Park Lease Parcel Map, dated March 1982, delineates land from water in the same manner as this survey.

From a review of the 1982 Mission Bay Park Lease Parcel Map, statements made in a 1988 Memorandum of Law regarding the inaccuracy of existing surveys, and knowledge of the 2-foot contour interval accuracy aerial mapping used by the City in the late 1960s to quantify areas in the Park, it is likely that the City's survey staff could not map the mean high water line within the marshland near the Campland lease parcel due to the extremely flat nature of the area, lack of sufficiently accurate elevation data, and the limitations of the existing survey technology. On the 1982 Lease Parcel Map, a mean high water line was drawn completely around this area where, in this present survey, we have accurate elevation data and the technology to map the mean high water line in its true location. This provides some explanation as to why the City previously quantified an area of marshland within the park boundaries. However, this does not provide a full explanation or location of the source of the area previously identified as marshland because the area in question near the Campland leasehold does not contain 134 acres. Additionally, the 1982 Lease Parcel Map does not delineate the location of the 134 acres of marshland. The only reference found to marshland is by table on said Lease Parcel Map.

This survey was limited to quantifying the total dedicated land and water areas of Mission Bay Park, as these values are pertinent to Charter Section 55.1. Charter Section 55.1 limits the leasehold development of Mission Bay as follows:

000384

Section 55.1: Mission Bay Park - Restrictions upon Commercial Development

Notwithstanding any other provision of this Charter to the contrary, the total land and water area of all leases in Mission Bay Park shall not exceed twenty-five percent (25%) of the total dedicated land area or six and one-half percent (6.5%) of the total dedicated water area respectively of the park without such lease being authorized or later ratified by vote of 2/3's of the qualified electors of the City voting at an election for such purpose.

Charter Section 55.1 does not address the quality of the land or water. Therefore, the scope of work for the survey did not include any effort to quantify different qualities of land, such as marshland, sandy beaches, turf areas, paved streets, or the area of developed or undeveloped land. Likewise, there were no efforts to quantify the area of water that was tidal versus non-tidal or fresh water versus salt water.

The Record of Survey was submitted to the County Surveyor for review and approval in November 2000. The County Surveyor has subsequently reviewed and approved the Record of Survey. The Record of Survey map was officially declared filed in early March 2001.

Survey Results

The resulting dedicated land and water acreage in Mission Bay Park, including the additional 26.84 acres dedicated by Council, is summarized in the following table. The table also includes the pre-survey values that were referenced in the 1994 Mission Bay Park Master Plan Update.

Survey Category	2000 Survey	Pre-survey
Total Park Acreage	4235.280	4248.93 ¹
Mission Bay Park Dedicated Land Acres	1936.360	1887.02
Mission Bay Park Dedicated Water Acres	2298.920	2228.18
Commercial Leasehold Acres - Land	450.092 ²	438.93
Non-Profit Leasehold Acres - Land	14.003	13.53
Total Leasehold Acres - Land	464.095	452.46
Commercial Leasehold Acres - Water	89.653	89.67
Non-Profit Leasehold Acres - Water	5.906	5.90
Total Leasehold Acres - Water	95.559	95.57

000385
November 2000.

¹ Includes approximately 134 acres designated as marshland.

² Includes a 2.5 acre leasehold expansion of Dana Inn approved by Council,

Charter Section 55.1 Compliance

The survey results confirm that the City is in compliance with the leasehold development restrictions imposed by Charter Section 55.1 and Council Policy 700-08. The status of the current level of leasehold development percentages in Mission Bay Park is summarized in the following table. The table also includes the limits and percentages historically cited by staff prior to the survey being conducted.

		Current Status	Pre-Survey Status
L A N D	Leasehold Development Limit (25%)	484.09 acres	471.76 acres
	Total Mission Bay Park Leasehold Acres - Land	464.095 acres	452.46 acres
	Percentage of leased land under amended Council Policy 700-08 to include non-profit leaseholds (Acres remaining under charter limit)	23.9% (19.995 acres remaining)	24% (18.8 acres remaining)
W A T E R	Leasehold Development Limit (6.5%)	149.430 acres	144.83 acres
	Total Mission Bay Park Leasehold Acres - Water	95.559 acres	95.57 acres
	Percentage of leased water under amended Council Policy 700-08 to include non-profit leaseholds (Acres remaining under charter limit)	4.1% (53.871 acres remaining)	4.3% (49.26 acres remaining)

1994 Mission Bay Park Master Plan Update (Master Plan)

Commercial and non-profit leasehold development included in the 1994 Master Plan that involve changes to existing leasehold acreage have been nearly completed. There are four projects included in the Master Plan that would involve changes to current leasehold sizes.

- 1) Quivira Basin - This project will redevelop the Quivira basin leaseholds. While the Master Plan provides that the project could expand into an additional 10 acres, the proposed project will expand approximately 3.6 acres.
- 2) Bahia Hotel - The Master Plan provides for a one acre expansion of the Bahia leasehold.
- 3) Dana Landing - The Master Plan provides for a one acre expansion of this leasehold.

000386

- 4) De Anza Harbor Resort - Consistent with the Master Plan, the proposed project would decrease the size of the existing leasehold by approximately 17 acres:

Upon completion of the projects that would expand existing leaseholds, the total area associated with leasehold development in Mission Bay Park would be 469.695 acres. This figure remains significantly under the Charter limitation of 484.09 acres based upon the survey results, as well as under the lower limitation of 471.76 acres contained in the 1994 Master Plan based upon dated survey information and cited by staff prior to the completion of the recent survey. Therefore, the change in land associated with the recent survey results, as well as the additional acreage dedicated by Council, has not impacted the ability of the City to fully implement the Master Plan. Furthermore, in the event the proposed De Anza Harbor Resort project is approved, the total area associated with Mission Bay Park leaseholds would drop to approximately 452.6 acres. The Master Plan also contemplates the conversion of approximately 20 acres of the Campland leasehold near the mouth of Rose Creek to wetlands upon expiration of the lease in 2017.

Respectfully submitted,

Tim C. Rothans
Management Assistant to the City Manager

Approved: George Loveland
Senior Deputy City Manager

LOVELAND/TCR

000387

ATTACHMENT 11

000389

THE COMMITTEE ON NATURAL RESOURCES AND CULTURE
OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO

ACTIONS FOR
WEDNESDAY, MAY 30, 2001, AT 9:00 A.M.

COUNCIL COMMITTEE ROOM (12TH FLOOR), CITY ADMINISTRATION
BUILDING
202 C STREET, SAN DIEGO, CALIFORNIA

(For information, contact Leslie Perkins,
Council Committee Consultant, 619-533-3980.)

COUNCIL COMMENT

ACTION: None received.

PUBLIC COMMENT

ACTION: None received.

ITEM-1: Report from the City Manager on a pending METROPOLITAN WASTEWATER
DEPARTMENT CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT:
South Bay Water Reclamation Plant Change Orders.

(See CMR 01-106; Equal Opportunity Contracting Program Evaluation)

ACTION: Motion by Councilmember Inzunza, second by Councilmember
Peters to approve the City Manager's recommendation.

VOTE: 3-0; Madaffer-yea, Peters-yea, Wear-not present, Inzunza-
yea, District 6-vacant

ITEM-2: Report from the City Manager on pending WATER AND SEWER
ENGINEERING PROJECTS:

- A. Group Jobs #605A, 619, 677, 539, 699, 634B, 638, 690, 702, 519,
535, 464A, Torrey Pines Road Water/Sewer Project, Belt Street
Trunk Sewer, North Encanto Water Improvements, and two "as-
needed" contracts.
- B. Pump Stations #27, 42, 3, 10, 12, 15, 17, 20, 23, 61, 62, 25, 31, 32,
33, and 40.
- C. Scada Telemetry Control System contract.

000390

ACTIONS
Committee on Natural Resources and Culture
May 30, 2001

- 2 -

D. General Requirements contract amendment.

(See Frank Belock, Jr.'s May 24, 2001, memo; Frequently Asked Questions About Group Jobs)

ACTION: Motion by Councilmember Peters, second by Councilmember Inzunza to move all projects forward for approval by the City Council.

VOTE: 3-0; Madaffer-yea, Peters-yea, Wear-not present, Inzunza-yea, District 6-vacant

ITEM-3: Informational report from the City Manager on the MISSION BAY PARK BOUNDARY SURVEY.

(See CMR 01-105; Community Planners Committee's Resolution No. 03-2001; San Diego County Grand Jury Report)

ACTION: Motion by Councilmember Wear, second by Councilmember Inzunza to direct the City Manager to return to the Natural Resources and Culture Committee with a strategy and public process to implement the Mission Bay Park Master Plan as it relates to Fiesta Island and South shores, including Cudahy Creek and Tecolote Creek areas. This strategy/process should encompass the public, recreational, and habitat elements contained in the Master Plan and include any utility and infrastructure requirements necessary for the implementation of these improvements. An analysis of all funding that currently exists as well as additional funding required to achieve the implementation strategy should also be a part of this effort. The City Manager should also include copies of the results of periodic testing on the closed municipal landfill located at South Shore.

VOTE: 4-0; Madaffer-yea, Peters-yea, Wear-yea, Inzunza-yea, District 6-vacant



Jim Madaffer
Chair



000391

THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: November 1, 1999

REPORT NO. 99-220

ATTENTION: Natural Resources and Culture Committee
Agenda of November 3, 1999

SUBJECT: Available Commercially Leaseable Acreage in Mission Bay Park

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE.

BACKGROUND

At the October 20, 1999 Natural Resources & Culture Committee meeting, the Committee directed staff to return with information regarding the status of available commercially leaseable acreage in Mission Bay Park.

The total acreage of Mission Bay Park is 4,248.93 acres. It was calculated by City staff using a planimeter and 200 scale aerial photographs (taken at mean high tide). Three staff members performed three different calculations to arrive at a consistent determination of the acreage for Mission Bay Park boundaries, land area, water area and marsh area. The figures, used by the Park & Recreation and Real Estate Assets Departments, consist of 1,887.02 land acres, 2,228.18 water acres and 133.73 marsh acres. Attached is a breakdown of leased and park areas.

DISCUSSION

Two different survey methods can be utilized to verify the accuracy of these figures. The first method utilizes a computer CADD system, along with digital mapping and ortho-photography. Digital mapping identifies road limits, street lights, and vegetation and is correct to plus or minus a 2-5 percent.

The second method would be to perform a physical boundary survey which would locate existing survey monuments and property corners. The park boundary would be created by standard

000382

The Committee also requested information on City Charter section 55.1, which limits commercial development to 25% of the total Mission Bay land, and 6.5% of Mission Bay water. The City Attorney issued a Memorandum of Law which stated that only commercial leases should be calculated toward the maximum allowable leased area. Charter section 55.1 also mirrors Council Policies in effect at the time. Prior to section 55.1, there were two separate Council Policies relating to leases in Mission Bay Park. One established the policy for Commercial leases, the other for Non-commercial, Non-profit and Club leases. The 25% limit was included only in the policy for commercial leases. In 1986, the two policies were combined into the current Council Policy 700-8, which also distinguishes between commercial and non-profit leases. This issue has been well-researched and determined that the 25% limit applies only to commercial leases.

