

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W39a

Filed: July 20, 2009
49th Day: September 7, 2009
180th Day: January 16, 2010
Staff: Ellen Lirley-SD
Staff Report: August 17, 2009
Hearing Date: September 9-10, 2009

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-08-074-A2

Applicant: 22nd District Agricultural Association: Attn: Rebecca Bartling Agent: Dustin Fuller

Original Description: Replacement of an existing, approximately 35-year old, 8-inch sewer pipeline (to be capped and remain in place) with a new 8-inch forcemain encased in a 14-inch pipeline under the San Dieguito River, to be installed utilizing directional drilling.

Proposed Amendment: Removal of portions of the existing 35-year old sewer forcemain, which was to have been capped and abandoned in place.

Site: Southwest portion of Fairgrounds, south of existing exhibit halls, to northern portion of the Del Mar Public Works Yard, between Jimmy Durante Boulevard and the railroad tracks, Del Mar (San Diego County)

Substantive File Documents: 1985 Del Mar Fairgrounds Master Plan Update and draft 2000 Del Mar Fairgrounds Master Plan Update; certified City of Del Mar LCP; CCC Files 6-08-074; 6-08-074-A1; 6-04-088

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed removal of portions of the old forcemain. A new forcemain has been installed through directional drilling deep under the river bottom, making the old pipe unnecessary. The original plan was to cap the old pipe and abandon it in place, since it appeared to be far enough under the river bottom to not interfere with completion of the San Dieguito Restoration Plan pursuant to Coastal Development Permit #6-04-088. However, recent increases in tidal action have exposed portions of the pipe, making it now preferable to remove it so that the approved dredging associated with the San Dieguito Restoration Plan can commence. Removal of the pipe is not anticipated to have any direct or indirect permanent impacts to environmentally sensitive habitat including vegetated wetlands and open waters, and occurs within the area already analyzed, and for

which mitigation was already required, if necessary, as part of implementation of the San Dieguito Restoration Plan. Recommended conditions call for application of construction BMPs, identification of any unforeseen biological impacts and a reminder that all conditions of the original permit remain in full force and effect, such as the submission of permits or authorization from other agencies, since their permits must also be amended, and the waiver of liability previously agreed to.

Chapter 3 of the Coastal Act is the legal standard of review.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-08-074 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

The permit is subject to the following conditions:

1. Construction Impacts/Restoration. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the existing condition/location of any wetland vegetation surrounding the site, including staging areas and construction corridors, shall be documented. The existing condition survey shall also overlay the San Dieguito Restoration Plan footprint in this area. In addition, the applicant shall commit in writing

to conduct and submit a post-construction survey to determine actual impacts to the vegetation and substrate within 60 days of completion of the project. The existing condition survey and commitment to conduct the post-construction survey shall be submitted for review and written approval of the Executive Director. If no permanent or temporary impacts have occurred, nothing further is required through this condition. If any temporary impacts to wetlands have occurred, beyond those already approved and for which mitigation was required pursuant to 6-04-088 (San Dieguito Restoration Plan), the applicant shall then submit for review and written approval of the Executive Director, a detailed revegetation plan that includes the following components:

- a. The Post-Construction Survey.
- b. Areas subjected to temporary wetland impacts shall be revegetated at a 1:1 ratio with native wetland plants from local stock.
- c. Areas subjected to temporary upland impacts shall be revegetated at a 1:1 ratio. Drought tolerant, non-invasive native plants from local stock shall be utilized to re-establish the area consistent with historic conditions. Use of pesticides and rodenticides shall be prohibited.
- d. The following goals, objectives, and performance standards shall apply for the sites of any temporary impacts:
 1. Full restoration of all temporary wetland impacts. Restoration of temporarily impacted areas shall include at a minimum, restoration of before-impact hydrology, removal of all non-native plant species, and replanting with locally collected native wetland plant species.
 2. Success criteria and final performance monitoring shall require and assess, respectively, that coverage of areas disturbed by construction activities be similar to adjacent non-impacted reference sites within 1 year of completion of construction activities.
- e. The final design and construction methods that will be used to ensure the restoration sites achieve the defined goals, objectives, and performance standards.
- f. Submittal, within 30 days of completion of initial restoration work, of post-restoration plans demonstrating that the revegetated areas have been established in accordance with the approved design and construction methods.
- g. A survey taken one year after revegetation identifying the quantity and quality of the restored plants and compliance with the above success criteria. If the survey demonstrates the revegetation has been unsuccessful, in part or in whole, the survey shall include a plan for remediation and further surveys/reports until the sites are fully restored.

