

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

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Coastal Commission Review of the Executive Director's
Decision to Reject the City of San Diego's
Proposed Amendment to Permit 6-86-651Staff Summary

The referenced coastal development permit, originally approved in 1981 and amended twelve times thereafter, allowed an expansion of the existing sludge drying facilities on Fiesta Island in Mission Bay Park. In its approval of the expansion, the Commission required that the entire operation be removed from public parklands by January, 1987; most of the subsequent amendments were to extend that deadline. In 1989, when it was apparent that little progress had been made towards relocation of the sludge facility, the Commission extended the deadline on condition that the City pay an annual mitigation fee, to mitigate the continuing adverse impacts of the expanded sludge drying beds on coastal resources (public access and recreation) and as an incentive for the City to move forward.

The City of San Diego now seeks to amend/delete Special Condition #1 of Coastal Development Permit #6-86-651-A10 to delete the \$1,500,000 annual mitigation fee required therein. The Commission's regulations governing permit amendments require that in order to be accepted for processing, amendments to coastal developments permits must not "lessen or avoid the intended effect of a...conditioned permit" unless the applicant provides "newly discovered material information" that could not have been produced before the permit was granted [Section 13166(a)(1)]. The City states that circumstances have changed since the Commission last took action in February 1996, when it denied an identical request to eliminate the mitigation fee. The changed circumstances cited by the City are its aggressive construction schedule for replacement facilities and the extraordinary costs associated with the relocation effort.

Staff reviewed the City's request against the above criteria and determined that the proposed amendment did not meet the criteria for acceptance. On January 15, 1995, Peter Douglas, the Executive Director of the Commission, informed the City that he was rejecting the amendment for processing.

I. Motion and Resolution

If the Commission concurs with the Executive Director's action in rejecting the proposed amendment, the Commission does not need to take any further

action. If one or more Commissioners are inclined to overturn the Executive Director's determination, the following motion and resolution would be the appropriate means:

MOTION

I hereby move that the Commission reverse the determination of the Executive Director to reject for processing under Section 13166(a)(1) of the California Code of Regulations, the City of San Diego's proposed amendment to Special Condition #1 of Coastal Development Permit #6-86-651-A10.

Staff recommends a NO vote on the foregoing motion, which will result in the adoption by the Commission of the following resolution:

RESOLUTION

The Commission hereby finds that the City of San Diego's proposed amendment to Special Condition #1 of Coastal Development Permit #6-86-651-A10 (1) would "lessen or avoid the intended effect of" Permit #6-86-651, as amended, and (2) is not based on "newly discovered material information," and therefore concurs in the determination of the Executive Director to reject the amendment application for processing under Section 13166(a)(1) of the California Code of Regulations.

II. Findings and Declarations

The Commission finds and declares as follows:

1. Site History. Prior to passage of Proposition 20, which established the Coastal Commission in 1972, the City had constructed and was operating a sludge drying facility on Fiesta Island within Mission Bay Park. Under the terms of the State Tidelands Grant of Mission Bay Park to the City, this is not an allowed use (allowed uses are limited to navigation, fishing and public recreation) on granted parkland. However, Mission Bay Park was still being formed at this time, and sludge was being used as fill material to construct many of the upland areas of the park, including portions of Fiesta Island. For this reason, the State Lands Commission agreed that the sludge beds could be temporarily sited on Fiesta Island to facilitate park construction, but stipulated that they could not remain there on a permanent basis.

Population growth in the San Diego area soon dictated that additional sludge drying capacity was needed. In its 1981 action on Coastal Development Permit #9559, for expansion of the existing facility, the Coastal Commission approved the project with special conditions requiring that the entire operation be relocated within six years of Commission action on the permit, which would have been January, 1987. The special conditions also require annual reports documenting the City's progress towards relocation. This action was supported by the State Lands Commission as consistent with their position that the sludge facility was only a temporary, interim measure. Because the initial permit, through a special condition, required complete removal of the

sludge-drying operation by 1987, retaining the sludge-drying operation on Fiesta Island beyond that date requires an amendment to the initial permit.