Respectfully submitted,

William T. Griffith
Real Estate Assets Director

Approved: P. Culbreth-Graft, DPA
Assistant City Manager

GRIFFITH/LMF

Attachment

LMR-MISSION BAY PARK.wpd

000393

MISSION BAY PARK LEASES

NAME OF LESSEE OR DBA	LAND ACRES	WATER ACRES
Sea World Inc.	173.23	17.02
De Anza Harbor Resort	69.90	6.29
Paradise Point	43.95	6.59
Mission Bay Golf Center	45.80	0.00
Marina Village	18.80	17.50
Campland on the Bay	21.14*	5.76
Hyatt Islandia	9.45	9.38
San Diego Hilton	17.66	0.36
Bahia Hotel	13.27	2.00
Seaforth Sportfishing	6.26	11.99
Mission Bay Marina	3.99	4.40
Mission Bay Yacht Club (Non-profit)	(6.10)	(5.65)
Dana Inn	7.97	2.43
Dana Landing	3.10	4.38
San Diego - Mission Bay Boat and Ski Club (Non-profit)	(4.00)	(0.25)
San Diego Visitors Information Center	2.16	0.00
United States Government (Non-profit)	(1.84)	(0.00)
Sportsmen's Seafood, Inc.	0.75	0.46
Mission Bay Sportscenter	0.56	0.00
SDSU and UCSD (Non-profit)	(0.52)	(0.00)
Quivira Bait Barge	0.00	0.21
Catamaran Pier	0.72	0.90
Catamaran Beach	0.22	0.00
San Diego Rowing Club (Non-profit)	(1.07)	0.00
TOTAL LEASED AREA	438.93	89.67
NON-PROFIT AREA	(13.53)	(5.90)
MAXIMUM LEASEABLE AREA**	471.76	144.83
LESS EXISTING COMMERCIAL LEASES	<u>-438.93</u>	<u>-89.67</u>
BALANCE REMAINING TO LEASE	32.83	55.16

* Does not include Park Land and Street Right-of-Way outside of dedicated Mission Bay Park. (19.00 +/- acres).

** Total acreage 4,248.93: (1,887.02 land) (2,228.18 water) (133.73 marsh). A vote by the citizens of San Diego on November 3, 1987 allows a maximum commercial lease of 25% of the total dedicated land area in Mission Bay Park (25% of 1,887.02 equals 471.76 acres) and limits total water area of all commercial leases to 6.5% of the total dedicated water area in Mission Bay Park (6.5% of 2,228.18 equals 144.83 acres).

A legal survey of Mission Bay will be required prior to the separation of marsh into land and water.

LMF:csn-j
Rev. 10/29/99

LMR-MISSION BAY PARK.wpd

000395

ATTACHMENT 12

000097

Mission Bay Park
Land/Water Survey Timeline

- November 1968: Official acreage at mean sea level as determined by the Office of the City Engineer was **1910.3** acres of land and **2339.3** acres of water for a total of **4249.6** acres. The 25% limit on land leases was set forth as a policy in the May 1969 Mission Bay Park Master Plan and under Council Policy 700-08.
- June 1978: The Mission Bay Park Master Plan for Land and Water Use identified total land area at **1867** acres, water area at **2228** acres and marshland at **130.35** acres. The 25% limit on land leases was calculated using the dedicated land area excluding the marshland area.
- November 1987: Proposition D passed adding City Charter Section 55.1 – Restrictions upon Commercial Development in Mission Bay Park – setting the limit on land leases at 25% and water leases at 6.5%.
- Sept. 8, 1988: The City Attorney issued a Memorandum of Law (MOL) supporting the need for a survey to establish the line between the land and the water; states that the mean high water mark should be used as the line between land and water; and states that a survey should determine what portion of the **130** acres of marshland constitutes land as opposed to water area. The MOL included acreage figures, based on the City's 800-1 maps, of land at **1887.74** acres, water at **2228.18**, and marshland at **130.35** for a total area of **4,246.27** acres. The MOL also concludes that the mean high tide line should be established as of 1987, when Proposition D was passed by the voters.
- August 2, 1994: The Mission Bay Park Master Plan Update identified total land area total land area at **1887.74** acres, water area at **2228.18** acres but did not specifically call out the acreage of the marshland. The Plan calculated the allowable acres dedicated for lease areas in the park to be **472** acres (1887.74 acres x 25%, excluding the marshland area.) However, the Plan specifically stated that the intent is not to reach the limit, recommending that the proposed maximum lease total should be capped at **419.46** acres.
- Nov. 3, 1999: NR&C directed the City Manager to initiate a process to survey Mission Bay Park AND requested the City Attorney to determine the intent of the voters when they passed San Diego charter section 55.1 related to the 25% limit on leased acreage of land in Mission Bay Park – are non-profit leases included in the 25% limit? Staff reported that the acreage figures currently being used by staff consist of **1,887.02** land acres, **2,228.18** water acres and **133.73** marshland acres.

February 29, 2000:

000328

The City Attorney issues a Memorandum reaffirming the September 8, 1988 MOL concluding that for the purposes of determining the total land and water areas in Mission Bay, the land area should be calculated as the area above the mean high tide line, and the water area as below the mean high tide line.

April 18, 2000:

San Diego County Grand Jury issues report entitled "Mission Bay Park – The Truth About 'False Bay'", asking the City to complete a survey to accurately determine land and water acreages to ensure compliance with City Charter section 55.1. Grand Jury also asks City to determine the extent of marshlands.

May 5, 2000:

City Attorney issues a Memorandum of Law concluding City Charter Section 55.1 restrictions apply only to commercial leases, however the City Council, in its discretion, may further restrict leasing in the Park.

June 5, 2000:

City Council authorizes the City Manager to enter into a contract with Project Design Consultants to perform a Boundary and Acreage Survey of Mission Bay Park which will identify boundaries, total acreage of land and water and separate totals of lease acreage.

July 17, 2000:

City Manager formally responds to Grand Jury stating that a survey is underway. City Manager also states that a separate calculation of marshland is not warranted and will not provide relevant information for compliance with Charter Section 55.1. In accordance with standard surveying practices and California law, the mean high water mark is the measurement used to distinguish land from water.

July 19, 2000:

NR&C votes 5-0 to revise Council Policy 700-08 (Mission Bay Park Policies) to include non-profit leases in the 25% limit on leased acreage of land in Mission Bay Park. City Council approves on October 16, 2000.

October 5, 2000:

Project Design Consultants completes survey calculations and the results are within one quarter of one percent (0.25%) of historic park boundary calculations. The survey also found that several areas of excess right-of-way within the park boundaries have not been dedicated as parkland.

October 30, 2000:

City Council voted 9-0 to dedicate 10 parcels totaling 26.84 acres which were always within the boundary of Mission Bay Park but were not formally dedicated as parkland. The Council also directed the City Manager to return to NR&C with a discussion of the policy issues associated with the Mission Bay Park survey; and that the 25% will still be based on the historic amount of acreage that everyone understood it to be, which was the 1887 figure; and direct the City Manager not to suspend finalizing the survey but to file the survey.

February 27, 2000:

000398

Community Planners Committee (CPC) recommended that marshland not be used to calculate land available for development. CPC also recommended the creation of a classification standard for wetlands/marshland/tideland for further definition of property within the Park boundaries.

February 28, 2001:

The Mission Bay Park Boundary Survey was officially recorded as Record of Survey 16891 and filed in the Office of the County Recorder.

May 31, 2001:

NR&C held a meeting to discuss the policy issues associated with the Mission Bay Park survey. The Committee discussed the issue of whether marshland/wetlands should be included in the measurement of land. Committee members commented that although further surveying to clearly define wetlands would be an interesting study, it is not necessary to determine compliance with Charter Section 55.1. Rather, the City should focus on implementing the Master Plan.

Nov. 13, 2006:

The City Attorney issued a Memorandum of Law (MOL) at the request of the NR&C Committee stating that wetlands/marshes should be characterized as "water" under the Federal Clean Water Act for the purposes of how one defines "water" under Section 55.12 of the City Charter.

May 15, 2007:

City Council continued a proposed Ordinance which would define "Waters of Mission Bay" to mean and include all *wetlands*, navigable waters, and all "waters of the United States" as defined under the Clean Water Act for purposes of determining land and water lease limitations per Section 55.1 of the City Charter.

July 13, 2007

000400
San Diego City Council
City Administration Building
202 C Street
San Diego, CA 92101

Re: ITEM-200 of July 16, 2007 Agenda: Amending Chapter 6, Article 3, of the San Diego Municipal Code by adding Language that Clarifies the Meaning of the Land/Water Distinction as Characterized within Section 55.1 of the City Charter.

Dear Honorable Council President and Councilmembers:

The San Diego Bay Council ("Bay Council") is a coalition of environmental organizations from throughout San Diego County. Members of the Bay Council are concerned with the current lack of recognition and protection afforded wetlands in Mission Bay Park when the City calculates the amount of leasable land under Section 55.1 of its Charter. As further explained below, we urge the City to adopt a clear policy that excludes wetland acreage from the formula utilized to determine the amount of leaseable land within the Park pursuant to Section 55.1 of the City Charter. Having reviewed the extensive record on this issue, we endorse the October 3, 2006 Mission Bay Park Committee approval of a motion to exclude wetland/marshland acreage from all calculations lease limits in Mission Bay Park.

Enacting such a policy to protect Mission Bay wetlands will also preserve public access to all areas of the park by preventing an inflated calculation of leasable land and water. In 1987, the people of San Diego passed Proposition D, creating Charter § 55.1 and thereby limiting the amount of leasable area within Mission Bay Park to 25% of the land area and 6.5% of the water area. The ballot language supporting the proposition proclaimed its passage would "ensure that Mission Bay Park will remain open public park and open space for future generations." There is no doubt the original intent of San Diego voters was to protect this important public resource by restricting development within the commonly viewed boundaries of Mission Bay Park.

The various controversies arising from the City's implementation of Charter § 55.1 are well known. The environmental community and many others applauded the Council's adoption of policies that incorporated all leases in the lease calculation and rejected the unfounded opinions of then City Attorney Casey Gwinn that leases to non-profit organization were exempt from the prescribed limits. The public's deep involvement with these issues exemplifies the passionate feelings San Diegans have for protecting Mission Bay Park.

Incorrect Usage of the Mean High Tide Line – A Mistake of the 2000-2001 Survey

In 2000 and 2001, the Council contracted with a firm to comprehensively survey the Park. The Council, through the Park and Recreation Department, directed the surveyor to use the mean high tide line ("MHTL") to classify the areas of Mission Bay Park as water or land. The decision relied upon the opinion of a discredited 1988 memorandum of law ("MOL") and a 2000 confirmation of that opinion issued by the office of the City Attorney. These were the same opinions that attempted to exempt leases with non-profit organizations from the effects of Charter § 55.1. The equally mistaken opinion to use the MHTL was based neither upon science nor appropriate legal precedent.

Although the MOL failed to cite any legal authority or precedent, it was presumably based upon the accepted practice of using the MHTL to determine ownership of tideland areas. The Supreme Court has held it appropriate to use the MHTL when determining ownership boundaries between public trust tidelands and adjacent private landowners. *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10 (1935). As a November 6, 2006 memo from the current City Attorney's Office points out, however, the *Borax* case does not apply to Charter § 55.1 because the ownership of Mission Bay parcels is not in question. Rather, the relevant question is how to best distinguish land and water for the express purpose of conservation.

