

CALIFORNIA COASTAL COMMISSION

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Th 8 & 9

ADDENDUM

March 6, 2012

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to the original staff report.](#)

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. 8 & 9 - CEASE AND DESIST ORDER
CCC-12-CD-02 AND RESTORATION ORDER CCC-12-RO-02
(22ND DISTRICT AGRICULTURAL ASSOCIATION)
FOR THE COMMISSION MEETING OF **March 8, 2012****

Documents Received:

Documents included in this addendum are the following letters in support of the Cease and Desist and Restoration Orders:

1. Letter from Assemblymember Toni Atkins, dated February 23, 2012.
2. Letter from Assemblymember Marty Block, dated February 23, 2012.
3. Letter from Pamela Epstein with Sierra Club, date March 6, 2012.

Changes to staff report / Recommendations and Findings for CCC-12-CD-02 AND CCC-12-RO-02

Commission staff hereby revises its February 23, 2012 staff report and, thereby, its recommended findings in support of the Cease and Desist Order & Restoration Order. Language to be added is shown in *italic and underlined*, as shown below, and deletions are shown in ~~strikeout~~:

1. Page 4, paragraph 1, sentence 2 should read as follows:

“Portions of the Consent Orders additionally pertain to the DAA’s Horsepark property that is located at 14550 El Camino Real, *in the Cities of* Del Mar *and San Diego*, San Diego County (Exhibit 3).”

2. Page 5, paragraph 4, sentence 1 should read as follows:

“The area now occupied by the subject property was one such area created by the import of fill in the early 1900s, and an annual fair, generally held in mid June, has been held on the subject property since 194~~3~~6.”

3. Page 6, paragraph 2, sentence 3 – 4 should read as follows:

The permit provided that the term of use of the tent would be a total of ~~6~~ 5 years: ~~1 year of non-volleyball activities, and 5 years of volleyball activities. the first year to being the only year during which non-volleyball activities were permissible.~~ The aforementioned permit expired in September of ~~2008~~2007; however, the tent remains in place on the property.

4. Page 12, paragraph 2, sentence 2 should read as follows:

“The Horsepark property is located approximately 1.5 miles upstream on the San Dieguito River of the subject property and is bounded to the north by Via De La Valle, ~~San Dieguito Road~~ El Camino Real borders to the east, and the San Dieguito River traverses the southern portion of the property.”

5. Page 14, paragraph 1, sentence 5 should read as follows:

“In an effort to accommodate increased demand, the DAA began to develop and utilize supplementary facilities and parking; overflow parking areas previously used a few ~~weeks~~ months of the year are now used for parking nearly every weekend of the year, and the East Overflow Lot is additionally used for short-term events.”

6. Page 14, paragraph 1, sentence 6. Page 23, paragraph 4, sentence 1. Page 34, paragraph 1, sentence 3. The word “impermanent” shall be added to modify reference to the unpermitted concert stage in the three sentences indicated. The sentences shall therefore read as follows:

Page 14, paragraph 1, sentence 6. “Moreover, while a concert stage had, prior to the Coastal Act, been erected within the race track for nightly concert events following horse races, the DAA now constructs the impermanent stage south of the racetrack where the Del Mar Fair midway is located in June.”

Page 23, paragraph 4, sentence 1. “Moreover, DAA has placed and began to use an impermanent concert stage on the far western extent of the subject property, adjacent to Stevens Creek, where the midway is located during the Fair.”

Page 24, paragraph 1, sentence 3. “Locating the *impermanent* concert stage near the wetlands dramatically increases the number of days of auditory and visual disruption of the wetlands biota.”

7. Page 16, paragraph 2, sentence 2. DAA has asserted to Commission staff that neither the Breeders Cup nor the Kentucky Derby has been held at their facilities. As Commission staff has no reason to doubt the veracity of this claim, references to both events will therefore be stricken and the sentence shall read as follows:

“In recent years, unpermitted events employing the East Overflow Lot for both parking and to hold the actual event, and the South Overflow Lot for parking, include but are not limited to the Harvest Festival, ~~Breeders Cup~~, Calendar Antique Show, Snow Jam, Tony Robbins event, Import Auto Show, Sale of Century Antique Show, Koi Show, Jamboree by the Sea, Selling Shows, Gunshow, Wildfowl Arts, Rodeo Concert, Dog Show, Fred Hall Fish Show, Night of the Horse, Banquets, ~~Kentucky Derby~~, Spirit West Coast Christian Music Festival, Pumpkin Patch, Christmas Tree Sale, Cirque Du Soleil, Car Show, and Cinco de Mayo Concert.”

Changes to Consent Cease and Desist and Restoration Orders CCC-12-CD-02 and CCC-12-RO-02

Staff recommends the Commission approve the Consent Orders with the following minor addition:

1. Section 3.2.I of the proposed Consent Orders is hereby amended, with the concurrence of DAA, to read as follows:

If the Commission approves the CDP application identified in Section 3.2.B of these Consent Orders, DAA shall undertake all of the development authorized by the permit and identified in Section 3.2.C of these Consent Orders no later than two (2) years from approval and comply with all terms, conditions, and deadlines of the approved CDP: and shall implement the approved version of the plan required by Section 3.2.H and comply will all deadlines established therein.

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PORTS
AEROSPACE

February 23, 2012

Chairwoman Mary Shallenberger
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Re: Consent Cease and Desist Order No. CCC-12-CD-02 - Support

Dear Chair Shallenberger:

I am writing to express my support for the Consent Cease and Desist Order No. CCC-12-CD-02 which would allow the California Coastal Commission (CCC) and the 22nd District Agricultural Association (DAA) to move past a decade long dispute regarding wetlands and other environmentally sensitive areas surrounding the fairgrounds. This settlement is especially important because the DAA has specifically enumerated the violations and has agreed to correct them, which marks a significant change in the dialogue between these two state agencies.

The settlement is also important because the Coastal Commission will take a comprehensive approach to bringing the DAA into compliance. As such, this settlement is worth nearly \$5 million to the California Coastal Commission and includes important Coastal Commission goals such as the restoration of surrounding wetlands, restoration of the North Shore of the San Dieguito River, and construction of the Coast to Crest trail.

For these reasons, I am pleased to support Consent Cease and Desist Order No. CCC-12-CD-02. Please do not hesitate to contact me if you would like to discuss my position on this important issue further. The appropriate contact in my office is Gibran Maciel, and he can be reached at (619) 645-3090 or via e-mail at gibran.maciel@asm.ca.gov. Thank you for your consideration, and I look forward to a new era of cooperation between the Coastal Commission and the 22nd District Agricultural Association.

Sincerely,

Toni Atkins
Assemblymember, 76th District

TA: gm

CC: Executive Director Charles Lester
Members, California Coastal Commission
Duane Morris, LLP

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BY RE-ENTRY

February 23, 2012

Chairwoman Mary Shallenberger
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Re: Consent Cease and Desist Order No. CCC-12-CD-02 - Support

Dear Chair Shallenberger:

I am writing to convey my support for the Consent Cease and Desist Order No. CCC-12-CD-02, which would allow the California Coastal Commission (CCC) and the 22nd District Agricultural Association (DAA) to move beyond a decade long dispute involving the wetlands and other environmentally sensitive areas that surround the fairgrounds. This settlement is of great importance because the DAA has specifically indicated the violations that have occurred and has agreed to correct them, marking a momentous shift in the dialogue between these two state agencies.

Additionally, this settlement is significant because the Coastal Commission will take a comprehensive approach to bringing the DAA into compliance. As a result, this settlement is worth nearly \$5 million to the California Coastal Commission and includes important Coastal Commission goals such as the restoration of surrounding wetlands, restoration of the North Shore of the San Dieguito River, and construction of the Coast to Crest trail.

For these reasons, I am pleased to support Consent Cease and Desist Order No. CCC-12-CD-02. Effective stewardship of our State's natural wonders can only take place under the watch of an effective and attentive government, and this agreement accomplishes just that. Thank you for your consideration, and I look forward to a new era of cooperation between the California Coastal Commission and the 22nd District Agricultural Association.

Respectfully,

A handwritten signature in black ink that reads "Marty Block". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

MARTY BLOCK
Assemblymember, 78th District

MB: bz



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March 6, 2012

Chair Shallenberger
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105

Via Electronic Mail

Re: **Consent Cease and Desist Order No. CCC-12-CD-02 Consent Restoration Order No. CCC-12-RO-02 (22nd District Agricultural Association**
March 8, 2012 Agenda Item Nos. 8 and 9

Dear Chair Shallenberger and Honorable Commissioners:

Please accept these comments on behalf of the Sierra Club, San Diego Chapter (the “Sierra Club” or the “Club”). The Club has expressed longstanding concern regarding the various unpermitted seasonal and periodic development and activities occurring on or around designated wetlands at the Del Mar Fairgrounds and Horsepark (the “Fairgrounds”). With this in mind the Club writes in strong support of Commission staff’s recommendation to approve Consent Cease and Desist Order No. CCC-12- CD-02 and Consent Restoration Order No. CCC-12-RO-02 (the “Consent Orders”). The Consent Orders ensure that the Fairgrounds are brought into a state of compliance with the Coastal Act, that the impacts of unpermitted development are mitigated, and that there is a proper framework for future compliance.

The comprehensive approach reflected by the Consent Orders is highly commendable. The Club is supportive of the detailed conditions, monitoring standards and enforcement provisions that encompass fines and other penalties if deadlines are missed or requirements are not adequately satisfied. Particularly important to the Club is the restoration of the South Overflow Lot to wetlands, the implementation of the 100-foot (native species) wetland buffers, requirements for coastal development permits for continued unpermitted uses and a new wetlands delineation study prepared in conformance with Coastal Commission standards; that would provide a much need current factual accounting of wetlands projections on the Fairgrounds.

It is the Club’s sincere hope that the Fair Board’s public acknowledgement of past and ongoing coastal violations is the birth of the new Board’s environmental conscious. Only time and how the Board handles proposed new activities not covered under the Consent Orders will demonstrate whether this is the dawn of a new era. Conversely, with a history of non-compliance, stretching back decades, the Club remains concerned that the Fair Board will revert to old habits. For instance, during the same meeting where the Fair Board endorsed the Consent Order, it also agendized an item for a budget appropriation of approximately \$80,000 worth of permanent electrical improvements for a new temporary concert area, without providing any indication of an intent to apply for the requisite coastal permits. The Club recommends the Commission inquire as to the Fair Board’s intention and follow the issue closely as it will

provide insight as to how the Fair Board will approach Coastal Act requirements that fall outside the scope of the Consent Orders.

The Consent Orders are absent any mention of the Fair Board's controversial Master Plan and several provisions contained within the Consent Orders are in direct conflict. It is the Club's position that in order to maintain consistency the Consent Order should require the Fair Board to amend the current conflicting Master Plan. Amongst the various resulting Master Plan inconsistencies the Club is most interested in the developmental changes that will be required by the updated wetlands delineations, full restoration of the SOL and 100-foot wetland buffers.

The Consent Orders provide the Fair Board with a roadmap for improved environmental stewardship, at the Fairgrounds. Moreover, the Consent Orders will achieve enhancements in water quality and biological productivity to severely degraded wetlands that have suffered from an epidemic of unpermitted activity and development. The Sierra Club strongly urges the Commission to approve staff's recommended Consent Orders. Thank you in advance for your consideration of these comments and the Club is look forward to testifying at the Commission hearing in Chula Vista.

Best Regards,



Pamela N. Epstein, Esq., LL.M
Managing Attorney & Legal Program Manager
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The San Diego Chapter of the Sierra Club is San Diego's oldest and largest grassroots environmental organization, founded in 1948. Encompassing San Diego and Imperial Counties, the San Diego Chapter seeks to preserve the special nature of the San Diego and Imperial Valley area through education, activism, and advocacy. The Chapter has over 14,000 members. The National Sierra Club has over 700,000 members in 65 Chapters in all 50 states, and Puerto Rico.



