

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: 9/4/2007
49th Day: 10/23/2007
180th Day: 3/2/2008
Staff: Charles Posner - LB
Staff Report: 10/25/2007
Hearing Date: November 14, 2007
Commission Action:

**W19a****STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NUMBER: 5-95-055-A9

APPLICANTS: City of Long Beach & Long Beach Aquarium of the Pacific

AGENT: Barbara Long, Vice President, Aquarium of the Pacific

PROJECT LOCATION: 100 Aquarium Way, Downtown Shoreline area, City of Long Beach.

DESCRIPTION OF PERMIT AMENDMENT REQUEST 5-95-055-A9:

Expand footprint and facilities of the existing aquarium use in Shoreline Park, including construction of a new watershed exhibit, classroom, animal care facility, and southern perimeter fence. [See Page Two for the descriptions of the Commission's prior approvals for aquarium-related projects.]

LOCAL APPROVALS:

1. City of Long Beach Site Plan Review Case No. 0704-18, 8/31/2007.
2. City of Long Beach Waived Parcel Map No. 69637, 8/16/2007.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Long Beach Certified Local Coastal Program, 7/22/80.
2. Amended Coastal Development Permit 5-95-055 (Aquarium of the Pacific).
3. Amended Coastal Development Permit 5-96-124 (Rainbow Harbor/Shoreline Park).
4. Amended Coastal Development Permit 5-96-268 (City of Long Beach Parking Structure).
5. Amended Coastal Development Permit 5-98-156 (The Pike Commercial Development).

SUMMARY OF STAFF RECOMMENDATION

Although the City of Long Beach has a certified Local Coastal Program (LCP), the Commission has permit jurisdiction over the proposed development because the aquarium is situated on State Tidelands within the Commission's area of original jurisdiction. Pursuant to Section 30519 of the Coastal Act, any development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission. The Commission's standard of review for the proposed event is the Chapter 3 policies of the Coastal Act. Staff is recommending that the Commission **APPROVE** the permit amendment for the proposed development with special conditions to address the permitted uses within the aquarium's leasehold parcels, the visual treatment of the new southern perimeter fence/wall of the aquarium, landscaping, and the protection of water quality. The applicants agree with the recommendation. **See Page Three for the Motion** to carry out the staff recommendation.

DESCRIPTIONS OF PRIOR COMMISISON APPROVALS:**DESCRIPTION OF PROJECT ORIGINALLY APPROVED ON MAY 10, 1995 (5-95-055):**

Construction of the Long Beach Aquarium of the Pacific including: 1) demolition of a 70-space recreation vehicle park; 2) demolition of the Queensway Bay Bridge ramps that connect to Shoreline Drive; 3) construction of new Queensway Bay Bridge ramps that connect to Shoreline Drive; 4) construction of new signalized intersection at Shoreline Drive and Chestnut Place; 5) construction of a new parking lot (approximately 434 spaces); 6) installation of parking meters on all parking spaces for aquarium and Shoreline Park; 7) construction of aquarium access roads and new signalized intersection at Shoreline Drive; 8) construction of new pedestrian and bicycle accessways; 9) construction of the 125,000 square foot aquarium building; 10) construction of a pipeline to convey barged ocean water to the aquarium from an existing dock at Catalina Landing; and 11) associated landscaping.

5-95-055-A1: Approve a Waived Tentative Parcel Map establishing two subdivision parcels for the development of the Long Beach Aquarium of the Pacific. [Approved October 11, 1995].

5-95-055-A2: Erect a 16-foot bronze dolphin sculpture (three jumping dolphins) in the center of the traffic circle adjacent to the Long Beach Aquarium of the Pacific on Aquarium Way. [Approved April 1998].

5-95-055-A3: Establish a United States Weather Bureau data collection station within the grounds of the Long Beach Aquarium of the Pacific. [Approved June 2000].

5-95-055-A4: Reconfigure existing outdoor "Kids Cove" area to include 20-foot high walk-through aviary, 6,000 square foot touchpool with 30-foot high shipwreck theme, and 13,800 square foot amphitheater and seating area. [Approved April 10, 2001].

5-95-055-A5: Installation of a 24-foot high, two-story, 880 square foot prefabricated structure to be used as a shop (first floor) and staff office (second floor). The structure would be placed within the facility's existing rear utility area (west side). [Approved October 2001].

