

The standard of review is Chapter 3 policies of the Coastal Act

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-08-037 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Term of Permit. This permit is valid for a period of five years from the date of Commission action. Future flood control maintenance beyond this date will require a coastal development permit, or an amendment to this permit, from the California Coastal Commission. Any modification of the project within the five year period will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

2. Maintenance and Monitoring. The restored site shall be maintained and monitored in full compliance with the maintenance and monitoring provisions of the *Stevens Creek Emergency Flood Control Channel Maintenance Mitigation and Monitoring Plan*, dated July, 2009. A copy of the annual monitoring report shall be submitted to the Executive Director of the Coastal Commission.

The permittee shall undertake maintenance and monitoring in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Other Permits. **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing an immediate and ongoing flood control maintenance project within a portion of Stevens Creek, which runs along part of the northern and western perimeters of the Del Mar Fairgrounds. Stevens Creek runs south through the city of Solana Beach, where it is primarily contained within an underground concrete channel. After draining the majority of Solana Beach, the channel daylights on the Fairgrounds, and turns west, then south again, as a natural drainage area, until it empties into the San Dieguito River, which forms the southern boundary of the Fairgrounds. There is no concrete in the portion of Stevens Creek within the Fairgrounds property.

Over time, sediments have accumulated within the channel bottom, and both native and non-native species have grown on the bottom and both banks, although mostly the northern bank. Both banks have chain-link fences on top, to separate the northern bank from the sidewalk and Via de la Valle, and the southern bank to separate it from Fairgrounds operations. The channel is approximately 36 feet across, and the proposal is to clear a 12-foot strip down the middle, removing both sediments and vegetation (0.002-acre of cattails and the rest non-wetland species), for a total distance of 1,150 linear feet. The dredged sediments and vegetation will be stockpiled next to the creek until they dry, then they will be trucked to a legal landfill outside the coastal zone. The proposal includes conducting this clearance as needed for a period of five years. Special Condition #1 formalizes the time period, with an additional Coastal Commission action

needed to continue beyond the five years, either through a new permit or an amendment to this permit.

An excavator will be used to remove the accumulated materials. It will be staged on the bank above the creek, if possible, but may need to be placed in the creek itself, and the operation will be conducted during low tide, if possible. Although tidal exchange does not itself reach this far into Stevens Creek, water back ups against the incoming tide, such that the streambed carries more water (fresh water), and makes use of equipment more difficult. To compensate for impacts to wetland (0.002 acres) and other native and non-native vegetation (0.32 acres), the applicant is proposing to remove non-native vegetation on the northern bank and replant the area (0.43 acres) with native riparian vegetation. Any future maintenance activities will be conducted with the same equipment in the same location.

Chapter 3 of the Coastal Act is the legal standard of review for this project.

2. Biological Resources. The following Coastal Act policies, related to biological resources, are most applicable to the proposed development, and state, in part:

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240

... (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930's, and Stevens Creek's current configuration was most likely determined through those filling activities. Although much of the site is now developed, there are several areas still containing wetland resources, including portions of Stevens Creek. The wetlands within Stevens Creek consist of freshwater marsh and occupy the far eastern end of the creek before it turns north and becomes an underground channel. Only 0.002 acres of freshwater marsh will be impacted pursuant to the proposed plan. The remainder of vegetation to be removed, along with the accumulated sediments, is a mixture of non-wetland native and non-native species, and some areas of bare dirt.

The original submitted application has been formally modified, reducing the project scope as well as the anticipated wetlands impacts. The original project was to have cleared more than 1,800 linear feet of channel, whereas the currently proposed project will only clear 1,150 linear feet, and the original wetland impact expectation was for three times as much impact as currently proposed. Finally, there will be a 0.32-acre impact to other vegetation, which is a mix of non-wetland natives and non-natives (mostly the latter) within the 12-foot-wide project path itself. This vegetation does not represent valuable habitat, since most of it consists of non-natives and it is wedged between a busy road and the backstretch area of the Fairgrounds. The applicant's proposal to remove exotics from 0.43 acres on the northern bank of Stevens Creek, and replant the area with native riparian species will provide greater than 1:1 mitigation, which the Commission's ecologist has determined to be the most beneficial type of mitigation in this instance, and adequate in quantity for the level of impact.