Not only were the 1988 and 2000 MOLs mistakenly based on the wrong underlying surveying purposes, the actual performance of the survey failed to follow the directions contained in the MOLs. When the City set to establish the MHTL as it existed in November 1987 (date of the passage of Prop D), as per the City Attorney's opinion, it approached the National Oceanic and Atmospheric Administration, a federal agency which defines a mean high tide line as the average of all the high tides occurring over a period of 18.6 years (one lunar epoch). The NOAA experts explained that it was impossible to establish the 1987 MHTL in the year 2000. Since it was not possible to adhere to the City Attorney's original opinion, the City sought a secondary opinion allowing it to use the 2000 MHTL.

By using the MHTL as the dividing line between water and land, large portions of wetland areas were classified as land in the 2000-2001 survey, 25% of which could supposedly be leased and developed. Unfortunately, the City failed to consult the scientific opinion of land-use or water experts, or expressly ignored them, in determining how to protect the

000401
natural resources of Mission Bay from environmental degradation or overdevelopment. Thus, the 2000-2001 survey was not based on scientific expertise, but rather a default second choice legal opinion of an abandoned and incorrect memo.

Aligning San Diego Wetland Protection with Federal and State Authorities

The failure to distinguish wetlands from land and water in the 2000-2001 survey is contrary to the practices of the federal and state government agencies regulating wetland development. As the City Attorney's November 2006 MOL outlines, the federal and state laws protecting wetlands do so within the framework of water protection. For this reason, the Council may choose to redefine "waters of Mission Bay" in the same way that the federal Clean Water Act defines "waters of the United States." Such a definition includes all wetland areas and would establish a method consistent with government authorities for distinguishing land from water in non-wetland areas. Although removing wetland areas from the definition of "land" protects these areas from inclusion in the calculations of the 25% limit, characterizing the wetlands as "water" exposes them to inclusion within the 6.5% limit. The most protective and legally supportable option before the Council, however, would go even further to completely protect the wetlands.

San Diego's Public Trust Responsibilities

Protection of Mission Bay Park wetlands from inclusion in either the land or water limit would be consistent with the dedicatory purposes of Mission Bay Park and the public trust responsibilities inherited from the State of California upon receipt of wetlands. These public trust responsibilities include the duty to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust. See *National Audubon Society v. Department of Water and Power of the City of Los Angeles* (1983), 33 Cal. 3d 419, 441. Parties acquiring rights in trust property cannot act in a manner harmful to the trust. *National Audubon Society*, 33 Cal. 3d at 437). Excluding wetlands from both land and water is the best way to fulfill these trust responsibilities.

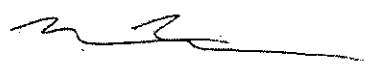
Wetlands are crucial habitat areas that provide filtering and flood protection functions vital to the health of the bay. We urge the Council to establish an expansive definition of wetlands based upon scientific measures such as soil saturation, vegetation, functionality, and habitat provided for the various species therein. One wetlands definition used by the U.S. Fish and Wildlife Service has also been endorsed by the California Department of Fish and Game. See Cowardin, "Classification of Wetlands and Deepwater Habitats of the United States," FWS/OBS 79/31 (December 1979).

The enactment of policies to exclude wetland/marshland acreage from the calculations of land and water under Charter § 55.1 would also be in line with a recommendation submitted to the Council in early 2001 by the Community Planners Committee of the City of San Diego. The decision adheres to the original intent of the voters to best protect the public resources in Mission Bay Park and is consistent with the City's mandate to protect wetland areas from development.

The Council Should Exclude Wetlands from the Definitions of Water and Land

We strongly urge the San Diego City Council to fulfill its public trust responsibilities, align City regulations with those of federal and state authorities, and adhere to the original intent of Proposition D by enacting policies that will exclude wetland/marshland areas from the definitions of land and water in Mission Bay Park.

Sincerely,



Bruce Reznik, Executive Director
San Diego Coastkeeper

Marco Gonzalez
Surfrider Foundation, San Diego Chapter

Jim Peugh
San Diego Audubon Society

cc: Mayor Jerry Sanders
Shirley Edwards, Office of the City Attorney
Elizabeth Maland, Office of the City Clerk

000403
From: "Sherri Lightner" <sherri@lightner.net>
Date: 7/16/2007 12:16:36 PM
Subject: Yes on Item 200 - July 16, 2007

Dear Councilmembers,

I respectfully request an affirmative vote on item 200 for the July 16, 2007 agenda.

Revisions to San Diego Municipal Code Section 63.25.1 to include definitions of water and land of Mission Bay are needed. These definitions should exclude wetlands and marshlands for the purposes of calculating or determining lease percentages.

Best Regards,

Sherri S. Lightner

--

Sherri S. Lightner
P: (858) 551-0770
F: (858) 551-0777

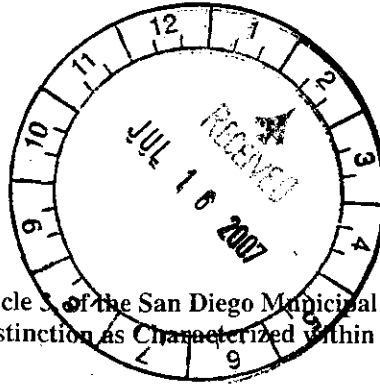
000404
From: "Joanne Pearson" <sjpearson@sbcglobal.net>
To: "bhueso@sandiego.gov" <bhueso@sandiego.gov>, "city clerk" <cityclerk@sandiego.gov>, "donna frye" <DonnaFrye@sandiego.gov>, "jerrysanders@sandiego.gov" <jerrysanders@sandiego.gov>, "jim madaffer@sandiego.gov" <jimmadaffer@sandiego.gov>, "klfaulconer@sandiego.gov" <klfaulconer@sandiego.gov>, "brian maienschein" <bmaienschein@sandiego.gov>, "shpeters@sandiego.gov" <shpeters@sandiego.gov>, "toni@sandiego.gov" <toni@sandiego.gov>, "tony young" <anthonyyoung@sandiego.gov>
Date: 7/16/2007 11:05:20 AM
Subject: SUPPORT: Item 200 July 16, 2007

To all elected officials: Please support Item 200 on today's agenda, as it is a common sense but apparently necessary restatement that wetlands and marshes cannot be used in calculating the ratio of Mission Bay "land" for development purposes. The environmental integrity of Mission Bay Park depends on your support. Thank you for your consideration.

Joanne Pearson, Chair
San Diego Sierra Club Coastal Committee

000405
July 13, 2007

San Diego City Council
City Administration Building
202 C Street
San Diego, CA 92101



Re: ITEM-200 of July 16, 2007 Agenda: Amending Chapter 6, Article 3 of the San Diego Municipal Code by adding Language that Clarifies the Meaning of the Land/Water Distinction as Characterized within Section 55.1 of the City Charter.

Dear Honorable Council President and Councilmembers:

The San Diego Bay Council ("Bay Council") is a coalition of environmental organizations from throughout San Diego County. Members of the Bay Council are concerned with the current lack of recognition and protection afforded wetlands in Mission Bay Park when the City calculates the amount of leasable land under Section 55.1 of its Charter. As further explained below, we urge the City to adopt a clear policy that excludes wetland acreage from the formula utilized to determine the amount of leaseable land within the Park pursuant to Section 55.1 of the City Charter. Having reviewed the extensive record on this issue, we endorse the October 3, 2006 Mission Bay Park Committee approval of a motion to exclude wetland/marshland acreage from all calculations lease limits in Mission Bay Park.

Enacting such a policy to protect Mission Bay wetlands will also preserve public access to all areas of the park by preventing an inflated calculation of leasable land and water. In 1987, the people of San Diego passed Proposition D, creating Charter § 55.1 and thereby limiting the amount of leasable area within Mission Bay Park to 25% of the land area and 6.5% of the water area. The ballot language supporting the proposition proclaimed its passage would "ensure that Mission Bay Park will remain open public park and open space for future generations." There is no doubt the original intent of San Diego voters was to protect this important public resource by restricting development within the commonly viewed boundaries of Mission Bay Park.

The various controversies arising from the City's implementation of Charter § 55.1 are well known. The environmental community and many others applauded the Council's adoption of policies that incorporated all leases in the lease calculation and rejected the unfounded opinions of then City Attorney Casey Gwinn that leases to non-profit organization were exempt from the prescribed limits. The public's deep involvement with these issues exemplifies the passionate feelings San Diegans have for protecting Mission Bay Park.

Incorrect Usage of the Mean High Tide Line – A Mistake of the 2000-2001 Survey

In 2000 and 2001, the Council contracted with a firm to comprehensively survey the Park. The Council, through the Park and Recreation Department, directed the surveyor to use the mean high tide line ("MHTL") to classify the areas of Mission Bay Park as water or land. The decision relied upon the opinion of a discredited 1988 memorandum of law ("MOL") and a 2000 confirmation of that opinion issued by the office of the City Attorney. These were the same opinions that attempted to exempt leases with non-profit organizations from the effects of Charter § 55.1. The equally mistaken opinion to use the MHTL was based neither upon science nor appropriate legal precedent.

Although the MOL failed to cite any legal authority or precedent, it was presumably based upon the accepted practice of using the MHTL to determine ownership of tideland areas. The Supreme Court has held it appropriate to use the MHTL when determining ownership boundaries between public trust tidelands and adjacent private landowners. *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10 (1935). As a November 6, 2006 memo from the current City Attorney's Office points out, however, the *Borax* case does not apply to Charter § 55.1 because the ownership of Mission Bay parcels is not in question. Rather, the relevant question is how to best distinguish land and water for the express purpose of conservation.

Not only were the 1988 and 2000 MOLs mistakenly based on the wrong underlying surveying purposes, the actual performance of the survey failed to follow the directions contained in the MOLs. When the City set to establish the MHTL as it existed in November 1987 (date of the passage of Prop D), as per the City Attorney's opinion, it approached the National Oceanic and Atmospheric Administration, a federal agency which defines a mean high tide line as the average of all the high tides occurring over a period of 18.6 years (one lunar epoch). The NOAA experts explained that it was impossible to establish the 1987 MHTL in the year 2000. Since it was not possible to adhere to the City Attorney's original opinion, the City sought a secondary opinion allowing it to use the 2000 MHTL.

By using the MHTL as the dividing line between water and land, large portions of wetland areas were classified as land in the 2000-2001 survey, 25% of which could supposedly be leased and developed. Unfortunately, the City failed to consult the scientific opinion of land-use or water experts, or expressly ignored them, in determining how to protect the

000406
natural resources of Mission Bay from environmental degradation or overdevelopment. Thus, the 2000-2001 survey was not based on scientific expertise, but rather a default second choice legal opinion of an abandoned and incorrect memo.

Aligning San Diego Wetland Protection with Federal and State Authorities

The failure to distinguish wetlands from land and water in the 2000-2001 survey is contrary to the practices of the federal and state government agencies regulating wetland development. As the City Attorney's November 2006 MOL outlines, the federal and state laws protecting wetlands do so *within the framework* of water protection. For this reason, the Council may choose to redefine "waters of Mission Bay" in the same way that the federal Clean Water Act defines "waters of the United States." Such a definition includes all wetland areas and would establish a method consistent with government authorities for distinguishing land from water in non-wetland areas. Although removing wetland areas from the definition of "land" protects these areas from inclusion in the calculations of the 25% limit, characterizing the wetlands as "water" exposes them to inclusion within the 6.5% limit. The most protective and legally supportable option before the Council, however, would go even further to completely protect the wetlands.