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**Items Th 8 & 9**

Staff: Heather Johnston-SF
Staff Report: February 23, 2012
Hearing Date: March 08, 2012

**STAFF RECOMMENDATIONS AND FINDINGS FOR
 CONSENT CEASE AND DESIST AND CONSENT RESTORATION ORDERS**

CEASE AND DESIST ORDER: CCC-12-CD-02

RESTORATION ORDER: CCC-12-RO-02

RELATED VIOLATION FILE: V-6-01-004, V-4-90-009, V-6-10-011, V-6-11-006, V-6-11-009

PROPERTY LOCATION: 2260 Jimmy Durante Blvd and 14550 El Camino Real, Del Mar, CA 92014; San Diego County Assessor's Parcel Numbers APNs 302-090-011; 298-260-015; 298-260-035; 298-271-03; 299-030-01; 299-030-04; 299-030-05; 299-042-02; and 299-042-01.

PROPERTY OWNER: 22nd District Agricultural Association

VIOLATION DESCRIPTION: Violations include the following unpermitted development: Change in the intensity of use of the subject property from its pre-Coastal Act levels of use, including, but not limited to, greatly increased parking use in floodplain/habitat areas, commencing operation of a truck-driving school, and initiating new regular and special events; landform alteration within the wetlands and river channel related to the operation of the unpermitted truck driving school in the South Overflow Lot; placement of riprap in two locations along the northern shore of the San Dieguito River (both without a permit and in potential violation of a prior permit); construction of a concert stage at the western end of the Fairgrounds adjacent to wetlands; continued presence of a 13,500 square foot fabric tent on the "Surf and Turf" site beyond the express deadline provided in the permit; construction of a swimming pool and operation of a swimming school, and placement of an associated

1,500 square foot fabric tent adjacent to the swimming pool; construction of a restroom facility; and placement of billboards and other forms of advertising visible from Interstate-5 on the “Surf and Turf” facility.

PERSONS SUBJECT TO THESE ORDERS: 1. 22nd District Agricultural Association

SUBSTANTIVE FILE DOCUMENTS:

1. Public documents in Cease and Desist and Restoration Order files No. CCC-12-CD-02 and CCC-12-RO-02
2. Exhibits 1 through 11 and Appendix A of this staff report

CEQA STATUS Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

A. Overview

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-12-CD-02 and Consent Restoration Order No. CCC-12-RO-02 (collectively, the “Consent Orders”) to address development undertaken in violation of the Coastal Act, on property located at 2260 Jimmy Durante Blvd and 14550 El Camino Real, Del Mar, CA 92014.¹, known as the Del Mar Fairgrounds and associated areas, operated by the 22nd District Agricultural Association (DAA). The locations of the properties subject to the proposed Consent Orders are depicted on the map in Exhibit 1, and Exhibit 2 identifies the various sub-areas of the property located at 2260 Jimmy Durante Blvd (“subject property”) referred to below², The proposed Consent Orders are included as Appendix A of this staff report.

The entity subject to the proposed Consent Orders is the 22nd District Agricultural Association, which undertook the subject development on the subject property without the necessary permits, and therefore in violation of the Coastal Act. District agricultural associations are special state agencies formed pursuant to California Food and Agriculture Code section 3802 to operate local fairgrounds and promote agricultural education. The development at issue in this matter (hereinafter referred to as the “Unpermitted Development”) includes, but may not be limited to, the following: (1) change in the intensity of use of three unpaved areas (EOL, SOL and GDR), from their pre-Coastal Act levels (and types) of use, not only by vastly increasing parking use, but also by, among other things, commencing operation of a truck-driving school and initiating

¹ Also identified by the San Diego County Assessor’s Parcel Numbers 302-090-011; 298-260-015; 298-260-035; 298-271-03; 299-030-01; 299-030-04; 299-030-05; 299-042-02; and 299-042-01.

² The properties addressed include areas known as the Golf Driving Range (GDR), Surf and Turf Facility, the South Overflow Parking Lot (SOL), and the East Overflow Parking Lot (EOL).

new regular and special events, which both use these areas, and create new additional parking demands; (2) landform alteration within wetlands related to the operation of the unpermitted truck driving school in the SOL; (3) construction of a restroom facility on the Surf and Turf Lot; (4) placement of riprap in two locations along the northern shore of the San Dieguito River; (5) construction of a concert stage at western end of the Fairgrounds, adjacent to wetlands; (6) continued presence of a 13,500 square foot fabric tent for youth volleyball activities beyond the life-span in the permit issued by the Commission; (7) construction of a swimming pool and operation of a swimming school, and placement and use of an associated 1,500 square foot fabric tent; and (8) placement of billboards and other forms of advertising visible from Interstate-5 on the “Surf and Turf” facility.

This Consent Order is the culmination of many years of discussions between the DAA and the Coastal Commission staff. As described more completely below in Section IV, the unpermitted development on the subject property (of which Commission staff is aware) began in the 1980s, with the steady increase in usage of the facility from summertime use as a fairground and for horseracing venue to year-round use for many more purposes and the concomitant construction of, and/or addition to, facilities on-site to accommodate the new uses and the increased demand for visitor serving amenities. In the intervening years, DAA has sought and obtained after-the-fact permits from the Commission to authorize some portions of the unpermitted development. The proposed Consent Orders are intended to address as much of the remaining unpermitted development on the subject property as possible and to establish a framework for complying with the Coastal Act in the future.³

The Orders have a number of provisions to address the various situations at the site, and to address the resources affected. By requiring (1) the removal of unpermitted development, (2) an application for Coastal Act authorization of any new development the DAA proposes and of any existing unpermitted development it proposes to maintain, (3) restoration of specified impacted areas, (4) restoration of 100-foot buffers along the San Dieguito River and around anticipated restored wetlands both east of Jimmy Durante Blvd, and (5) sponsoring and promoting coastal clean up, education, and awareness, the proposed Consent Orders are intended to ultimately ensure that the subject property is brought into a state of compliance with the Coastal Act, and that impacts of unpermitted development are mitigated.

Commission staff has worked closely with DAA to reach agreement on the proposed Consent Orders and appreciates its cooperation in both resolving these violations, and in setting forth a process to avoid additional violations in the future. Through the proposed Consent Orders, DAA has agreed to ultimately resolve Coastal Act violation matters addressed herein, including resolving claims for injunctive relief, through removal, restoration, mitigation, agreeing not to undertake unpermitted development in the future, and agreeing to continued compliance with previously issued permits.

B. Description of Property

³ While Commission staff is obviously not aware of everything that has occurred on the subject property over the past 30 years and therefore cannot assure that this action will resolve all unpermitted development on the site, we have addressed all violations known to the CCC, and the orders provide that any additional violations will be dealt with separately.

The property subject to the Consent Orders is the 22nd District Agricultural Association's facility in the City of Del Mar ("subject property"). Portions of the Consent Orders additionally pertain to DAA's Horsepark property that is located at 14550 El Camino Real, Del Mar, San Diego County (Exhibit 3).

Nearly the entire subject property was originally created through the filling of tidelands during the 1930s, but much of it continued to function as wetlands. In fact, while a portion of the site has been occupied with structures and other event-related development for years, several areas remain that contain seasonal wetland resources. These areas include the East and South Overflow Parking Lots and much of the driving range, all of which are additionally within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons (Exhibit 4). The East Overflow Lot (EOL) is also documented as containing several areas of seasonal wetlands. As wetlands provide filtration of sediment and pollutants, function as nurseries and critical habitat for a variety of avian and aquatic species, and are essential to the regulation of hydrology in watersheds, a number of policies enumerated in Chapter 3 of the Coastal Act are intended to protect and, where possible, enhance the integrity of wetlands. Impacts of unpermitted development on wetland and other coastal resources are further described below in Section IV.D.2.b.

The subject property and the Horsepark property are both situated in the San Dieguito River Valley and either adjoin wetlands or occupy historic wetlands. Wetlands are extremely rare and important ecosystems. Less than twenty-five percent of the original coastal wetland area remains in Southern California, and much of the remaining wetlands are degraded. Despite their rarity, they remain extremely important from an ecological standpoint, and southern California's coastal wetlands continue to support numerous plant species found only in wetlands and resident and migrant wildlife species, including birds migrating along the Pacific Flyway. Wetlands often provide critical habitat, nesting sites, and foraging areas for threatened or endangered wildlife and bird species. Additionally, pursuant to Executive Order S-13-08, issued on November 14, 2008, all state agencies in California that are planning construction projects in areas vulnerable to future sea level rise must take predicted sea level rise into account. Through their water regulating and storage functions, floodplains and wetlands can reduce the impacts of increased precipitation, storms, glacier melting and even sea level rise. Therefore, preservation, and where possible, restoration of wetlands and floodplains is an important component in the State's capacity to adapt to sea level rise.

Significantly, the subject property is also contiguous with Southern California Edison's ongoing 150 acre, \$87-million San Dieguito Wetlands Restoration Project (WRP) (Exhibit 3). This project, authorized by the Commission on October 12, 2005, is designed to restore tidal flows, natural habitat, and vegetation to the coastal wetlands of the San Dieguito River Valley. The central feature of the WRP, which entered the final stage of major construction in September 2011, is the conversion of the status of lands within the historical wetland footprint from less valuable vegetation types to more valuable tidal saltmarsh or open water. The restoration will create 150 acres of tidal wetlands and uplands, designed to provide adequate tidal flushing, circulation, and habitats necessary to support diverse biological resources. Once this restoration program reaches completion, the portions of the river valley south of the subject property and west and south of the Horsepark property will be comprised of ecologically valuable tidal saltmarsh and upland habitats. The proximity of the subject property and Horsepark property to this large-scale restoration project means that any unpermitted development within both areas

could threaten to compromise the habitat value of the restored wetland, still in nascent recovery. In addition, as the SOL is contiguous with the restoration area, DAA's proposed restoration of portions of the SOL to functioning wetland, with the remainder to be restored after obtaining a CDP for development on the EOL, is the more valuable as it would allow for a greater swath of contiguous high value wetlands habitat as well as increased buffering to help protect water quality from urban runoff.

Furthermore, the Coast to Crest Trail traverses the southern periphery of the subject property and the Horsepark, and the San Dieguito River Valley coastal area is a significant scenic resource for residents and visitors in Solana Beach, Del Mar, the City of San Diego, and the County region as a whole.

C. Summary of Violation and Proposed Resolution

Functioning as a critical hydrologic drainage basin for approximately 346 square miles of western San Diego County, the San Dieguito Lagoon has the largest watershed of the six San Diego coastal lagoons, with the ecologically valuable marsh area alone believed to have been over 600 acres historically. Over the years, the San Dieguito River Valley, particularly the coastal saltmarsh, was subjected to major filling for a number of activities, including construction of Highway 101, Jimmy Durante Boulevard, residential land development, the Del Mar Fairgrounds, and a World War II airport.

The area now occupied by the subject property was one such area created by the import of fill in the early 1900s, and an annual fair, generally held in mid June, has been held on the subject property since 1946. Prior to February 1, 1973, the effective date of Proposition 20, two annual events were held each year on the subject property: the Del Mar County Fair, and thoroughbred horseracing ("Fair and Races")⁴. These events were held from mid June through early September and occupied the western two thirds of the extant footprint of on-site development, with the areas now known as the EOL, SOL, and GDR areas used for overflow parking. Since the effective date of Proposition 20, the size and scope of events held on the subject properties began to expand, and the DAA began to engage in development to accommodate the increased demand, in terms of both footprint and the length of time used, for facilities and parking associated with this more year-round usage. Where the overflow parking areas had previously been utilized only a few months of the year for Fair and Races events, they soon became used for parking nearly every weekend of the year, and DAA additionally began holding short term events on the EOL during these non-Fair and Races times, which themselves in turn created new demands for parking. As discussed further in Section IV.C., DAA also constructed numerous facilities during this period, including barns, arenas, and exhibit halls, some of which were permitted by the Commission after construction.