h. All surveys, reports or other documentation of the revegetation effort shall be submitted to the San Diego office of the Coastal Commission within 30 days of completion.

i. If the post-construction survey identifies that permanent wetland impacts have occurred, a permit amendment is required to address the identified impacts. Mitigation shall be provided for any identified permanent wetland impacts at a ratio of not less than 4:1.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Construction Best Management Practices. The applicant shall apply all applicable parameters of the Construction BMP Plan, Del Mar Fairgrounds, Sewer Force Main Replacement, prepared by Fuscoe Engineering and dated July, 2008 to the subject forcemain removal process. No changes to the BMP Plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Prior Conditions of Approval. All prior conditions of approval of the permit 6-08-074, as amended, not specifically revised herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project History/Amendment Description.** The applicant proposes to amend the original permit to install a new sewer forcemain in order to remove portions of an approximately 35-year-old, 8-inch sewer line running beneath the San Dieguito River that was originally proposed to be capped and abandoned in place. The pipe to be removed is located approximately 50 feet west of the replacement pipe that was installed pursuant to the original permit. Since installation of the new pipe, portions of the abandoned pipe have become exposed (approximately 75 lineal feet). Additional portions may become exposed in the future, since this stretch of the San Dieguito River will be dredged to further increase tidal action pursuant to Coastal Development Permit (CDP) #6-04-088, which authorizes the San Dieguito Restoration Plan. That dredging operation will become far more difficult, although it could still go forward, if the subject amendment is not approved. Therefore, not only the 75 lineal feet of pipe currently exposed will be removed, but also an additional 135 lineal feet that is just beneath the riverbed surface.

The project is potentially located within two permit jurisdictions with two different legal standards of review. The riverbed, which is subject to tidal action, is an area of original jurisdiction where permit authority is held by the Coastal Commission, and Chapter 3 of

the Coastal Act is the standard of review. The Del Mar Public Works Yard is within the City of Del Mar's LCP, with coastal development permits being issued by the City with the certified LCP as the standard of review. Thus, although the entire project has been described to present the full picture, this permit amendment only addresses that area within the Coastal Commission's jurisdiction, which includes all portions of the development except for any portion located upland at the Del Mar Public Works Yard.

2. Water Quality/Biological Resources. The following Coastal Act policies are most pertinent to this issue, and state:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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.

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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) 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. (Emphasis added)

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

[. . .]

The applicant's existing sewer system collects sewage from the developed portions of the Fairgrounds (i.e., those portions north and west of Jimmy Durante Boulevard, including the existing race track, training track, and horse arena). It is then pumped to a sewage treatment facility through a sewer forcemain under the San Dieguito River. A newly-built pipe was bored beneath the river to replace the 35-year-old pipe that is the subject of this amendment request. The 35-year-old pipe sits only a few feet under the riverbed, and will be only one or two feet below the riverbed after dredging associated with the San Dieguito Restoration Plan commences in the winter of 2010. That dredging is intended to keep the downstream inlet open permanently and increase the tidal prism in the lagoon, and thus must be maintained at dredged levels. Because of the shallow depth of the pre-existing pipe, it could even be exposed during the rainy season if heavy rains cause significant scouring of the river.

The newly-installed pipe is located between 22 – 27 feet below the riverbed after dredging, and is a minimum of 14 feet below the deepest level of potential scour. This significantly reduces the potential for pipe failure compared to previously existing conditions. Now that this new pipe is operational, the old pipeline is no longer in service. The initial plan had been to clean and plug that pipe and leave it in place, rather than remove it, since it was not then expected to interfere with the inlet dredging associated with the San Dieguito Restoration Plan. However, as the restoration plan moves forward on the ground, increased tidal action is occurring, and approximately 75 lineal feet of the old pipe has already been exposed. The proposed amendment would allow removal of the exposed portion of pipe, along with an additional 135 lineal feet of the pipe, which is currently buried, but could easily become exposed in the future. Only the northernmost portion of the old pipe will be left in place, as it is buried more deeply. The work will be done with a track excavator to remove the exposed 75 lineal foot portion, then to dig, break, and remove the remaining 135 lineal foot buried section. All debris will be disposed of at a legal landfill outside the coastal zone.

