

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Staff Report: September 12, 2002
Hearing Date: October 8-11, 2002

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-042

Applicant: 22nd District Agricultural
Association

Agent: Patricia Butler

Description: Excavate a 6-foot wide trench to open the mouth of the San Dieguito Lagoon, and place excavated materials (approximately 800 cu.yds.) along the sides of the trench. This application is the follow-up to an emergency permit

Site: The mouth of San Dieguito Lagoon, from the shoreline, east to the Highway 101/Camino del Mar bridge, Del Mar, San Diego County

Substantive File Documents: Certified San Dieguito Lagoon Enhancement Plan;
Certified City of Del Mar LCP Implementation Ordinances; CCC Files 6-00-134 and 6-02-042-G.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of this application as the follow-up application for a past emergency. On March 7, 2002, the applicant undertook this work to alleviate severe flooding of the Del Mar Fairgrounds. The Commission has approved artificial lagoon mouth openings on multiple occasions for various Southern California lagoons. Many of these openings have required emergency authorization. No impacts to coastal resources have occurred as a result of the opening. Staff does not recommend that this permit authorize any future openings. Due to Permit Streamlining Act requirements, the Commission must act on this permit at its October, 2002 hearing.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-02-042 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit 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 TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit 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. 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. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Term of Permit. This permit represents only the follow-up regular permit required after an emergency permit action. No future lagoon openings are authorized herein, and any such future openings would require a separate action by the Commission.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. In March, 2002, the San Diego district office was contacted by the applicant with a request for emergency authorization to open the mouth of San Dieguito Lagoon. Because the mouth was closed by a large berm made up of accumulated beach sands and sediments, water levels in the lagoon itself had risen enough that the applicant's storm drain system was completely under water. Moreover, there was standing water up to 4-feet deep in many areas of the property, threatening several structures and creating an unhealthy situation for Fairgrounds visitors and employees. Therefore, the applicant proposed excavating a six-foot wide channel from

the shoreline to the Highway 101/Camino del Mar bridge, with the excavated sediments left alongside the trench. The emergency action resulted in the river surface elevation being reduced to normal levels, relieving the threat of significant flooding and allowing the storm drain system to function.

The applicant has also requested on-going authorization for future mouth openings whenever the river rises to an elevation that covers the storm drain outlets. However, pursuant to Special Condition #1, the Commission does not find it appropriate to endorse this request at this time, and the subject permit is for a one-time opening only. The Commission has approved a permit for the City of Del Mar (Coastal Development Permit #6-00-134) authorizing as-needed mouth openings for biological reasons for a period of five years. Rather than have multiple permits authorizing the same activity, the Commission finds it more appropriate that the existing permit be amended to incorporate flooding as an additional, or alternative, justification for opening the lagoon mouth. Thus, this application is being processed solely as follow-up to an emergency action.

The Commission has a long history of permitting the artificial opening of lagoons in San Diego County, including Los Penasquitos, San Elijo and San Dieguito Lagoons. These openings were typically proposed based on certain criteria being met related to salinity, dissolved oxygen and other water chemistry conditions as indicators of impending fish kills, alga blooms or similar unhealthy occurrences. The subject applicant's situation is somewhat different, in that the Fairgrounds property lies completely within the 100-year floodplain of the San Dieguito River, and was constructed more than 30 years before passage of the Coastal Act. Besides being in the floodplain, portions of the property were built on tidelands, and some areas retain wetland vegetation to this day. The applicant's usual reason for opening the lagoon is the protection of the existing infrastructure, buildings, and safety of the people and livestock attending events at the Fairground. This has resulted in San Dieguito Lagoon being opened more for flood relief than for biological purposes, although these openings were often conducted pursuant to CDP #6-83-148, an old permit that required annual openings.

The City of Del Mar has a fully-certified LCP 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.

2. Environmentally Sensitive Habitats. The following Coastal Act policies are most applicable to this situation, and state, in part:

Section 30233

- (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:

- ... (5) 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. ...
- (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 such purposes to appropriate beaches or into suitable long shore 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 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to ... (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development ...