As stated, the channel is approximately 36 feet in width, and the proposal is to clear the middle 12 feet. The remaining 12 feet of channel bottom and banks on either side of the proposed cleared strip will not be touched and can continue to grow. In addition, the applicant's proposed Mitigation and Monitoring Program requires removal of exotic and invasive species from the northern bank. The applicant must replant the area with native riparian species only and monitor and maintain the mitigation area for five years. The need for periodic maintenance will be triggered by 10-20% of vegetation cover above water or by a one-foot or greater obstruction of the culvert width. Adherence to the Mitigation and Monitoring program is required through Special Condition #2, with any modifications of the proposed program requiring a permit amendment. Special Condition #3 requires that copies of permits from any other state or federal agencies be submitted for the file before construction actually begins. Any project modifications from other agencies could also require an amendment to this permit.

This proposed development must be reviewed for consistency with Section 30236 of the Coastal Act, which addresses, among other things, flood control channels. Although Stevens Creek is a "natural" creek, it has been channelized through development of Solana Beach north of Via de la Valle, the northwestern part of the Fairgrounds, and the railroad bridge that runs north-south west of the creek. The creek is not part of the Fairgrounds stormwater system, but it drains 80% of Solana Beach. In the past, when the creek has not been cleared of sediments, vegetation and debris, significant flooding of both public and private properties in southern Solana Beach has occurred, and lawsuits have resulted. To prevent flooding, the creek must be kept in a free-flowing condition, which requires periodic maintenance such as that proposed. The proposed development will not further channelize the creek, but will keep it in condition to drain large areas of uplands to the north of the Fairgrounds.

To summarize, the proposed project will clear a 12-foot-wide strip down the center of the creek, and will allow the applicant to periodically maintain that cleared area for a period of five years. Although the proposed project will result in a small wetlands impact, the impacts have been reduced in both scope of work and amount of wetland impacts, and said impacts have been adequately mitigated. The Commission's staff ecologist reviewed

the original proposal for more dredging and greater impacts, and suggested then that mitigation be performed as currently proposed rather than through other methods being considered. Thus, the project incorporates the best feasible mitigation measures, as required under Section 3-236. Periodic maintenance is required in Stevens Creek, since it serves as a flood control channel to protect portions of the City of Solana Beach. Therefore, as conditioned, the Commission finds the proposed project consistent with the cited policies of the Coastal Act.

3. Public Access. The following Coastal Act policies are most pertinent to this issue, and state in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The fairgrounds is located near the mouth of the San Dieguito River and Lagoon, west of I-5, but east of Camino del Mar (Old Highway 101) and the railroad tracks. It is between the river and Via de la Valle which is the first public east-west road north of the river; El Camino Real, due to changes in tidal influence caused by the San Dieguito Restoration Project, is now the first north-south public road east of the site. Thus, the entire fairgrounds complex is located between the sea and first public roadway, where maintaining shoreline public access to the river/lagoon and west to the municipal beaches is of greatest concern. As the property owner is another state agency, the property is in public ownership, and, for the most part, the public can freely access various portions of the grounds, including the riverfront, particularly when no major events are taking place.

However, the portion of Stevens Creek affected by the proposed project is at the far northern boundary of the Fairgrounds, just south of Via de la Valle. Because it is part of

public drainage facilities (it drains 80% of Solana Beach, but none of the Fairgrounds, which has its own stormwater system), the creek itself is enclosed by chain-link fence. The creek is used only for flood control purposes, and has never been intended to provide any public recreational opportunities, or even any significant wildlife habitat opportunities, along its northern reach. Implementation of the proposed project itself will not interfere with any existing public access points to the river or lagoon. Therefore, as conditioned, the Commission finds the proposed development consistent with the cited Chapter 3 policies of the Coastal Act, and consistent with all other public access and recreation policies as well.

4. Water Quality. The following Coastal Act policies are most pertinent to this issue, and state:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Proposed is a maintenance project to keep Stevens Creek, part of the City of Solana Beach's stormwater system, operating effectively. The proposed project will involve grading/dredging a portion of Stevens Creek with an excavator to remove sediments, vegetation and other debris. The project will not create any new impervious surfaces, or introduce any pollutants, and, by removing sediments and debris, will remove any pollutants contained within them. A silt barrier will be installed at the downstream end of the project, to prevent sediments from moving downstream and causing turbidity. The silt barrier will be removed when the project is complete. The dredged sediments and vegetation will be stockpiled next to the creek until they dry, then they will be trucked to a legal landfill outside the coastal zone. The proposed project will not modify the existing storm drain facilities or drainage patterns, and will be repeated as necessary for the next five years. Therefore, the Commission finds the development, as conditioned,

consistent with the cited policies of the Coastal Act with respect to water quality concerns.