San Diego's Public Trust Responsibilities

Protection of Mission Bay Park wetlands from inclusion in either the land or water limit would be consistent with the dedicatory purposes of Mission Bay Park and the public trust responsibilities inherited from the State of California upon receipt of wetlands. These public trust responsibilities include the duty to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust. *See National Audubon Society v. Department of Water and Power of the City of Los Angeles* (1983), 33 Cal. 3d 419, 441. Parties acquiring rights in trust property cannot act in a manner harmful to the trust. *National Audubon Society*, 33 Cal. 3d at 437). Excluding wetlands from both land and water is the best way to fulfill these trust responsibilities.

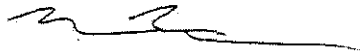
Wetlands are crucial habitat areas that provide filtering and flood protection functions vital to the health of the bay. We urge the Council to establish an expansive definition of wetlands based upon scientific measures such as soil saturation, vegetation, functionality, and habitat provided for the various species therein. One wetlands definition used by the U.S. Fish and Wildlife Service has also been endorsed by the California Department of Fish and Game. *See Cowardin, "Classification of Wetlands and Deepwater Habitats of the United States," FWS/OBS 79/31 (December 1979).*

The enactment of policies to exclude wetland/marshland acreage from the calculations of land and water under Charter § 55.1 would also be *in line with a recommendation* submitted to the Council in early 2001 by the Community Planners Committee of the City of San Diego. The decision adheres to the original intent of the voters to best protect the public resources in Mission Bay Park and is consistent with the City's mandate to protect wetland areas from development.

The Council Should Exclude Wetlands from the Definitions of Water and Land

We strongly urge the San Diego City Council to fulfill its public trust responsibilities, align City regulations with those of federal and state authorities, and adhere to the original intent of Proposition D by enacting policies that will exclude wetland/marshland areas from the definitions of land and water in Mission Bay Park.

Sincerely,



Bruce Reznik, Executive Director
San Diego Coastkeeper

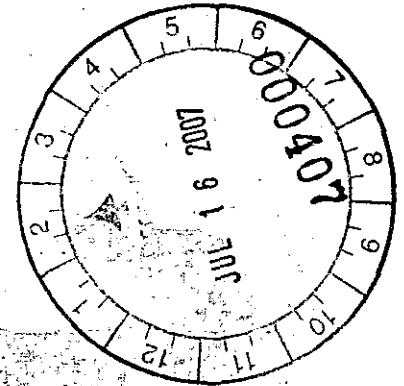
Marco Gonzalez
Surfrider Foundation, San Diego Chapter

Jim Peugh
San Diego Audubon Society

cc: Mayor Jerry Sanders
Shirley Edwards, Office of the City Attorney
Elizabeth Maland, Office of the City Clerk



Mission Bay Park Land and Water Survey



**Presentation to City Council
Monday, July 16, 2007**

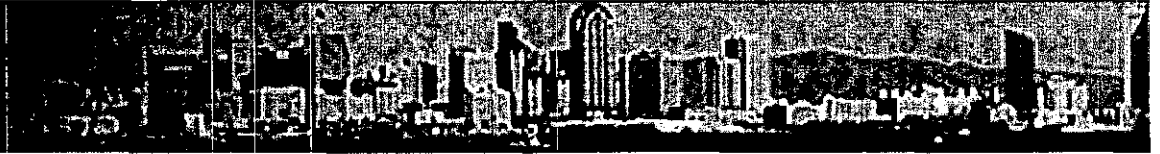


Overview

000408

- **November 15, 2006 NR&C Requested City Attorney to Provide Definition of Land and Water for the Purpose of Complying with City Charter Section 55.1**

... the total land and water area of all leases in Mission Bay Park shall not exceed 25% of the total dedicated land area or 6.5% of the total dedicated water area respectively....



000409

Overview (cont.)

- **City Attorney opined that wetlands (marshlands) should be characterized as water pursuant to the Clean Water Act for purposes of complying with Charter Section 55.1**
 - **Not consistent with preceding legal opinions and previous Council direction**
 - **Creates unintended consequences by increasing the amount of water that can be leased**



Recommendations

000410

- **Oppose the Ordinance as initially drafted**
- **As initially drafted the Ordinance could have a greater impact on the amount of water area that could be commercially developed or leased**
- **Continue to follow the adopted Mission Bay Park Master Plan and identified acreage amounts therein (1887 land acres, 2228 water acres)**

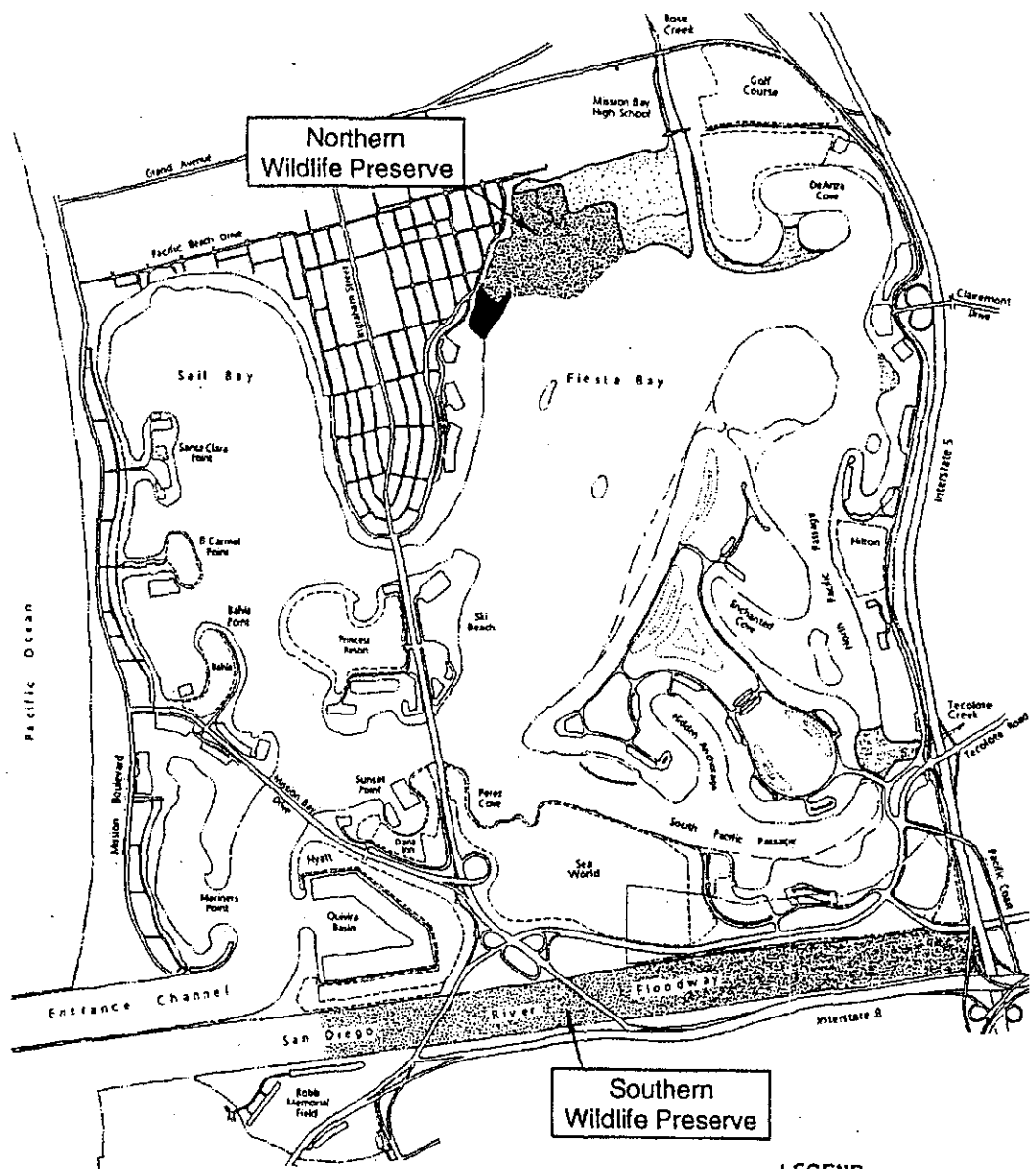


Protecting Wetlands in Mission Bay Park

000411




- **Proposed Ordinance does nothing to protect wetlands**
- **Wetlands are already protected to the highest degree through multi-jurisdictional local, state, and federal regulations**
 - Clean Water Act
 - U.S. Army Corps of Engineers (Section 404 permit)
 - Environmental Protection Agency (EPA)
 - Endangered Species Act
 - U.S. Fish & Wildlife Agency
 - California Coastal Commission
 - Regional Water Quality Control Board
 - California Department of Fish & Game
 - City of San Diego Environmentally Sensitive Lands Regulations

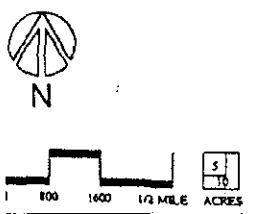
000412



Mission Bay Park Master Plan

Existing and Proposed Wetland Habitat

- LEGEND**
-  Existing Preserves
 -  Proposed Wetland Area
 -  Proposed Preserve Expansion Area