In December of 1986, the Commission heard an amendment request from the City to extend the deadline for relocation to January, 1990. However, the Commission granted a one-year extension only, with special conditions requiring submittal of City Council documents regarding the proposed land transfer agreement with the U. S. Navy and requiring the City to reapply at the end of 1987 for any additional extension. In January 1988, the Commission heard a request for a one-year extension. At that time, the Commission only approved a six-month extension and attached three special conditions requiring submittal of detailed information regarding the City's relocation efforts. The same action occurred again in June, 1988, with a second six-month extension granted and in January, 1989, when the Commission only extended the deadline until April 1989. These very short extension periods reflected the belief on the part of some Commissioners that the City was not pursuing relocation of the sludge beds with maximum diligence.

In April, 1989, the City requested a three-year time extension, until April, 1992, to accommodate interim operation of the sludge facility on Fiesta Island while the City continued to pursue relocation efforts. The then-projected dates for relocation appeared to be 1995 or 1996, at least, so the City anticipated coming back before the Commission in three years (1992) for another permit amendment. In 1989, the Commission approved the longer-term amendment (three years), but required the continued submittal of annual progress reports and imposed a new special condition addressing mitigation for the extended period of time before relocation would be achieved. The condition required the City to pay \$1,000,000 for each additional year that the sludge beds remained on Fiesta Island, as mitigation for usurpation of public parkland. The City concurred with this condition, and had in fact, been instrumental in devising the mitigation program, in hopes that it would demonstrate good faith and convince the Commission to grant a longer extension of time. The mitigation program was actually seen as a reasonable alternative to placing the City in the position of being in violation of its permit, which would have been the case if time extensions were not granted.

When the three years had passed, the City again asked for a three-year extension of time, through an amendment to the original permit. The three annual reports submitted to the Commission during the interim period reflected the continued uncertainty at the City level as to where various Clean Water Program facilities were to be sited, and an apparent inability to choose a site for sludge relocation (even one that had been designated as the environmentally-preferred site through the environmental review process) in the face of vocal community opposition. Ultimately, the Commission did grant a sixth extension of time, for one year only, but raised the amount of the mitigation from \$1,000,000 to \$2,000,000 for each year the sludge beds remain on Fiesta Island.

In 1993, 1994 and in March, 1995, the Commission granted amendments to extend the relocation deadline for one year each time, and also approved the City's proposed work programs for the expenditure of the mitigation monies. The

prior conditions addressing the mitigation program and annual report were modified and expanded in 1993. Also in 1993, the Commission added a new special condition, requiring the City to prepare a work program through 1996 for the mitigation monies, rather than continuing one year at a time; the program was to include a water quality component. The Commission reviewed and approved the required, three-year work program in 1994, for years 1994, 1995 and 1996. The intent of the mitigation requirement was that the program would continue until the sludge beds are removed from Fiesta Island and a clean site is turned over to the Parks and Recreation Department for public recreational use.

In March, 1995, an amendment request to extend the relocation deadline, the City's annual report and a permit application to retain existing mechanical dewatering equipment at Fiesta Island were all approved by the Commission, again with one-year time limits on the first and third items. At the same time, the City requested deletion of the special condition requiring payment of sludge mitigation fees. The Executive Director rejected the amendment request on the same grounds as stated herein, but the Commission reversed his determination and the amendment was set for hearing. Since 1994 marked the first year of real progress towards relocation, with the City finally settling on an appropriate site, and serious site planning and environmental review getting underway, the Commission, although it declined to delete the mitigation program altogether, did reduce the fee to \$1,500,000 annually, in recognition of the City's relocation progress in 1994. The special condition was revised to reflect the Commission's May 1995 action, and became Special Condition #1 of Amendment #10 (#6-86-651-A10).

