

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Staff Report: December 9, 1998  
Hearing Date: January 12-15, 1999

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-98-90

Applicant: City of Coronado

Agent: Tom O'Toole

Description: Erection of temporary safety fencing around an existing storm drain outlet and associated pond and surface discharge area. The fence has already been erected under Emergency Permit #6-98-90-G, issued July 8, 1998.

Site: North Beach, west of Ocean Boulevard and just south of North Island  
NAS, Coronado, San Diego County.

Substantive File Documents: Certified City of Coronado LCP  
RWQCB Tentative Cease and Desist Order No. 98-74  
CCC File #6-96-51

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

### III. Special Conditions.

The permit is subject to the following conditions:

1. Removal of Fence. The temporary fence surrounding the North Beach storm drain outfall shall be removed within two weeks after the Regional Water Quality Control Board grants approval for removal. In no case, shall the fence remain beyond May 28, 1999, unless this deadline is extended by the Executive Director for good cause.

### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and History. The City of Coronado applied for an emergency permit last July to erect a temporary fence around an existing storm drain outfall on the public beach in the northern part of the City. The outfall includes two pipes carrying only stormwater discharge from the City's street system and a third pipe which also carries groundwater discharge. All three pipes end at a headwall and the combined discharges form a pond seaward of the outfall, then flow across the beach to the ocean. Due to high fecal coliform counts at the outfall (in the groundwater discharge pipe), the City had been served with a tentative cease and desist order by the California Regional Water Quality Control Board (RWQCB). The order required the City to locate the source of the pollution and to address the issue in both the short-term and through a permanent solution. To this end, the City proposed the temporary fence to immediately prevent public contact with contaminated water while it investigated the situation and analyzed potential solutions. The emergency permit was approved on July 8, 1998, with a condition requiring the temporary fence to be removed by August 12, 1998, the date identified in the order for implementation of short-term measures. The emergency permit included a provision that this deadline could be extended by the Executive Director for good cause. The 6-foot-high, chain-link fence extends from just inland of the outfall to the surf zone, enclosing approximately 2,250 sq.ft. of sandy beach and upland area, inclusive of the outfall itself and its associated pond and surface discharge flow path.

When the August 12 deadline for removal of the fence approached, the City requested to extend authorization of the fence for an additional period of time while it continued working on a short-term measure to treat the effluent. The requested additional time period was until the end of October 1998. The RWQCB supported the additional time, as it maintained the City was acting in good faith, but needed to install and test its interim solution prior to removing the fence. Thus, the additional time was granted by the Executive Director on August 18, 1998. As a short-term means to address the issue, the City has subsequently installed an ultraviolet (UV) treatment system upstream in the identified stormwater/groundwater drainpipe, outside the Coastal Commission's permit jurisdiction. This appears to have significantly reduced the bacterial counts at this time, except immediately following storm events.

Based on a November 25 meeting between the City and RWQCB, the City is continuing test samples at the outfall, but is now testing in the pond seaward of the headwall rather than at the end of the one pipe which appeared to be the problem. The RWQCB required this change in the testing procedure, and also determined that the fence, which surrounds the headwall, pond and flow path, should remain in place at this time, even though the City had recommended that the fence be removed. The RWQCB order provides that implementation of a long-term solution must begin by December 4, 1998 and be completed by April 30, 1999. The City anticipates the existing UV system to be the long-term (permanent) solution required by the RWQCB in the tentative cease and desist order and they will meet with RWQCB again in about a month to discuss testing results and potential removal of the temporary fence.

The subject application represents the City's follow-up to the emergency permit. It requests erection and maintenance of a temporary fence from July 1998 until the RWQCB allows the fence to be removed. The fence runs seaward along both sides of the flow path, but is open on the seaward end. Except at high tides, there is ample beach area available seaward of the fence for lateral access along the shoreline. There are several signs posted on the fence itself warning the public to avoid the contaminated discharge.