Historical Perspective

mission bay

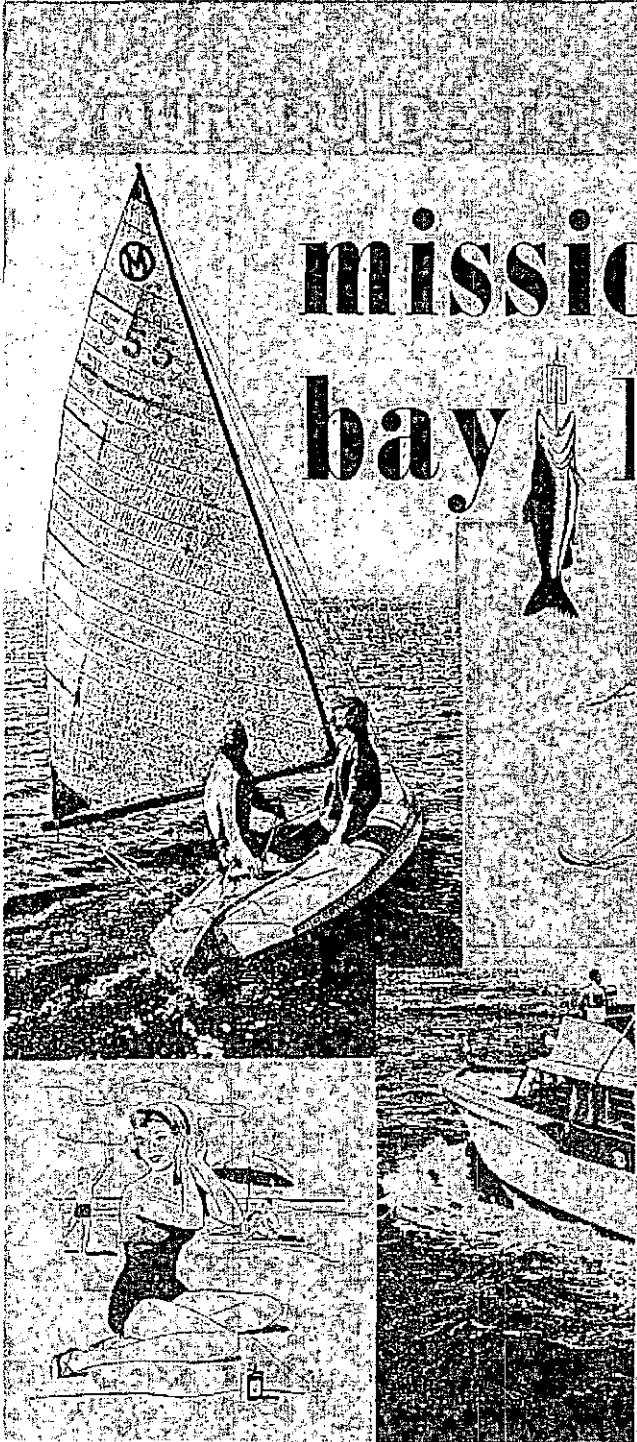
HISTORY

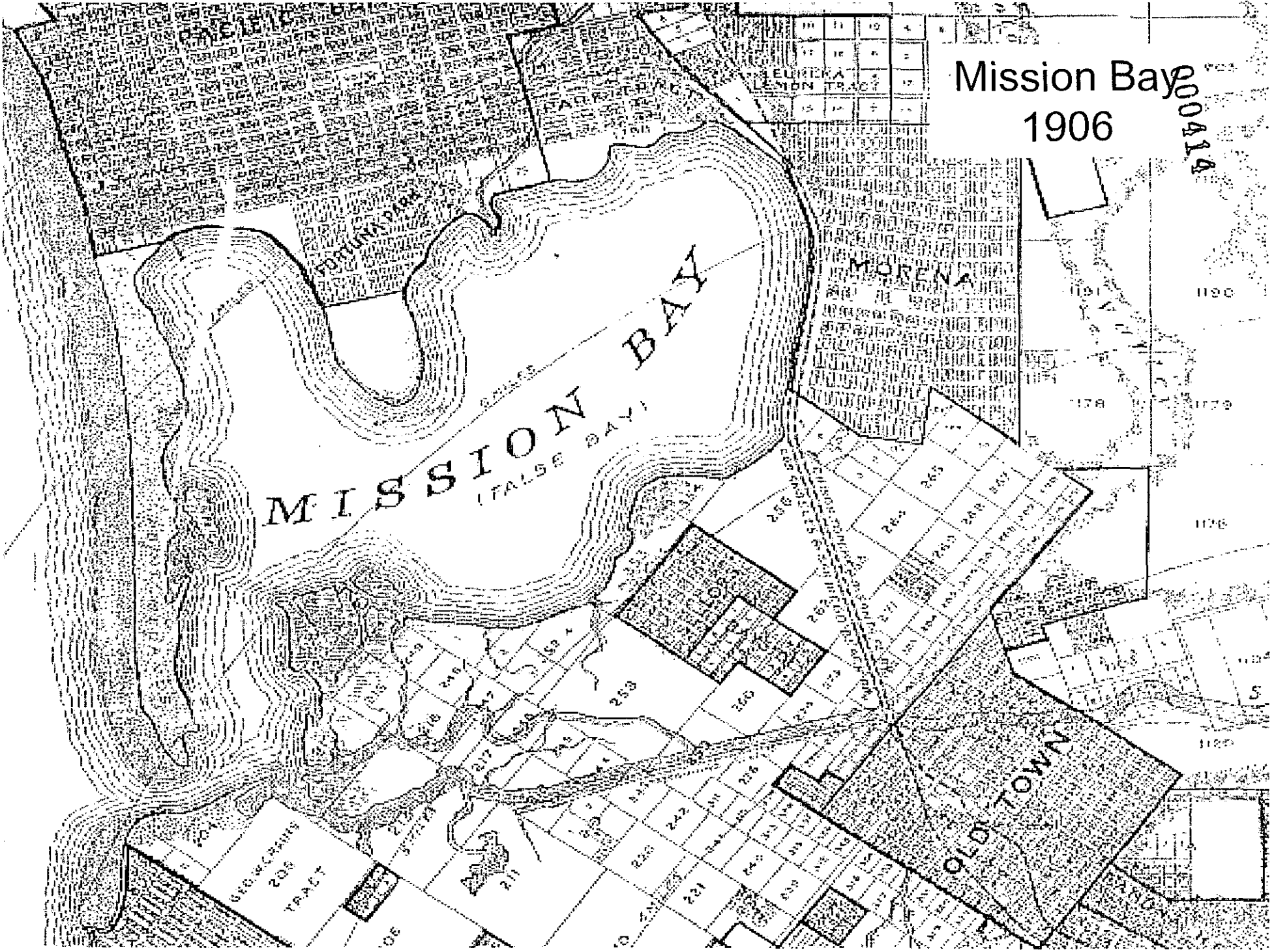
Mission Bay is a miracle. It is a lofty civic dream which did come true. It represents the planned conversion of a marshy wasteland into one of the world's great aquatic playgrounds, by three governmental agencies working in unison.

When Juan Rodriguez Cabrillo sailed into San Diego Bay in the mid-sixteenth century, he noticed an unsightly mudflat ten miles to the north where the Rio San Diego had once emptied. This he dubbed "false bay." And so it remained for nearly 400 years -- barren and useless.

Modern Mission Bay history begins in 1929 when the State Legislature declared it a state park. In 1930 the first plan for a recreation area was detailed by the City Planning Commission. Successive refinements of this plan were prepared in 1935, 1939, 1944, 1953, 1956 and 1958.

1945 was an active year for Mission Bay. It was deeded by the State to the City of San Diego. Local voters approved a two million dollar bond issue for its development and the City Council made an additional 1.5 million available. U. S. Army Engineers started proceedings





Mission Bay
1906

00041A

MISSION BAY
(FALSE BAY)

GEO. WILSONS
TRACT

ELIZABETH
LONDON TR.

