

DATE ISSUED: July 3, 2002 REPORT NO. 02-153

ATTENTION: Honorable Mayor and City Council
Docket of July 9, 2002

SUBJECT: CALIFORNIA COASTAL COMMISSION'S SUGGESTED
MODIFICATIONS TO THE SEAWORLD MASTER PLAN UPDATE:
COUNCIL DISTRICT 6. PROCESS 5.

REFERENCE: Planning Commission Report No. P99-130, dated August 26, 1999,
Initiation of an Amendment to the Mission Bay Park Master Plan.
Planning Commission Report No. P99-203, dated December 2, 1999,
Workshop regarding SeaWorld's Public Input and Community Outreach
Program. Planning Commission Report No. P-00-037, dated February 17,
2000, Workshop regarding status of SeaWorld's Public Input and
Community Outreach forums. Planning Commission Report No. P-00-
120, dated July 13, 2000, SeaWorld Field Trip and Workshop. Planning
Commission Report No. P-01-093, dated May 3, 2001, SeaWorld
Workshop. Planning Commission Report No. P-01-114, dated June 14,
2001, Planning Commission Final Hearing. City Manager's Report No.
01-134, dated July 10, 2001, City Council Final Hearing. California
Coastal Commission Report dated January 24, 2002, Coastal Commission
Hearing of February 7, 2002. California Coastal Commission Report
dated March 20, 2002, Coastal Commission Hearing to approved revised
findings.

OWNER/
APPLICANT: City of San Diego/SeaWorld

SUMMARY

Issues - Should the City Council approve the California Coastal Commission's suggested modifications to the SeaWorld Master Plan Update and Mission Bay Park Master Plan, and the associated amendments to the SeaWorld lease?

Manager's Recommendation: Approve the California Coastal Commission's suggested modifications, and the associated amendments to the SeaWorld lease.

Planning Commission Recommendation - On June 21, 2001, the Planning Commission approved the SeaWorld Master Plan Update with numerous modifications, most of which were incorporated into the project by the City Council. Approval of the California Coastal Commission's suggested modifications are not subject to Planning Commission review and approval.

Community Planning Group Recommendation - Recommendations from all Planning Groups representing communities surrounding SeaWorld were considered during the July 10, 2001 City Council hearing.

Environmental Impact - On July 10, 2001, the City Council certified Final Environmental Impact Report (EIR) No. 99-0618, which was prepared for this project.

Fiscal Impact - It is anticipated that implementation of the SeaWorld Master Plan Update will result in an increase in fiscal revenue to the City from improved business performance of the lessee. The minimum rent will also be adjusted to reflect any increase in the value of the leasehold that occurs once the lessee obtains fully vested entitlements.

Code Enforcement Impact - None.

Housing Affordability Impact - None.

BACKGROUND

City Council Approval:

On July 10, 2001, the City Council approved the SeaWorld Master Plan Update and associated amendments to the Mission Bay Park Master Plan and Local Coastal Program. City Council's approval of the Master Plan Update included a wide variety of significant changes to the project. Attachment 1 of this report entitled Addendum to SeaWorld Master Plan Update - City Council Revisions, includes a detailed description of all changes adopted by the City Council. Attachment 4 (under separate cover) of this report includes the SeaWorld Master Plan Update with all of the City Council's changes incorporated. The City Council's significant changes to the SeaWorld Master Plan include the following:

Reduced the overall scale of the proposed Perez Cove hotel from 90 feet in height down to 30 feet in height, and from 650 rooms down to 300 rooms. The Council also mandated

that construction of the hotel be delayed for a period of ten years.

Increased the level of public notice and participation for all future development at SeaWorld by requiring all projects higher than 30-feet to undergo a rigorous public hearing process (requires a total of six public hearings and/or meetings including Planning Commission and City Council).

Required SeaWorld to provide adequate right-of-way on its leasehold for the MTDB transit facility, and to participate financially in the design and constructions of the SeaWorld Transit Station.

Required SeaWorld to enhance public access to Mission Bay through the construction of improved pedestrian/bicycle paths both through and surrounding SeaWorld's leasehold.

Reduced the height of the proposed front gate renovation icon from 90 feet down to 60 feet.

Mandated that a minimum of 75 percent of SeaWorld's total attractions should include significant educational and/or animal conservation related elements.

The City Council suggested and SeaWorld agreed to award at least 20 percent of its contracts for construction and consulting work to companies owned by women, people of color, the disabled, and/or veterans.

