

**CALENDAR ITEM
C27**

A 74
S 38

10/16/2008
WP 8426.9
J. Smith

GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT:

City of Del Mar
1050 Camino del Mar
Del Mar, California 92014-2698

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in the Pacific Ocean and the San Dieguito Lagoon/River Mouth,
City of Del Mar, San Diego County.

AUTHORIZED USE:

Breaching of the San Dieguito Lagoon mouth and maintenance of the opening,
as necessary, with placement of excavated material on sovereign lands to the
north and/or south of the lagoon inlet.

LEASE TERM:

Five years, beginning February 15, 2007.

CONSIDERATION:

The public health and safety; with the State reserving the right at any time to set
a monetary rent if the California State Lands (Commission) finds such action to
be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Liability insurance with combined single limit coverage of not less than
\$1,000,000; or staff approved self-insurance plan.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the uplands adjoining the lease premises.
2. At its meeting on November 27, 2000, the Commission authorized the
issuance of a one-year General Lease-Public Agency Use (Lease No.
PRC 8248.9) to the City of Del Mar (the City) to breach the lagoon mouth
to remedy a closure that threatened the health of the lagoon's marine

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resources. That lease expired September 14, 2001. The lagoon mouth closes periodically due to a build up of sand and sediment that washes in from the ocean and flows downstream from inland development. The lagoon mouth must be artificially breached from time to time to maintain the health of the ecosystem.

The Commission's action was challenged in state court by local property owners and Citizens United to Save the Beach. The trial court sustained the Commission's demurrer and denied Citizens' motion to add the City as a defendant, and entered a judgment dismissing the case against the Commission. On appeal, however, the court held the Commission's demurrer to the causes of action concerning taxpayers injunctive relief, violation of the public trust, and declaratory relief should have been denied (the court of appeal upheld the trial court's decision that the CEQA causes of action were barred by the statute of limitations). The court of appeal also held that the City should have been added as an indispensable party. Ultimately, the case was dismissed without prejudice.

The local property owners (Del Mar Sandy Lane Homeowners Association and Citizens United to Save the Beach) had previously filed lawsuits against the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) challenging the adequacy of the Final EIR/EIS for the San Dieguito Wetland Restoration Project. On July 27, 2001, the San Diego Superior Court ruled that the EIR/EIS did not comply with CEQA and remanded the EIR/EIS back to the JPA for revisions. However, on August 4, 2003, the California court of appeal overturned the superior court's ruling and upheld the adequacy of the EIR/EIS.

On October 1, 2002, in response to the closure of the lagoon mouth, the Commission authorized the issuance of a General Lease - Public Agency Use to the City for breaching and maintenance of the San Dieguito Lagoon mouth opening. That lease, which expired on June 11, 2006, allowed the City to excavate approximately 15,000 cubic yards of sediment per closure event to maintain the opening and to deposit the material on the beach both north and south of the lagoon inlet.

As a result of the lagoon mouth closing in June 2006, the California Coastal Commission (CCC) issued Emergency Permit #6-06-097-G. The City breached the lagoon mouth in mid-September 2006, when the biological conditions in the lagoon deteriorated to the point that the dissolved oxygen levels were less than 3 parts per million. One of the criteria established by the CCC allows the City to open the lagoon mouth when the dissolved oxygen levels are less than 5 parts per million. The

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lagoon mouth closed again in mid-March 2008, and the City performed another emergency breaching in early May 2008. In each event, the City excavated approximately 15,000 cubic yards of sediment from the mouth and deposited the material on the sovereign lands both north and south of the lagoon inlet.

On February 15, 2007, the CCC approved Coastal Development Permit # 6-06-097, as a follow-up to Emergency Permit #6-06-097-G. That permit allows the City to open and maintain the lagoon mouth as needed for five years.