MORONA

OLD TOWN

Mission Bay
1935



000416

Mission Bay 1937

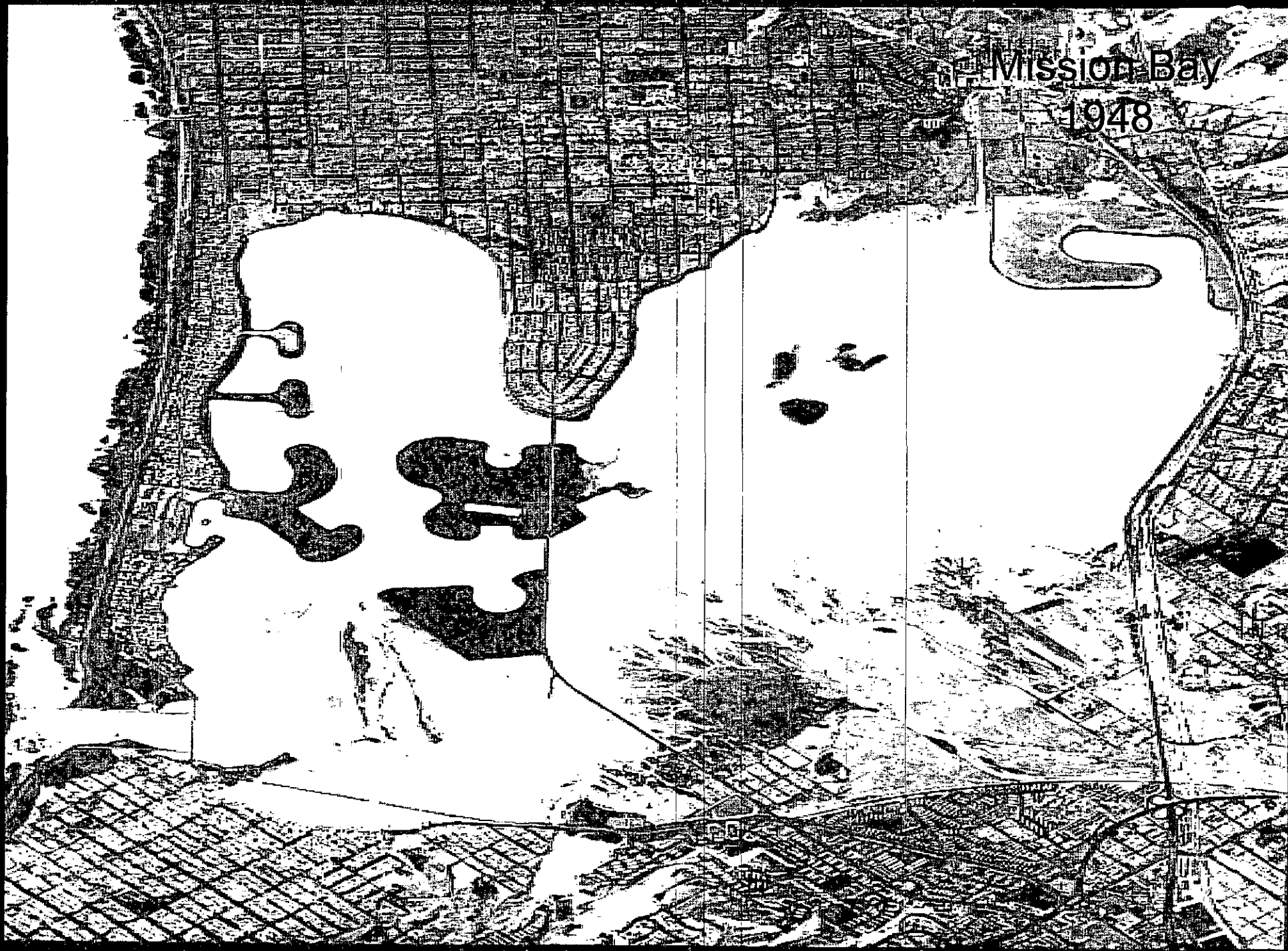


U.S. GEOLOGICAL SURVEY
 WATER RESOURCES DIVISION
 MISSION BAY, CALIFORNIA
 1937

79741-491 AERIAL MAP OF MISSION BAY

Mission Bay

1948



1958 Mission Bay Park Master Plan

000419



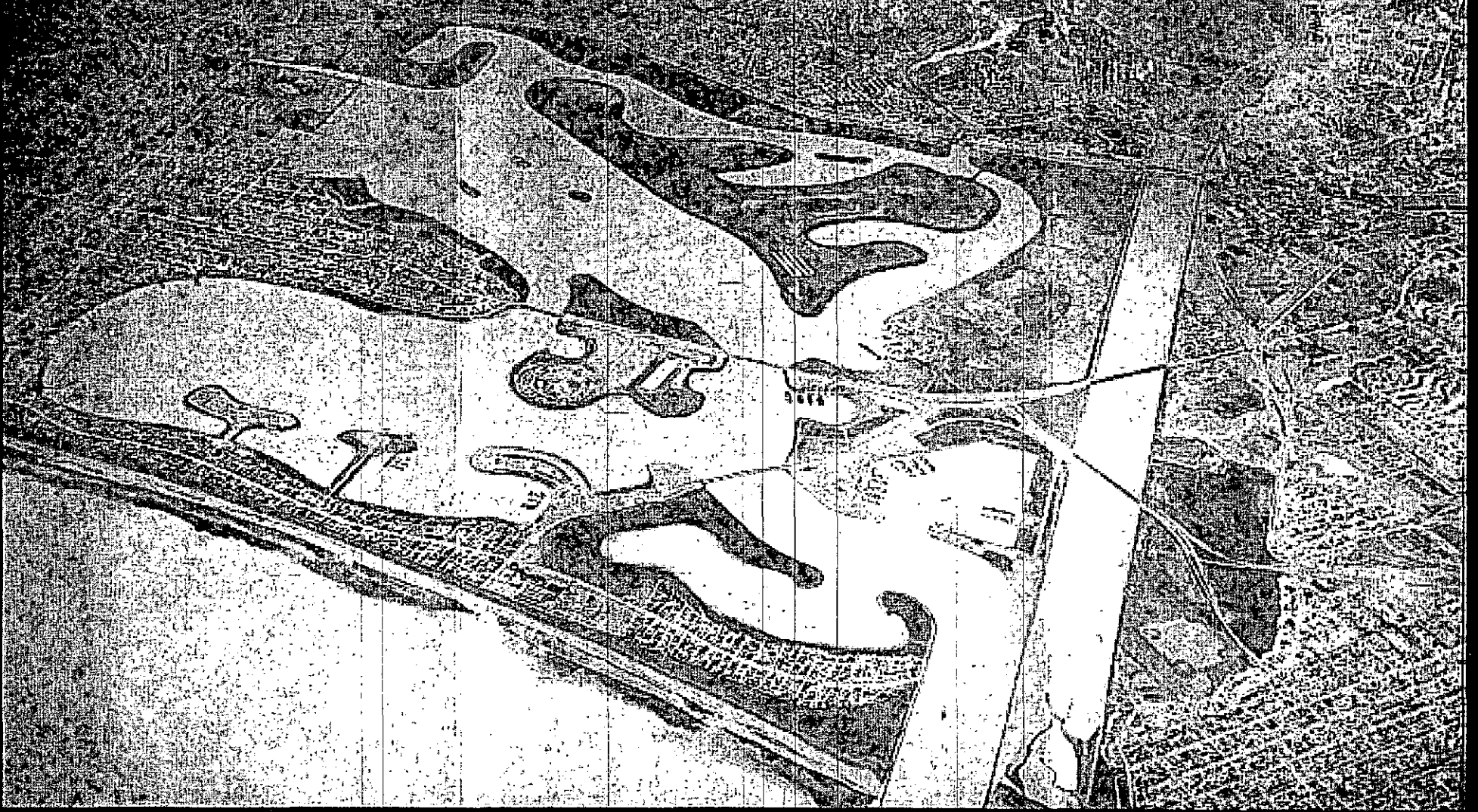
MISSION BAY PARK MASTER PLAN

COMMISSION AND COUNCIL APPROVALS

APPROVED BY THE CITY COMMISSION	APPROVED BY THE CITY COUNCIL
APPROVED BY THE CITY MANAGER	APPROVED BY THE CITY CLERK
APPROVED BY THE CITY ENGINEER	APPROVED BY THE CITY ATTORNEY
APPROVED BY THE CITY PLANNING DEPARTMENT	APPROVED BY THE CITY HISTORIC COMMISSION

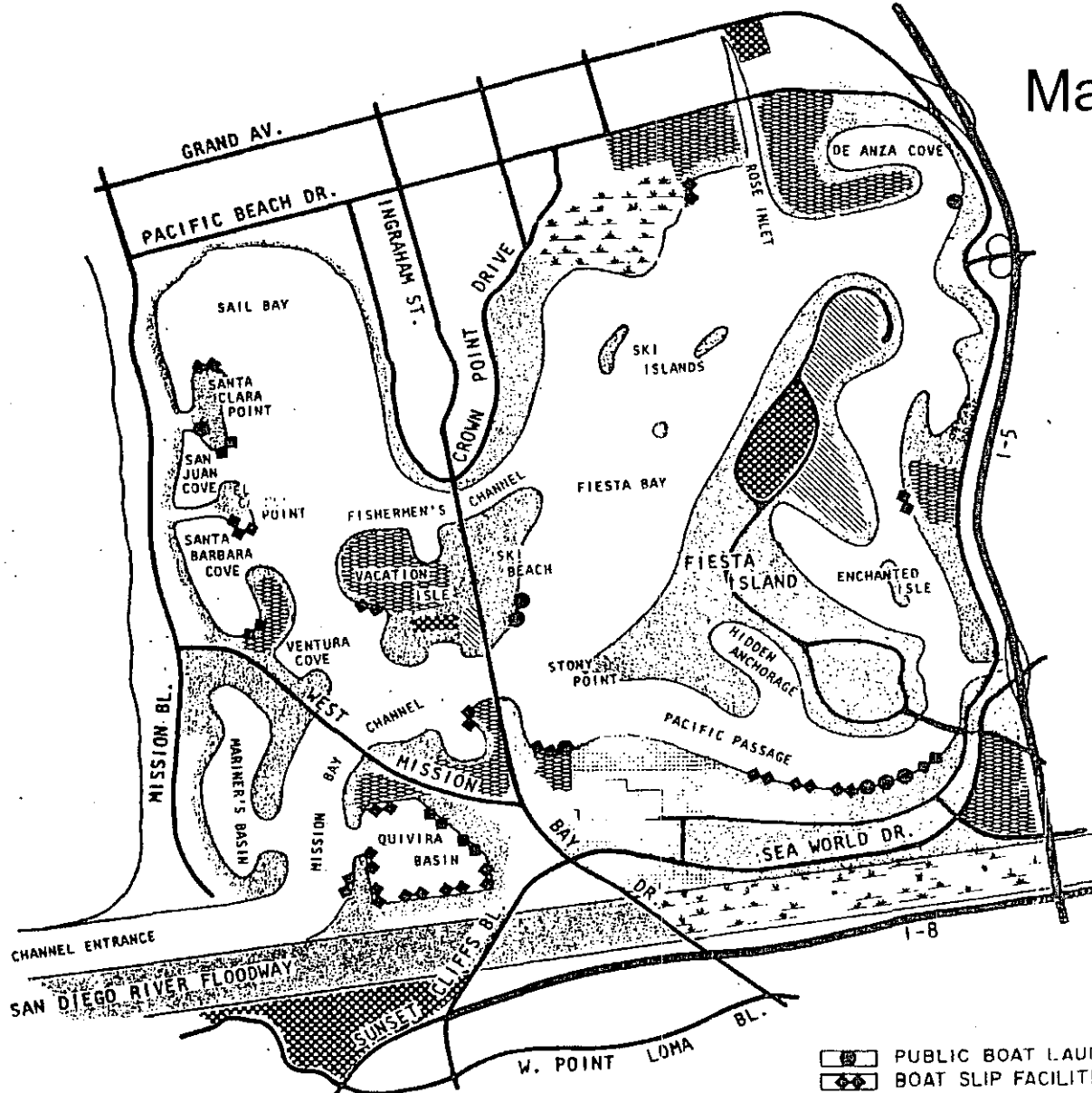
Mission Bay – Late 1960's

000420



1978 Master Plan

000421



PROPOSED LAND AND WATER USE MISSION BAY PARK

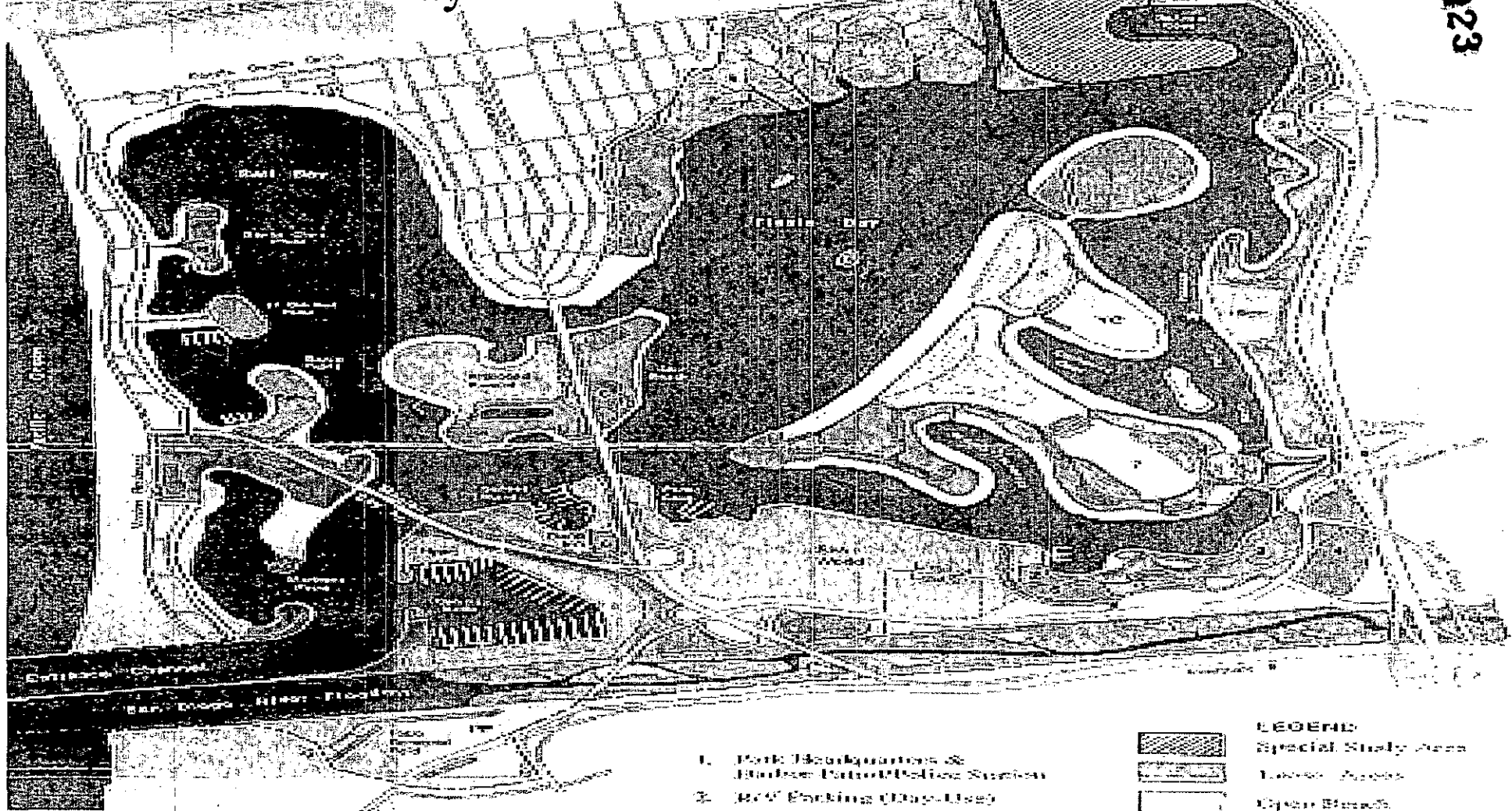


- PUBLIC BOAT LAUNCHING
- BOAT SLIP FACILITIES
- PARK AND SHORELINE
- GUEST HOUSING
- PUBLIC ACTIVITIES AREA
- SEMI-PUBLIC OR PUBLIC FACILITIES
- WILDLIFE RESERVE
- ORGANIZED YOUTH GROUP CAMPING



1994 Mission Bay Park Master Plan

000423



Mission Bay Park San Diego, California



1. Park Headquarters & Public Patrol/Police Station
2. RV Parking (Day-Use)
3. Visitor/Information Center
4. Overflow Parking
5. Primitive Camping
6. Boat Ramp/Trailer Parking
7. Sand Areas
8. Northern Wildlife Preserve
9. Public Amphitheater & Promenade

