

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th24a

Filed: 7/2/12
180th Day: 12/29/12
Staff: T. Ross-SD
Staff Report: 10/24/12
Hearing Date: 11/14-15/12

AMENDMENT REQUEST STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-07-021-A1

Applicant: Los Penasquitos Lagoon Foundation

Location: Mouth of the Los Penasquitos Lagoon at North Torrey Pines Road (Highway 101), North City, San Diego, San Diego County.

Original Description: Excavation of a temporary channel (maximum dimensions 1,000' x 20' x 6') to open the mouth and enhance the outflow of Los Penasquitos Lagoon, and placement of excavated materials on the adjacent beach, as needed to maintain biological resources, for five years.

Proposed Amendment: Modification of Special Condition #1 to extend the term of the original permit an additional five years and to modify Special Condition #3 to reduce the level of dissolved oxygen necessary to begin work opening the lagoon inlet from when it drops **below** five milligrams per liter (mg/L) to when it **reaches** five mg/L.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The Los Penasquitos Lagoon Foundation (Lagoon Foundation) is proposing to modify two of the special conditions incorporated into CDP #6-07-021. This permit authorized excavation of a temporary channel (maximum dimensions 1,000' x 20' x 6') to open the mouth and enhance the outflow of Los Penasquitos Lagoon and placement of excavated materials on the adjacent beach, as needed to maintain biological resources, for five years. The permit has now reached its expiration date. The Commission has approved artificial lagoon mouth openings on multiple occasions for various Southern California lagoons. In earlier years, these were usually issued on a one-time only basis, but more recently permits typically authorize multiple openings within a set timeframe. With approval of this amendment permit 6-07-021 will be extended an additional five years. In addition to this, the Lagoon Foundation is also proposing a slight modification to the biological criterion necessary to begin work opening the lagoon inlet. Previously, the Commission approved work to begin when the level of dissolved oxygen measured in the lagoon waters *drops below* five milligrams per liter (mg/L). As proposed, opening the inlet will be authorized when the level of dissolved oxygen *reaches* five milligrams per liter (mg/L). The intent of the change is to take a more proactive approach to maintaining the inlet and reduce the potential for stressing the health of the lagoon that typically occurs when waiting for the lagoon to reach the previously identified criteria. Specifically, the applicant has indicated that the current criteria doesn't allow enough time from when the criteria is met, to when the actual inlet is open and tidal flushing to resume. The result being that the quality of water creates conditions for algal blooms and associated fish kills before the Lagoon Foundation has the time to get the inlet open. As proposed, the modified criteria will allow enough time to open the inlet before reduced water quality leads to impacts to marine organisms.

The primary Coastal Act issues associated with this project include potential adverse impacts to marine resources including wetlands, water quality and public access. Specifically, the proposed removal of sand in the lagoon inlet is considered dredging of open coastal waters must be one of the listed uses permitted by 30233 of the Coastal Act. In this case, the proposal is for restoration purposes, a permitted use. In addition, removal and deposition of sand can result in impacts to water quality and the construction activities associated with opening the inlet can impact the public's ability to gain access to the beach. Finally, once the lagoon inlet is opened the water quality drops to unsafe levels and the beaches must temporarily close, further impacting the public's ability to access to ocean. That being said, the Commission generally accepts that the maintenance of lagoon inlets increase the overall physical condition of marine resources and water quality, and therefore, also generally promote public access.

Special Condition #'s 1 and 2 are the changes proposed by the Lagoon Foundation, and will reflect the extension of the permit for an additional five years, and will incorporate the new biological criterion for opening the lagoon inlet. The Commission's ecologist has reviewed the proposed changes and supports the change to the biological criterion as well as the extension of the permit. Specifically, the Commission's ecologist agrees that if current criterion results in impacts to water quality and therefore marine organisms, the criteria should be modified. As previously discussed, the subject proposal is only a slight modification to an existing coastal development permit, which has been previously conditioned and has been found consistent with the Coastal Act. As such, Special Condition #3 includes that all terms and conditions of the

original approval of Coastal Development Permit 6-07-021 shall remain in full force and effect, except those that are explicitly replaced or modified in this amendment.