5-95-055-A6: Revised plans for the reconfiguration of the existing outdoor "Kids Cove" area. The plans previously approved by permit amendment 5-95-055-A4 included a 20-foot high walk-through aviary, a 6,000 square foot touchpool with 30-foot high shipwreck theme, and a 13,800 square foot amphitheater and seating area. The revised plans proposed by this amendment (5-95-055-A6) include the 20-foot high walk-through aviary, a 3,200 square foot touchpool with 25-foot high shade structure, and a 16,800 square foot amphitheater and seating area. The shipwreck structure and theme are being deleted from the plan. The proposed development is situated entirely within the boundaries of the previously approved Aquarium of the Pacific lease parcel. [Approved December 2001].

5-95-055-A7: Installation of a 1.35-megawatt cogeneration plant to provide the facility with electric power. The plant would be placed within the facility's existing rear utility area (west side), entirely within the boundaries of the previously approved Aquarium of the Pacific lease parcel. [Approved June 2002].

5-95-055-A8: Installation of a fourteen-foot high, 800 square foot (20'x 40') shade structure, with no sides and six vertical steel poles, near the main aquarium entrance. And, placement of two twenty-foot high poles next to the shade structure to hang the aquarium's seasonal promotional banner signs. [Approved June 2003].

PROCEDURAL NOTE:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

In this case, the Executive Director has determined that the proposed amendment is a material change to the previously approved project. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [14 California Code of Regulations 13166].

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the permit amendment request with special conditions:

MOTION: *"I move that the Commission approve with special conditions the proposed amendment to Coastal Development Permit 5-95-055 pursuant to the staff recommendation."*

The staff recommends a **YES** vote. Passage of the motion will result in **APPROVAL** of the permit amendment with special conditions, and adoption of the following resolution and findings, as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by an affirmative vote of a majority of Commissioners present.

I. Resolution to Approve the Permit Amendment

The Commission hereby **APPROVES** a coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Special Conditions of Permit Amendment 5-95-055-A9

Note: The original special conditions of Coastal Development Permit 5-95-055 and Permit Amendment 5-95-055-A1, attached as Exhibit #8, are still in effect.

1. Aquarium Leasehold Parcels – Approval of Waived Parcel Map No. 69637

Permit Amendment 5-95-055-A9 approves a new parcel for aquarium leasehold interests only, as shown on Waived Parcel Map No. 69637. The use of the aquarium's leasehold parcels, as shown on Waived Parcel Map No. 69637 and Waived Parcel Map No. 9509-02 (approved by the Commission on October 11, 1995 pursuant to Coastal Development Permit Amendment 5-95-055-A1) is limited to the uses expressly permitted by Coastal Development Permit 5-95-055, as amended; specifically public access, public recreation, public parking, and the Long Beach Aquarium of the Pacific. This permit amendment does not authorize any development to occur outside of the boundaries of the Aquarium of the Pacific leasehold parcels as shown on Waived Parcel Map Nos. 9509-02 and 69637. The ability of the public to access and use the areas within the aquarium's leasehold parcels shall not be restricted, except that fees may be charged for admission into the aquarium structure and for use of the public parking facilities. Public access to the esplanade and plaza areas in front of and adjacent to the aquarium structure shall be free and unrestricted. The parcels, as shown on Waived Parcel Map Nos. 9509-02 and 69637, are created for leasehold interests only and may not be sold or otherwise alienated from the state tidelands.

2. Perimeter Wall/Fence Treatment

A minimum fifteen-foot (15') wide buffer shall be provided and maintained between the southern perimeter fence/wall of the aquarium and the curb of the Shoreline Park public parking lot, as described on Pages 33 through 39 of **Exhibit #9 of the 10/25/07 staff report**. The required buffer shall be maintained as an open public accessway, with appropriate landscaping (consistent with Special Condition Three below) that does not interfere with public access along the buffer. The southern perimeter fence/wall of the aquarium shall be visually screened with trees and other landscaping as described on Pages 33 through 39 of **Exhibit #9 of the 10/25/07 staff report**.

3. Landscaping – No Invasive Plants

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.

4. Construction Responsibilities and Debris Removal

By acceptance of this coastal development permit, the applicants agree that the permitted development shall be conducted in a manner that protects water quality pursuant to the implementation of the following BMPs:

- a) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wind or rain erosion and dispersion.
- b) Any and all demolition/construction material shall be removed from the site within ten days of completion of demolition/construction and disposed of at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.
- c) Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the sea.
- d) Any spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.
- e) Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all stormdrains, open ditches and surface waters.
- f) All trash generated by construction activities within the project area shall be disposed of at the end of each day, or as soon as possible.
- g) All grading and excavation areas shall be properly covered and sandbags and/or ditches shall be used to prevent runoff from leaving the site, and measures to control erosion must be implemented at the end of each day's work.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Amendment Description

On May 10, 1995, the Commission approved Coastal Development Permit 5-95-055 for the construction of the Long Beach Aquarium of the Pacific on a 5.89 acre site in Shoreline Park (Exhibit #3). The aquarium was completed on schedule and opened to the public on June 19, 1998. The aquarium is located on the western edge of Rainbow Harbor, which was also completed in the summer of 1998 (Coastal Development Permit 5-96-124). Parking for the aquarium and Rainbow Harbor is provided within the City's 1,471-stall public parking structure situated in the northwest corner of Shoreline Park (Exhibit #2).