2. Public Access and Recreation. The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies, which address the protection of public access and recreational opportunities, are most applicable to the proposed development, and state, in part:

#### Section 30210

In carrying out the requirements 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

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

(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....

#### Section 30213

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

#### Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The proposed development is located on the public beach in Coronado. The specific site is North Beach, the area of the City's municipal beach just south of North Island Naval Air Station (NAS). The storm drain outfall is just south of the air station. There is an existing fence separating the City and air station (federal lands), but it does not extend all the way to the water line; however, the public is not encouraged to use the sandy beach or ocean areas within the air station. Thus, legal lateral access ends roughly at the location of the outfall, although the area just west and immediately north of the outfall is utilized by pet owners as an area where dogs can be off the leash.

As stated previously, except perhaps at the highest tides, there is ample area seaward of the temporary fence for the public to pass and repass, although there is very little area available north of the outfall (between the outfall and the air station) for public recreation in any case. There is also ample area landward of the fence for public lateral access and area both north and south of the fence for vertical access from the road (Ocean Boulevard) to the shoreline.

This northern end of the beach is less frequented by the general beach-going public, since it is approximately half a mile to the public restrooms and lifeguard facility, which are located in the central portion of the beach. Moreover, the nearness of the naval facility and loose dogs on the beach make this area less popular for sunbathing and swimming than areas further south. Even so, North Beach still receives a fair level of public use year round. However, because of the wideness of the beach, and the relatively small area occupied by the temporary fence, the Commission finds the fence does not represent a significant impediment to public access in this area. In addition, the Commission recognizes the public safety issue raised by the contaminated discharge on the beach.

Finally, it is the City's intent to remove the fence as soon as the RWQCB concurs that it is no longer needed as a public safety measure. Special Condition #1 requires the City to remove the fence within two weeks of approval by the RWQCB. The condition also provides that May 28, 1999 is the final deadline for removal to assure that the fence is

gone prior to the start of the next summer beach season. As in the emergency permit, this date can be extended by the Executive Director for good cause (i.e., if its continued retention is required by the RWQCB for public safety). Because the temporary fence is found not to have a significant adverse effect on public access and because it will be removed as soon as public safety allows, the Commission finds the temporary fence consistent with the cited public access policies of the Coastal Act. Moreover, since the development is located between the first coastal road and the sea, the Commission finds it consistent, as conditioned, with all other public access and recreation policies as well.

3. Water Quality. Section 30231 of the Coastal Act of the Coastal act is most applicable to the subject development, and 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.

The temporary fence installed under an emergency permit is at the location of an existing storm drain on North Beach in Coronado. The storm drain system and outfall was recently rebuilt pursuant to Coastal Development Permit (CDP) #6-96-51, which authorized the installation of larger storm drains (three separate pipes), enlargement of the existing headwall and addition of a riprap dissipater. The project represented that portion of an overall storm drain system upgrade in this area of Coronado which was within the Commission's permit jurisdiction. Most of the overall project was located within the City of Coronado's coastal permit jurisdiction.

Testing of the discharge from this outfall more than half a year ago revealed the presence of unacceptable levels of fecal coliform and resulted in a tentative cease and desist order from the RWQCB. In response to that order, the City installed the temporary fence and began research to try and locate the source of the contamination. Although the City has still not found the ultimate cause, it has installed an ultraviolet (UV) treatment system in the one storm drain pipe at the North Beach outfall which was determined to be a problem. That particular pipe collects groundwater discharge as well as stormwater, and thus flows year round; the other two pipes at the outfall only carry storm flows, so they only flow during the rainy season. The UV system has significantly reduced the fecal coliform counts at the end of the identified pipe, except for two recent tests that occurred right after storm events. Discharges from all storm drains are considered unsafe for public contact for approximately the first 72 hours following storms. The City has stated that end-of-pipe testing had been the accepted protocol for water quality purposes, but, based on the recent meeting between the City and RWQCB, the RWQCB is now requiring testing of the pond formed by the discharge from all three pipes. The pond is also accessible to birds and dogs, such that test sampling within the pond may not be

truly indicative of the discharge from the identified "problem" pipe, or from the other two pipes as well.