Commission staff recommends **approval** of coastal development permit amendment application 6-07-012-A1, as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. PROCEDURAL NOTE	5
III. SPECIAL CONDITIONS	5
IV. FINDINGS AND DECLARATIONS	6
A. PROJECT DESCRIPTION.....	6
B. WATER QUALITY AND MARINE RESOURCES.....	6
C. PUBLIC ACCESS.....	11
D. LOCAL COASTAL PLANNING.....	13
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	13

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Site Location

Exhibit 3 – Special Conditions of CDP #6-07-021

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-07-021 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 object so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [Title 14 California Code of Regulations, section 13166]

III. SPECIAL CONDITIONS

This permit amendment is granted subject to the following special conditions:

1. The following shall replace, in its entirety, Special Condition #1 of the original permit:

1. **Term of Permit.** This permit as amended (ref. CDP #6-07-021-A1) is valid for a period of five years from the date of Commission action. Future lagoon mouth openings beyond this date will require an amendment to this coastal development permit or a new coastal development permit from the California Coastal Commission. Any modification of the Commission-approved project within the five year period, such as changes in channel size or location, timing of work, staging areas, or biological criteria used to determine the need for dredging of the lagoon mouth opening, will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.
2. The following shall replace, in its entirety, Special Condition #3 of the original permit:
 3. **Biological Criteria for Opening.** The proposed channel excavation work shall be performed only:
 - a. when the dissolved oxygen levels in the lagoon reach 5 milligrams per liter (mg/L), or
 - b. when the water salinity level in the lagoon is below 25 parts per thousand (ppt) and dissolved oxygen levels are determined by a qualified biologist to be likely to drop below 5 ppm within the next two-week sampling interval, or
 - c. when the water salinity level in the lagoon is above 33 ppt (hypersaline).

The sampling results or biologist's determination which results in a decision to open the lagoon mouth shall be reported in writing, if time permits, or verbally, with written follow-up, to the San Diego Commission office within one business day of any proposed opening, and shall be submitted to the Coastal Commission as part of the annual report required in Special Condition #4 of the original permit.

3. **Prior Conditions of Approval.** All terms and conditions of the original approval of Coastal Development Permit 6-07-021 shall remain in full force and effect, except those that are explicitly replaced or modified in this amendment.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY

The proposed amendment includes changing the language on two special conditions included in previously approved coastal development permit 6-07-021. Again, this original permit included excavation of a temporary channel (maximum dimensions 1,000' x 20' x 6') to open the mouth and enhance the outflow of Los Penasquitos Lagoon. The proposed work has occurred many times in the past pursuant to prior permits, including four recent openings one in each of the last four years conducted pursuant to coastal development permit #6-07-021 (May 2008, 5/09, 5/10, 5/11), and an additional four openings conducted pursuant to coastal development permit #6-02-

013. The primary purpose of the application is to request authorization for future mouth openings, to be performed as needed over the next five years. Special Condition #1 again limits the term of the permit to 5 years, to allow the Commission to reassess the need and limitations on opening the lagoon mouth in the future. These potential future openings will utilize the same location and equipment that have been used previously. However, the proposed amendment will modify the biological criterion levels necessary to begin work opening the lagoon inlet. Previously, the Commission approved work to begin when the level of dissolved oxygen measured in the lagoon waters *drops below* five milligrams per liter (mg/L). As proposed, opening the inlet will be authorized when the level of dissolved oxygen *reaches* five milligrams per liter (mg/L). The intent of the change is to take a more proactive approach to maintaining the inlet.

The City of San Diego has a fully-certified LCP, with the certified Los Penasquitos Lagoon Enhancement Plan as a component, and issues its own coastal development permits for most of its coastal areas. However, the lagoon, river mouth and beach areas that are the subject of this permit are all tidelands, such that the Commission will retain permit jurisdiction over this particular site in perpetuity. Therefore, the Chapter 3 policies of the Coastal Act are, and will continue to be, the standard of review, with the City's certified LCP used as guidance.

B. WATER QUALITY AND MARINE RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such

materials. Effective containment and clean up facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject site is located at the mouth of Los Penasquitos Lagoon (LPL), an environmentally sensitive habitat area that is one of the 19 priority wetlands listed by the State Department of Fish and Game. LPL is a relatively small coastal salt marsh and is considered part of the Torrey Pines State Reserve. LPL provides critical habitat to Federally and State Listed Species that include the Light-footed Clapper Rail, the Western Snowy Plover, the Brown Pelican, and Belding's Savannah Sparrow. The LPL contains areas of Essential Fish Habitats and is the closest coastal lagoon to the only two Areas of Special Biological Significance (ASBS) located in San Diego County. That being said, the dredging of the inlet will result in no direct impacts to ESHA and is considered a restoration project, such that the surrounding environment will be improved post-construction. Specifically, the proposed design will not impact wetlands or other sensitive areas, as this area is not considered "Essential Fish Habitat" and is not near any current nesting areas of endangered birds. The extended channel will stop west of the deepwater mark, where the bathymetry of the lagoon changes, and sediments become more silty (i.e., not suitable for use as beach sand).

