



AGENCY: City Council  
MEETING DATE: June 25, 2018  
DEPARTMENT: CDD  
PRESENTED BY: M Jones  
EMAIL ADDRESS: mjones@fortbragg.com

## AGENDA ITEM SUMMARY

### **TITLE:**

**Receive Report and Provide Direction Regarding Preferred Processing for Coastal Development Permit for the Mill Pond Project: 1) Consolidation of the Coastal Development Permit with the Coastal Commission and Processing by the Coastal Commission; or 2) Local Processing of the CDP by the City of Fort Bragg Followed by Potential Appeal to the Coastal Commission**

### **ISSUE:**

The Georgia-Pacific Corporation (GP) will soon submit a Coastal Development Permit (CDP) to implement the Mill Pond Remediation and Dam Stabilization Project. This project requires a number of local, state and federal permits, including a Coastal Development Permit from both the Coastal Commission and the City of Fort Bragg. Typically a project would only require a CDP from the City, however since a portion of the project may be located below the Mean High Tide which is in the Coastal Commissions jurisdiction (aka Area of Deferred Certification), the Commission may also require a CDP.

The processing of the Coastal Development Permit can proceed under one of the two following avenues:

**Alternative 1:** The City may review the project for compliance with the Local Coastal Program (Coastal General Plan and Zoning Ordinance) for a CDP and complete CEQA review for the project (either an MND or an EIR). If the City approves the project it is then appealable to the Coastal Commission. A denial by the City Council would not be appealable to the Coastal Commission. Concurrently with the City's process, the Coastal Commission would review that portion of the project that is in the area of deferred certification for compliance with the Coastal Act. This process would likely take six months to a year depending on the CEQA document selected for the project. Additionally, if the CDP is approved by the City Council the project may be appealed to the Coastal Commission which would review the project de novo, which means that the Coastal Commission does not consider the review/work completed by the local jurisdiction in the Coastal Commission's deliberations. The Coastal Commission's review would take an additional year from the appeal date.

or

**Alternative 2:** The City Council could request CDP permit consolidation with the Coastal Commission. In situations where a project requires Coastal Development Permits for work in the jurisdiction of the local agency (the City) and the Coastal Commission, it is possible to consolidate the permit. Coastal Development Permit consolidation would result in the Coastal Commission taking on sole responsibility of the review of the project's compliance with the Coastal Act and would either issue or deny the Coastal Development Permit. Additionally, the Coastal Commission would complete its CEQA equivalent evaluation of the project in advance of the Coastal Commission's decision. Permit Consolidation must be approved by both the

Local Jurisdiction and the Coastal Commission and must meet certain threshold requirements set out in code section 30601.3 of the Coastal Act and further described below.

In either case the property owner (GP) would be required to cover all permit processing costs.

### **ANALYSIS:**

**Project Description.** The Mill Site remediation is largely complete with 97% of the site fully remediated. The Mill Pond, Ponds 1-4 and Ponds 6 & 7 are the only remaining areas of Operable Unit E (OUE) which have not completed the full remediation process. The DTSC has completed the Site Characterization, Risk Assessment and Feasibility Study for OUE. The Feasibility Study includes an analysis of remedial strategies for each of the ponds in OUE and identifies a preferred remedial solution. Additionally, the Division of Safety of Dams (DSOD) has determined that GP must reinforce the Mill Pond dam to withstand a maximum credible earthquake in order to protect people on the beach from the risk of dam collapse. The DSOD is requiring the following improvements in the Mill Pond Dam: 1) strengthening of the entirety of the impoundment structure so that it would withstand a maximum credible earthquake with less than 1 inch of deflection; and 2) installation of a weir in the middle of the dam to reduce hydrostatic pressure behind the dam and remove it from DSOD jurisdiction. Both of these projects require a Coastal Development Permit and environmental review pursuant to the California Environmental Quality Act.

As noted in the summary above the project will also require a CDP from the City of Fort Bragg and a CDP from the Coastal Commission.

In order to consolidate the Coastal Development Permit the following criteria must be met:

#### **30601.3. Coastal Development Permit Consolidation**

(a) Notwithstanding Section 30519, the commission may process and act upon a consolidated coastal development permit application if both of the following criteria are satisfied:

(1) A proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission.

(2) The applicant, the appropriate local government, and the commission, which may agree through its executive director, consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation.

(b) The standard of review for a consolidated coastal development permit application submitted pursuant to subdivision (a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.

(c) The application fee for a consolidated coastal development permit shall be determined by reference to the commission's permit fee schedule.

*(Added by Stats. 2006, Ch. 294, Sec. 8. Effective January 1, 2007.)*

The City has spoken with both the Coastal Commission staff and the applicant and both are considering whether consolidation of the CDP makes sense; neither has provided a definitive response to date regarding this issue.

