

CALIFORNIA COASTAL COMMISSION

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Commission Action: Nov. 6, 2007
Staff: Ellen Lirley-SD
Staff Report: July 10, 2007
Hearing Date: August 8-10, 2007

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-07-021

Applicant: Los Penasquitos Lagoon Foundation **Agent:** Joan Jackson

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.

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

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; #6-00-134 #6-02-013-G; and #6-02-013

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

A. Detailed Project Description/History. The proposal is for 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, as has occurred many times in the past pursuant to prior permits, including four recent openings conducted pursuant to coastal development permit #6-02-013, which remains in effect at this time. The primary purpose of the application is to request authorization for future mouth openings, to be performed as needed over the next five years. These potential future openings are proposed to use the same location and equipment as have been used in the past, and would be triggered by the same types of biological conditions. However, the current proposal is to dredge a channel 1,000' in length, as opposed to the 200' channel of past permits, in hopes of decreasing the number of openings required overall. In past applications, the Commission's ecologist has reviewed the biological criteria historically applied and supports the granting of long-term permits to allow dredging to occur before the lagoon resources are imminently or actively distressed.

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, based on the identified biological criteria related to salinity, dissolved oxygen and other water chemistry conditions as indicators of impending fish kills, alga blooms or similar unhealthy occurrences. For many years now, the Commission has been approving such permits (#6-97-036; #6-99-012; #6-00-134; #6-02-013) for a set period of time (typically five years) wherein multiple openings could occur as needed based on certain biological criteria being met; this is addressed in Special Condition #1.

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.

Los Penasquitos Lagoon is one of the 19 priority wetlands listed by the State Department of Fish and Game, and is identified by the State Water Resources Board as an impaired water body for sedimentation. Most of the lagoon is owned by the California Department of Parks and Recreation. Information received from the U.S. Fish and Wildlife Service and State Department of Fish and Game (collectively the wildlife agencies) regarding similar past proposals indicate that the biological resources of lagoons have been significantly stressed due to the frequent closures of the lagoon mouths. The enhancement plan, certified land use plans and many past permit actions identify dredging the lagoon as an important part of an overall management strategy, and a relatively inexpensive means of increasing tidal flushing and improving the biological productivity with the least impact on the lagoon and surrounding environment. The wildlife agencies have indicated their support for maintaining the lagoon mouth in an open condition to the greatest degree possible.

The Commission's ecologist concurs, and has determined that the biological criteria required in Special Condition #3 are appropriate to assess the need to open the lagoon. The Commission's ecologist has also reviewed the proposal to dredge a longer channel when artificially opening the lagoon mouth, and concurs that the longer channel may ultimately reduce the amount of disturbance associated with the mechanical opening, as such openings may happen less frequently with the extended channel design. The revised 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). Special Condition #2 requires that the proposed work be coordinated with the State Department of Fish and Game to determine appropriate timing to best protect natural resources, that the Commission staff be notified prior to dredging operations, and that staging and storage areas be identified and properly located. Special Condition #4 requires an annual monitoring report to document all openings performed pursuant to this permit.

There are some concerns related to public access and recreation associated with the project, as the adjacent public beach provides very popular day-use facilities for beach visitors and serves as an important recreational resource of region-wide importance. However, monitoring of past mouth openings has been required, and the submitted monitoring report indicates no significant impacts to public access or recreation have occurred over the past five years. 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, and County Public Health officials have to post the surrounding beaches with signs prohibiting any body contact with the water. This small temporary impact is offset by the significant improvements to water quality and marine habitats within the lagoon, and the reduction in flooding potential, afforded by the 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. Special Condition #2 requires that every effort be made to avoid an opening on weekends, during holiday periods, including Spring Break, and during the period between Memorial Day and Labor Day, when beach use is at its peak. Also, the conditions require that no equipment be stored on the beach overnight. In the long run, the project will have a beneficial effect on public recreation, since all suitable sediments excavated from the lagoon are to be deposited on the adjacent beaches, augmenting the sandy area available for public use. Additionally, keeping the lagoon mouth open as much as possible improves the overall water quality in the long term, thus enhancing recreational use, even if the beach has to be closed for a few days immediately following an opening.