Most of the lagoon is now publicly owned by the California Department of Parks and Recreation, who also administer the adjacent Torrey Pines State Beach and nearby Torrey Pines Reserve. In addition, the Commission certified the Los Penasquitos Lagoon Enhancement Plan as a component of the City of San Diego LCP. The enhancement plan policies stress the importance of keeping the lagoon mouth open to maintain tidal flushing and an appropriate saltwater/freshwater balance.

The development approved pursuant to CDP #6-07-021 involved the removal of sediments from the mouth of Los Penasquitos Lagoon. Under the Coastal Act, dredging of open coastal waters, like a lagoon, is allowed under limited circumstances. To be allowable under Section 30233, the proposed development must be one of the listed permitted uses. In this case, the proposal is for restoration purposes and thus, a permitted use pursuant to Section 30233 cited above. In addition, the development must be found to be the least environmentally damaging feasible alternative, incorporate feasible mitigation measures for any associated adverse impacts and either maintain or enhance the functional capacity of the wetland system. In this case, potential alternatives include the no project alternative or a smaller-sized inlet opening. The no project alternative would eliminate tidal flushing and result in significant impacts to the overall productiveness of the lagoon ecosystem. Constructing a smaller inlet would require more frequent inlet opening and a consequence of this would be that the lagoon environment will become stressed on a more frequent basis. In addition, removal and deposition of sand can result

in impacts to water quality and the construction activities associated with opening the inlet can impact the public's ability to gain access to the beach. Finally, once the lagoon inlet is opened the water quality drops to unsafe levels and the beaches must temporarily close, further impacting the public's ability to access the ocean. As such, a smaller inlet, and therefore more frequent opening of the inlet would have greater impacts on water quality, marine organisms and public access. The proposed project can, therefore, be found to be the least environmentally damaging alternative.

Generally speaking, lack of tidal action has a number of adverse effects on a lagoon environment. The lagoon water becomes stagnant, reducing the oxygen levels in the water. Reduced oxygen can lead to eutrophication, the condition where a closed body of water can "turn over," where large amounts of methane and hydrogen sulfide gas are released at the bottom and absorbed into the water, leading to fish and benthic invertebrate kills. Another problem facing the lagoon environment is the salinity levels of the water. Together, lack of tidal influence and low levels of freshwater inflow increase the salinity and temperature of the water, creating a hypersaline situation which is stressful, if not deadly, to many forms of plant and animal life in the lagoon. Conversely, decreased salinity caused by the combination of high levels of freshwater inflow and lack of tidal action allows for the establishment and growth of freshwater vegetation such as willows, cattails and tules in areas formerly entirely covered by salt marsh vegetation.

The enhancement plan, certified land use plans and many past permit actions identify dredging to maintain a tidal flow into the lagoon as an important part of an overall management strategy to enhance the biological productivity of the lagoon. The proposed sediment removal will allow the mouth to remain open longer to flush out stagnant water, replace low-salinity water and allow for the reestablishment of estuarine and marine invertebrates, fish and plant species, which are prevented from entering the lagoon while the inlet is closed. As proposed, the project does not involve any alteration or impact to existing habitat. The subject development will restore and enhance the functional capacity of the lagoon, and thus, is a permitted use under Section 30233 of the Act.

Dredging the lagoon mouth is a relatively inexpensive means of increasing tidal flushing and improving the water quality and biological productivity of the lagoon in a manner that has the least impact on the lagoon and surrounding environment. The U.S. Fish and Wildlife Service and the California Department of Fish and Game, have indicated their support for maintaining the lagoon mouth in an open condition to the greatest degree possible.

As previously discussed, the proposed amendment includes a slight modification to the biological criterion necessary to begin work opening the lagoon inlet. Previously, the Commission approved work to begin when the level of dissolved oxygen measured in the lagoon waters *drops below* five milligrams per liter (mg/L). As proposed, opening the inlet will be authorized when the level of dissolved oxygen *reaches* five milligrams per liter (mg/L). The intent of the change is to take a more proactive approach to maintaining the inlet.