Section 30106 of the Coastal Act defines "development" to include: "...on land, in or under water, the placement or erection of any solid material or structure...change in the density or intensity of use of land..." The development subject to these Consent Orders includes physical development, as discussed further herein, and also includes the change in intensity of use of the subject properties. The physical development includes landform alteration in a wetlands,

⁴ The subject property is bisected by the Proposition 20 jurisdictional boundary.

construction of a concert stage, placement of billboards on truck trailers in two locations on the subject property visible from Interstate-5, the construction of a restroom facility, the placement of riprap in two locations along the northern shore of the San Dieguito River, the construction of a swimming pool, and the placement and continued use of large fabric tents. The change in the intensity-of-use development includes the intensification of use of the subject property through the aforementioned increased use of the East and South Overflow Lots to house events and year round parking; landform alteration for, and operation of, a truck driving school; the placement and operation of a swim school; and the year round parking of truck trailers. In some cases this changed intensity-of-use is additionally accompanied by attendant physical development, including the parking of cars and trucks and the blading of the parking area in preparation for non-Fair and Races events. As discussed more extensively in Section V (b) below, this change-of-use, accompanied by physical development and the increase and diversification of uses both triggers a permit requirement under the Coastal Act, and raises a number of concerns under Chapter 3 of the Coastal Act, including: impacts on scenic and visual qualities of coastal areas (§30251), concentration of development (§ 30250), development adjacent to environmentally sensitive habitat (§30240), maintenance of public access (§ 30252), fill of wetlands (§30233), and the biological productivity and quality of coastal waters (§30231).

Furthermore, development on the subject property violates the terms and conditions of at least two permits previously issued by the Commission. CDP 6-02-020 (approved September 9, 2002) authorized the construction of a 13,500 sq foot tent on the “Surf and Turf” portion of the subject property. The permit provided that the term of use of the tent would be a total of 6 years: 1 year of non-volleyball activities, and 5 years of volleyball activities. The aforementioned permit expired in September of 2008; however, the tent remains in place on the property. CDP application 6-11-059 seeks to authorize the permanent retention of the tent, but has not been approved by the Commission. Therefore, the tent remains in violation of CDP 6-02-020.

CDP 6-04-049 authorized the replacement of barns on the Fairgrounds property. Special Condition 1 of CDP 6-04-049 specifically provided that the applicant forfeited any potential future right to construct some form of protective channelization or alteration of a river or stream to protect the barns. However, in January of 2010, unpermitted riprap placed was placed within the San Dieguito River in violation of Special Condition 1 of CDP 6-04-049. This rip-rap was placed without a permit, and if placed to protect the barns from inundation it additionally would be in violation of CDP 6-04-049.

In the 1990s and early 2000s, the DAA engaged in myriad unpermitted development on the Horsepark Property. The Commission subsequently granted CDP 6-04-029 to the DAA on March 17, 2005 to resolve the violations on the Horsepark property. Pursuant to the proposed Consent Orders DAA has agreed to continue complying with the terms and conditions of CDP 6-04-029 to ensure complete resolution of Coastal Act violations on the Horsepark property.

All of the Unpermitted Development at issue herein remains on the property at present. Photographs of some of the Unpermitted Development are included as Exhibit 5.

By signing the proposed Consent Orders, DAA has agreed to, among other things: 1) remove the riprap from the two locations along the San Dieguito River and restore impacted areas with native vegetation; 2) restore the southernmost portion of the SOL, EOL, and GDR with native vegetation to serve as the requisite 100 foot wetland buffer; 3) apply for Coastal Development

permits to seek permanent authorization for increased usage of the subject properties consistent with the Coastal Act and under specified deadlines; 4) grant conservation easements over a varying width buffer area along Stevens Creek, and over the restored 100-foot buffers on the SOL, EOL, and GDR, for protection and restoration of the areas and public access; 5) remove advertisements visible from Interstate-5; 6) restore the South Overflow Lot to functioning wetlands within thirty months of any Commission approval of a permit application for development or use of the EOL (Exhibit 6); and (7) undertake mitigation, including sponsoring wetlands cleanup, undertaking trash removal along the Coast to Crest Trail on the subject property, providing funding and ranger space to the San Diego River Park Joint Powers Authority, and promoting coastal awareness and education. The Consent Orders also provide enforceable deadlines for all of the obligations under the Orders.

The provisions of the Orders are relevant to the long term restoration of wetlands in this area. Restoration of the coastal wetlands of the San Dieguito River has been a stated goal of the Cities of Del Mar and San Diego, and the organizers of the San Dieguito River Park Joint Powers Authority (JPA), comprised of the Cities of Del Mar, Escondido, Poway, San Diego and Solana Beach, for almost two decades. The ultimate restoration goal, as stated in the San Dieguito Lagoon Resource Enhancement Program (adopted in 1979) and the San Dieguito River Park Concept Plan (adopted in 1994), is to restore what remains of the historically significant San Dieguito Lagoon system. The objective of the JPA restoration is to preserve, improve, and restore a variety of habitats to increase and maintain fish and wildlife and ensure the protection of endangered species. These goals are consistent with the policies of Chapter 3 of the Coastal Act, including the preservation of biological productivity and quality of coastal waters and the protection of environmentally sensitive habitat, as well as Executive Order W-59-93, which directed State agencies to conduct activities consistent with the preservation, restoration, and long-term protection of wetlands. Restoration that DAA has agreed to undertake under these Orders will help accomplish this goal, as the restorative grading and revegetation will create a tidal saltmarsh that will be subject to tidal action, enable saltmarsh plants to achieve greater productivity, support a greater variety of invertebrate prey, and will be utilized by a greater diversity and abundance of vertebrates.

Further, restoration of 100 foot wetland buffers along the southern periphery of the property east of Jimmy Durante Blvd and the easement along Stevens Creek will enhance water quality and biological productivity of the adjacent wetland, by ensuring that runoff is filtered through soils and natural vegetation before entering the watercourse. In addition to mitigation of impacts by the restoration of the buffers and wetlands, the DAA will construct a public trail in a location proximate to Jimmy Durante Boulevard, and provide public access facilities and interpretive signage to accompany the restoration area. The proposed public access amenities are intended both as a means of reducing inadvertent adverse impacts of uncontrolled access to the restoration areas, and of enhancing public appreciation of the restoration effort through nature study and education about wetland values.

As mitigation for the unpermitted development, provided under the proposed Consent Orders, DAA has agreed to record an offer to dedicate a conservation easement over the restored 100-foot buffer on the SOL, EOL, and GDR. This conservation easement is to benefit the public, and precludes development not necessary for resource management and protection or to facilitate appropriate public access, and will be held by the San Dieguito River Park Joint Powers

Authority (“JPA”),⁵ which was formed as an independent agency on June 12, 1989, by the County of San Diego and the Cities of Del Mar, Escondido, Poway, San Diego and Solana Beach. If and when the Commission approves a permit for development on the EOL, DAA will also restore the remainder of the South Overflow Lot and amend the easement/offer to dedicate to include the entirety of the South Overflow Lot. After so recorded, the entire area will be preserved for wetlands habitat and appropriate recreational activities. Additionally, to help address funding needs in the JPA budget, DAA has offered to provide \$20,000 per year funding to the JPA for five years as additional mitigation and to benefit the coastal resources in the immediate area. This funding shall be used for the fulfillment of the JPA’s mandate to preserve open space, protect and interpret biological and cultural resources, and provide and maintain a public access trail. Further, to help facilitate the work of the JPA, DAA has agreed to provide office space at the Fairgrounds for the JPA Ranger until such time as permanent facilities are developed.

Finally, DAA has committed to several additional projects to promote coastal resources, preservation, awareness, and education, including: sponsoring an annual San Dieguito River Park cleanup west of Interstate-5; undertaking trash pick-up and removal along the Coast to Crest Trail on the subject properties; in consultation with Commission’s public education program, adding a coastal conservation component to the DAA’s website, and to the education curriculum for the DAA’s School Tours program and/or to the Plant/Eat/Grow curriculum; and facilitating providing booth space to the Commission’s public education program for outreach and education purposes.

D. Jurisdiction

The Commission has initial jurisdiction over both permit and enforcement matters on the entire DAA facility.

The City of San Diego Local Coastal Plan (LCP) Implementation Plan was certified in 1988, and on October 17, 1988, the City assumed permit authority for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; with some having since been certified through LCP amendments. The Horsepark property portion of DAA’s facility is located within one such area of deferred certification.⁶ The Commission therefore has initial enforcement jurisdiction over the Horsepark property, and the legal standard of review for reviewing permit applications is Chapter 3 of the Coastal Act, with the City of San Diego’s LCP policies to be used only as guidance.

⁵ The easement may also be held by another public agency or private entity approved by the Executive Director

⁶ Subarea II of the North City Future Urbanizing Area, in the City of San Diego’s LCP. The area was primarily undeveloped when the Commission certified the North City Future Urbanizing Plan in the mid-90s. Because that plan lacked specificity, except for its circulation and environmental aspects, it was agreed that coastal development permit jurisdiction over the three subareas that were all, or partly, in the coastal zone would transfer to the City of San Diego for each subarea only when the Commission had certified a subarea plan for that area. Since then, the Commission has certified subarea plans for two of those three subareas (Pacific Highlands Ranch/Subarea III and Del Mar Mesa/Subarea V), and the City now has permit jurisdiction in those communities. No plan for Subarea II has been submitted to, or certified by, the Commission; thus, Subarea II remains in the Coastal Commission’s coastal development permit jurisdiction.

The portion of the facility referred to in the Consent Orders as “subject property” is located within the Torrey Pines Community of the North City Land Use Plan segment. While the LCP has been certified in this area, because this particular property is located on filled tidelands, it is within the Coastal Commission’s area of original/retained jurisdiction pursuant to California Public Resources Code (“PRC”) section 30519(b). In addition, this portion of the facility is located within the City of Del Mar, an area of deferred certification. Thus, the Commission has coastal development permit authority here as well, and the standard of review for such permit applications is Chapter 3 of the Coastal Act.

Therefore, as the Horsepark property is in an area of deferred certification, and the subject property is within the Commission’s retained jurisdiction, the Commission has permit authority over both localities. As the permitting authority, the Commission has direct enforcement jurisdiction over these areas without having to coordinate with or defer to the local governments.

E. Commission’s Authority

The Commission can issue a Cease and Desist Order under PRC Section 30810 in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under PRC section 30811 if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly here, and discussed in more detail in Section IV, below.

The unpermitted activity that has occurred on the subject property clearly meets the definition of “development” set forth in the Coastal Act (PRC Section 30106). Development is defined broadly under the Coastal Act, and includes, among many other actions, the “placement of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials;...change in the density or intensity of use of land;...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition or alteration of the size of any structure...; and the removal or harvesting of major vegetation other than for agricultural purposes...”(emphasis added). All non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. The development was undertaken without a CDP, and some of it is also inconsistent with previously issued CDPs. Furthermore, the Unpermitted Development is: 1) inconsistent with the policies in Chapter 3 of the Coastal Act, including Section 30231 (protecting the biological productivity of coastal waters), Section 30250 (concentration of development), Section 30233 (limiting fill of wetlands), Section 30252 (maintenance of public access), and Section 30240 (protecting environmentally sensitive habitat areas or ESHA), and Section 30236 (limiting alterations of rivers and streams), which require protection of coastal resources within the Coastal Zone; and 2) causing continuing resource damage, as discussed more fully in Section IV below.