Staff has briefly compared both approaches for City Council's consideration as illustrated in Table 1.

**Table 1: Comparison of Alternatives 1 and 2 for Processing of CDP for the Mill Pond Project**

	<b>Alternative 1 – Local CDP Processing</b>	<b>Alternative 2 – CDP Consolidation with Coastal Commission</b>
Local Participation	Local Public Meetings would include: <ul style="list-style-type: none"> <li>• CEQA Scoping Session</li> <li>• CEQA Public Hearing</li> <li>• A Planning Commission Public Hearing to Make a Recommendation to City Council</li> <li>• City Council Public Hearing on CDP and CEQA Document</li> <li>• If appealed, the Coastal Commission appeal hearing would be held somewhere in California.</li> </ul>	Local public meetings would include: <ul style="list-style-type: none"> <li>• City Council public hearing to consolidate the CDP</li> <li>• Coastal Commission public hearing on the CDP would be held in Arcata or Santa Rosa.</li> </ul>
Standard of Review	The City’s Certified Local Coastal Program would be the standard of review at both the local process and at a Coastal Commission appeal.	The Coastal Act (Chapter 3) would be the standard of review with the City’s Local Coastal Program being used as “guidance” for the Coastal Act review.
Environmental Analysis	Either an MND or an EIR would be prepared depending on the results of the scoping session. Many of the City’s Local Coastal Program policies require that any approved project be the “least environmentally damaging alternative.” Consequently an EIR may be necessary so that a range of alternatives to the proposed project can be analyzed for environmental impacts.	Coastal Commission would complete its CEQA Equivalent Analysis, which would include the analysis of a range of project alternatives to identify the least environmentally damaging alternative.  If this avenue is selected for the permitting process, an additional environmental document for this project would have to be prepared by either the DSOD or the DTSC as the Coastal Commission’s CEQA equivalent document cannot be used by other agencies for environmental review.
Local Staff Effort	Processing the CDP and CEQA document would require 20 to 25% of the Community Development Director’s time for 6 to 12 months. While GP is required to pay for staff time through a Development Deposit Account; staff would have less time to focus on other City Council priorities.	This would require little City staff effort.

Appeal Process & Legal Redress	<ul style="list-style-type: none"> <li>• An approved CDP is appealable to the City Council and the Coastal Commission.</li> <li>• The CEQA document may be challenged in court.</li> <li>• The City would be the defendant for a challenge of the CEQA document.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no appeal for a Coastal Commission decision.</li> <li>• Both the CDP and CEQA document may be challenged in court.</li> <li>• The Coastal Commission would be the defendant if the CDP is challenged in court.</li> <li>• DTSC would be the defendant for the CEQA document.</li> </ul>
Cost – Paid by Applicant	\$150,000 to \$200,000	\$100,000
Timeline and Review Period	6 to 12 months for the CDP and CEQA document, 2 months for the local hearing process. If appealed, an additional 14 months for the appeal to the Coastal Commission.	12 months for Coastal Commission review of CDP application from the time the application is deemed complete.
Effectiveness & Efficiency	<p>A local denial of the CDP would stop the project as currently designed. If the CDP is denied locally the applicant could either redesign and resubmit the project to the City or litigate against the City.</p> <p>If the project is approved locally, it is likely to be appealed to the Coastal Commission. As the Coastal Commission will consider the project de novo, the work of local staff and the local community to review this would not be considered.</p> <p>If the project is appealed, public comment that is submitted locally would be attached to the staff report as in the form of City Council minutes.</p>	<p>If the permit is consolidated, Coastal Commission staff will begin to analyze this project earlier in the process and ask for relevant studies and reports (paid for by GP) which the Commission Staff need to review the project under the Coastal Act. This may save time and effort.</p>

**RECOMMENDED ACTION:**

Receive Report and Provide Direction Regarding the Preferred Approach to Process the CDP for the Mill Pond Project.

**ALTERNATIVE ACTION(S):**

None.

**FISCAL IMPACT:**

All City and State permitting and environmental review costs will be borne by Georgia-Pacific.

**CONSISTENCY:**

The Mill Pond project will require a Coastal Development Permit and thus consistency with the Coastal General Plan and/or the Coastal Act will be required and will be fully analyzed prior to the consideration and decision on the CDP.

**IMPLEMENTATION/TIMEFRAMES:**

See Table 1.

**ATTACHMENTS:**

1. Draft Mill Pond Project Description

**NOTIFICATION:**

1. Notify Me: Mill Site Specific Plan, Mill Site Remediation, Downtown, Economic Development
2. Taylor Champion & Dave Massengill, Georgia-Pacific
3. Tom Lamphar, DTSC
4. DSOD
5. Bob Merrill, Coastal Commission