An application for a new Public Agency Lease has been received and processed by staff. Staff recommends that the Commission authorize a lease to the City to breach and maintain the lagoon mouth opening, as needed, beginning February 15, 2007, for a term consistent with the CCC's permit, which will expire on February 14, 2012. The lease will require the City to provide staff with copies of annual monitoring reports on or before April 1 of each year. The annual report will summarize the facts that necessitated any openings occurring during the previous year.

3. The JPA and Southern California Edison Company (SCE) maintain a 49-year lease (PRC 8553.9) issued by the Commission in 2004, to construct the San Dieguito Wetlands (Restoration Project). One of the components of the Restoration Project is to create a permanent open lagoon mouth. While the Restoration Project is currently underway, maintaining a permanent lagoon mouth opening is not scheduled to occur for a few years and will require further agency approvals.
4. On February 15, 2007, the CCC approved Permit #6-06-097 for this project under its certified regulatory program (Title 14, California Code of Regulations, section 15251(c)).

Staff has reviewed the document and determined that the conditions, as specified in Title 14, California Code of Regulations, section 15253 (b), have been met for the Commission to use the environmental analysis document certified by the CCC as a Negative Declaration equivalent in order to comply with the requirements of the CEQA.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

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6. Based on all available information, including but not limited to, the history of the lagoon, the impact of past fill and other human activities that have artificially impacted the natural ability of the lagoon to maintain an opening to the Pacific Ocean, the necessity to prevent the potential significant impact to the habitat and associated fish and wildlife within the lagoon and San Dieguito Lagoon Ecological Reserve, and to reduce the possibility of flooding to adjacent properties northeast and south of the lagoon, the activity of removing sand from the mouth of San Dieguito Lagoon is a project that is necessary for the preservation of public trust values in the San Dieguito Lagoon. On balance, the temporary, minor impact of the removal of sand from the mouth of the lagoon on public recreational activities on the beach and adjacent waters is minimal compared to the significant beneficial result of preserving the existing public trust resources by this action to restore tidal flushing of the lagoon.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
U.S. Department of Interior, Fish and Wildlife Service
Regional Water Quality Control Board
California Coastal Commission
State Department of Fish and Game

EXHIBIT:

- A. Location and Site Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT AN ENVIRONMENTAL ANALYSIS DOCUMENT, CALIFORNIA COASTAL COMMISSION (CCC) PERMIT #6-06-097, WAS ADOPTED FOR THIS PROJECT BY THE CCC ON FEBRUARY 15, 2007 UNDER ITS CERTIFIED PROGRAM (TITLE 14, CALIFORNIA CODE OF REGULATIONS SECTION 15251 (c)), AND THAT THE CALIFORNIA STATE LANDS COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION THEREIN AND CONCURS IN THE CCC'S DETERMINATION.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE

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LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370,
ET SEQ.

PUBLIC TRUST FINDING:

FIND THAT THE ACTIVITY AUTHORIZED BY THIS LEASE IS
CONSISTENT WITH AND IN FURTHERANCE OF PUBLIC TRUST
VALUES FOR SAN DIEGUITO LAGOON AND ITS CONNECTION WITH
THE PACIFIC OCEAN.

AUTHORIZATION:

AUTHORIZE ISSUANCE OF A GENERAL LEASE – PUBLIC AGENCY
USE TO THE CITY OF DEL MAR, BEGINNING FEBRUARY 15, 2007,
FOR A TERM OF FIVE YEARS, FOR BREACHING OF THE SAN
DIEGUITO LAGOON MOUTH AND MAINTENANCE OF THE OPENING
AS NEEDED, WITH PLACEMENT OF EXCAVATED MATERIAL ON
SOVEREIGN LANDS TO THE NORTH AND/OR SOUTH OF THE
LAGOON INLET, ON THE LAND SHOWN ON EXHIBIT A (FOR
REFERENCE PURPOSES ONLY) ATTACHED AND BY THIS
REFERENCE MADE A PART HEREOF; LIABILITY INSURANCE WITH A
COMBINED SINGLE LIMIT COVERAGE OF NOT LESS THAN
\$1,000,000 OR A STAFF APPROVED SELF-INSURANCE PLAN.