5. Visual Resources. Section 30251 of the Act addresses visual resources, and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

The proposed maintenance project will not have any significant effect on the overall appearance of the Fairgrounds. The project occurs along the portion of Stevens Creek that forms part of the northern boundary of the site, adjacent to the backfield facilities and storage areas of the Fairgrounds. The project will be minimally visible from Via de la Valle, if it can be seen at all through the street trees lining the road. The location within the Fairgrounds is well away from the areas generally used for shows and exhibits, and will thus be out of sight of the general public. Mitigation for the proposed development will increase native vegetation overall, but will not change the overall appearance of the area, since non-native vegetation is being removed and replaced with the natives. The whole development will be noticeable only to those in the immediate vicinity. The Commission therefore finds the proposal, as conditioned, will not adversely impact public views or scenic resources and is consistent with Section 30251 of the Act.

6. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

Although the site is in an area of original jurisdiction (filled tidelands) and thus not subject to the policies and regulations of Del Mar's certified LCP, the proposed project is nonetheless consistent with the Fairgrounds/Racetrack land use designation and zone of the Del Mar LCP. The District is currently working on a complete update of its 1985 Master Plan, but the draft document has not undergone full review as yet. Although these specific restoration activities are not addressed in either the old or draft master plans, maintenance of existing facilities in general is part of the plan. However, in areas of original jurisdiction, Chapter 3 of the Coastal Act is the legal standard of review, and local planning documents are used as guidance only. The preceding findings have demonstrated that the proposal, as conditioned, is fully consistent with all applicable Chapter 3 policies of the Coastal Act, and will not prejudice the planning abilities of the District.

7. Consistency with the California Environmental Quality Act (CEQA).

The 22nd District Agricultural Association (District) is the lead agency for purposes of CEQA review for Fairgrounds projects, and the Coastal Commission is a responsible agency. The District found the proposal categorically exempt from CEQA review pursuant to Class 33, Section 15333, as a small restoration project. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

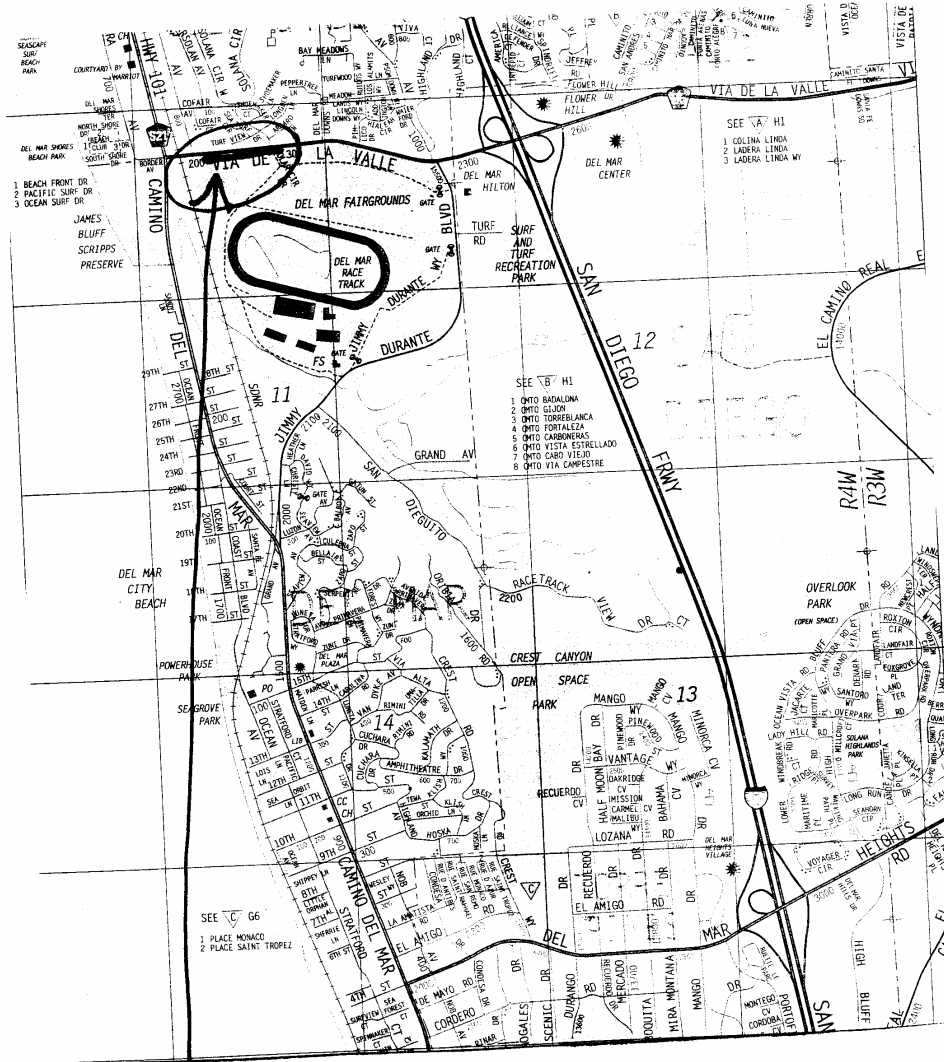
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including a mitigation and monitoring program to address biological impacts, limiting the term of the permit to five years, and requiring copies of any other state or federal permits, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