As cited above, the Coastal Act requires that environmentally sensitive habitat areas be protected from the adverse impacts associated with new development. However, in this case, any potential impacts from removal of the pipe are expected to occur within the inlet dredging work zone, and have been calculated and mitigated pursuant to CDP #6-04-088. Such impacts would be to open water only, as there are no nearby vegetated areas. In case any impacts should occur outside the restoration plan footprint, Special Condition #1 requires they be identified and mitigated. Therefore, although all impacts are anticipated to occur within the larger project footprint, the condition will insure that, should unexpected impacts occur elsewhere, they will be appropriately addressed.

The applicant submitted a construction BMP plan identifying the precautions to be taken to protect the construction sites from erosion. These are all contained in the plan referenced in Special Condition #2, which requires the applicant to implement the plan as proposed. The condition also advises that any changes to the plan must be reported to the Executive Director and may require an amendment to this permit. Similarly, Special Condition #1 provides the same reporting and potential amendment requirement for the project as a whole, not just the construction BMP portion.

Incidental Public Purpose.

Section 30233 of the Act prohibits diking, filling or dredging of open coastal waters, wetland or estuaries unless it is for one of seven permitted uses. In addition, if it is one of the seven permitted uses, it must also be the least environmentally damaging alternative and must minimize and mitigate any adverse environmental impacts. In this case, the proposed project involves the removal of an abandoned pipeline, which has recently been replaced. The pipeline is within the restoration plan dredging footprint for the dredging already approved pursuant to CDP #6-04-088. The project does not involve any fill of coastal waters or wetlands. The subject project is to remove the pipeline, instead of leaving it in place, and is considered follow-up maintenance of the old forcemain consistent with Section 30233(a)(5) of the Act which allows for the proposed activity for an incidental public service project.

The pipe removal, however, is not part of the San Dieguito Restoration Plan, but is instead associated with the original permit to replace the pipe with one drilled under the river at significantly deeper elevations. The purpose of both pipes is/was to maintain sewage flow from developed areas north of the fairgrounds to a pump station south of the river, thence on to a treatment facility. Neither pipe actually collects sewage generated at the fairgrounds itself, which has its own collection and treatment facility. The subject plugged and abandoned sewer pipe is incidental to the sewage facilities as a whole, and has unexpectedly become an impediment to both navigation and to the approved dredging project that is part of the San Dieguito Restoration Plan. Therefore, removal of the old pipe is consistent with Section 30233 of the Coastal Act as an incidental public service improvement.

Alternatives.

Section 30233 also requires that the project be the least environmentally damaging alternative. In this particular case, the only options with respect to the now obsolete forcemain are either to abandon it in place or remove it. Although the Commission, as well as other regulators, had accepted the abandon in place alternative originally, now that the bottom of the channel is lowered through increased tidal action to the point where some of the old pipe is exposed, it is the opinion of all other agencies that removal of the pipe is now the best option.

In summary, the applicant has identified that the proposed development is necessary follow-up to the original sewer pipeline replacement project, as it addresses treatment of the pipe being replaced. The Commission thus finds that the proposed development is an allowable use under Section 30233. In addition, by removing the abandoned pipe, the proposed project represents a less environmentally damaging alternative to leaving the pipe in its current state, with exposure of more and more of the pipe over time the likely outcome. As conditioned, mitigation is required for any project impacts that may occur outside the footprint of the dredging operation associated with the San Dieguito Restoration Plan, as the impacts within this footprint have already been mitigated. Therefore, the Commission finds the proposed amendment, as conditioned, is consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

3. Geologic Stability. The Coastal Act contains policies to assure that new development provides structural integrity, minimizes risks to life and property in areas of high flood hazard, and does not create or contribute to erosion:

Section 30253

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The project involves the removal of approximately 210 lineal feet of abandoned sewer pipe. Although pipe removal will occur within open waters, the operation is designed to coincide with the dredging of the San Dieguito Restoration Plan, in a manner to avoid any impacts to coastal resources associated with development within the inherently geologically unstable coastal settings. Thus, the project as proposed and conditioned would assure stability and structural integrity, primarily because the sewer forcemain will be removed simultaneously with the far greater disturbance of the inlet dredging operation, which covers this specific site and much more. Therefore, the Commission

finds the amendment as designed and conditioned would minimize risks to life and property in areas of high flood hazard and assure stability and structural integrity of the site and its surroundings, as required by Section 30253.