The Unpermitted Development within and adjacent to the San Dieguito River has altered and adversely impacted the resources associated with wetland habitat. Such impacts meet the definition of “damage” provided in Section 13190(b) of Title 14 of the California Code of Regulations (“14 CCR”), which defines “damage” as, “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” If the

Unpermitted Development, including, but not limited to, wetland fill, placement of riprap, and increase intensity of use of the subject property, is allowed to remain unmitigated, further adverse impacts are expected to result (including the temporal continuation of the existing impacts) to resources protected under Chapter 3 of the Coastal Act.

The Unpermitted Development and the impacts therefrom remain on the subject property. The continued presence of the Unpermitted Development, as described below, will exacerbate and/or prolong the adverse impacts to wetland habitat, the water quality and biological productivity of this area, and the adjacent sensitive habitat. The continued presence of the unpermitted development on the subject property is causing continuing resource damage, as defined in 14 CCR Section 13190. Thus, the Commission has the authority to issue both a Cease and Desist and a Restoration Order in this matter.

Commission staff appreciates the efforts of DAA in working towards a mutually acceptable resolution of Coastal Act violations on the subject properties. The proposed Consent Orders provide a process and framework for rectifying Coastal Act violations, seeking authorization for select extant unpermitted development, and significantly, for obtaining Coastal Act authorization for future development on the subject properties.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195, respectively.

For a Cease and Desist Order and/or Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion below, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following two motions:

A. Motion No. 1

I move that the Commission issue Consent Cease and Desist Order No. CCC-12-CD-02 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-12-CD-02, as set forth below, and adopts the findings set forth below on grounds that development, conducted by DAA or other associated entities has occurred on property owned by DAA without a coastal development permit, in violation of the Coastal Act, and that the requirements of the Consent Order are necessary to ensure compliance with the Coastal Act.

B. Motion No. 2

I move that the Commission issue Consent Restoration Order No. CCC-12-RO-02 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-12-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-12-CD-02 AND RESTORATION ORDER CCC-12-RO-02⁷

⁷ These findings also hereby incorporate by reference Section I of the February 17, 2012 staff report (“Staff Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders”) in which these findings appear, which section is entitled “Summary of Staff Recommendation and Findings.”

A. Description of Property

The subject property is the 22nd District Agricultural Association's facility at 2260 Jimmy Durante Boulevard, in the City of Del Mar. This facility is comprised of several parcels, which are primarily bounded by Interstate-5 to the east, Via De La Valle to the north, Camino Del Mar to the west, and the San Dieguito River to the South. Jimmy Durante Boulevard bisects the facility with the preponderance of Fair and Races-associated physical development lying west of Jimmy Durante Blvd. Exclusive of the "Surf and Turf" section of the operation, which consists of a pool area and golf-related fabrications, the development east/south of Jimmy Durante consists predominately of two large-scale unpaved areas adjacent to the San Dieguito River that the DAA has used for overflow parking. (See Exhibit 2 for an annotated photograph of the facility).

Portions of the Consent Orders additionally pertain to DAA's Horsepark property that is located at 14550 El Camino Real, Del Mar, San Diego, San Diego County. The Horsepark property is located approximately 1.5 miles upstream on the San Dieguito River of the subject property and is bounded to the north by Via De La Valle, San Dieguito Road borders to the east, and the San Dieguito River transverses the southern portion of the property.

The vicinity north of the subject property is primarily residential development, while the San Dieguito River traverses the southern boundaries of the subject property and Horsepark. Much of the western periphery of the subject property has been developed, however areas of ecologically significant wetland habitat are present along those portions of the perimeters abutting the river, and areas of interspersed wetlands exist in the East Overflow Lot. Moreover, as previously iterated, the subject property is contiguous with the 150-acre San Dieguito Wetlands Restoration Project ("WRP") that is presently underway. This project will increase the habitat value of the coastal wetlands adjacent to the subject property by restoring tidal flows, natural habitat, and vegetation. The restoration project will additionally provide habitat for endangered species, including nesting sites for birds migrating along the Pacific Flyway. As such, while the extant wetlands ecosystem bounding the subject property is ecologically valuable, the ongoing WRP will increase habitat integrity and coastal tideland water quality in a critical watershed, rendering the restoration and mitigation work to be done under these Orders more valuable.

B. Description of Coastal Act Violation

The violations at issue in this matter include both unpermitted installation of physical structures (including rip-rap) and related earth work (such as landform alteration), as well as actions constituting changes in the intensity of use of land. These actions include, but may not be limited to, the following: change in the intensity of use of the East and South Overflow Lots and the Golf Driving Range from their pre-Coastal Act use; including by the introduction of parking during times of the year other than the period of historic Fair and Race Usage; holding impermanent events on the East Overflow Lot and associated parking; year round truck and trailer storage on the East Overflow and Golf Driving Range; and placement of billboards and other forms of advertising (including banners and signage attached to truck trailers) visible from Interstate-5 on the Golf Driving Range.

Additional unpermitted development on the subject property includes: landform alteration within wetlands and river channel related to the operation of an unpermitted truck driving school in the South Overflow Lot, as well as the operation of a truck driving school on the South Overflow Lot; placement of riprap in two locations along the northern shore of the San Dieguito River, east of the railroad and west of the Jimmy Durante Bridge (both without a permit and in violation of a prior permit); construction of concert stage at western end of the Fairgrounds adjacent to wetlands; use of a 13,500 square foot fabric tent for youth volleyball activities; operation of a swimming school and placement of an associated 1,500 square foot fabric tent; and placement of billboards and other forms of advertising visible from Interstate-5 on the Surf and Turf portion of the subject property.

Development on the subject property violates the terms and conditions of at least two permits previously issued by the Commission: CDPs 6-02-020 and 6-04-049. CDP 6-02-020 authorized the construction of a 13,500 sq foot tent on the “Surf and Turf” portion of the subject property with a term of use of 6 years, expiring in September 2008 – the tent remains in place to this date, in violation of CDP 6-02-020. CDP 6-04-049 authorized the replacement of barns on the subject property, but pursuant to Special Condition 1, through acceptance of that permit, DAA waived any rights to construct some form of channelization or substantial alteration of a river or stream for the purpose of protecting the barns to be replaced. Nevertheless, in January of 2010, riprap was placed within the San Dieguito River without a permit, and potentially in violation of Special Condition 1 of CDP 6-04-049.

C. History of Development and Commission Action on Subject Property

a. Historic Del Mar Fair and Thoroughbred Horse Races

The subject property was built by placing extensive fill in the floodplain north of the San Dieguito River channel in the early 1930s. The subject site was originally filled as part of the State of California’s Swampland Reclamation Act, which was designed to develop marshland for “useful purposes.” Original facilities included a one-mile racetrack and grandstands, stables for 600 horses, a main entrance building, ten livestock buildings, an equipment shed, an exhibit hall, and an auditorium. In 1993, the Army Corp of Engineers (“USACE”) conducted a wetlands delineation on the subject property as a whole, which resulted in the designation of portions of the subject property as wetland, specifically the entire South Overflow Lot, adjacent to the San Dieguito River, and approximately a third of the East Overflow Lot.⁸ The USACE issued a formal Restoration Order against the DAA for illegally grading and filling wetlands in violation of the Clean Water Act in the 1990s. The USACE-mandated wetlands restoration will consist of restoration of the dirt parking area to 2.14 acres of saltmarsh habitat and .93 acres of saltmarsh habitat along the northern bank of the San Dieguito River on the southwestern portion of the SOL.

⁸ It should be noted that both the Commission and the California Department of Fish and Game define wetlands as lands that contain any one of three indicators. Section 13577 of the Commission’s Regulations defines wetlands as “...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes....” As the USACE employs a more narrow three part test for wetlands delineation, this determination would likely be deemed under inclusive pursuant to Commission standards.

Two annual events were historically held on the subject property; the Del Mar County Fair in early June; and thoroughbred horseracing events from June to early September. Fair activities were confined to the western portion of the property, with the “midway” located at the western property edge along Stevens Creek, while horse racing events were historically confined to the racetrack and grandstand proper. The footprint of these activities has continued to expand and new activities have been initiated during the time the Commission assumed jurisdiction over the area, with the size and scope of events held on the subject properties reaching the extant maximum, where events of a very broad variety are held year round on the subject property. Events now held on the subject property outside of the historic June to early September “Fair and Races” season include consumer trade shows, conventions, weddings, dog shows, horse shows, rodeos, sports events, and miscellaneous social events. In an effort to accommodate the associated increased demand, the DAA began to develop and utilize supplementary facilities and parking; overflow parking areas previously used a few weeks of the year are now used for parking nearly every weekend of the year, and the East Overflow Lot is additionally used for short-term events. Moreover, while a concert stage had, prior to the Coastal Act, been erected within the race track for nightly concert events following horse races, the DAA now constructs the stage south of the racetrack where the Del Mar Fair midway is located in June. This location accommodates a much larger scale production, drawing a large number of patrons and associated vehicular traffic, and, unfortunately, is located adjacent to Stevens Creek and the San Dieguito river mouth, which contains environmentally sensitive habitat and flows into the ocean.

In past permit actions, the Commission authorized use of the EOL for parking during the five years the Grand Prix was held on the subject property, and allowed the installation of an at-grade paved tram track in the EOL outside USACE delineated wetlands. A tram is used during the annual fair and thoroughbred racing season to transport patrons to the entrance ticketing windows. With these two exceptions, there have been no Coastal Act permits applied for or obtained for any of the parking by patrons or employees or any other uses of these lots, except use of the Golf Driving Range for its primary golfing purposes, which also predates the Coastal Act⁹.

b. Commission Enforcement and Permitting Action

Development permitted by the Commission, some through after the fact permits, on the subject property over the past 30 years includes construction of horse arenas, a grandstand for racetrack viewing, an infield pedestrian underpass connecting the grandstand to the infield, a roadway for pedestrian trams around the perimeter of the east overflow lot, temporary approval of a volley ball tent on the Surf and Turf property, and various removals and replacements of development existing prior to the Coastal Act, such as barns, restrooms and sewer pipelines.¹⁰ As iterated above, prior to the effective date of the Coastal Act, use of the subject property had historically been limited to twice-yearly events for Fair and Races.

⁹ Coastal Development Permit 6-04-049.

¹⁰ The Commission issued the following coastal development permits for development on the subject property: CDP 6-81-302, CDP 6-81-R(A), CDP 6-83-225, CDP 6-84-525, CDP 6-84-525-A1, CDP 6-84-601, CDP 6-85-314, CDP 6-86-164-A, CDP 6-88-8, CDP 6-88-8-A2, CDP 6-89-37, CDP 6-89-270, CDP 6-90-266, CDP 6-90-266, CDP 6-91-193, CDP 6-94-13, CDP 97-80-Z, CDP 6-97-112, CDP 6-99-058-W, CDP 6-99-94, CDP 6-99-31, CDP 6-00-198, CDP 6-02-161, CDP 6-02-171, CDP 6-02-118-W, CDP 6-04-067, CDP 6-04-049, CDP 6-04-028, CDP 6-04-029, CDP 6-06-119, CDP 6-07-082, CDP 6-08-037, and CDP 6-08-074.

Although DAA has periodically applied to the Commission for approval of some development projects, DAA has simultaneously continued to engage in other, unpermitted development on the subject property. District enforcement action relating to the subject property dates back to 1984, with three violations addressed by violation notices in the 1980s, involving unpermitted grading of an overflow parking lot, construction of a dirt berm, and unpermitted infield development consisting of kiosks, concessions booths, seating areas and restrooms. These violations were subsequently addressed through the issuance of after-the-fact coastal development permits, including conditions designed to ensure the consistency of the development with the Coastal Act.