6-08-037



Site

EXHIBIT NO. 1
APPLICATION NO.
6-08-037
Location Map
California Coastal Commission

6-08-037

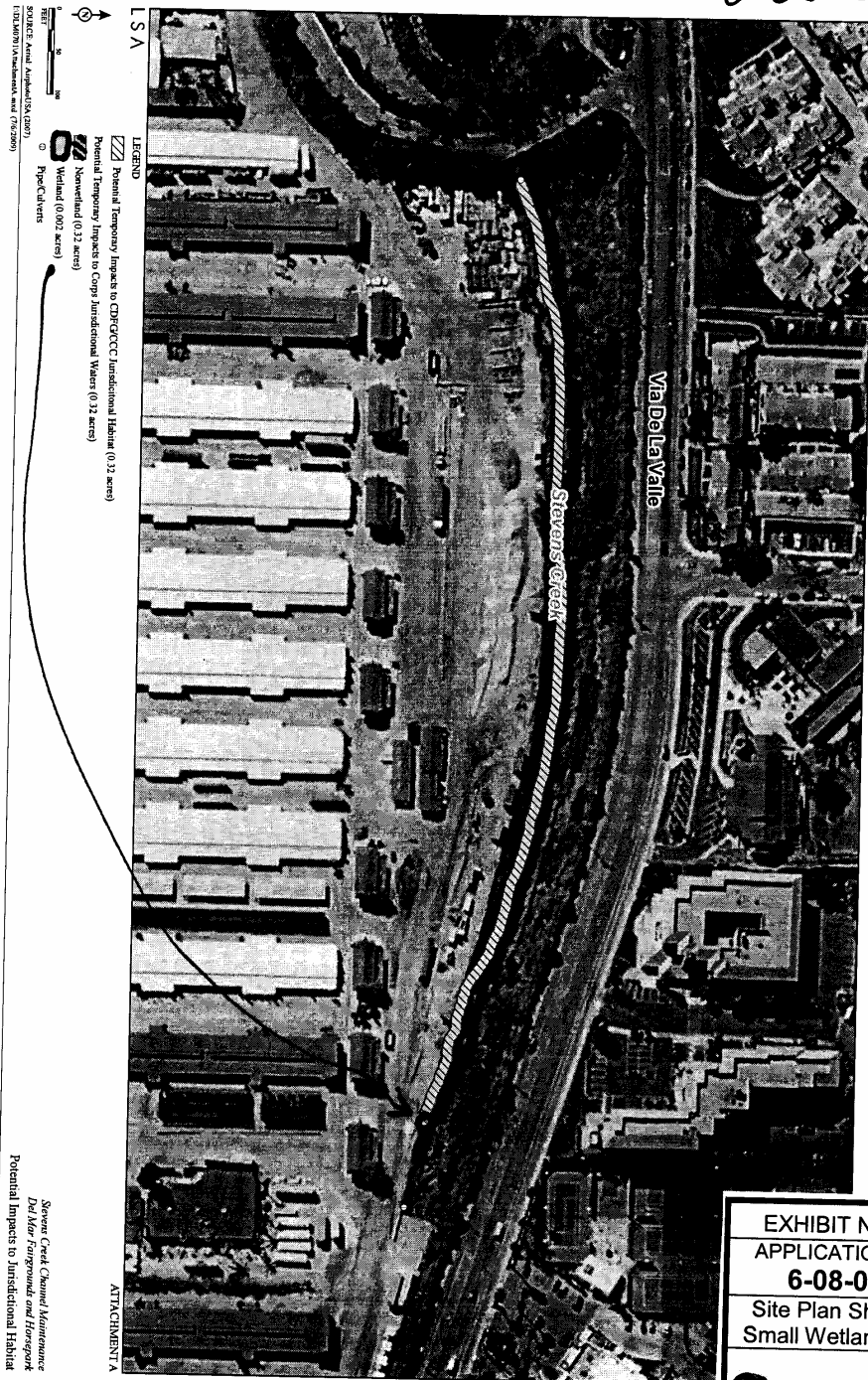


EXHIBIT NO. 2
APPLICATION NO.
6-08-037
Site Plan Showing Small Wetland Area
California Coastal Commission

6-08-037