LEGEND	
	Special Study Area
	Lowest Areas
	Open Beach
	Parkland
	Playfields
	Youth Camping
	Wetland Habitat
	Upland Preserve
	Crested Landscape
	Salt Pan



004224

Need For A Survey

- **City Charter Section 55.1 passed by voters in November 1987**
 - Limits land leases to 25%
 - Limits water leases to 6.5%
- **Record of Survey needed to accurately measure land and water**
- **Historical surveys lacked accurate elevation data**
- **Records show that City survey staff could not at the time map the mean high water line within the marshland near Campland**

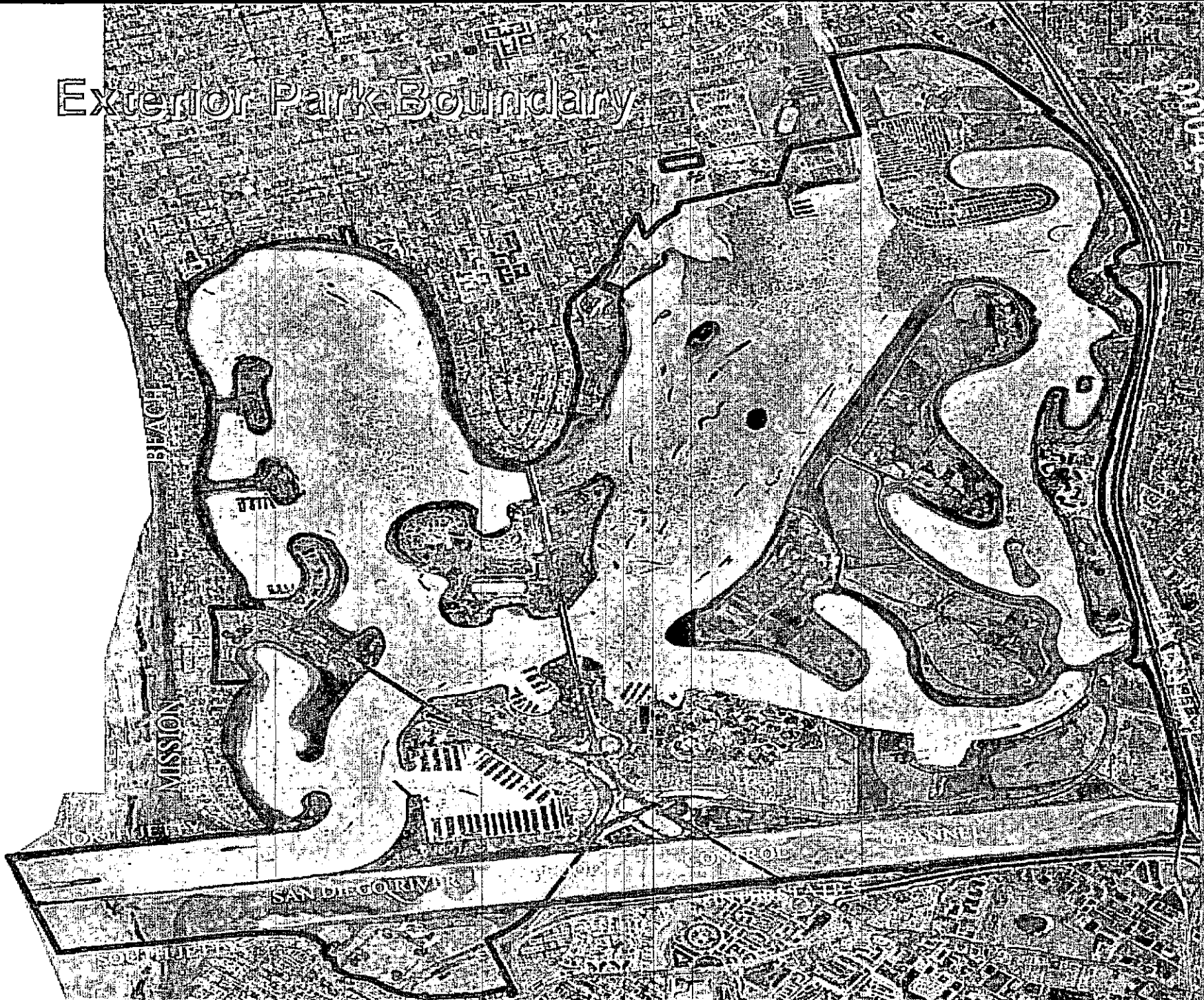


Mission Bay Survey

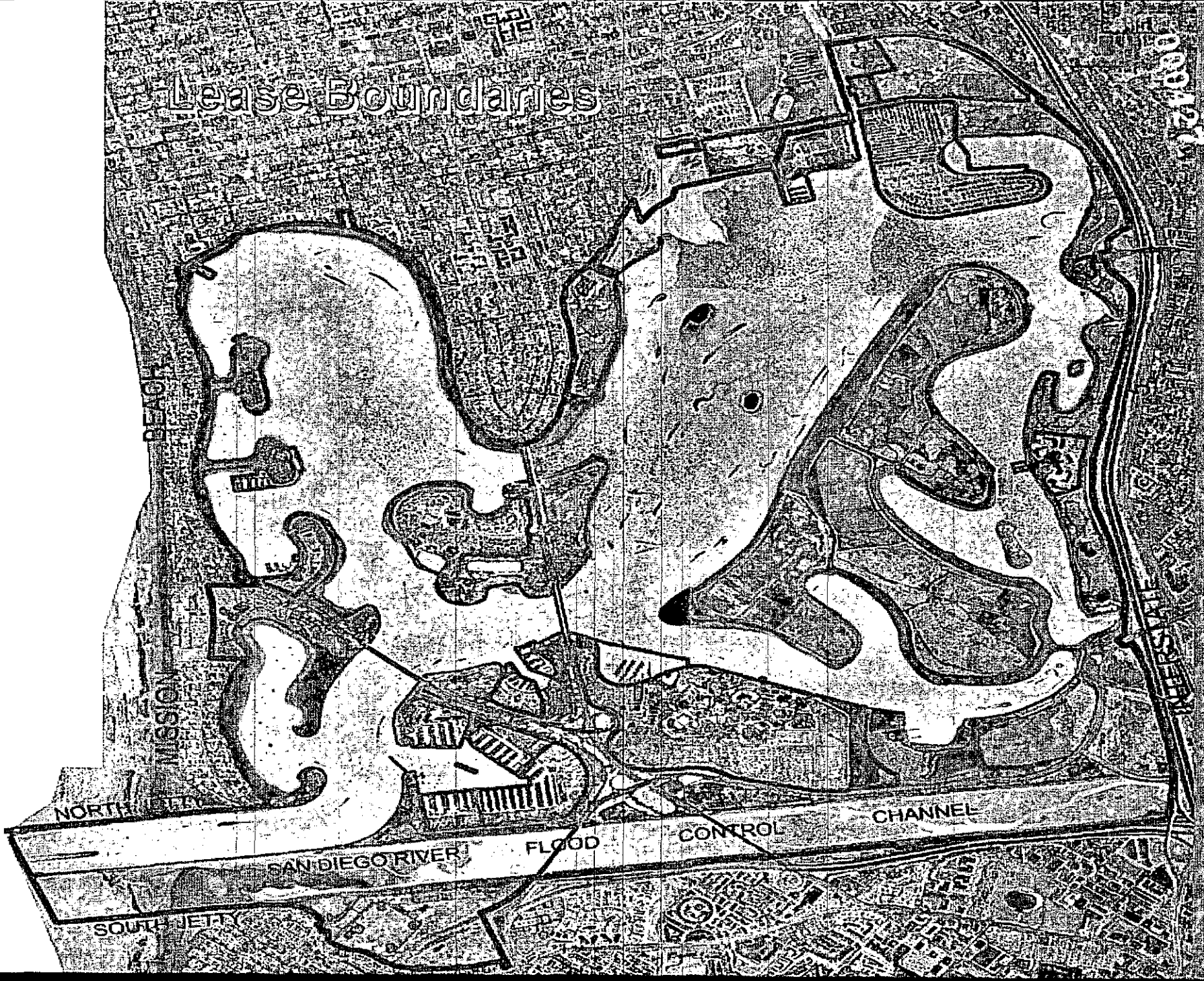
- **Completed in October 2000**
- **Identified and calculated land and water based on the Mean High Tide Line**
 - Consistent with standard surveying methods, legal principles and case law, and Public Resources Code
- **Did not separate marshland/wetlands**
- **Identified 10 parcels within the Park that had not been formally dedicated**

Exterior Park Boundary

000426



Lease Boundaries



Mean High Water Mark

0800428



NORTH

SAN DIEGO RIVER

FLOOD

CONTROL

CHANNEL

SOUTH

INTERSTATE



0429

Comparison of Acreage Numbers

	Pre-survey Acreage	2000 Survey Acreage	Difference
Land	1887.02*	1936.36	+49.34
Water	2228.18	2298.92	+70.74
Marshland	133.73	0	-133.73
Total	4248.93	4235.28	-13.65

*The adopted 1994 Mission Bay Park Master Plan Update cites the land acreage as 1887.74, however most of the historical studies use the 1887.02 figure.



00430

Acreage Limits Based on Pre-Survey Numbers

	Total Acreage	Charter Limits	Current Leasehold Acreage	Remaining Acreage	Current %
Land	1887.02*	471.76	418.99	52.77	22.20%
Water	2228.18	144.83	97.65	47.18	4.38%
Marshland	133.73	0	0	0	
Total	4249.01	616.55	516.64	99.19	

*The adopted 1994 Mission Bay Park Master Plan Update cites the land acreage as 1887.74, however most of the historical studies use the 1887.02 figure.



Acreage Limits Based on 2000 Survey Numbers

	Total Acreage	Charter Limits	Current Leasehold Acreage	Remaining Acreage	Current %
Land	1936.36	484.09	418.99	65.10	21.64%
Water	2298.92	149.43	97.65	51.78	4.25%
Marshland	N/A	0	0	0	
Total	4235.28	633.52	516.64	116.88	



132

Remaining Acreage Summary

	Pre-Survey Remaining Acreage	2000 Survey Remaining Acreage	Difference (acres)
Land	52.77	65.10	+12.33
Water	47.18	51.78	+4.60
Marshland	N/A	N/A	
Total	99.91	116.88	+16.97



Previous Council Direction

10/30/00: The 25% land lease limit will be based on the historic amount of acreage of 1887 acres

5/31/01: NR&C held a policy discussion related to the survey - concluded that City should focus on implementing the Mission Bay Park Master Plan



Practical Application of Acreage Numbers

- Current leasehold acreage – under either scenario – is well under the Charter limit
- Even with full implementation of the Master Plan leasehold acreage would fall under the limit

– Quivira Basin	+10 acres
– Bahia Hotel	+1 acre
– Dana Landing	+1 acre
– Primitive Camping (Fiesta Island)	+18 acres
– Campland	- 20 acres
– De Anza:	<u>- 16 acres</u>
Net	- 6 acres



Mission Bay Park Master Plan

- **The Guiding Policy Document for Mission Bay Park**
- **Adopted by the City Council**
- **Certified by the California Coastal Commission**
- **All Development Must Comply with the Master Plan**
- **Wetlands/Marshland CANNOT be developed**
- **Full implementation of the Master Plan will net less than current leasehold acreage**



Outreach

- **Presented to the Mission Bay Park Committee on July 10, 2007**
- **Extended an offer to the Mission Bay Lessees Association to present information**
 - Mission Bay Lessees are represented on the Park Committee and heard the item
- **Committee did not take a vote, but supported the Mayor's Recommendations**



Recommendations

- **Oppose the Ordinance as initially drafted**
- **Continue to follow the adopted Mission Bay Master Plan and identified acreage amounts as follows:**
 - 1887.02 acres for land
 - 2228.18 acres for water



Questions...

