Speaker slips will be available. Please fill out a slip and give it to the Chair prior to the meeting if you wish to speak to an item on the agenda. The Board may take action on any item listed on the Consent or Action agenda.

Public Comment
This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board and not appearing on today's agenda. Comments relating to items on today's agenda are to be taken at the time the item is heard. Pursuant to the Brown Act, no action shall be taken by the Board on public comment items.

ACTION

S-1. 22nd District Agricultural Association Coastal Development Permit Application


  b. Funding for Coastal Consultant Sara Wan
TO: JPA Board
FROM: Staff
SUBJECT: 22nd District Agricultural Association Coastal Development Permit Application

RECOMMENDATION:

Provide direction to staff on compromise position for presentation at Coastal Commission November meeting; and authorize staff to amend FY 13/14 budget to transfer monies between funds to pay for additional consulting services.


At the JPA Board meeting on September 20, 2013 your Board considered a coastal development permit application (#6-12-067) by the 22nd District Agricultural Association (DAA) associated with the DAA’s Cease and Desist Order and future use of the Fairgrounds’ overflow parking lots. Based on recommendations from JPA staff and the JPA’s Wetland Advisory Committee your Board authorized JPA staff to present the JPA’s position in a letter to the California Coastal Commission (see Attachment 1). The Coastal Commission considered the DAA’s CDP application at their meeting of October 11, 2013. JPA staff and JPA Board member Supervisor Roberts presented the JPA’s position at the hearing (Attachment 2). Several individuals, organizations, and elected officials spoke in favor of and against the CDP. The Commission voted 9 to 2 in favor of continuing the item to their November 11-15 meeting in Newport Beach and asked that the DAA and JPA discuss a potential compromise.

JPA staff is developing a draft compromise position that will be presented at your Board meeting for consideration.

b. Funding for Coastal Consultant Sara Wan

As reported previously, staff entered into a consulting agreement with Coastal Consultant Sara Wan last year to assist staff in dealing with two things: 1) claims of the State Coastal Conservancy (SCC) that the JPA must repay the SCC $590,000 associated with the Boudreau acquisition; and 2) the 22nd District Agricultural Association’s CDP application as required by the Consent Order. Her advice on the former was instrumental in resulting in a complete turn-around by the SCC so that the SCC is satisfied and is not demanding any repayment. Her advice on the latter has been essential in clarifying the legal issues presented in the Consent Order and in the Coastal Commission staff’s determinations, and advising staff and the Wetland Advisory Committee regarding CCC operations and procedures. The JPA has paid Ms. Wan $14,308 in FY 13/14, which brings her current to October 6th. These expenses were paid from the Professional
Services category in the adopted JPA budget. The remaining funds in that line item are needed for attorney and auditor services and must be retained.

Staff recommends that additional consultant services from Ms. Wan in the amount of $5,000 would be valuable to assist the JPA in completing the negotiations described in item a. above. Staff has identified two sources that could be utilized to pay for the services. One source is the JPA’s Reserve Fund, which has $7,377 set aside for future vacation payouts that may be needed. $5,000 of those funds could be transferred from the Reserve Fund to the Operating Fund, Professional Services account, at your Board’s direction. A second source is the $12,500 in funds that your Board approved in the FY 13/14 Trails budget for repair and replacement of interpretive panels. Your Board could direct staff to transfer $5,000 of those funds to the Operating Fund, Professional Services account. Repair and replacement of some interpretive panels would therefore be deferred to FY 14/15.

**ALTERNATIVES**

1. Add $5,000 to the consultant services contract and transfer $5,000 from the Reserve Fund to the Operating Fund, Professional Services account.
2. Add $5,000 to the consultant services contract and transfer $5,000 from the Trails Fund to the Operating Fund, Professional Services account.
3. Do not add $5,000 to the consultant services contract.

**RECOMMENDATION:**

Provide direction to staff on compromise position for presentation at Coastal Commission November meeting; and authorize staff to amend FY 13/14 budget to transfer monies between funds to pay for additional consulting services.

Respectfully Submitted,

Dick Bobertz
Executive Director

Attachment 1. Letter from JPA to Coastal Commission, 9/25/13
Attachment 2. Speaking Points to Coastal Commission
September 25, 2013

Alexander Llerandi, Coastal Planner
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Subject: 22nd District Agricultural Association, Del Mar Fairgrounds CDP Application #6-12-067

Dear Mr. Llerandi:

The San Dieguito River Park JPA Board has considered the 22nd District Agricultural Association's (DAA) CDP application #6-12-067. Our staff thoroughly reviewed the reports and information submitted by the DAA as part of the application package and we appreciate your willingness to meet with our staff to discuss the application. We understand that this CDP application is submitted under Section 3.2B of the Cease & Desist Order (CO) issued by the Commission in March 2012 and that it is scheduled for a hearing on October 11, 2013. Once your staff recommendation is available for review, we may also send a follow-up letter.

The Fairgrounds is located at the western gateway to the San Dieguito River Park and adjacent to a $90 million lagoon restoration project and sits on land that was historically tidal wetlands. It is the dominant land use in this area and is located directly adjacent to the San Dieguito River. For these reasons, the JPA has had a long-term interest in Fairground operations since the formation of the San Dieguito River Park. Specifically, the JPA has the following comments on the CDP application:

1) Of utmost importance to us is the relationship between the DAA’s request for permanent year-round use entitlement of the EOL and GDR and the extant wetlands covering these areas. The difference between historic use of a portion of the EOL for seasonal overflow parking and the current CDP request for complete and permanent use (including year-round events, storage, “logistical operations”, and future paving for 3,000 cars) must be reconciled.