In 1990, district enforcement staff opened a violation case relating to the failure to comply with the terms and conditions of CDP No. 6-84-525, which approved the pedestrian underpass from the Grandstand to the infield, subject to several special conditions. Pursuant to Special Condition 1 of CDP No. 6-84-525, DAA was required to create 16 acres of California Least Tern nesting habitat. After years of working with the District, the California Department of Fish and Game, the San Dieguito River Park Joint Powers Authority, and other interest groups, the Commission issued coastal development permit amendment No. 6-84-525-A1, which superseded and replaced the original special condition in favor of the requirement, enumerated in Special Conditions 1 and 2, that DAA provide ongoing maintenance and management of Least Tern nesting sites once restored pursuant to the San Dieguito Lagoon Restoration Project. The DAA is currently complying with the conditions of this permit.

Subsequently, in 2001, Commission enforcement staff opened another violation file for, among other violations, grading and placement of fill within wetlands and the San Dieguito river channel related to operation of an unpermitted truck driving school in the south overflow lot. Although the truck driving school has since ceased to operate, DAA never submitted an application or obtained a CDP to resolve the unpermitted landform alteration. Additional violations cited involved the placement of storage trailers that function as billboards along the west side of Interstate-5 and year round continuous placement of miscellaneous equipment and storage trailers in the South and East Overflow Lots, and in the area between these lots.

The most extensive violation on the subject property, first cited by CCC district enforcement staff in 2001, involves the DAA's now-annual unpermitted increased intensity of use of the South and East Overflow Lots, by allowing visitor parking on the lots outside of the period when such use had historically (since prior to the Coastal Act) occurred, as well as in areas not previously used. Current usage of DAA facilities is year-round, and DAA provides parking and/or space on the South and East Overflow Lots for these events outside of the acknowledged, historical use periods. To prepare the lot surface for parking each year, DAA discs and levels it prior to the mid-June start of the Fair (the race meet follows almost immediately after the Fair closes). The preparation activities, and the parking itself, severely inhibit the ability of this area to support growth of wetland vegetation and thus function successfully as wildlife habitat. While dramatically limited by this unpermitted year-round usage, the degraded wetlands persist on the subject property, with pooling and limited vegetation regrowth frequently recurring during wet periods. The remaining wetland function under these degraded conditions indicates the extent to which these areas are indeed wetlands areas of potentially even greater value.

Commission staff has corresponded with the DAA since the 1980s regarding potential ramifications of the Coastal Act with respect to development on the subject property.

Additionally, staff sent Notices of Violation to the DAA on July 18, 2001, April 5, 2002, and April 23, 2002, to the DAA, and has continued to be in communication with and receive letters from the DAA regarding unpermitted development, permit applications, and potential resolution of Coastal Act violations on the subject property. A selection of this correspondence, including the Notice of Violation letters, are attached as Exhibits 8 through 11.

As the DAA has not applied for a permit for this additional use, the Commission has not had the opportunity to review parking by patrons and employees or any other uses of the South and East Overflow Lots outside of the Fair and Races season to evaluate impacts on coastal resources and consistency with the Coastal Act. In recent years, unpermitted events employing the East Overflow Lot for both parking and to hold the actual event, and the South Overflow Lot for parking, include but are not limited to the Harvest Festival, Breeders Cup, Calendar Antique Show, Snow Jam, Tony Robbins event, Import Auto Show, Sale of the Century Antique Show, Koi Show, Jamboree by the Sea, Selling Shows, Gunshow, Wildfowl Arts, Rodeo Concert, Dog Show, Fred Hall Fish Show, Night of the Horse, Banquets, Kentucky Derby, Spirit West Coast Christian Music Festival, Pumpkin Patch, Christmas Tree Sale, Cirque Du Soleil, Car Show, and Cinco De Mayo Concert. This unpermitted intensification of use has potentially had a substantial deleterious impact on wetlands resources as discussed above and further in Section V, and unpermitted parking on these lots outside of the Fair and Races season continues, in violation of the Coastal Act.

In an attempt to resolve the various violations on the subject property, Commission staff continued working to negotiate a settlement with DAA through 2004. These discussions ultimately proved unsuccessful, and in 2006, Commission staff opened a new violation for grading and placement of fill adjacent to the San Dieguito River Channel and alteration of the berm adjacent to the El Camino Real Bridge on the Horsepark property. CDPs No. 6-04-028 and 6-04-029 were issued by the Commission in an effort to address these violations and DAA is currently complying with permit conditions.

In 2010, Commission enforcement staff opened another violation file for unpermitted development involving an unpermitted swimming pool tent, an unpermitted volley ball tent, and change of use to run the swim school on the Surf and Turf portion of the subject property. These elements of development are now proposed to be addressed via the pending after-the-fact authorization requested pursuant to CDP application No. 6-10-084.

Finally, in 2011, an enforcement action was initiated for the unpermitted placement of two sections of rock revetment near the San Dieguito riverbed, west of Jimmy Durante Blvd., apparently intended to protect undeveloped portions of the subject property from the natural flooding of the San Dieguito River. Though DAA requested emergency authorization from Commission staff for this revetment, DAA failed to provide the necessary information needed to issue emergency permit, and no emergency permit was ever obtained. Therefore, the work was undertaken without a permit, and the riprap remains in place as of the date of this report, and in violation of CDP 6-04-049, and will be removed and the impacted areas restored pursuant to the proposed Consent Orders.

In October 2011, Commission staff again began working with DAA in an attempt to resolve the ongoing violations on the subject property, and has worked closely with DAA staff and board members towards resolution of Coastal Act violations on the subject property. Commission

Executive Director Charles Lester issued a “Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings” to DAA on October 20, 2011 (Exhibit 7) in part to facilitate the negotiation process and, in the event the parties could reach agreement, to enable them to bring a Consent Order(s) before the Commission. As noted above, Commission staff appreciates the dedication and vision of DAA in working closely with staff over the last several months to resolve the violations through the proposed settlement of this matter, attached as Appendix A of this staff report.

D. Basis for Issuance of Orders

1. Statutory Authority

a. Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist....

...

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

b. Restoration Order

The statutory authority for issuance of this Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

2. Factual Bases for Orders

The following paragraphs set forth the bases for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 and 30811 for the Commission to issue a Cease and Desist and Restoration Order.

a. Development has occurred without a Coastal Development Permit

As previously presented in Section IV.C of this report, the activities at issue in this matter constitute “development” as defined in the Coastal Act and are therefore subject to the permitting requirements of the Coastal Act. Staff has verified, and the DAA does not dispute, that the cited Unpermitted Development on the subject property was conducted without a CDP. No exemption from the permit requirements of the Coastal Act applies to the development.

b. The Unpermitted Development at Issue is Inconsistent with the Coastal Act

As described below, the Unpermitted Development described herein is not consistent with several sections of the Coastal Act, including Section 30231 (protection of biological productivity of coastal waters and quality of coastal waters), Section 30236 (limiting alterations of rivers and streams), Section 30233 (limiting fill of wetlands), Section 30240 (ESHA protection), and Section 30251 (preservation of scenic and visual qualities of coastal areas) of the Coastal Act.

1. Wetlands

Because of the historical losses and current rarity of these habitats, and because of their extreme sensitivity to disturbance, wetlands are provided protection under the Coastal Act.

Section 30121 of the Coastal Act states:

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The Commission has further specified how wetlands are to be identified through regulations and guidance documents. Section 13577(b)(1) of the Commission’s regulations states, in pertinent part:

Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.*

The Coastal Commission’s regulations establish a “one parameter definition,” meaning that they

only require evidence that one of the three parameters listed above applies in order to be able to designate an area as a wetland¹¹.

Section 30233(a) of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- 1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- 2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- 4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 6) *Restoration purposes.*
- 7) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30108.2 of the Coastal Act defines "Fill" as:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Finally, Section 30235 of the Coastal Act provides that:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The unpermitted development subject to the proposed Consent Orders includes placement of large boulder riprap and fill within and adjacent to wetlands and other open coastal waters associated with the San Dieguito River, and the removal/destruction of wetland vegetation associated with the shoreline alteration.

¹¹ See, also, *Kirkorowicz v. California Coastal Comm'n* (2000) 83 Cal.App.4th 980, 990 (upholding the Commission's one-part test).

Section 30233 of the Coastal Act allows for fill of wetlands and other open coastal waters only under very narrow criteria, and when properly authorized in a CDP. Notably, while DAA applied to the Commission for an Emergency Permit in 2010 for the placement of riprap on the subject property, no permit was issued, due to an incomplete showing of necessity by DAA. No CDP was therefore ever obtained for the unpermitted fill and riprap placement activities at issue in this enforcement action. Without the benefit of full permit-analysis, no less environmentally damaging alternatives were explored and deemed unsuitable, as required by Section 30233 of the Coastal Act before a proposed approach can be authorized. Additionally, had the placement of fill and riprap been deemed appropriate by the Commission, Section 30233 mandates that DAA would have been required to undertake mitigation measures to minimize adverse environmental impacts associated with the development. The placement of riprap and fill clearly degraded the riverine habitat, through both hardening of the river channel and by creating a physical barrier for natural fluvial processes and wildlife. Therefore, this Unpermitted Development deleteriously impacted the environment and failed to provide the analysis and mitigation required pursuant to Section 30233 of the Coastal Act.

Similarly, Section 30235 provides that construction altering natural shoreline processes is only permissible to the extent that it is considered necessary to protect a resource-dependent use, or to protect existing development or public beaches in danger from erosion, and when designed to minimize adverse impacts. No showing was made that the riprap and fill was necessary to protect existing structures, and as described below, it is highly unlikely that such a showing could be made. Furthermore, as noted above, no less environmentally damaging alternatives were explored, nor was mitigation undertaken to minimize environmental impacts.

Moreover, even if DAA had applied for a CDP from the Commission, the unpermitted development that resulted in the placement of riprap and fill does not fall under any of the allowable criteria for wetlands fill or construction that alters natural shoreline processes under the Coastal Act. Sections 30235 and 30233 provide that fill/shoreline protection may be appropriate in situations where it is necessary to protect a resource dependent use or meets one of the seven criteria in 30233. As the extant use of the subject property is not resource-dependent, and none of the allowable uses in 30233 applies, installation of fill/shoreline protection would not be consistent with the Coastal Act.

Therefore, the placement of fill and riprap in wetlands and the removal of vegetation within and around the wetlands was conducted without benefit of a CDP, in violation of the Coastal Act. Moreover, as demonstrated in this section and throughout this staff report, the unpermitted development is inconsistent with the resource protection policies of the Coastal Act.

2. Protection of Biological Productivity and Water Quality

Section 30231 provides:

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 and substantial

interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of streams.

Pursuant to Coastal Act Section 30240:

- a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- 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.*

The subject property is located less than one mile from the Pacific Ocean in the San Dieguito River Valley, immediately adjacent to and within the wetlands floodplain of the San Dieguito Lagoon in the incorporated City of Del Mar. The lagoon provides an essential breeding place for fish, birds and plants that require a specific coastal wetland habitat to survive. It also protects water quality by removing excess nutrients and preserving flood and sediment control areas. The vegetative communities within and surrounding the subject property are part of the coastal wetlands ecosystem characterized by riparian scrub and freshwater marsh, coastal sage scrub, native grasslands, chaparral, and saltmarsh transition. The open water areas are critical habitat areas for the state and federally-designated endangered California least tern and light-footed clapper rail, and the state-designated endangered California brown pelican and Belding's savannah sparrow. The lagoon is also a stopover site on the Pacific Flyway for birds migrating from Siberia to South America. The major filling activities on the subject property over the years have reduced the marshland to half of its original size, down to approximately 400 acres. Over two-hundred acres of wetland restoration in this area are planned and funded such as the San Dieguito Lagoon Restoration Project.