The Commission is concerned that the marine environment be maintained in optimum health, both for the benefit of marine resources and public recreation. It is typical in recent years for the Commission to attach monitoring and reporting conditions to any permits authorizing additions or changes to storm drain and sewer systems or other projects which could have significant water quality impacts. In this particular case, the recent CDP #6-96-51 already includes this requirement, such that no additional conditions are needed herein. Under the prior permit, the City is required to monitor the outfall and report annually on its condition, through the submittal of copies of the reports required by the RWQCB under the City's National Pollutant Discharge Elimination System (NPDES) permit. The first annual monitoring report required under that permit is expected by the end of January/early February, 1999, consistent with the reporting deadlines of the RWQCB. Since the concern for ongoing maintenance of marine resources and public recreational opportunities is assured through the continuing requirements of CDP #6-96-51, the Commission finds the subject temporary fence consistent with the cited Coastal Act policy.

Visual Resources. Section 30251 of the Coastal Act addresses the visual impacts of development, and 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.

The temporary fence is a six-foot high, chain-link fence extending along both sides of the existing headwall and flowpath at the North Beach storm drain outfall. There are warning signs attached to the fence on both sides at regular intervals. It has been installed in the interest of public safety, to prevent beachgoers from contact with contaminated discharge from the storm drain. However, it is not visually appealing, and is incompatible with the open aspect of the nearby municipal beaches. Although it does not block existing public views, since it is open in character, it does diminish the enjoyment of those views.

A mitigating factor in this particular location is that there are other, permanent fences nearby associated with North Island NAS. A taller, chain-link and barbed wire fence runs along the boundary separating the City and federal property, from the terminus of Ocean Boulevard to the sandy beach. In addition, there are several landing lights on the City's beach, highlighting the approach to the runway at NAS; each set of lights is also surrounded by a chain-link and barbed wire security fence. Although these other permanent fences do not make the subject, temporary fence more acceptable under the

policies of the Coastal Act, they at least make the fence less noticeable. However, the Commission finds the fence acceptable under Section 30251 of the Act only because it is temporary and serves a necessary public safety purpose at present. With the attached special condition, the fence will be gone before the start of the next summer season, when beach attendance will significantly increase.

4. 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. Such a finding can be made for the proposed project, as conditioned.

The City of Coronado has a certified LCP and has assumed permit issuing authority for the majority of the City, all of which is in the coastal zone. The site of the subject proposal, however, is located in an area that is subject to the Commission's original permit jurisdiction because it is located on public trust lands. Thus, Chapter 3 of the Coastal Act is the standard of review. As addressed in the previous findings, the temporary fence, as conditioned to be removed before next Memorial Day weekend, can be found consistent with the applicable policies of the Coastal Act.

The subject site is designated "beach" in Coronado's certified LCP. Although the use of the area is not permanently changed by the temporary fence, some impacts on the public's full enjoyment of the immediate area are occurring while the fence remains in place. However, since both the certified LCP and the Coastal Act strive to secure the public's safe use of coastal waters, an argument could be made that the public, until the cause of contamination can be located and remedied, has healthier enjoyment of the area with the temporary fence providing protection from bodily contact with the contaminated discharge. A permanent obstruction on the public beach could not be supported by either the Coastal Act or certified LCP. However, the City is proposing the fence to remain only until it is sure the UV treatment system is functioning properly and the RWQCB authorizes its removal. As a short-term, temporary measure to increase public safety, the Commission finds the proposed development consistent with the Coastal Act, and further finds that approval of the temporary fence will not prejudice the ability of the City of Coronado to continue implementation of its LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, 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.

