San Diego Regional Water Quality Control Board
Definition of Prior Lawful Approval for Priority Development Projects
Workshop Summary
April 28, 2015
9:30 a.m. to 12:00 p.m.

Participants:

David Barker, San Diego Water Board
Eric Becker, San Diego Water Board
Laurie Walsh, San Diego Water Board
Wayne Chiu, San Diego Water Board
Wayne Rosenbaum, BIA
Mike McSweeney, BIA
Guy Asaro, BIA
Brendan Hastie, Rick Engineering
Marco Gonzalez, Coastal Environmental Rights Foundation
Julia Chunn-Heer, Surfrider Foundation
Colin Kelley, Orange County Coastkeeper / Inland Empire Waterkeeper
Richard Boon, County of Orange
Ryan Baron, County of Orange
Tracy Ingebrigtsen, City of Laguna Beach
David Garcia, Riverside County Flood Control & Water Conservation District
Jarrod Gibbon, County of Riverside
Sumer Hasenin, City of San Diego
Jon Van Rhyn , County of San Diego
Helen Davies, City of Escondido
Boushra Salem, City of Chula Vista
Lewis Michaelson, Katz & Associates

Summary of Comments

San Diego Water Board

- We are interested in understanding everyone's perspective.
- We felt the language brought to the Board was sufficient.
- The outcome of these meetings will be to have crafted language for approval by the Board.
- We believed at the time that prior lawful approval was clear enough. We're trying to think longer term in this permit cycle, since this language should be satisfactory for multiple permit cycles.
- In looking at other regions, we see they have no real agreement on this issue either, so there are no precedents or model language to follow or adapt.
- Questions from the Board:
    - What would be acceptable from the environmental community's perspective?
    - What meets the needs of responsible development interests?

- What will be implementable for the Copermittees?
- Is it enough to have a vested tentative map? Is it enough to have a development agreement? Do you need something else?

Developers

- The development community expressed gratitude toward the Board that there was a public participation process in place.
- There seems to be two sets of language out there for defining prior lawful approval. We feel that the language the Board has presented goes too far. We would prefer to look to the language of the previous permit cycle.
- Many projects don't follow permit cycles. Once a project starts under one set of rules we want to be able to finish under the same set of rules.
- The real challenge of the last permit cycle was how each jurisdiction understood and applied certain parts of the permit.
- Most projects have been in progress for years. These projects have gone through plan checks, CEQA processes, planning board review etc. Without clarification in the language of what prior lawful approval is we're looking at affecting major change on projects in the final 10% of their full cycle. The building industry is asking for certainty.
- The footnote in the previous permit still does not provide enough guidance. We would like to see well defined prior lawful approval that incorporates all the language of the 2007 permit.
- Developers are looking for clarity.
    - Even within "grading permits," for example, there are a large variety of types, as well as jurisdictions that don't issue them.
- Currently there are three ways of being vested: statutory approval via *Avco*, a development agreement, or a vested tentative map
- Permits are revised every 5 years, project approvals can take 7 to 10 years

Environmental Community

- We need to govern for the typical not for the anomaly.
- The types of houses being built now are not the types of houses being built prior to the recession. The old regulations are not in tune with what is actually being built.
- The NPDES permit is a state document that is implemented at the municipal level.
- There are circumstances that will occur that will pull the rug out from under the developer. It's always a risk that you take as a developer, and it can come from any number of sources. Evolving regulations are just one example.
- Given technology today why don't we have a database of how many vested tentative maps we have? Part of the environmental community's discomfort with allowing these types of conditions to qualify as prior lawful approval is that we do not know what the universe of cases are, where they are located, which watersheds are impacted, or how large the projects are.

- The environmental community won't accept anything less than what the case law already provides for. For [the environmental community] that would have to be a grading permit and some hard costs expended on good faith reliance on a prior approval, but not just soft costs.
- We agree that ambiguity of the language should be eliminated.
- In general we agree that water quality has gotten better over the last couple of decades. However, this has not been from the benevolence of the development community. We need clarity in the language to compel action.

Copermittees

- The Copermittees see the language as presented by the Board as sufficient. Everything that needs to be in it is in it.
- The only thing we can tell developers right now is there will be changes. We need certainty and an ability to tell people coming to our planning counter exactly what is going to be expected of them.
- Our real world experience is that people are trying to work out what design standards they need to build to. Even if I tell them to look at a document from January, that could change. I don't want to tell the developers the wrong information. The window between now and adoption of the new language is problematic for developers who are on the cusp of receiving approval.
- The majority of the projects we're facing are small scale projects. These are the projects we also want to make sure have prior lawful approval. We need clear direction from here.
- Just having a footnote is not good enough from a practical perspective
- Clear definition of what constitute these approvals is needed now.