B. Biological Resources. Coastal Act policies 30240 and 30251 restrict the alteration of natural landforms and protect sensitive habitats. Section 30231 of the Coastal Act requires that coastal waters are protected and runoff minimized. Section 30233 limits development in open coastal waters, wetlands, estuaries, and lakes to specific permitted uses where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The proposed development is a form of wetland restoration/enhancement, which is permitted under Section 30233. The project, as conditioned, will not have an adverse impact on any sensitive habitat, and will not result in erosion or long-term adverse impacts to water quality. Thus, the project, as conditioned, is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

C. Visual Quality. The development is located within an existing public beach facility, and will not change the overall appearance of the area in any significant way. Although during actual dredging operations, there may be intermittent impacts on public views due to the placement of equipment on the beach, the impacts would be minimal and temporary. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

D. Public Access. As conditioned, the proposed development will not have a significant adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and Section 30604(c) of the Coastal Act.

E. Local Coastal Planning. The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the North City/Torrey Pines community.

F. California Environmental Quality Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, 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.

6-07-021



Site

OCEAN

EXHIBIT NO. 1
APPLICATION NO.
6-07-021
Location Map
 California Coastal Commission

6-07-021

Approximate Extent of Project to Transect E2

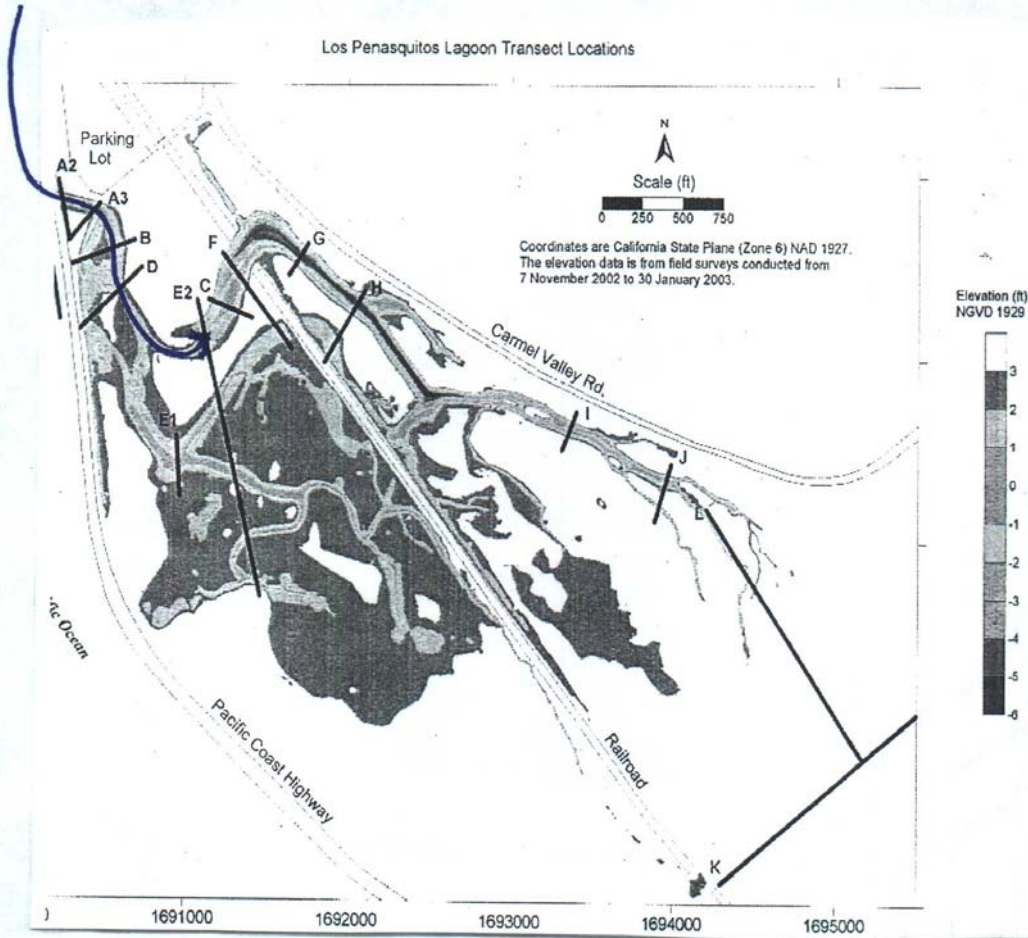


EXHIBIT NO. 2
APPLICATION NO.
6-07-021
Site Plan +
<i>Transects</i>
California Coastal Commission