The co-applicants (City of Long Beach and Aquarium of the Pacific) now propose to expand the aquarium footprint in Shoreline Park and to add new facilities to the existing aquarium use. The proposed expansion involves the creation of a new 19,757 square foot (0.45 acre) leasehold parcel within Shoreline Park (Exhibit #5: Waived Parcel Map No. 69637). The proposed new parcel is situated at the southern end of the aquarium's existing leasehold parcel that the Commission approved on October 11, 1995, pursuant to Coastal Development Permit Amendment 5-95-055-A1 (Exhibit #5). The 19,757 square feet of existing parkland that is being converted to aquarium leasehold area is a lightly-used part of the park (450 feet long and fifteen-to-forty feet wide) that is occupied by ornamental landscaping and several large trees. The existing trees and landscaping will be removed as part of the proposed development (Exhibit #9, p.29).

The additional 19,757 square feet of aquarium leasehold area will provide the space needed for the aquarium to add the proposed new facilities: an 1,800 square foot animal care facility with three new holding tanks for veterinary care and animal husbandry, a new watershed exhibit ("Watersheds of San Pedro Bay") with a 1,300 square foot classroom, and a future (not yet designed) port exhibit (Exhibits #4&9). The new watershed exhibit includes a native plant garden that will display the native plants found along the Los Angeles and San Gabriel Rivers. The existing perimeter fence that encloses the southern end of the aquarium will be removed and replaced with a new fence/wall (up to ten feet in height) that will be erected within the new leasehold area. The new southern perimeter fence/wall is proposed to be located fifteen feet away from the public parking lot in Shoreline Park in order to leave enough room between the new fence/wall and the surface parking lot for a public walkway and landscaping to screen the fence/wall (Exhibit #9, ps.33-39). [Note: See Exhibit #9 for more details regarding the proposed new aquarium facilities and exhibits included in this permit amendment.]

B. Public Access and Recreation

The Long Beach Aquarium of the Pacific is situated on a 5.89-acre waterfront site within Shoreline Park. Shoreline Park and all land located south of the Chapter 138 Line is comprised of State Tidelands (Exhibit #2). These waterfront areas, which the City holds in trust for the people of California, provide the general public with public shoreline access and numerous recreational opportunities. The existing public access and recreational opportunities shall be protected.

The Coastal Act contains several policies which address the issues of public access and recreation along the coast. The proposed amendment must conform to the following Coastal Act policies:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The protection of public access and recreational opportunities on State Tidelands is an issue of primary importance to the Commission. Public access issues were particularly important in the Commission's approval of the underlying permit (Coastal Development Permit 5-95-055) because the aquarium is situated in a public park located on State Tidelands.

In approving the aquarium, the Commission found that aquarium is a water-oriented recreational and educational facility which complies with Sections 30220 and 30221 of the Coastal Act which encourage the use of waterfront land for water-oriented recreational activities. The aquarium's exhibits educate the public about the Pacific Ocean environment. The currently proposed improvements are intended to enhance the educational and recreational activities provided by the aquarium. The proposed new exhibits, including the animal care facility, will be open for public outreach and educational activities.

The amount of public parkland occupied by the aquarium is limited to the area within the aquarium's leasehold parcels. Pursuant to this permit amendment, the aquarium's leasehold area would be expanded by 19,757 square feet with the Commission's approval of the new leasehold parcel created by Waived Parcel Map No. 69637 (Exhibit #5). In approving Coastal Development Permit 5-95-055 and Amendment 5-95-055-A1, the Commission attached several special conditions of approval in order to ensure that the Long Beach Aquarium of the Pacific would be constructed and operated in a manner consistent with the public access and recreation policies of the Coastal Act. The Commission's original conditions of approval for Coastal Development Permit 5-95-055 and Permit Amendment 5-95-055-A1 protect public access in the open parklands that surround the aquarium (Exhibit #8). The Commission's previous conditions of approval are not affected by this amendment request and are still in effect.