4. Public Access and Recreation. The Coastal Act emphasizes the need to protect and provide for public access to and along the coast, and to provide low cost recreational facilities, particularly in new development projects. The following Coastal Act policies are applicable to the proposed development:

Section 30210

In carrying out the requirement 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 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, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

In addition, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with any development located between the first coastal roadway and the sea, indicating that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed project will be located between the sea (San Dieguito River) and the first coastal roadways (Via de la Valle east to El Camino Real, then south and west through developed neighborhoods south of the river valley). Public access to and along the shoreline to the west of the subject site will be generally unaffected by the proposed development. However, the public does occasionally walk along the river within the Del Mar Fairgrounds property, and along a public trail north of the Del Mar Public Works Yard. The current amendment itself will not affect access on the north side of the San Dieguito River, but may result in closure of the trail adjacent to the Del Mar Public Works Yard, during the two days while the old pipe is being removed. Since this is being done in conjunction with inlet dredging

authorized pursuant to CDP #6-04-088, other closures or delays may also occur due to that larger project.

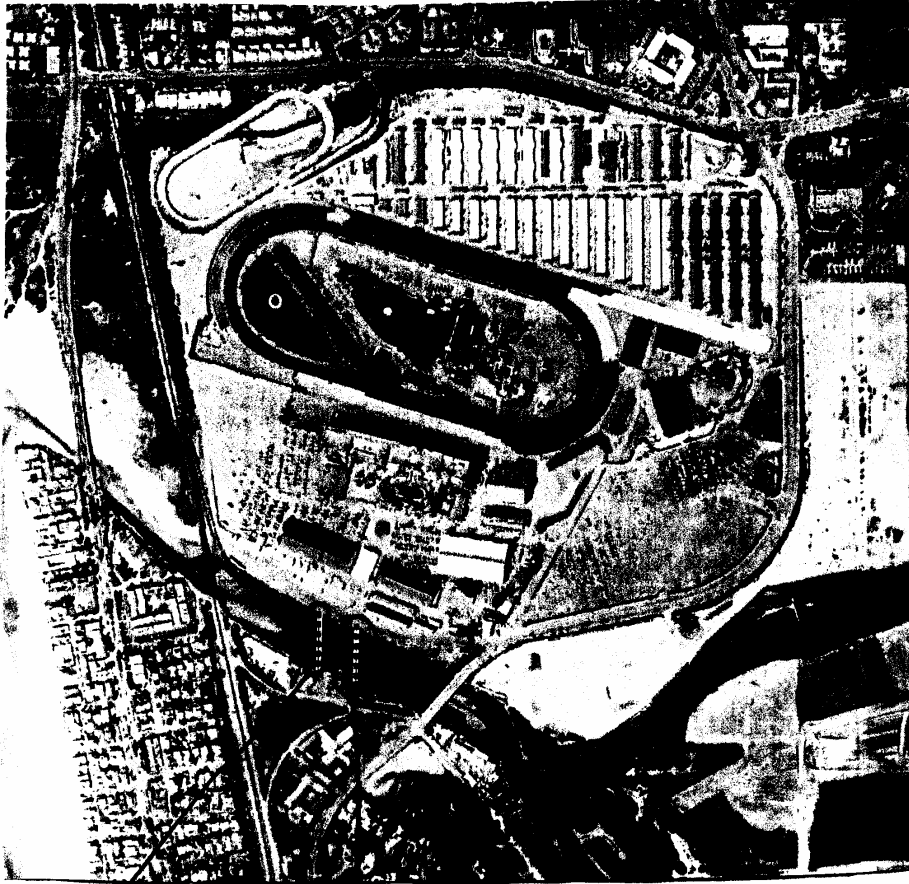
In addition, adequate public access exists along the shoreline and elsewhere within the river valley. Therefore, since no permanent adverse impacts to public access will occur as a result of this project and adequate access currently exists along the shoreline, the proposed amendment is consistent with the public access and recreation policies of the Coastal Act.

5. Local Coastal Planning. Although the northern part of the project is in an area of original jurisdiction within the San Dieguito River, part of the work may occur on the south side of the river which is within the City of Del Mar's LCP jurisdiction, so that portion of the project is not approved pursuant to the subject amendment request. Any necessary coastal development permits, or permit amendments, for that portion will be addressed at the local level. The preceding findings have demonstrated that the proposal, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the planning abilities of the 22nd District Agricultural Association or the City of Del Mar.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits, or permit amendments, to be supported by a finding showing the permit or amendment, 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 amendment has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing potential wetland impacts and water quality will minimize all adverse environmental impacts. As conditioned, 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.

6-08-074-A2



New Pipe
Pipe Being Removed

EXHIBIT NO. 1
APPLICATION NO. 6-08-074-A2
Location Map & Site Plan
 California Coastal Commission