The unpermitted development subject to the proposed Consent Orders includes the placement of riprap and fill in and adjacent to a wetlands, removal of vegetation within vegetation buffer areas, and the changed intensity of use of the subject property. These unpermitted activities impact sensitive habitat areas and are detrimental to the water quality and biological productivity of a sensitive and highly ecologically important area, which, through the ongoing restoration efforts in the area, will become all the more valuable.

As noted above, the habitat that a functioning wetland provides is a significant coastal resource due in part to the high biological productivity of wetland habitat and the rarity of this habitat and the sensitive species it supports. One of the chief components of wetland habitat is wetland vegetation. Thus, removal of wetland plant species reduces the habitat value of a wetland. Wetland vegetation native to southern California saltmarshes, such as pickleweed and saltgrass, were among the vegetation removed here, without a permit and subsequently in violation of the Coastal Act. These plants contribute to the function and value of a wetland by providing habitat for nesting and foraging, stabilizing soils, and providing aquatic filtration. Additionally, degradation of function through alteration of wetland hydrology means that the same plants may not grow or persist and habitat value and wildlife use of the wetland could be reduced.

The placement of riprap is designed to influence surface water flows and alter the natural state of

the San Dieguito River. Such alterations can cause the destruction of riparian vegetation; alter the fluvial processes (flooding, erosion, deposition); disrupt biotic communities dependent upon the fluvial and terrestrial exchanges; disrupt floral and faunal dispersal and movement patterns; and fragment habitats within the corridor, among other detrimental impacts¹². The placement of riprap and fill in and adjacent to wetlands altered hydrology and resulted in the removal of riparian vegetation and is therefore inconsistent with Sections 30231 and 30240 of the Coastal Act.

The failure to maintain adequate buffer areas on the subject property is further inconsistent with Section 30231 which seeks to protect water quality and biological productivity of coastal waters, and which specifically enumerates vegetation buffers as a measure necessary to achieve this goal. Unpermitted Development on the East Overflow Lot and Golf Driving Range has resulted in the degradation and elimination of vegetation from buffer areas along the San Dieguito River. Commission Staff Ecologist Dr. Dixon recommends a 100-foot buffer zone between all wetlands and development. Riparian vegetation plays a significant role in the regulation of water quality and maintenance of biological productivity. Failure to maintain vegetation buffers can additionally lead to the fragmentation of habitat; lack of continuous vegetative cover along the San Dieguito River channel can further limit its value for terrestrial wildlife movement.

Riparian buffer zones in upland areas help to protect water quality by slowing the rate and reducing the volume of surface runoff into the river channel, thereby providing time for infiltration, deposition of suspended solids, filtration of suspended solids by vegetation, adsorption to plant and soil surfaces, and adsorption of pollutants by plants. Similarly, vegetation within and immediately adjacent to the stream channel helps to regulate nutrient levels through uptake, and minimizes erosion and sedimentation through bank stabilization¹³. Riparian vegetation also influences biological productivity. For example, riparian vegetation provides habitat, shades and moderates temperatures within the river channel and riparian corridor, and serves as a primary source of energy (food) for aquatic organisms¹⁴. Because of its vast influence on the physical, chemical, and biological integrity of water bodies, the destruction of riparian vegetation can have cascading effects on water quality and biological productivity¹⁵, inconsistent with Sections 30231 and 30240 of the Coastal Act.

A second concern associated with the unpermitted removal of riparian vegetation and failure to maintain adequate buffers, is the amount and quality of runoff leaving the subject site, since the entire improved site drains directly across the floodplain and into the San Dieguito River channel. Any fill or alteration of wetland hydrology reduces a wetland's ability to function, and consequently, its biological productivity. Degradation of function means that the same plants will not grow and the wetland will not provide the same water filtration, percolation, and stormwater runoff storage function. The unpermitted development at issue disrupted the wetland hydrology through placement of riprap and removal of wetland vegetation. Lack of a vegetative boundary along the river bank can mean the loss of additional treatment of stormwater. Vegetation

¹² Wetzel, R.G. 2001. *Limnology: Lake and River Ecosystems*, 3rd Ed. Pp. 832-835.

¹³ Barling, R.O. and I.O. Moore. 1994. Role of Buffer Strips in Management of Waterway Pollution: A Review. *Environmental Management* 18: 543-558.

¹⁴ Knight, A.W. and R.L. Bottorf. 1981. Importance of Riparian Vegetation to Stream Ecosystems. In *California Riparian Systems: Ecology, Conservation, and Productive Management*. (1984) Pp. 160-167.

¹⁵ California Coastal Commission. 2007. Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetland and Other Environmentally Sensitive Habitat Areas.

provides the only filtration of stormwater on the site at this time, and it has been removed or degraded in areas. Increased sedimentation and turbidity diminish the water quality of wetlands, and as noted above, the function and biological productivity of the wetland, by reducing water clarity, increasing water temperature, and smothering wetland vegetation. The preclusion of growth of the vegetative buffer is particularly problematic given the proximity of parking to wetlands on the subject property; the diminished capacity for filtration and runoff control can have a deleterious impact on water quality and biological productivity in the adjacent San Dieguito River. Thus the unpermitted removal of vegetation within the riparian buffer area is inconsistent with Sections 30231 and 30240 of the Coastal Act.

Finally, the unpermitted changed intensity of use of the subject property is inconsistent with biological productivity, ESHA, and water quality protections afforded by Sections 30231 and 30240 of the Coastal Act. As discussed above, the spatial and temporal extent of activities held on the subject property has grown dramatically from the historic Fair and Races usage. While Fair and Races events and parking were held on the subject property from approximately mid June to early September prior to the Coastal Act, events are now held year-round. The East and South Overflow Lots are heavily used throughout the year and events are now also held on the East Overflow Lot. This increased and diversified site-usage further exacerbates the biological productivity and water quality concerns associated with unpermitted development on the subject property.

Although much of the site is now developed, there are several areas still containing wetland resources, including the EOL, SOL, and most of the Golf Driving Range. In addition, these areas are within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons. When only used during the Fair and Races, the wetlands were periodically degraded but still provided some wetland habitat function outside of the Fair and Races season, when wetland vegetation returns, and were used for loafing, resting and feeding by shorebirds and migratory species. Depending on the specific species, some breeding may have also occurred, although most species breeding seasons continue into the summer months when the lots have historically been used for parking. The nearly year-round parking activities now undertaken on the subject property severely inhibit the ability of this area to support growth of wetland vegetation and thus function successfully as wildlife habitat. Additionally, because wetlands trap and slowly release surface water thereby reducing runoff and flooding, the loss of functioning wetlands can diminish the hydraulic holding capacity of an area and associated flood control benefits provided by intact wetlands.

Moreover, DAA has placed and began to use a concert stage on the far western extent of the subject property, adjacent to Stevens Creek, where the midway is located during the Fair. Historically, a concert stage was constructed within the confines of the horse racetrack. While the recent placement of a concert stage is indeed located on a parking lot, and in a similar location to the Fair midway, the altered location is not consistent with Section 30240 of the Coastal Act because of noise and light impacts on the riparian biota associated with the concert stage placed so proximate Stevens Creek. Additionally, comparable to the Commission's buffer requirements, the Fish and Game Commission policy on the *Retention of Wetland Acreage and Habitat Values* provides that buffers should be of sufficient width and should be designed to eliminate potential disturbance of wildlife resources from noise, human activity, and any other potential source of disturbance. The intense bright lighting and noise associated with a concert production immediately adjacent to Stevens Creek is a new impact associated with this use, and

has the potential to adversely affect the natural resources of the adjacent wetlands. This additional, unpermitted source of nighttime light, glare, and noise may negatively impact migratory birds and plant species and reduce serviceable habitat area for various species. Locating the concert stage near the wetlands dramatically increases the number of days of auditory and visual disruption of the wetlands biota.

Therefore, the Unpermitted Development is inconsistent with Coastal Act Section 30231 and 30240 as it has negatively impacted water quality, biological productivity and ESHA. For these reasons, the Commission finds that the development subject to the proposed Consent Orders is inconsistent with Coastal Act Sections 30231 and 30240.

3. Preservation of Coastal Views

Section 30251 of the Coastal Act addresses visual resources, and states, in part:

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 the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

This site is located within the San Dieguito River Valley, less than one mile from the Pacific Ocean, and adjacent to areas of wetland currently being restored. As such, views throughout this area are considered significant, and the retention and enhancement of existing viewpoints and view corridors is required. As the subject property is visible from Interstate-5, Commission action on the property has previously conditioned development to minimize impacts to the view shed by minimizing building height and requiring earthtone colors for new buildings. The unpermitted year-round parking of trailers and trailers with billboards/other forms of advertising visible from Interstate-5 on the subject property is inconsistent with the coastal view protections afforded by Section 30251 of the Coastal Act and previously required by the Commission.

4. Location of Development/Maintenance of Public Access

Section 30250 provides:

New...commercial...development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it, or where such areas are not available to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

Section 30252 states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service,...(3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public

transportation...(6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

As the Commission has not had an opportunity to review the unpermitted development on the subject property, there has been no review of the individual and cumulative impacts of the development and increased intensity of use on adjacent sensitive coastal resources as required by the Coastal Act. Further, the subject property is proximate the coast along a heavily used corridor between the Cities of Solana Beach and Del Mar, usage of which increases dramatically during the period the Fair and Races are held on the subject property. Section 30252 requires that new development provide for alternative transportation, ensure the maintenance of adequate parking, and not unduly burden coastal recreation areas. Because of the failure to evaluate these parking and transportation concerns in the context of a coastal development permit application, the Commission has been deprived of the opportunity to ensure that the increased intensity of use, and attendant development, are consistent with the Coastal Act.

5. Hydrology/Flood Hazards

The Unpermitted Development is inconsistent with Section 30253 of the Coastal Act, which requires new development to minimize impacts to the site's geologic stability. Section 30253 states:

New development shall do all of the following:

- b. Minimize risks to life and property in areas of high geologic, flood, or fire hazard.*
- b. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective device that would substantially alter natural landforms along bluffs or cliffs.*

The Unpermitted Development on the subject property is additionally inconsistent with Section 30236, which specifies the types of alterations to rivers that are allowable under the Coastal Act. Section 30236 states:

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 flood plain 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.

As discussed above, the Unpermitted Development subject to the proposed Consent Orders includes the placement of riprap and fill within and adjacent to a wetlands. The riprap was placed in January 2010 along the San Dieguito River without a coastal development permit. The City of San Diego base zoning maps identify the subject site as being within the Floodplain/Floodplain Fringe of the San Dieguito River.

Jimmy Durante Boulevard, which was realigned and raised in elevation during the 1980's pursuant to Coastal Development Permit #6-83-589, acts as a dike, protecting the more developed portions of the subject property (main parking lot and existing buildings) from flooding except during the most severe flood events. The Commission has in the past approved many permits for development on the filled tidelands. However, these past permits have authorized improvements within the partially paved, already developed portion of the subject property north and west of Jimmy Durante Boulevard. For the most part, these past projects have consisted of the replacement of many of the historic buildings, including the racetrack grandstands, the horse arena and most of the stables.

In fact, in past actions, the Commission has found that the placement of fill or permanent structures in a floodplain significantly alters flood flows and therefore is inconsistent with Coastal Act Section 30236. Conversely, structures that can accommodate periodic inundation without being damaged do not cause flood waters to be redirected and therefore can be found consistent with Section 30236. The entire Fairgrounds complex is comprised of structures that are, and will continue to be, able to withstand periodic inundation occasionally during severe rain events¹⁶. Although there are many permanent structures within the facility, they are designed to be compatible with periodic inundation and allow the passage of floodwaters, such that there is no redirection of flood flows, nor damages to downstream lands. Because of their design and function, the structures at the Fairgrounds can sustain extended periods of time in a flooded state. The riprap and fill within the San Dieguito River channel appear to have been undertaken for flood control purposes, however DAA have offered no evidence suggesting the necessity of this riprap for the protection of existing, permitted structures, and as the extant structures are designed to accommodate periodic inundation, such protection would be superfluous.