In an effort to protect least terns, required SeaWorld to move the fireworks barge approximately 3/4 mile to the east, off the shores of South Shores for the duration of the least tern breeding season, April 1st to September 15th.

Deleted a significant rent credit provision from the SeaWorld lease.

Limited SeaWorld's fireworks displays to a maximum of 150 nights per year.

California Coastal Commission Approval:

On February 7, 2002 the California Coastal Commission approved the SeaWorld Master Plan Update and associated amendments to the Local Coastal Program/Mission Bay Park Master Plan, subject to 36 suggested modifications. The California Coastal Commission's suggested modifications and findings are included in Attachment 2 of this report. The Coastal Commission's significant modifications include the following:

Requires the City of San Diego to prepare and complete, no later than 2 years from the effective certification date of the LCP amendment, a capital improvement program for the development of significant public recreational facilities, including but not limited to, necessary infrastructure improvements at Fiesta Island and South Shores. The program must identify strategies for funding in addition to the \$3.8 million [sludge] mitigation fund currently available for recreational improvements. The capital improvement program must include a phasing component to ensure recreational improvements will be developed commensurate with new commercial development approved in the Park. Fiesta Island and South Shores are to be given highest priority.

Requires utilization of the Caltrans Project Study Reports for traffic improvements at the I-5/SeaWorld Drive Interchange to determine the phasing and funding of improvements to relieve peak summer recreational congestion and address the effects of increased commercial development. The Project Study reports will be funded out of the first mitigation dollars received. SeaWorld is required to pay a total amount of \$10,656,900 in traffic mitigation funds to the City in five (5) annual installments adjusted by a 3% increment or the CPI index, whichever is greater.

Relocates the Splashdown Ride away from the shoreline at the northeast corner of the leasehold to a location near the SeaWorld parking lot along the inner park edge just east the hospitality center. This relocation in effect swaps the original proposed locations of the Splashdown Ride and Special Events Center.

Requires a minimum 75-foot shoreline setback for all future development (except water or shoreline-dependent uses).

Requires that SeaWorld construct a 50-foot wide waterfront public promenade at South Shores in addition to the bikeway.

Requires an expanded five-year monitoring program to assess the possible effects of fireworks displays on water quality. The program requires reporting of results to the resource agencies and a re-evaluation of the significance of any potential impact at the end of the five-year period. Additionally, SeaWorld must increase the area of clean up on Fiesta Island, continue its surface water clean-up procedures, and continue to test for accumulation of chemical constituents of fireworks displays on the floor of Pacific Passage at least once prior to, and once following each summer season. The Coastal Commission added language to require monthly testing during the first year of the program, including testing at the ocean entrance to Mission Bay.

Deletes all language in the SeaWorld Master Plan assigning maximum height allocations for the entire leasehold and the Tier 2 future development sites. The findings of the coastal staff report state that assigning specific maximum height allocations can be misinterpreted as acceptance of the full level of build out. In the future, SeaWorld may submit all Tier 2 development at once as an LCP amendment, or submit one project at a time for permit review only.

Requires that specific criteria for compliance with the requirement that 75 percent of the attractions must contain significant animal, education and conservation elements shall be set forth in the lease with the City.

Requirements for public transit incentives to ease peak summer traffic congestion. Adds language to the SeaWorld Master Plan requiring SeaWorld to offer a five-dollar (\$5) discount on admission to every guest that provides evidence that they rode public transit to the theme park.

DISCUSSION

In order to fully implement all of the above, the City Council must also approve any required amendments to SeaWorld's lease. In order to finalize the negotiations, City staff obtained clarification and direction from the Mayor and Council on June 18, 2002 on three issues; traffic mitigation funding, a potential transit station, and a potential hotel.

Advance of Traffic Mitigation Funding

Pursuant to the EIR certified by the City Council, SeaWorld is required to mitigate impacts as specific traffic thresholds are exceeded. The EIR requires that SeaWorld pay both for specific mitigation measures (near term impacts) as well as fair share contributions to larger CIP projects (longer term impacts). Specific payments are to be made at the time these thresholds are met, and if never attained, no payment is required. One of the California Coastal Commission's modifications (Modification 7) required for certification of the LCP amendment was a condition that SeaWorld pay approximately \$10.7 to the City in advance for traffic mitigation.