The Lagoon Foundation has indicated that conditions have changed since the time of approval of CDP #6-07-021, specifically; since that time, the bridge structure facilitating vehicular traffic

circulation on North Torrey Pines Road crossing over Los Penasquitos Lagoon has been reconstructed. In 2002, the Commission approved the reconstruction of this bridge (ref. CDP #6-01-172/City of San Diego). Pursuant to this action, the Torrey Pines Road Bridge was replaced by a bridge with far fewer pilings (4 as opposed to the existing 78). The reconstruction of this bridge has changed the site conditions in two ways. While the new bridge design increases tidal flushing in the lagoon, and therefore reduces the frequency the inlet has to be opened, it allows for a much wider inlet opening and when the inlet does become obstructed, re-opening in the inlet now requires the sand to be removed and re-deposited on a larger-scale. Specifically, mechanical removal and re-deposition of sand from the wider inlet has increased construction time from six days to ten. The result is that tidal flushing doesn't fully resume until four days later than previous maintenance activities. Additionally, the applicant has indicated that the larger-scale dredging effort also requires review and approval by additional agencies. The Lagoon Foundation has indicated that coordination with multiple agencies has resulted in delays between when opening of the inlet becomes biologically necessary and when the authorization to begin work occurs. The combination of a longer construction period and additional time necessary to receive all required approvals can result in additional and unnecessary impacts to aquatic species, in that the lagoon waters are stressed for a longer period of time, and goes against the intent of the originally approved inlet maintenance permit. As such, the proposed modification will allow the Lagoon Foundation to begin seeking approvals and begin construction earlier; and, therefore, prevent any avoidable stress and impacts to marine resources within the lagoon. The Commission's ecologist has reviewed the proposed modification and has determined that the change to the biological criteria will have a positive impact on the natural resources of the lagoon by expediting the time between when conditions in the lagoon are stressed and when tidal flushing resumes. Therefore, the proposed revisions to original permit #6-07-021, reflected herein as Special Condition #1 and #2 can be found consistent with the Coastal Act.

In conclusion, a closed lagoon mouth stresses the ecosystem beyond the point where it can recover on its own. The proposed changes will only facilitate the opening of the inlet, and therefore improve water quality and protect marine resources, more expeditiously and the Commission ecologist has reviewed and supports the proposed changes. Additionally, the proposed development is an allowed use pursuant to Section 30233 of the Coastal Act in that the proposed inlet maintenance is considered a restoration project, and the least environmentally damaging alternative has been implemented. In addition, the project is designed to minimize any potential adverse impacts on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30233, 30240 of the Coastal Act.

C. PUBLIC ACCESS

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 30212 of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

2) adequate access exists nearby, or, ...

The project site is the mouth of Los Penasquitos Lagoon, which empties into the Pacific Ocean at the northern end of the City of San Diego, just south of the City of Del Mar. The channel runs across the municipal beach at the northern end of the city, and can be traversed on foot during most tidal regimes. The public beach provides very popular day-use facilities for beach visitors and serves as an important recreational resource of region-wide importance. As the proposed development will occur on the beach and the far-western portions of the lagoon, the potential for adverse impacts on public access and recreational opportunities exists.

Based on the experience of previous lagoon mouth openings, for a short period after the lagoon mouth is opened, bacteria levels (fecal and total coliform counts) in the water exiting the lagoon are usually above health standards in the mouth and surf zone surrounding the mouth. As a result, County Public Health officials have had to post the surrounding beaches with signs prohibiting any body contact with the water because of potential health hazards caused by the high bacteria counts. Although this has always been a known concern, in permitting previous lagoon mouth openings, the Commission has not found this to be a significant impact on public recreational opportunities as the lagoon mouth openings generally occur in the non-summer months and the high bacteria levels only last a few days to a week.

Based on data collected from monitoring previous lagoon mouth openings (at several different regional lagoons), it can be anticipated that after an initial opening, bacterial counts will exceed water quality standards and body contact with the water in the general area of the lagoon mouth will be prohibited. However, these reports indicate that within a short period of time, bacterial water quality in the surf zone should meet the recreational standard, as seawater dilution of the Lagoon occurs and after contaminated water in the Lagoon has flowed out. In addition, because bacteria levels deteriorate quickly once tidal flow is established, the longer the lagoon stays open, the less often the area surrounding the mouth has to be closed. However, if the lagoon does close and is then reopened, resulting in high enough bacterial counts that the beach must be

closed, the proposed development could significantly impact public recreational opportunities during high use periods such as weekends or holidays during the summer months.