Such riprap and fill, if installed to protect the barn structures from inundation, would be inconsistent with the permits issued for the facilities. Notably, the Commission adopted the findings in CDP 6-04-049 for development on the subject property that, "[i]f steps were taken to prevent flooding, such as berms, walls, or other protective devices there would be alteration of the flood flows, which would be inconsistent with 30236." Furthermore, Special Condition #1 of CDP 6-04-049 provided that any rights to construct some form of channelization or substantial alteration of a river or stream for the purpose of protecting the replacement barns that may exist under Public Resources Code Section 30236 were waived. Therefore, if the unpermitted riprap was placed within the San Dieguito River channel to protect the bar facilities, it would be additionally inconsistent with this previous Commission action as well as Section 30236 of the Coastal Act.

The unpermitted riprap attempted to fix in place the width and alignment of the San Dieguito River in the areas where riprap was placed. Placement of riprap on a river bank necessarily involves preclusion of the establishment of riparian vegetation whose roots provide bank stabilization and support. By virtue of perpetuating denuded river banks through the placement of the riprap boulders, the Unpermitted Development has compromised the stability of the river bank and is undermining natural vegetative banks and slope stabilization potential not only by impeding the free growth of the remaining trees along the bank, but also by preventing the establishment of other native plants that would also serve to stabilize the river bank.

¹⁶ Coastal Development Permit 6-04-049 (3.22.2005): 5-8.

Furthermore, modifications to the current flooding patterns, in which a large portion of the 100-year flood waters are contained on the subject property, could result in increased flood hazards to existing up-and downstream developments, which could, in turn lead to proposals for further channelization of the river¹⁷. Development within the riverine channel is therefore inconsistent with Section 30236. Moreover, the Commission has received no evidence of mitigation undertaken in association with the subject development, as is required under the statute for such developments. The Commission concludes, therefore, that the development within the stream channel is inconsistent with Section 30236 of the Coastal Act.

In summary, the unpermitted development has significantly impeded hydrology, water quality, wetland function, biological productivity of wetlands on and off the subject property, and riverine shoreline stability. Further, the interim loss of habitat value and wetland hydrology will have a significant impact that will continue to be experienced until the impacts of the unpermitted development are remedied.

Due to its deleterious effect on wetland habitat and function on and off the subject property, the unpermitted development does not maintain, much less restore, the biological productivity and water quality of wetlands necessary to maintain the optimum populations of marine organisms and is not compatible with the continuance of the wetlands ESHA. Therefore, the unpermitted development is inconsistent with Sections 30231, 30233, 30236, 30253, and 30240(b) of the Coastal Act, thus satisfying the second criterion for issuance of a Cease and Desist and Restoration Order.

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing “continuing resource damage”, as those terms are defined by Section 13190 of the Commission’s regulations.

Continuing:

The term “continuing” is defined by Section 13190(c) of the Commission’s regulations as follows:

“‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.”

Resource:

Section 13190(a) of the Commission’s regulations defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

”‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.”

Damage:

¹⁷ Coastal Development Permit 6-04-049 (3.22.2005): 5-8.

The term “damage” in the context of Cease and Desist and Restoration Order proceedings is provided in Section 13190(b) as follows:

“‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.”

In this case, the resources are the habitat provided by the impacted native coastal wetlands and associated vegetation, and the water quality functions and environmentally sensitive wildlife and plant habitat provided by the wetlands, and the damage is the degradation of that wetland habitat, including ESHA, which is caused by the unpermitted development on the subject property, as described in the Section V (b) above.

As of this time, the unpermitted development that is the subject of these proceedings and the results thereof remain at the subject property. As described above, the unpermitted development results in impacts to coastal resources, including habitat provided by native coastal wetland vegetation, wetlands and wetlands habitat, biological productivity of the wetlands, and ESHA. The fill of wetlands, removal of wetland vegetation, and increase intensity of use of land adjacent thereto continues to impact the coastal resources, including wetland and protected resources within and adjacent to the wetland area by continuing to prevent the wetland from existing or functioning and disrupting the biological productivity of these areas.

As described above, the unpermitted development is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of “continuing resource damage.” The third and final criterion for issuance of a Restoration Order is therefore satisfied.

E. Provisions of Consent Cease and Desist Order No. CCC-12-CD-02 and Consent Restoration Order No. CCC-12-RO-02

The proposed Consent Orders attached to this staff report as Appendix A are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. By signing the proposed Consent Orders, DAA has agreed to, among other things: 1) remove the riprap from the two locations along the San Dieguito River and restore impacted areas with native vegetation; 2) restore the southernmost portion of the SOL, EOL, and GDR with native vegetation to serve as the requisite 100 foot wetland buffer; 3) apply for Coastal Development permits to seek permanent authorization for increased usage of the subject properties consistent with the Coastal Act; 4) grant conservation easements over a varying width buffer area along Stevens Creek, and over the restored 100-foot buffers on the SOL, EOL, and GDR, for protection and restoration of the areas and public access¹⁸; 5) remove advertisements visible from Interstate-5; 6) restore the South Overflow Lot to functioning wetlands within thirty months of any Commission approval of a permit application for development or extended use of the EOL (Exhibit 6); and (7)

¹⁸ The 100-foot buffer areas along the southern periphery of the EOL, SOL, and GDR are inclusive of the Coast to Crest Trail, and the easements granted will allow continued maintenance of the trail.

undertake mitigation, including sponsoring wetlands cleanup, undertaking trash removal along the Coast to Crest Trail on the subject property, providing funding and ranger space to the San Diego River Park Joint Powers Authority, and promoting coastal awareness and education.

The proposed Consent Orders also require DAA to plant native plant species to be compatible with the surrounding wetlands habitat and to ensure that non-native, invasive plant species do not colonize the newly restored site and spread from there to supplant the surrounding native habitat. Failure to revegetate the site would lead to potential invasion of non-native plant species, thus decreasing the biological productivity of this wetland habitat, inconsistent with the resource protection policies of the Coastal Act. The primary function of the wetland restoration project is the improvement of fish and wildlife habitat; therefore the proposed use is consistent with Section 30236.

The actions to be undertaken pursuant to the proposed Consent Orders are designed to improve water quality and coastal resources by increasing tidal circulations, restoring wetland functions to the areas being remediated, and increasing wetland area. Additionally, restoration of the buffer areas along the southeastern portion of the subject property, and recording an easement for a buffer along Stevens Creek and the southwestern portion of the subject property is designed to enhance water quality and biological productivity by helping ensure filtration of runoff and pollutants prior to entrance into the adjacent watercourses.

Restoration of the 100 foot wetland buffers along the southern periphery of the property east of Jimmy Durante Blvd, and the dedication of an easement along Stevens Creek is designed to enhance water quality and biological productivity of the adjacent wetland by ensuring that runoff is filtered through soils and natural vegetation before entering the watercourse. In addition to mitigation of impacts by the restoration of the buffers and wetlands, the DAA will construct a public trail in a location proximate to Jimmy Durante Boulevard, and to provide public access facilities and interpretive signage to accompany the restoration area.

As mitigation under the proposed Consent Orders, DAA has agreed to record an offer to dedicate a conservation easement over the restored South Overflow Lot, and to provide \$20,000 per year funding to the JPA for five years for preservation of open space, protection of biological and cultural resources, construction and maintenance of a trail, and education of the public. Finally, DAA has committed to several projects to promote coastal preservation, awareness, and education. Therefore, the proposed Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

F. Consent Agreement: Settlement

Chapter 9, Article 2, of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. DAA has clearly stated their willingness to completely resolve the violations at issue herein, including any civil liability, administratively and amicably, through a settlement process. To that end, DAA have committed to comply with all terms and conditions of the Consent Orders, and not to contest the issuance or implementation of the Consent Orders. Upon fulfillment of all provisions of the proposed Consent Orders, including restoration of the South Overflow Lot, the DAA will be released from Coastal Act liabilities for the abovementioned violations.

G. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Consent Orders to compel compliance with the Coastal Act, to restore resources impacted by the Unpermitted Development activities, and to mitigate the impacts that resulted from the Unpermitted Development are exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 et seq., and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are also in 14 CCR.

H. Summary of Findings of Fact

1. The 22nd District Agricultural Association (DAA) is the owner of the properties located at 2260 Jimmy Durante Blvd and 14550 El Camino Real, Del Mar, CA 92014. The property is identified by the San Diego County Assessor's Office as APNs 302-090-011; 298-260-015; 298-260-035; 298-271-03; 299-030-01; 299-030-04; 299-030-05; 299-042-02; and 299-042-01. The property is located within the Coastal Zone.
2. DAA has undertaken development, as defined in Coastal Act Section 30106, on the above referenced property including: Change in the intensity of use of the subject property from its pre-Coastal Act levels of use, including, but not limited to, greatly increased parking use, commencing operation of a truck-driving school, and initiating new regular and special events; landform alteration within the wetlands and river channel related to the operation of the unpermitted truck driving school in the South Overflow Lot; placement of riprap in two locations along the northern shore of the San Dieguito River (both without a permit and in violation of a prior permit); construction of a concert stage at the western end of the Fairgrounds adjacent to wetlands; continued presence of a 13,500 square foot fabric tent on the "Surf and Turf" site beyond the express deadline provided in the permit; construction of a swimming pool and operation of a swimming school, and placement of an associated 1,500 square foot fabric tent adjacent to the swimming pool; construction of a restroom facility; and placement of billboards and other forms of advertising visible from Interstate-5 on the "Surf and Turf" facility.
3. No exemptions from the Coastal Act permitting requirements apply to the development described in finding #2.
4. DAA undertook the unpermitted development, as defined by Coastal Act Section 30106, without a coastal development permit, and/or in violation of previously issued coastal development permits on the subject property.
5. The unpermitted development described in finding #2 above impacted Environmentally Sensitive Habitat Area, wetlands, water quality, biological productivity, and the scenic and visual qualities of the coast inconsistent with Coastal Act Section 30240, 30233, 30251, 30236, and 30231.

6. The unpermitted development described in finding #2 is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
7. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order, and all elements of that Section have been met herein.
8. Coastal Act Section 30811 authorizes the Commission to issue a restoration order, and all elements of that Section have been met herein.
9. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
10. On October 20, 2011, the Executive Director issued a “Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings” to DAA.
11. On February 15, 2012, an authorized signatory for DAA signed Consent Cease and Desist Order No. CCC-12-CD-02 and Restoration Order No. CCC-12-RO-02, a copy of which is attached to this staff report as Appendix A.
12. The temporal loss of fitness incurred by coastal resources will continue until the requirements of the Consent Orders are carried out.

Staff recommends that the Commission issue the Consent Cease and Desist Order and Consent Restoration Order attached hereto as Appendix A.

APPENDICES AND EXHIBITS

List of Appendices

Appendix	Description
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- | | |
|----|--|
| A. | Proposed Consent Cease and Desist and Restoration Orders Nos. CCC-12-CD-02 and CCC-12-RO-02. |
|----|--|

List of Exhibits

Exhibit	Description
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- | | |
|----|--|
| 1. | Map showing the location of the DAA properties. |
| 2. | Aerial photograph depicting sub-areas of the subject property. |

3. Map indicating the location of the subject property, Horsepark property, and Wetlands Restoration Project.
4. Aerial photograph of partially inundated South Overflow Lot.
5. Photographs of unpermitted development on the subject property.
6. Depiction of proposed restoration pursuant to the Consent Orders.
7. October 20, 2011 Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings (letter from Charles Lester to DAA).
8. Notice of Violation date July 18, 2001.
9. Letter from CCC to DAA dated May 13, 2003.
10. Letter from DAA to CCC dated February 13, 2001.
11. Letter from DAA to CCC dated November 7, 2001.