As a temporary public safety measure, the proposed project has been found consistent with all applicable policies of the Coastal Act. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Site



6-98-90

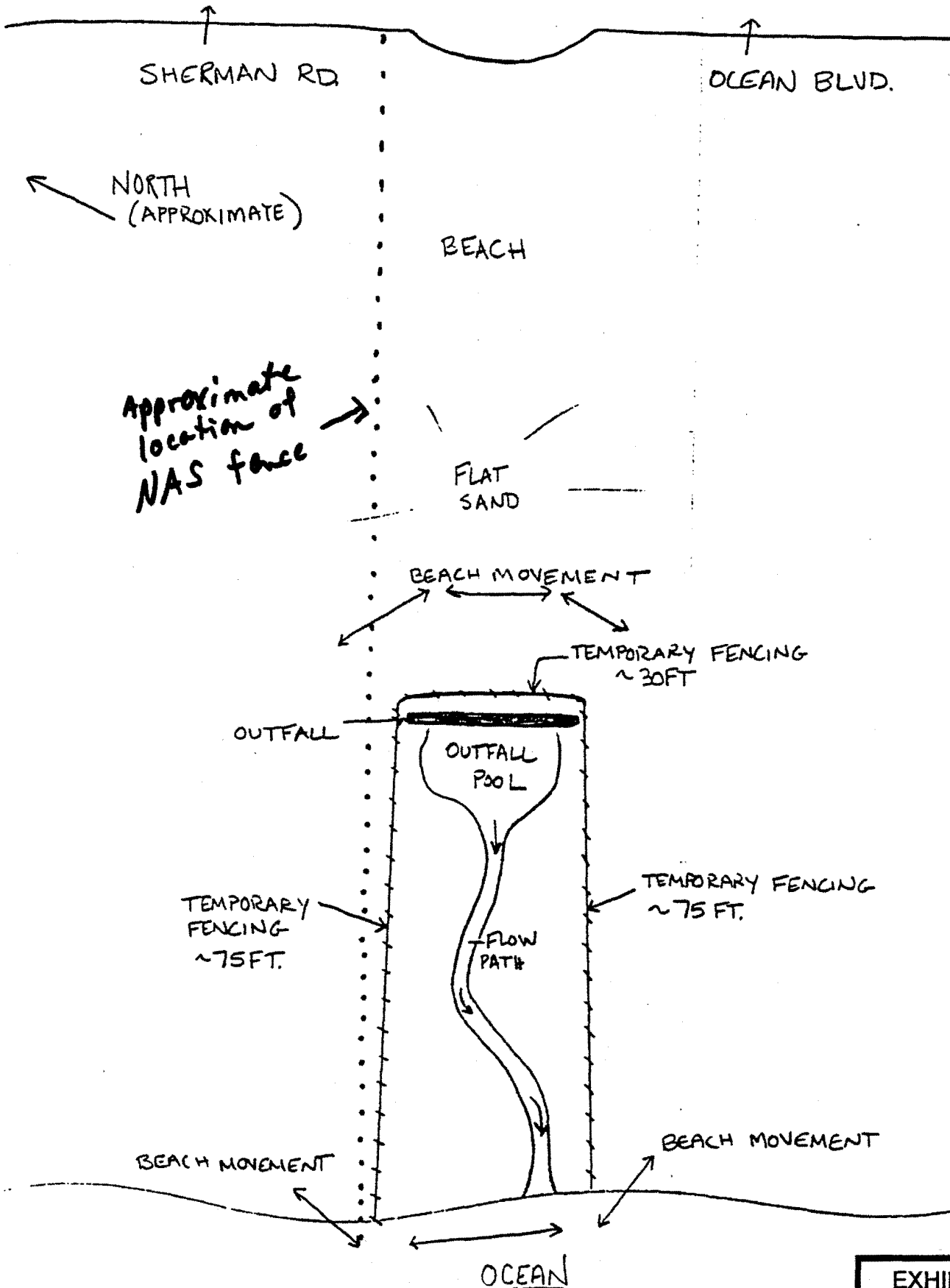


EXHIBIT NO. 2
APPLICATION NO.
6-98-90
Site Plan
California Coastal Commission