The Commission finds that every effort should be made to avoid an opening on weekends, during holiday periods, and during the period between Memorial Day and Labor Day, when beach use is at its peak. Under the terms of original special condition #4 (ref. Exhibit #X), no dredging can occur 14 days before a holiday or a scheduled beach event, no operations would occur on weekends during the summer months, and on weekends in the winter only if necessary. Moreover, the conditions require that no equipment be stored on the beach overnight. Although the conditions will not assure that the beach is never closed during weekends and holidays, it will help ensure that the highest levels of contaminants which are present immediately after the mouth is opened, have time to dissipate before the weekend and that no equipment will physically block the beach. As such, Special Condition #3 includes that all terms and conditions of the original approval of CDP #6-07-021 shall remain in full force and effect, except those that are explicitly replaced or modified in this amendment. Therefore, all the previous protections to public access will still be required associated with this amendment and can be found consistent with the public access and recreation policies of the Coastal Act as conditioned.

D. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

As stated, the subject site is located in the City of San Diego, at the mouth of Los Penasquitos Lagoon. The proposed development requires no local permits, but is consistent with the certified LCP, which the Commission uses as guidance in the review of coastal development permit applications. As conditioned, the Commission finds the proposed development consistent with all applicable Chapter 3 policies of the Coastal Act, which will continue to be the standard of review in this area of original jurisdiction. Therefore, the Commission finds the proposed development, as conditioned, should not prejudice the ability of the City of San Diego to continue implementation of their certified LCP for the remainder of the City.

E. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including measuring biological criteria to determine when an opening is warranted, restrictions on timing of the work, and submittal of

monitoring reports, have been added or reincorporated as conditions of approval for the subject amendment request. These conditions will minimize all adverse environmental impacts. Therefore, as conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- Certified Los Penasquitos Lagoon Enhancement Plan;
- Certified City of San Diego North City Land Use Plan and LCP Implementation Ordinances;
- CCC Files Number #6-00-051-G; #6-02-013-G; #6-00-134; 6-07-021
- Los Penasquitos Lagoon Mouth Maintenance 2011 Summary Report