In a letter dated June 13, 2002 (see Attachment 3), SeaWorld has requested that the City refund any amounts collected by the City that are not required for the traffic mitigation measures identified in the EIR. The justification for this request as outlined in SeaWorld's letter is that the City could not legally require such an advancement of funds, and payments would only be required if the thresholds are met. SeaWorld has proposed that the City begin refunding SeaWorld's payments starting six years from the first payment and ending five years later (ten years from the first payment). If approved, the City would place the funds in a special interest bearing fund, to be used exclusively for the traffic mitigation measures identified in the EIR. The unspent balance remaining in the fund including any interest accumulated would be returned to SeaWorld over this five year period. As the specific traffic thresholds are met, the City would utilize the deposited funds to pay for the corresponding mitigation measure. Notwithstanding the language in Modification 7, if there is not a sufficient balance in the fund at the point in time a traffic threshold is met, SeaWorld would need to make additional payments to pay for the required mitigation measures. If the thresholds are met after the City has refunded the balance of the funds, SeaWorld would still be required to fund the specific mitigation measures at the then current cost. Typically, a mitigation and monitoring program would expire after 20 years, but SeaWorld would be required to continue this obligation for the term of the lease. City staff was directed to finalize the language in the lease amendment to implement this request.

MTDB Transit Station

The Council imposed a condition that SeaWorld provide right of way at no cost to the City and participate financially in the design and construction of a transit station, if such a station is ever built. The Mayor and City Council have directed staff to require SeaWorld to contribute 50% of the cost of a "standard design" station, capped at \$500,000 (in 2002 dollars) to be increased by CPI. Any thematic upgrades to the station would not be included in this amount and will be at SeaWorld's sole expense. Such amounts will not be payable until the design and construction timelines are established in the future. City staff has also been directed to include language ensuring that the location of the transit station is no further from the gate than any car with the exception of handicapped spaces, pursuant to Council's direction.

Potential Hotel at SeaWorld

The City Council's previous action was to impose a 10-year moratorium on a potential hotel project at SeaWorld. City staff received further clarification and direction from Council that an application seeking approval for the hotel may be submitted no sooner than ten years from the original Council hearing date of July 10, 2001. In addition, SeaWorld must notify the City, in writing, ninety prior to doing so.

Other Lease Issues

Attractions: The Council required that a minimum of 75 percent of SeaWorld's total attractions should include significant educational and/or animal conservation related elements.

Height Restriction Allocations: The language assigning maximum height allocations has been deleted from the Master Plan as directed by the Coastal Commission. The lease includes maximum height restrictions for the project. Permission to build at any height within the leasehold is subject to Coastal Commission approval through the Coastal Development Permit process.

Minority Contracting: It was requested that SeaWorld voluntarily award at least 20 percent of its contracts for construction and consulting work to companies owned by women, people of color, the disabled, and/or veterans. SeaWorld has agreed to do so voluntarily.

Rent Credit: The Council required the deletion of an existing rent credit provision in the existing lease for offsite traffic mitigation. The lease reflects this change.

Fireworks: The number of nights fireworks that are allowed are limited to 150 annually and the location of the fireworks barge will be moved during least tern nesting season.

Jet Skis: SeaWorld has agreed to include a condition precluding the potential future renting of jet skis to members of the public.

CONCLUSION

The final steps to obtain final certification of the LCP amendment are as follows:

In order to obtain final approval and certification of the SeaWorld Master Plan Update and the associated amendments to the Mission Bay Park Master Plan and Local Coastal Program, the City Council must take formal action (by resolution) to adopt the Coastal Commission's suggested modifications. The Council must take action on the suggested modifications prior to August 7, 2002 (six months from the date of the Coastal Commission action). The City submits the Council's resolution acknowledging the suggested modifications together with revised copies of the Mission Bay Park Master Plan and SeaWorld Master Plan Update to the Executive Director of the Coastal Commission. The Executive Director reviews the documentation for consistency with the Coastal Commission's certification order and reports his determination to the Commission at the next available meeting.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

William T. Griffith
Real Estates Assets Director

Approved: P. Lamont Ewell
Assistant City Manager

CHRISTIANSEN/MJW

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

- Attachments:
1. Addendum to the SeaWorld Master Plan Update - City Council Revisions.
 2. California Coastal Commission Report dated March 20, 2002, including all 36 suggested modifications and findings.
 3. Letter from SeaWorld, dated June 13, 2002.
 4. The SeaWorld Master Plan Update incorporating all of the City Council's action of July 10, 2001 (under separate cover).