

CALIFORNIA COASTAL COMMISSION

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Th3a

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Staff: D.Carl
Staff report prepared: 2/12/2003
Hearing date: 3/6/2003
Hearing item number: Th3a

STAFF REPORT: REQUEST TO WAIVE PERMIT APPLICATION FEE**Application number**3-02-107**Applicant**.....Gary Podesto

Project location.....Manresa State Beach, at the toe of the bluff area below the residence at 1443 San Andreas Road (the first residential structure immediately downcoast of the beach access ramp from the Manresa parking lot).

Project descriptionTemporary retention of a rip-rap revetment (that was installed without a coastal development permit in February 1998) and subsequent replacement of the revetment with a shotcrete seawall along roughly 250 linear feet of shoreline.

Applicant's Request.....The Applicant is requesting that the Commission direct the Executive Director to waive the permit application fees for coastal development permit (CDP) 3-02-107. [Note: Pursuant to California Code of Regulations (CCR) Section 13055(f), the Executive Director shall waive the CDP application fee where requested by resolution of the Commission.]

Staff recommendation ...Reject Fee Waiver Request

Summary of staff recommendation: The Applicant submitted a CDP application for the proposed project; including an application fee of \$1,200 in March 2002. In December 2002, the Applicant subsequently withdrew his application and immediately re-submitted it because he wanted to prepare additional information for the Commission's consideration, but the Permit Streamlining Act (PSA) 180-day deadline made this infeasible. In other words, the application was withdrawn and resubmitted to restart the statutory processing clock. Although Staff was prepared to bring this matter to a Commission hearing in December 2002 based on the originally submitted application materials, Staff was supportive of the Applicant's intention to develop better information to assist in framing the CDP decision in this case, and was supportive of postponing a Commission hearing on this matter to allow that to happen.

The \$1,200 fee that the Applicant submitted to process the original application was less than it should have been because project cost was underestimated in the original application. The correct fee for the original application should have been \$4,000; the same fee as is due to process the resubmitted application. The Applicant has requested that the current \$4,000 application fee be waived. The only way an application fee can be waived is by the Commission directing Staff to waive the fee.

**California Coastal Commission****March Meeting in San Luis Obispo**Staff: D.Carl Approved by: *DSL*

3-02-107 Podesto fee waiver request 3.6.2003.doc

Staff notes that a strict application of the fee regulations would result in a \$4,000 fee for the original application (3-02-018), of which only \$1,200 has been paid, and an additional \$4,000 fee for the new application (3-02-107).

Staff believes that the current application, though technically a "new" application, is best understood as a continuation of the processing of the original application. As such, one application fee of \$4,000 should be sufficient in this case (rather than a total for two applications of \$8,000). That said, however, the fee thus far submitted on the original application was short by \$2,800. In order to resolve the fee discrepancy, Staff believes that the Applicant should submit a fee of \$2,800 on the new application so that the total fee charge is \$4,000 as directed by CCR Section 13055(a)(8) and the CDP application fee schedule (i.e., \$1,200 already submitted on the original application and \$2,800 on the new application). The best procedural manner to accomplish this would be for the Commission to reject the current fee waiver request, and have Staff require a \$2,800 fee on the current application.

Thus, staff recommends that the Commission reject the Applicant's request.

I. Staff Recommendation

Staff recommends that the Commission **reject** the Applicant's request for a waiver of application fees for CDP application number 3-02-107. If rejected, Staff would require the Applicant to submit an application fee of \$2,800 to continue processing the CDP application.

Motion. I move that the Commission grant this request to direct the Executive Director to waive the permit application fee for coastal development permit application number 3-02-107 pursuant to the staff recommendation.

Staff Recommendation of Rejection. Staff recommends a **NO** vote. Failure of this motion will result in the rejection of the Applicant's request to direct the Executive Director to waive the permit application fee and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Reject a Fee Waiver Request. The Commission hereby rejects the request to direct the Executive Director to waive the permit application fee for coastal development permit application number 3-02-107.

II. Findings

Proposed Project Description & Location

The proposed project is located at the base of the bluffs backing Manresa State Beach in the unincorporated La Selva Beach area of south Santa Cruz County. The bluff area is located where an unnamed intermittent stream meets the beach and, as a result, forms a wrapped headland (with part of



the bluff facing the Monterey Bay and part running perpendicular to the shoreline facing the channel area immediately downcoast of the Manresa State Beach parking lot). The base of the bluffs involved is currently occupied by an un-engineered rock revetment that the Applicant had installed in February 1998 without a coastal development permit (CDP).

The Applicant proposes to construct a 250 linear foot concrete seawall founded in deep piers at the base of the bluffs, and to retain the existing revetment as a temporary measure until the seawall is constructed. Roughly 1,600 cubic yards of the revetment would be retained to armor the toe and the top of the seawall. The upper portion of the seawall would be faced with sculpted concrete, the slope above it vegetated, and sand pushed up from the beach to bury the seawall from view.

Previous Application

The Applicant submitted an application, including a fee of \$1,200, for the proposed project on March 7, 2002 (CDP application number 3-02-018). The application was subsequently filed on May 24, 2002 and scheduled for a July 2002 Commission hearing. At that time, the Applicant requested that the hearing be postponed. At the Applicant's request, the hearing on the item was subsequently rescheduled to the August 2002 meeting. The Applicant then requested a December 2002 hearing on the item. At the Applicant's request, the hearing on the item was then rescheduled to the December 2002 meeting.¹

Prior to the December 2002 hearing (on November 18, 2002), Commission staff met with the Applicant at the site to discuss project issues. At that time, it appeared that there was additional information that could be developed that could prove helpful in framing the coastal permit decision for the Commission. The Applicant indicated a desire to have the opportunity to prepare such information for use in preparation of the staff recommendation on the application. Further, the Applicant also wanted the opportunity to discuss potential modifications to the proposed shoreline structure meant to eliminate or reduce some of the potential coastal resource issues associated with the project as proposed.

