

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12-303

Applicant: Mesa Consolidated Water District

Project Location: San Diego Creek between SR-73 and Jamboree Road,
Newport Beach, Orange County

Project Description: Request for permanent authorization of emergency repairs to water main including removal of a damaged 16 foot length sections of a 42 inch diameter water main located in San Diego Creek and its replacement with new pipe section, installation of 12 cubic yards of gravel bedding, mowing of a 50'x200' area of native and non-native vegetation to 6 to 12 inch height and installation of construction fabric and a 12 inch layer of aggregate to create a temporary construction access and staging area.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending APPROVAL of CDP application 5-12-303 with One (1) SPECIAL CONDITION regarding a plan to remove non-native and invasive species.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Newport Beach Land Use Plan may be used for guidance.

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APPENDICES

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EXHIBITS

Exhibit 1 – Site Plans

Exhibit 2 – Photographs

Exhibit 3 – Emergency Permit 5-11-249-G

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-12-303 pursuant to the staff recommendation.*

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:

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 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 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:

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS:

This permit is granted subject to the following special condition:

1. **Plan to Monitor the Disturbed Area and Remove Invasive Non-native Plants**
 - A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant will submit, for the review and written approval of the Executive Director, a plan to monitor the 50' x 200' area disturbed as a result of the emergency water main repair and to remove non-native and invasive plants within that area. The plan shall be prepared by a qualified biologist with expertise in riparian restoration. The plan shall delineate the "impacted area" as the 50'x200' temporary storage and construction access area. The plan shall include procedures for identification and hand removal of non-native and invasive plants within the impacted area. Areas showing evidence of compaction shall be loosened with hand tools. The plan shall include the following:
 1. Invasive plants are those identified in the California Native Plant Society, Los Angeles -- Santa Monica Mountains Chapter handbook entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, January 20, 1992, those species listed by the California Exotic Plant Pest Council on any of their watch lists as published in 1999, and those otherwise identified by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service.
 2. All non-native and invasive plants shall be removed with hand tools
 3. Use of herbicides on the site shall be avoided wherever possible. Where found to be necessary to control invasive plant species, herbicide usage shall be restricted to the use of Glyphosate Aquamaster™ (previously Rodeo™) herbicide or equivalent. No use of any herbicide shall occur during the rainy season (November 1 – March 31) unless otherwise allowed by the Executive Director for good cause. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.
 - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
 - C. Two years from the date of issuance of Coastal Development Permit No. 5-12-303, the applicant shall submit for the review and approval of the Executive Director, a monitoring report, prepared by a qualified biologist with expertise in restoration that indicates the progress of the natural revegetation of the impacted area. The monitoring report shall include photographic documentation of plant species, plant coverage and an evaluation of the natural restoration of the site.

If the monitoring report indicates that the area has not naturally revegetated with native species typically found in the area, or that the site has not reached 90% native plant cover, with no more than 5% non-native species and 0% invasive species, the applicant, or successors in interest, shall submit to the Commission an application for an amendment to this coastal development permit for approval of an amended riparian restoration plan to address the deficiency and an extension of the non-native plant removal program for a period not less than two additional years and shall undertake the development approved pursuant to any such amendment.

IV. FINDINGS AND DECLARATIONS:

A. Project Location & Description

The project site is located in and adjacent to Upper Newport Bay, between State Route 73, University Drive, and Jamboree Road (Exhibit 1). The nearest public coastal access to San Diego Creek is available at the bike trail located just to the south of the subject site.

A 42 inch water main located below San Diego Creek transmits water to the City of Huntington Beach, the Mesa Water District, and serves as a backup water supply for the Orange County Water District's Sea Water Intrusion Barrier to protect groundwater supplies. Corrosion of the pipe resulted in failure of the water main on September 5, 2011. On October 21, 2011, the Executive Director issued Emergency Permit 5-11-249-G (Exhibit 3). Construction occurred between October 28, 2011 and February 2012.