We were pleased that the CO required a final determination of wetlands on the EOL and GDR as the extent of wetlands on the Fairgrounds property has long been in dispute with previous wetland delineations showing...
dramatically different results. The JPA protested the wetland delineation included in the Fairgrounds Master Plan EIR (December 2009) that only showed a narrow strip of wetlands along the river’s edge.

The DAA’s new wetland delineation (AECOM, September 2012), which identifies extensive delineated wetlands over the EOL and GDR, represents new information that was not known at the time the CO was issued, and impacts to these wetlands, as proposed in the DAA’s application, is in direct conflict with Coastal Act Section 30233.

We acknowledge that some use of the EOL may be in effect “grandfathered” because some areas of the EOL (and SOL) had already been in use for overflow parking during the Fair and racing seasons prior to the enactment of the Coastal Act in 1976. In fact, the enclosed aerial image, taken around that time period, shows evidence of parking on the SOL and the western half of the EOL. However, the CO set that period as a baseline identified in Section 8 (Description of the Unpermitted Development) and Coastal Act violations identified after that time are defined as a “change in the intensity of use of the EOL, SOL, and the GDR from their pre-Coastal Act use”). As the CO states (Section 3.2.E), any development and use on the EOL must comply with the Coastal Act. However, we recognize that elimination of some of those grandfathered uses could be the basis of a reasonable trade-off for some development on the northern half of the EOL in order to preserve the majority of wetlands in the southern portion.

2) The JPA does not object to continued use of the GDR for overflow parking during the existing Fair and racing seasons because the site has a valid CDP for a golf driving range and the site is dry during those two summer events. The JPA does object to extending the use of the GDR for parking the rest of the year as proposed, particularly during the rainy season (Oct-Mar).

3) We are concerned that no alternatives to the DAA’s proposed plan have been identified or evaluated as required by both the Coastal Act and CEQA. The DAA has not provided convincing evidence that the entire EOL is necessary for parking as demonstrated in its own Parking Assessment Study, which contains many “feasible” measures that could be employed by the DAA to better manage its parking. Alternative proposals that comply with the Coastal Act are available and should be seriously considered.

4) We are also opposed to the request for “intermittent truck and trailer storage” on the EOL and GDR. This use is in violation of a settlement agreement reached between the DAA and the JPA (one of three Petitioners (December 2012).

The importance of this proposal and its impact on wetlands, both on the Fairgrounds property and adjacent, cannot be emphasized enough. We are hopeful that compliance with the CO will finally resolve the long-standing inconsistency between the Fairgrounds past and future operations and the protection of wetlands under the Coastal Act. Thank you for considering our comments. We look forward to receiving the staff report.
Sincerely,

Jim Cunningham
JPA Board Chair
22\textsuperscript{nd} Agricultural District CDP  6-12-067  Agenda item F7a

Background

- The 22\textsuperscript{nd} District Agricultural Association (DAA) has a 40 year history of Coastal Act violations involving filling and grading on the areas known as the South Overflow Lot (SOL), East Overflow Lot (EOL) and Golf Driving Range (GDR).
- Recently the DAA agreed to a Cease and Desist Order (CO) intended to mitigate past violations. The CO required restoration of the 9.55 acre SOL as mitigation. It also required submittal of a CDP application for any uses proposed on the 43 acres of the EOL and GDR along with a wetland delineation and a parking assessment so that the CCC could make an informed decision on EOL and GDR uses that would comply with the Coastal Act.
- An important point is that the CO ties the requirement for SOL restoration to approval of development on the EOL and GDR, but the extent of development is not defined and a CO footnote says “nothing herein is intended to prejudice the approvability of any of the development listed in this section or to suggest whether the CCC will approve it, or to constitute pre-approval of it”.
- The subsequent wetland delineation showed extensive wetlands on both the EOL and GDR. The most concentrated area of wetlands is located on the south 1/3 of the EOL.
- The parking assessment demonstrates that the DAA can implement parking strategies that would compensate for loss of parking on the SOL and EOL.

San Dieguito River Park JPA Position

- The JPA supports the CO but believes the staff recommendation to allow development even in the most concentrated areas of delineated wetlands on the south 1/3 of the EOL is not consistent with the Coastal Act.
- The staff report recognizes the proposed development is not consistent with the Coastal Act (p.22) but recommends that the conflict resolution policies of the Coastal Act can justify all of the proposed development. The JPA believes this is an incorrect interpretation and use of the conflict resolution policies.*
- The JPA notes that special conditions 1a, 7a, and 9b specifically refer to preservation of the south 1/3 of the EOL indicating that an earlier version of the report recommended prohibiting development on that portion of the EOL containing the most concentrated wetlands.
- The JPA requests an amendment to the approval to allow proposed development on areas 1 and 2 of the EOL but prohibit all development and use year-round in area 3 (southern 1/3 of the EOL) and prohibit any use of the GDR beyond that already approved by existing CDPs.
*The Conflict Resolution policies of the Coastal Act are very narrow in their evaluation of potential conflicts that would justify an exception to the prohibition of development in delineated wetlands. In this case the staff report does not apply conflict resolution in a limited manner to minimize the impact of its use. The Consent Order does not rely on approval of a CDP for any and all development submitted for the proposed development site. It requires SOL restoration within 30 months of the “… approval of a CDP for use of the proposed development site.” An approval for development on the EOL areas 1 and 2 combined with prohibition of development on area 3 would still trigger the requirement for SOL restoration and other benefits of the Consent Order. The staff report wrongly assumes those benefits would be lost unless all elements of the proposed development are approved and uses that assumption to justify an excessively broad use of Conflict Resolution.

Staff also wrongly states that failure to approve the project is inconsistent with Sections 30230 and 30231 (Water Quality), Sections 30210 and 30213 (public Access) and Section 30250 (concentration of Development) since all of these section’s mandates would still be provided with a partial approval.