Because there wasn't enough time to develop the additional information and to work with Commission staff prior to the end of the extended PSA deadline, the Applicant withdrew application 3-02-018 by letter dated December 17, 2002. At the same time, the Applicant requested that a new application be submitted for the same proposed project (and using the materials in the withdrawn application file), but with the understanding that additional information would be submitted before the new application could be filed. Application 3-02-107 is the re-submitted application that is based upon the originally submitted file materials.

Fee Waiver Request

The Applicant submitted the original permit application (application 3-02-018) with an application fee

¹ Note that the 180th day (the deadline for the Commission to take an action on the application pursuant to PSA requirements) was prior to the December 2002 Commission meeting (i.e., the 180th day was November 20, 2002). Therefore, the Applicant formally extended the PSA deadline to January 13, 2003 in order to allow for a December hearing, and to also provide ample time within the extended PSA deadline for a follow-up January hearing should something occur at the December 2003 hearing that would necessitate a continuation of it to January 2003.



of \$1,200. The Applicant indicated that the project would cost less than \$100,000, and submitted the fee of \$1,200 based upon the CDP application fee schedule amount identified for an after-the-fact shoreline armoring project estimated to cost up to, but not more than, \$100,000.² Notwithstanding the fee originally submitted, the Applicant also submitted an analysis of potential alternatives project (to that proposed), and included in this analysis a more detailed set of cost comparisons. According to the Applicant's alternatives analysis, the proposed project is estimated to cost \$475,000. Pursuant to the CDP application fee schedule, the application fee for an after-the-fact shoreline armoring project estimated to cost \$475,000 is \$4,000.³

Thus, the original application required an additional \$2,800 application fee that was not submitted.

The new application, like its predecessor and for the same reasons, requires an application fee of \$4,000. California Code of Regulations Section 13055(f) states as follows:

The executive director shall waive the application fee where requested by resolution of the Commission.

The Applicant in this case is requesting that the Commission by resolution direct the Executive Director to waive the application fee for CDP application 3-02-107.

After numerous Applicant requested postponements, the Applicant withdrew their original application (and resubmitted the new application) in order to develop additional information for the Commission to consider in their deliberations in this matter. The reason that this was necessary was because the PSA deadline for Commission action made for an extremely narrow window of time within which to develop the information, have it available for Commission staff to review, and to have Commission staff prepare a revised staff report for the Commission that took into account the new information. Even if all of these things could have occurred extremely quickly, the Commission would have been left with a single hearing to take an action pursuant to the PSA (and couldn't have continued the matter in the event the that additional questions or issues were raised that needed to be resolved before the Commission could take an action). The Commission always tries to avoid a scenario where statutory deadlines require the Commission to take an action at a hearing, particularly such a scenario where the hearing is the first such Commission hearing on a particular item.

As a general rule, the Commission does not support application fee waiver requests. The Commission's fee schedule is not directly structured for "at-cost" recovery of the staff time actually spent on applications, and thus tends to charge Applicants less than the amount of the Commission resources that are expended in processing an application. In other words, application fees are already generally lower

² Pursuant to the CCR Section 13055(a)(8) and the CDP application fee schedule, the fee for a project of \$100,000 or less is \$600. Fees for after-the-fact applications are doubled unless the doubling is waived by the Executive Director when it is determined that the application could be processed without significant additional review time resulting from the processing of the violation. In this case, the Executive Director did not waive the double fees, in part due to the complicated nature and duration of the violation. Thus the application fee submitted was \$1,200 (\$600 x 2).

³ The application fee for a project costing between \$100,001 to \$500,000 is \$2,000 (CCR Section 13055(a)(8) and the CDP application fee schedule). When doubled, the fee is \$4,000.



than the amount it costs the Commission to process the application. In part, this is in recognition of the larger public service being provided to the people of the State, including applicants, for a public airing and debate regarding proposed projects in the coastal zone.

A strict application of the fee regulations in this case would result in a \$4,000 fee for the original application (3-02-018), of which only \$1,200 has been paid, and an additional \$4,000 fee for the new application (3-02-107).

In this case, however, the Commission believes that the processing of the "new" application is more aptly considered a continuation of the processing of the "old" application. Thus, the required application fee for the first application ought be sufficient to cover the application fee required for this current application pursuant to the parameters of the CDP application fee schedule. That said, and as detailed above, the application fee originally submitted was \$2,800 less than that that was supposed to have been submitted.

The Applicant must resolve the \$2,800 discrepancy for the overall processing of the proposed project (i.e., both the "old" and "new" applications). CCR Section 13055 presents an all-or-nothing waiver that doesn't appear to allow for Commission discretion in how much of any particular fee can be waived. Thus, the most straight-forward manner to collect the correct fee in this case would be for the Applicant to submit an application fee of \$2,800 for application 3-02-107. The fee schedule requires a fee of \$2,000, and that this fee generally be doubled to \$4,000 because of the violation. In this case, the Commission directs the Executive Director to require an application fee of \$2,800 (for the base fee and after-the-fact processing) for application 3-02-107.

Therefore, the Commission rejects the Applicant's request to direct the Executive Director to waive the permit fee application fee for coastal development permit 3-02-107. The Executive Director will instead require a fee of \$2,800 for application 3-02-107 (as per CCR Section 13055(a)(8) and the CDP application fee schedule). The effect of this action will be to charge one \$4,000 fee for the two permit applications (3-02-018 and 3-02-107) that have been submitted for this project.