Section 30240

... (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 San Dieguito Lagoon, an environmentally sensitive habitat area that is one of the 19 priority wetlands listed by the State Department of Fish and Game for acquisition. At this time, the lagoon has multiple public and private ownerships. A Joint Powers Authority (JPA) was created several years ago to oversee the lagoon and its watershed, acquire private lands to form a linear park, and investigate restoration potentials throughout the lagoon. Concurrently, a major restoration effort is being planned by Southern California Edison and its partners to mitigate for impacts on sensitive plant and animal communities resulting from the operation of the San Onofre Nuclear Generating Station (SONGS). A significant feature

of the SONGS restoration plan will be maintaining the lagoon mouth in an open condition to maximize tidal flushing of the lagoon. Maintaining an open mouth will also significantly reduce the likelihood of future flooding on the Fairgrounds.

The proposed development involves the removal of sediments from the mouth of San Dieguito Lagoon to alleviate flood conditions on upstream developed property. Under the Coastal Act, dredging of lagoons and/or open coastal waters is severely constrained. To be allowable under Section 30233, the proposed development must be one of the listed permitted uses. In this case, flooding of the Fairgrounds poses a threat to much of the existing development at the Fairgrounds, including underground utilities and power poles. It also causes the on-site storm drain system to fail. The emergency opening can thus be considered an incidental public service project to protect existing development, maintain regional power poles on Fairgrounds property, and allow the storm drain system to function properly. Moreover, the proposed mouth opening is a necessary flood control project pursuant to Section 30236, which provides that alteration of rivers and streams is permitted to protect existing development. Since the waters impounded on Fairgrounds property threaten existing development, the proposal is consistent with Section 30236.

Alternative measures to protect existing development at the Fairgrounds from flooding would require substantial diking or other protective measures. The breaching of the lagoon, which also improves biological conditions within the lagoon, is the environmentally preferable alternative. As this particular opening was limited to 800 cu.yds. of material (most openings involve the excavation of between 10,000 and 30,000 cu.yds. of sand and/or cobble), the dredge spoils were just left alongside the trench and the mouth has since closed again.

In summary, the proposed development is an allowed use pursuant to Section 30233 of the Coastal Act, and is further permitted by Section 30236 of the Act. Although biological purposes are not the reason for this particular lagoon mouth opening, the resource agencies (California Department of Fish and Game, U.S. Fish and Wildlife Service, U. S. Army Corps of Engineers and National Marine Fisheries) have also indicated their support for maintaining the lagoon mouth in an open condition to the greatest degree possible. Therefore, the Commission finds that the proposed project is consistent with Sections 30233, 30236 and 30240 of the Coastal Act.

3. Public Access/Recreation. The project site is the mouth of San Dieguito Lagoon, which empties into the Pacific Ocean at Del Mar. The river 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 occurs 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. In this particular case, the emergency opening occurred in March, 2002 and it is likely that the beach within 200 yards north and south of the opening was closed for a few days.

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 to public recreation.

The beach remains open to the public during the excavation operations, except for the actual site of dredging. Based on the monitoring reports of numerous lagoon/river mouth openings in San Diego County, the past openings do not appear to have imposed any significant hardships on the public. Thus, the Commission finds the proposed development is consistent with the public access and recreation policies of the Coastal Act.

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. In this case, such a finding can be made.

The project is located within the City of Del Mar, which has a fully certified LCP. However, the site is an area of filled tidelands and is thus within the Coastal Commission's area of original jurisdiction. The Commission has coastal development permit authority and the standard of review is Chapter 3 of the Coastal Act. The preceding findings have identified the project's consistency with applicable Chapter 3 policies. Moreover, the project is consistent with the certified LCP in that the LCP identifies the site for Fairgrounds/Racetrack purposes. Therefore, the Commission finds that project approval would not prejudice the ability of the City of Del Mar to continue to implement its certified LCP in this area.

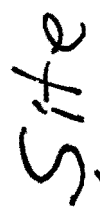
5. Consistency with the California Environmental Quality Act (CEQA).

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 is a follow-up permit for an emergency action that has already occurred. It has been found consistent with the Chapter 3 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 is 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.


California Coastal Commission

602-042



SOURCE: USGS 7.5 Minute Topographic Survey, Del Mar Quadrangle

Del Mar Fairgrounds



EXHIBIT NO. 2
APPLICATION NO.
6-02-
Site Plan
<i>Claser View</i>
California Coastal Commission