Although the proposed project will result in an expansion of the aquarium's footprint into Shoreline Park, it will not adversely affect public access or recreation because the park area proposed to be enclosed within the new southern perimeter fence (approximately 19,000 square feet) is an area of the park that does not receive much public use, and the proposed new aquarium use will provide equivalent, although different, public recreational opportunities. The area of expansion does not currently receive much public use because it provides no active recreational opportunities.¹ The area is vegetated with several trees, and the ground cover is primarily comprised of wood chips [See pages 6&7 of Exhibit #9 for photos of the open parkland being converted to aquarium use]. The open parkland being converted to aquarium use serves primarily as a buffer between the Shoreline Park public parking lot and the existing southern perimeter fence of the aquarium. As a result of the proposed project, the width of this existing parking lot/aquarium fence buffer area would be reduced from about forty feet to fifteen feet (Exhibit #4).

Sections 30220 and 30221 of the Coastal Act encourage the use of waterfront land for water-oriented recreational activities. The aquarium's proposed new exhibits will educate the public about the Pacific Ocean environment and will enhance the educational and recreational activities provided by the aquarium. Therefore, as conditioned, the proposed project and amendment request will not adversely impact public access to the water, will not adversely impact public recreational use of a public park or beach, and will be consistent with the public access and recreation policies of the Coastal Act.

C. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

¹ It should be noted that, pursuant to the requirements of the National Park Service's Land and Water Conservation Fund, the City is providing replacement parkland elsewhere in the City (2330 Lemon Avenue) to offset the loss of open parkland resulting from the aquarium's current expansion into Shoreline Park.

Section 30251 of the Coastal Act requires that the scenic and visual resources of coastal areas be considered and protected as a resource of public importance. In addition, public views to and along the ocean and scenic coastal areas shall be protected.

The proposed project includes a twenty-foot shade structures over the new holding tanks that are part of the proposed animal care facility. The new buildings (animal care center and classroom) are about eighteen feet in height (Exhibits #6&7). The proposed new southern perimeter fence would be ten feet high. Commission staff has photographed the site of the proposed development from the surrounding public areas and has analyzed the proposed project's potential negative impacts on the visual resources of Shoreline Park and Rainbow Harbor. The existing sixty-foot high aquarium structure and the shade structure of "Shark Lagoon occupy the area immediately north of the proposed expansion area where the proposed improvements would occur (Exhibit #4). The second level of the aquarium provides viewing decks from which patrons may view the surrounding coastline. These public views would not be affected by the proposed improvements as the decks are as high or higher in elevation than the proposed improvements.

From the public park area situated south of the aquarium, the visible parts of the currently proposed development would not exceed the silhouette of the existing sixty-foot aquarium structure and its mechanical equipment. The view across the project site from the esplanade of Rainbow Harbor (east of aquarium) is currently obstructed by lush landscaping and the 8-foot high perimeter fence. The landscaping and the perimeter fence also obstruct the view across the project site from the rear of the aquarium (west side). Therefore, the proposed project will not obstruct any views to or along the coast.

Therefore, the only potential new impact to public views and scenic resources is the proposed new southern perimeter fence. The view of the proposed fence, if not screened by vegetation, from the park could adversely affect the scenic resources of Shoreline Park. In order to protect the scenic nature of Shoreline Park, the fifteen-foot wide buffer being maintained between the proposed new fence and the public parking lot shall be attractively landscaped to screen the proposed ten-foot high fence from the public's view. The landscaping shall not interfere with public access along the buffer and shall not include any invasive species of plants. The southern perimeter fence/wall of the aquarium shall also be visually screened with trees and other landscaping as described on Pages 33 through 39 of Exhibit #9 of the 10/25/07 staff report. Only as conditioned is consistent with Section 30251 of the Coastal Act.

D. Parking

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30252 requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities....

Parking for the aquarium and Rainbow Harbor is provided within the City's 1,471-stall public parking structure situated in the northwest corner of Shoreline Park (Exhibit #2). The proposed improvements would not increase the previously planned capacity of the aquarium for which adequate parking is already provided. In addition, the aquarium is well-served by the City's public transportation system, which includes free bus service between downtown (the Metro Rail Blue Line train station) and Shoreline Park. Therefore, the proposed development and amendment comply with Section 30252 of the Coastal Act.

E. Water Quality

The proposed project will be occurring near coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

F. Local Coastal Program

A coastal development permit (amendment) must be obtained from the Commission for the proposed development because it is located on tidelands within the Commission's area of original jurisdiction pursuant to Section 30519 of the Coastal Act. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Long Beach certified LCP is advisory in nature and may provide guidance. The Commission certified the City of Long Beach LCP on July 22, 1980. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and does not conflict with the certified LCP for the area.

G. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project and amendment, only as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. All significant environmental effects have been mitigated by conditions of approval. As conditioned, there are no feasible mitigation measures or alternatives available that would lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the project is consistent with the requirements of the Coastal Act to conform to CEQA.

[Click here to go to the exhibits.](#)