One year ago, the City again came before the Commission to request an extension of time to achieve relocation, and again petitioned that the mitigation fee be eliminated, but presented no new information to support the request. Progress was continuing on the same timeline projected in 1995, when the Commission had determined that continuation of the mitigation fee was appropriate. Therefore, staff recommended approval of a two-year extension and denial of the request to eliminate the fee; the Commission adopted the staff's recommendation. Then last summer, in conjunction with an amendment request for restoration of six abandoned sludge beds, the City once more requested deletion of the mitigation fee. The restoration work was approved as a non-material amendment (#6-86-651-A12), but staff rejected the request to eliminate the mitigation fee as lessening the intent of an adopted condition of approval (Section 13166(a)(1) of the California Code of Regulations). The City had cited progress in construction and the abandonment of six sludge beds as new information warranting acceptance of the amendment request. However, this same information was presented to the Commission in February, 1996, when they denied the identical request.

2. Amendment Request. In the current amendment proposal, the City is once again requesting deletion of the special condition requiring the sludge mitigation fee. The City is now paying \$1,500,000 per year into a special fund, the intent of which is to finance both future park improvements on Fiesta Island and immediate improvement projects throughout Mission Bay Park.

3. Reasons for Rejection of Amendment Request. Special Condition #1 of Coastal Development Permit #6-86-651-A10 is the most recent iteration of the condition establishing and describing the sludge mitigation program. The condition states, among other things, that "Payments shall continue during the City's ongoing relocation efforts until the sludge beds have been permanently relocated from Fiesta Island (emphasis added)." Elimination of the fee (i.e., deletion of the special condition) at this time would "lessen or avoid the intended effect" of this condition, which was originally imposed by the Coastal Commission in 1989 and reaffirmed in numerous amendment actions since that date. Most recently, in February 1996, the Commission found that continuance of the \$1,500,000 annual fee (i.e., \$3,000,000 for Fiscal Years 1997 and 1998) was necessary to mitigate the impacts of allowing the sludge drying beds to remain on Fiesta Island for an additional two-year period. Without the fee, the impact of the sludge beds on coastal resources (public access and recreation) is unmitigated.

The sludge beds deny access to and use of an island centrally located in a park of national significance - an island that was deeded to the City by the State for public recreational purposes. The certified Mission Bay Park Master Plan Update designates this area of Fiesta Island for an assortment of active and passive public recreational uses. At present, the public does not enjoy so much as the right of pass and repass in the vicinity of the sludge dewatering operation, due to the nature of the existing development. Mitigation is achieved through the special condition by providing funding for various public access and recreation improvements throughout the other areas of Mission Bay Park. Typical facilities constructed with sludge mitigation monies include public restrooms, picnic shelters, playground improvements, bicycle and pedestrian path improvements, safety lighting and landscaping; these improvements have enhanced the public's overall enjoyment of Mission Bay Park. Thus, the projects funded by the fee at least partially mitigate the impacts of the continued presence of the sludge operation on Fiesta Island.

The arguments made by the City in February, 1996 are virtually the same as are being made in the current, identical amendment request. Namely, the City is citing its aggressive construction schedule, wherein it is continuing to meet all projected deadlines for final relocation of the sludge drying operation. Also, the City cites high costs of the relocation as being a burden on ratepayers, and believes it unnecessary to add the cost of mitigation to that public burden. Maintaining the same construction schedule that has been reported to the Commission for the past several years cannot be considered "newly discovered material information." Likewise, the public costs are consistent with the estimates included in past annual reports, and do not represent "new information."

In summary, the Commission finds that the proposed amendment would "lessen or avoid the intended effect" of Special Condition #1 of Coastal Development Permit #6-86-651-A10. It would, in fact, delete the condition altogether. The condition was imposed to provide mitigation to the general public, which has been barred from a significant portion (approximately 150 acres when the full air-drying facility was operational) of a dedicated public park since the park's creation, by a public works operation which was identified as

"temporary" by the State Lands Commission in granting the parkland to the City. In numerous actions over the past eight years, the Commission has upheld the mitigation program as necessary compensation for the continued displacement of the public from this area of the park. As recently as February, 1996, the Commission denied the same request the City is making now. Therefore, the Commission concurs with the Executive Director's rejection of the amendment request.

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