6-07-021



EXHIBIT NO. 1
APPLICATION NO.
6-07-021-A1
Location Map

6-07-021

Approximate Extent of Project to Transect E2

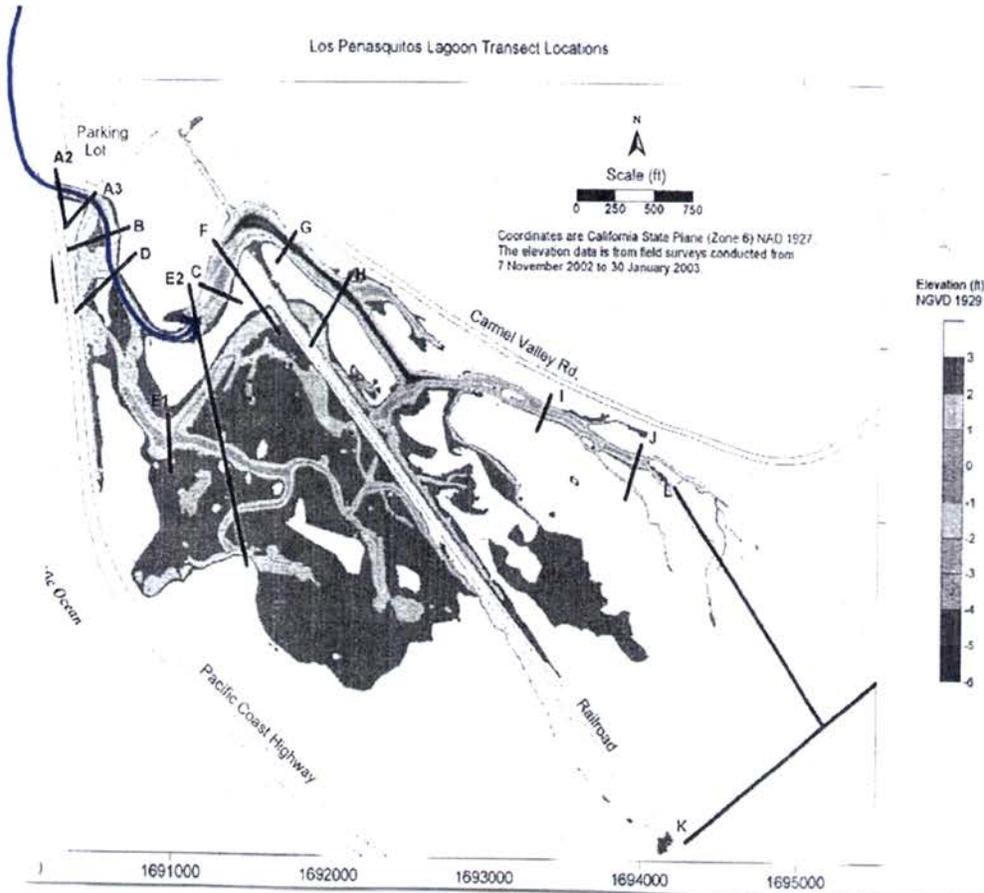


EXHIBIT NO. 2
APPLICATION NO.
6-07-021-A1
Site Plan

Special Conditions of CDP #6-07-21

1. **Term of Permit.** This permit is valid for a period of five years from the date of Commission action. Future lagoon mouth openings beyond this date will require a coastal development permit from the California Coastal Commission. Any modification of the project within the five year period, such as changes in channel size or location, timing of work, staging areas, or biological criteria used to determine the need for lagoon mouth openings, will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

2. **Timing of Work/Staging Areas.** Lagoon openings shall only occur with the authorization of the California Department of Fish and Game that the dredging, on the date proposed, will not cause adverse impacts on sensitive, threatened, or endangered species or the biological productivity of the area, and shall adhere to the following criteria:

- a. No dredging may occur within 14 days before a holiday or scheduled beach event such as a marathon, surfing contest., etc.
- b. No equipment shall be stored on the beach overnight.
- c. No work shall occur during the two-week period spanning Easter (i.e., spring break) of any year.
- d. Commission staff shall be notified by phone prior to commencement of any dredging.
- e. Staging areas shall not be located in any environmentally sensitive habitat areas located within or beyond the limits of the proposed project. Use of the Torrey Pines State Beach north parking lot for staging of equipment shall be designed to minimize disturbance of public use of the parking lot.

Openings during the summer months shall be avoided if possible; however, if openings are necessary during the summer, the following additional requirement shall be met:

- f. No work shall occur on Fridays, weekends or holidays between Memorial Day weekend and Labor Day .

The permittee shall undertake each development in accordance with its approved staging/storage plan. Any proposed changes to the approved staging/storage plan shall be reported to the Executive Director. No changes to the approved staging/storage plan shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.



3. Biological Criteria for Opening. The proposed channel excavation work shall be performed only:

- a. when the dissolved oxygen levels in the lagoon are less than 5 parts per million (ppm), or
- b. when the water salinity level in the lagoon is below 25 parts per thousand (ppt) and dissolved oxygen levels are determined by a qualified biologist to be likely to drop below 5 ppm within the next two-week sampling interval, or
- c. when the water salinity level in the lagoon is above 33 ppt (hypersaline).

The sampling results or biologist's determination which results in a decision to open the lagoon mouth shall be reported in writing, if time permits, or verbally, with written follow-up, to the San Diego Commission office within one business day of any proposed opening, and shall be submitted to the Coastal Commission as part of the annual report required in Special Condition #4.

4. Monitoring Report. By April 1 of each year, the applicant shall submit a monitoring report for the project for the review and written approval of the Executive Director. The report shall be submitted annually beginning the first year after Commission approval of the permit. The report shall summarize the impacts of the multiple openings, including the project's impacts on public access and recreation, and the biological productivity of the lagoon, any changes in the tidal prism caused by external factors (such as upstream development impacts, extreme storm conditions or unusual tides) which may have contributed to the need for the lagoon mouth openings, and shall include recommendations for any necessary changes or modifications to the project. In addition, the annual report shall include the following information for each of the openings that occurred during the year addressed in the report:

- a. The date of the opening(s) which occurred, along with the date of each subsequent closure.
- b. The specific biological criteria (described in Special Condition #3) which authorized each opening, along with a site map indicating the location where the determining samples were taken.
- c. Any noted adverse impacts on lagoon resources or adjacent public beach or park and recreation areas resulting from each mouth opening, and recommendations to avoid or mitigate these impacts with future openings.
- d. Identification of all staging and storage areas, as well as access routes, used for each opening.
- e. Identification of all equipment used for each opening and the construction method employed.