The applicant is requesting permanent authorization of development undertaken under Emergency Permit 5-11-249-G to 1) replace a damaged 16 foot length sections of a 42 inch water main located in San Diego Creek, 2) installation of 12 cubic yards of gravel bedding around the water main, 3) mowing of a 50'x200' area of native and non-native vegetation to 6 inch height and 4) installation of construction fabric and a 12" layer of aggregate on that 50'x200' area to create a temporary construction access and staging area, which was removed following construction.

Emergency Permit 5-11-249-G contains 12 conditions, including requirements for documentation of pre and post project conditions, surveys for special status species, avoidance or minimization of impacts to biological resources, erosion control measures, minimization of impacts to the public bike trail, and removal of work materials from the site.

Condition 8 of the project requires a pre-construction survey for sensitive species including the light footed Clapper Rail and the least Bell's Vireo. The submitted pre-construction survey identified no special status species on the site. Condition 7 of the emergency permit required documentation of the pre and post project biological conditions of the site, and an analysis of all impacts to biological resources which were caused by the project. The applicant has submitted a report titled "Pre and Post-construction Site Condition Associated with San Diego Creek Pipeline Repair" dated December 3, 2012. The report found that no impacts to biological resources occurred due to the project, except for the 50'x200' construction staging / access area, which was anticipated to be temporarily impacted by the project.

Pre-project, the 50'x200' construction staging / access area was 95% vegetative cover and 5 % bare ground, and approximately 95% of the vegetation consisted of native species, predominantly mulefat and big saltbush. For post project conditions, the construction staging/access area was divided into a 0.11 acre north segment and a 0.10 acre south segment. Post-project, the north segment is approximately 75% vegetated and 25% bare ground. Of the vegetated areas, the north segment consists of about 90% native vegetation, predominantly mulefat, and about 10% of non-native vegetation, including castor bean, cheeseweed, Lamb's quarters, and black mustard. The south segment is approximately 50% vegetated and 50% bare ground. Of the vegetated areas, the south segment consists of about 90% native vegetation, predominantly big saltbush with some California encelia and bur sage, and about 10% non-native vegetation, including black mustard, golden crownbeard, and fennel.

The subject site is adjacent to wetland areas associated with San Diego Creek. The post-construction survey states that the previously existing saltbush and mulefat have re-established, and that the impacted area is on track to fully recover through natural growth and recruitment of native species. Therefore, the applicant is proposing to allow the site to naturally revegetate.

Coastal Act Section 30230 requires the protection of maintenance, enhancement, and where feasible restoration of marine resources. Coastal Act Section 30231 requires the maintenance and if feasible restoration of biological productivity and water quality. Although revegetation on the site is progressing within the amounts of native coverage which are typical for a one year period after disturbance, it is unknown whether non-native and invasive species will grow instead of native plants. Any non-native or invasive species which develop adjacent to Upper Newport Bay have the potential to spread and impact the adjacent wetland habitat. Therefore, the Commission imposes Special Condition 1, requiring the applicant to monitor the progress of natural revegetation on the site and remove non-native species for two years. If natural revegetation does not result in the successful revegetation of the site, Special Condition 1 requires the applicant to submit an amendment to this permit for corrective restoration of the subject site. As conditioned, the proposed project is consistent with the Chapter 3 policies of the Coastal Act.

B. Water Quality

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. To reduce the potential for impacts on water quality, the Commission imposes Special Condition 1, requiring the usage of herbicides to be minimized, and for any herbicide usage to be limited to those which are consistent with riparian habitats. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

C. Public Access

As conditioned the development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. Habitat

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

E. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for Newport Beach was effectively certified on May 19, 1982, however, as stated, the Coastal Act is the standard of review for this project. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area.

F. California Environmental Quality Act

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

5-12-303 (Mesa Consolidated Water)

Appendix A - Substantive File Documents

City of Newport Beach Land Use Plan

Orange County Encroachment Permit No. 2011-00668