**** Special Thanks to Susan Taylor,
Real Estate Assets, for Providing
Historical Data and Graphics**

000439

Community Planners Committee

Planning and Development Review • City of San Diego • 202 C Street, 5th Floor, San Diego, CA 92101

May 30, 2001

Councilmember Jim Madaffer, Chair
The Committee on Natural Resources and Culture
CITY OF SAN DIEGO
City Administration Building
202 "C" Street
San Diego, CA 92101

**Subject: Informational report from the City Manager on the MISSION BAY
PARK BOUNDARY SURVEY
NR&C Committee Agenda of May 30, 2001 (Item-3)**

Dear Councilmember Madaffer:

Attached is a resolution adopted by the Community Planners Committee on February 27, 2001, regarding Mission Bay Park. In regards to the boundary survey, the resolution recommends that marshland be calculated separately from the dedicated land and water categories and that marshland not be included in determining the acreage available for leaseholds.

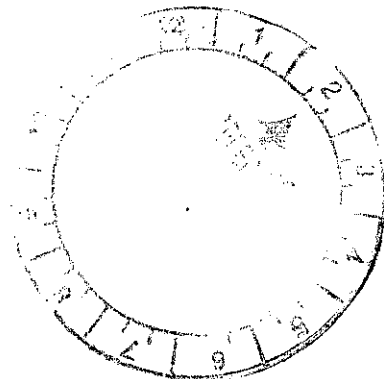
Thank you for your consideration.

Sincerely,



David A. Potter
Chair

cc: Mayor Dick Murphy
Councilmember Scott Peters, District 1
Councilmember Byron Wear, District 2
Councilmember Toni Atkins, District 3
✓ Councilmember George Stevens, District 4
Councilmember Brian Maienschein, District 5
Councilmember Ralph Inzunza, District 8
Leslie Perkins, NR&C Consultant
George Loveland, Senior Deputy City Manager
Keri Katz, Deputy City Attorney
Jane Potter, Chief of Staff, District 6



Attachment: Community Planners Committee Resolution No. 03-2001



000440

COMMUNITY PLANNERS COMMITTEE
RESOLUTION NO. 03-2001

Whereas, the Community Planners Committee (CPC) of the City of San Diego held a public meeting on Tuesday, February 27, 2001 and at that time discussed the issue of the Mission Bay Park Boundary Survey.

Whereas, the CPC recognizes Mission Bay Park as an asset to San Diego's open space and wildlife habitat system, as well as a major draw for the tourist economy and sports enthusiasts, and that the preservation and enhancement of this regional amenity should be of the highest priority for the City Council.

Whereas, the CPC understands that Project Design Consultants was hired to do a property survey to verify whether or not the City is in compliance with its charter regarding commercial development. The survey, completed October 5, 2000 and adopted by City Council on October 23, 2000, delineates "total acreage above the "mean high water line" (1936.36 acres) and "total acreage below the "mean high water line" (2298.92 acres.) These figures added approximately 27 acres to the park which were not previously included in the park boundaries. The result is that 23.8% of the park is land leased to commercial and non-profit uses and 4.16% of total water leased for the same, indicating compliance with the charter.

Whereas, the CPC has undertaken an extensive study of Mission Bay Park for two reasons: (1) for its own understanding of how the park is functioning for the City as a whole; and (2) to assist the City Council in understanding the concerns of the San Diego communities regarding the "real estate value" of the Mission Bay Park land, the "open space and water quality value" of the land, and the issue of how to balance the values so the assets of the park land are optimized for the San Diego communities.

NOW, THEREFORE BE IT RESOLVED BY THE CPC, THAT THE FOLLOWING MOTION BE APPROVED:

1. Mission Bay Park Boundary Survey:

The CPC recommends that "marshland" (wetlands) should not be used to calculate land available for development. Marshland is part of the wetland/open water habitat system vital to the health of the bay and is considered one of the highest priorities in the City's MSCP habitat system. The CPC recommends marshland acreage in Mission Bay Park be calculated separately from the land and water definitions, and that the defined area of Mission Bay Park not include the additional acreage currently being brought forward for dedication.

2. Basis of Survey:

The survey focused on the charter language regarding leaseholds; therefore, it used the total amount of dedicated "land" that is not "water" to establish compliance with the charter. The CPC recommends the creation of a classification standard for wetlands/marshland/tidelands for further definition of property within the Park boundaries.

000441

3. Expansion projects permitted under Proposition D:

CPC is concerned over the interpretation of the initiative by Anheuser-Busch, which is considering "thrill rides" and new building construction (large signs, increased lighting, etc.) which could reach heights of 160'. The CPC recommends continued collaborative interpretation and review of all expansion projects for compliance with the Master Plan.

4. Status of Upstream Wetland Restoration/Artificial Construction to absorb runoff:

The CPC supports the development of the three proposed filtration systems at the mouth of Rose, Tecolote, and Cudahy Creeks. These restored or actually manufactured wetlands have been praised by many hydrological experts as a feasible and effective way of absorbing point-source pollutants carried in upstream runoff, thereby preventing their contamination of Mission Bay. These wetlands have been supported by City environmental staff. The CPC recommends that "best management practices" be mandated to reduce runoff from commercial leaseholds, that a monitoring system be created to check for waste tank and boat dumping in and around the bay, and that the City initiate testing of the water on a regular basis.

5. Need for City to Designate a Special Mission Bay Park Person or Committee to Oversee Bay and Park Protection, with emphasis on environmental planning and oversight.

In the past a "czar" served in this role, under direction of the City Manager. The CPC recommends that this concept be reinitiated, with a broader scope served by a City staff and/or Council-appointed committee to review the environmental impacts of ongoing and future decisions by the Mission Bay Park Committee and the Real Estate Assets Department.

6. Commercial Projects - De Anza Cove, Sea World, Dana Inn, and Quivira Basin

As new and redevelopment projects for the above listed areas are submitted, the CPC recommends that it continue to be apprised of project submittals and status. The CPC also recommends that it continue to be advised of and allowed to make recommendations on all Mission Bay Park Master Plan Update proposed amendments.

Approval of the information contained in the above was passed and adopted by the Community Planners Committee by the following vote:

Yeas:	15
Nays:	0
Abstentions:	5



David A. Potter, Chair

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER: **51**
7131

TO: **000443**
CITY ATTORNEY

2. FROM: (ORIGINATING DEPARTMENT)
Councilmember Donna Frye

3. DATE
April 11, 2007

4. SUBJECT:
Amending Chapter 6, Article 3, of the San Diego Municipal Code by adding language that clarifies the meaning of the land/water distinction as characterized within Section 55.1 of the City Charter

5. FOR INFORMATION, CONTACT: (NAME & MAIL STA.)
Mary Ann Kempczenski, 10A

6. TELEPHONE NO.
619-236-6616

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION/ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Donna Frye</i>	<i>4/10/07</i>	6			
2				7			
3				8	CITY ATTORNEY	<i>[Signature]</i>	<i>04-12-07</i>
4				9	ORIGINATING DEPARTMENT		

5. DOCKET COORD. _____ COUNCIL LIAISON _____

COUNCIL PRESIDNET CONSENT ADOPTION

ms Refer to Council Date *5/15/07*

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

Please docket the following for discussion at an up coming City Council meeting:

- Amending the Municipal Code Chapter 6, Article 3, by adding language that clarifies the meaning of the land/water distinction as characterized with Section 55.1 of the City Charter consistent with the directions and recommendations from the Natural Resources and Culture Committee made at the November 15, 2006 meeting.

APR 12 1 38 PM '07
CITY ATTORNEY

11a. STAFF RECOMMENIONS

12. SPECIAL CONDITIONS

Council District: 6 (Frye)

Community Area: District Two and Six

Environmental Impact: CEQA does not apply

Other Issues: None

000444

000445

(O-2007-131)
REV

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 6 ARTICLE 3,
DIVISION 25, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 63.25.1 RELATING TO PUBLIC
WORKS AND PROPERTY, PUBLIC IMPROVEMENT AND
ASSESSMENT PROCEEDINGS..

The purpose this ordinance is to clarify the meaning of the land/water distinction as characterized within Section 55.1 of the City Charter, consistent with the directions and recommendations of the Natural Resources and Culture Committee.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SRE:pev
04/17/07
05/14/07 COR.COPY
07/12/07 COR.COPY2
07/18/07 REV
Or.Dept:Council 6
O-2007-131

000447

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 3,
DIVISION 25, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 63.25.1 RELATING TO PUBLIC
WORKS AND PROPERTY, PUBLIC IMPROVEMENT AND
ASSESSMENT PROCEEDINGS.

WHEREAS, the Natural Resources & Culture [NR&C] Committee has requested that the City Attorney assist in clarifying the meaning of the land/water distinction as characterized within Section 55.1 of the City Charter; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 3, Division 25, of the San Diego Municipal Code is hereby amended by amending Section 63.25.1, to read as follows:

§63.25.1 Same — Definitions

“Commercial Vessel” through “Float” [No change in text.]

“Land of Mission Bay” excludes wetlands and marshes for purposes of calculating or determining the total dedicated land area of Mission Bay that may be leased under Section 55.1 of the City Charter.

“Mission Bay Park” through “Vessel” [No change in text.]

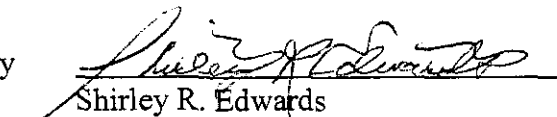
“Waters of Mission Bay,” excludes wetlands and marshes for purposes of calculating or determining the total dedicated water area of Mission Bay that may be leased under Section 55.1 of the City Charter.

Section 2. That this activity is not a "project" and therefore is exempt from the California Environmental Quality Act pursuant to State Guidelines Section 15060(c)(3).

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev
04/24/07
05/14/07 COR.COPY
07/12/07 COR.COPY2
07/18/07 REV
Or.Dept:Council 6
O-2007-131

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

NEW LANGUAGE: DOUBLE-UNDERSCORED

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 3,
DIVISION 25, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 63.25.1 RELATING TO PUBLIC
WORKS AND PROPERTY, PUBLIC IMPROVEMENT AND
ASSESSMENT PROCEEDINGS.

§63.25.1 Same — Definitions

“Commercial Vessel” through “Float” [No change in text.]

“Land of Mission Bay” excludes wetlands and marshes for purposes of
calculating or determining the total dedicated land area of Mission Bay that may
be leased under Section 55.1 of the City Charter.

“Mission Bay Park” through “Vessel” [No change in text.]

“Waters of Mission Bay,” excludes wetlands and marshes for purposes of
calculating or determining the total dedicated water area of Mission Bay that may
be leased under Section 55.1 of the City Charter.

SRE:pev
04/24/07
05/14/07 COR.COPY
07/12/07 COR.COPY2
07/18/07 REV
Or.Dept:Council 6
O-2007-131