CONSENT CEASE AND DESIST ORDER NO. CCC-12-CD-02
AND RESTORATION ORDER NO. CCC-12-RO-02

1.0. CONSENT CEASE AND DESIST ORDER CCC-12-CD-02

Pursuant to its authority under Public Resources Code (“PRC”) Section 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders the 22nd District Agricultural Association, all its successors, assigns, employees, agents, contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as “DAA”) to:

- 1.1 Cease and desist from performing any new development, as that term is defined in Coastal Act Section 30106, that requires a permit, on property identified in Section 6.0 below (“Subject Properties”), and from expanding or altering extant development on the Subject Properties, unless authorized pursuant to the Coastal Act, PRC Sections 30000-30900, which includes through these Consent Orders. Nothing herein precludes DAA from applying separately for future development not referenced in these Consent Orders. Furthermore, nothing in these Consent Orders prohibits the DAA from continuing Current Operational Activities (as defined in 3.4.A.2) during the Interim Use Period defined in Section 3.4.A.1 of these Consent Orders, provided that DAA furnishes the Executive Director with the list of contemplated activities per Section 3.4.B of these Consent Orders, and provided that all protective measures set forth in Section 3.4.C of these Consent Orders are implemented as required and that current activities are not expanded. This authorization terminates at the end of the Interim Use Period.
- 1.2 Remove, pursuant to an approved removal plan discussed in Section 4.0 below, and pursuant to the terms and conditions set forth herein, the following from the Subject Properties:

All physical items placed or allowed to come to rest on the Subject Properties as a result of unpermitted development, including billboards and other forms of advertising visible from Interstate-5 on the Golf Driving Range; landform alteration within wetlands related to the operation of an unpermitted truck driving school; and rip rap in the southwestern portion of the subject properties adjacent to the San Dieguito River.

Through the execution of Consent Cease and Desist Order CCC-12-CD-02, below, DAA agrees to comply with its terms and conditions.

2.0 CONSENT RESTORATION ORDER CCC-12-RO-02

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes DAA to restore the subject properties as described in Section 4.0 below. Through the execution of Consent Restoration Order CCC-12-RO-02, below, DAA agrees to comply with its terms and conditions.

PROVISIONS COMMON TO BOTH ORDERS

CCC-12-CD-02 and CCC-12-RO-02 are herein after collectively referred to as the Consent Orders.

3.0 TERMS AND CONDITIONS

3.1 Least Tern Nesting Sites. On October 13, 2005, DAA obtained Commission approval of CDP amendment 6-84-525-A1, which superceded and replaced Special Condition 1 of CDP 6-84-525. As of the effective date of these Consent Orders, DAA is in compliance with obligations of CDP 6-84-525-A1. To ensure continued compliance with CDP 6-84-525-A1, DAA agrees to continue implementation of the Monitoring Program prepared in accordance with Special Condition 2 of CDP 6-84-525-A1 and to comply with all remaining requirements of CDP 6-84-525-A1.

3.2 Overflow Lots, Surf and Turf, and Golf Driving Range

A. Definitions

1. East Overflow Lot (“EOL”): The unpaved area that has been used recently for parking and as a year-round facility for unpermitted temporary events which occupies property identified by San Diego Assessor’s Parcel Number (“APN”) 299-042-02, the western portion of APN 299-042-01, and a southwestern portion of APN 299-030-04, and which is bounded to the west by Jimmy Durante Boulevard, to the South by the San Dieguito River and to the east by the Golf Driving Range and the Surf and Turf property.
2. South Overflow Lot (“SOL”): The unpaved area that has been used recently for parking that occupies parcels known as APNs 299-071-04, 299-201-01, and the southeastern portion of APN 299-030-01, and which is bounded to the south by the San Dieguito River and the north by Jimmy Durante Boulevard.

3. Fair and Races: For the purposes of these Consent Orders, “Fair” is referential to the San Diego County Fair held at the Del Mar Fairgrounds yearly from early June through early July, as determined by the Board of Directors. “Races” refers to the yearly thoroughbred horse racing season events held at the Del Mar Racetrack.
 - a. Fair and Races additionally encompasses the limited scale blading and earth movement historically associated with the preparation for the San Diego County Fair since prior to the Coastal Act.
 4. Surf and Turf: That portion of the Del Mar Fairgrounds which occupies APN 299-042-02 and lies east of Jimmy Durante Boulevard, west of Interstate-5, north of the Golf Driving Range, and south of the Del Mar Hilton parking lot.
 5. Golf Driving Range (“GDR”): The eastern portion of APN 299-042-01, bounded to the west by the EOL, to the north by the Surf and Turf lot, to the east by Interstate-5, and to the south by the San Dieguito River, and which is utilized as a golf driving range and for overflow parking during the Fair and Races.
 6. Fairgrounds: That portion of land bounded by Via De La Valle to the north, Jimmy Durante Boulevard to the east and south, the San Dieguito River to the south, and Stevens Creek to the west.
- B. Within six (6) months of the effective date of the Consent Orders, DAA shall submit, and allow to be processed to Commission hearing under its normal procedures, a complete coastal development permit (“CDP”) application for approval (in some cases after-the-fact) of any of the following development DAA wishes to undertake, retain or continue to perform¹:

1. On the EOL:
 - a. Installation of semi-permeable surfacing;

¹ The parties acknowledge that nothing herein is intended to prejudge the approvability of any of the development listed in this Section, to suggest whether the Commission will approve it, or to constitute pre-approval of it. Additionally, nothing herein precludes DAA from applying separately for future development not referenced in these Consent Orders.

- b. Conducting of temporary events that do not trigger the need for parking on the SOL, along with a proposal that any temporary events with tents or other structures that exceed fifty (50) feet in height shall be located in the northern portion of the EOL in a manner that maintains views of the river corridor and that any signage for a temporary event shall be integrated within the event structures and shall not intrude into the viewshed of the river valley; and
 - c. Year-round parking and intermittent truck storage.
2. On the GDR and Surf and Turf Lot:
- a. Installation of sod, grass-crete or other permeable surfacing that is designed to infiltrate all run-off onsite;
 - b. Year-round parking
 - c. Intermittent truck storage with the clarification that no banners, billboards or other signs, whether on trucks or other equipment, shall be placed so as to be visible to I-5 traffic, and trucks with a logo, brand name or other similar type of information can be parked for storage purposes but shall not be placed for purposes of advertising to I-5 traffic (e.g. parking a truck with a large logo away from other trucks and facing I-5 shall be considered placed for advertising purposes);
 - d. An ADA-accessible restroom facility;
 - e. A swimming pool (constructed in the early 1980s);
 - f. A previously permitted (permit expired) 13,500 square foot fabric tent for volleyball activities; and
 - g. Placement of banners/signs for Fair and Races.
3. On the SOL:
- a. Construction of a vehicular route, concurrent with the restoration of the SOL pursuant to the Restoration Plan described in Section 3.2.H, with semi-permeable or

permeable surfacing from the EOL to the SOL existing driveway located as close to Jimmy Durante Blvd. as allowable under local road design standards and no wider than twenty (20) feet; and a surfaced driveway just north of the bridge over the San Dieguito River and a surfaced one-lane road from the proposed driveway to the existing driveway, located as close to Jimmy Durante Blvd. as allowable under local road design standards for a bus lane and drop-off point.

C. In addition to all information and requirements of the Commission's permit application form, DAA shall include the following documents, information, and proposals as part of the CDP application:

1. Wetland delineation, completed pursuant to Coastal Commission protocol, of the Subject Properties submitted for review and approval of the Executive Director.
2. Scaled site plan showing areas to be used for temporary events DAA applies to continue undertaking, with a description of the typical types of structures, including dimensions thereof, and uses for which authorization is being sought, event and trail parking, ingress/egress, bus lane, truck storage and the one hundred (100) foot wetland buffer areas described below in Section 3.2.F.
3. A plan to allow parking for trail users, outside of the time of the Fair and Races, in the bus lane of the SOL
4. A plan to phase out use of the SOL for parking and to grade it to wetland appropriate elevations consistent with Section 3.2.H below²
5. A plan to use the SOL for parking during this phase-out period only for the Fair and Races, and even then only if needed.
6. Transportation demand management plan that includes incentives to reduce vehicle miles traveled to and from the Del Mar Fairgrounds and encourages non-automobile circulation, addresses off-site parking and shuttle programs, and includes transportation demand measures such as

² Parking cessation will necessarily precede restoration; however both must be achieved to effectuate the complete restoration of the SOL as mandated by Section 3.2.H below.

bicycle facilities, employee transit subsidies, discounted carpool parking, etc.

7. Provision of twenty (20) parking spaces outside of when the Fair and Races occur for Coast to Crest Trail (“Trail”) users when and if a Trail is constructed.
 8. Grading and drainage plan to the extent applicable, for EOL, GDR, driveways and bus lane, identifying materials and method of installation of semi-permeable or permeable surfacing and other Best Management Practices for drainage and runoff control; and
 9. List of typical temporary events scheduled for the Interim Use Period within the EOL that DAA applies to continue undertaking, with a description of the “typical” types of structures and uses for which authorization is being sought; and
 10. Parking management plan for events and Trail users showing how SOL will be used only during the Fair and Races, and then only if needed, and access to the trail parking will be available free of charge at all times, except during Fair and Races.
- D. The CDP application discussed in Sections 3.2.B & C shall only be for the development identified therein. However, nothing in these Consent Orders precludes DAA from separately seeking authorization from the Commission for other development. If DAA seeks a permit for other development not identified in these Consent Orders, it shall apply to the Commission for such development in a separate application.
- E. The parties agree that normal permitting procedures pursuant to the Coastal Act and the Commission’s regulations, including Section 13166, apply to and will govern these procedures.
- F. Within six (6) months of the effective date of these Consent Orders, DAA shall submit, for the review and approval of the Commission’s Executive Director, a plan for removal of materials from, and restoration of, a one hundred (100) foot wide buffer along the southern edge of the EOL, GDR, and SOL, measured from the river bank or upland edge of the riparian or wetland vegetation, whichever extends farther from the centerline of the river, and around the wetlands to be restored by the DAA pursuant to Army Corps of Engineers direction, but only extending up to Jimmy Durante Boulevard (the “Buffer Restoration Plan”).

1. Removal and restoration shall not apply to the areas of the buffer directly occupied by the Trail.
 - a. In such instances the buffer shall extend the requisite one hundred (100) foot breadth inclusive of the as-permitted Trail.
2. Removal and restoration requirements of the Buffer Restoration Plan shall not apply to the existing pedestrian ramp and walkway located at the northern section of the SOL connecting to the crosswalk on Jimmy Durante Blvd., and which provides the primary pedestrian access between the SOL and the Fairgrounds until the requirements of Section 3.2.H apply. At that time, DAA shall remove the pedestrian ramp and restore the underlying area concurrently with the SOL Restoration Plan pursuant to the requirements of Section 3.2.H.
3. If the wetland delineation required by these Consent Orders demonstrates that restoration of the 100 foot buffer described in this section would prevent vehicular movement between the EOL and SOL, then DAA shall restore the buffer at the access point between the EOL and SOL (as depicted in Attachment 1) to the extent feasible while maintaining access between the lots, pursuant to the requirements of this section and Section 4.0. If the 100 foot buffer cannot be fully restored at the southern edge of the access point while maintaining access between the EOL and SOL as described herein, the parties agree that the DAA shall conform the buffer to the 100 foot standard upon completion of the SOL Restoration Plan pursuant to the requirements of Section 3.2.H. Nothing in this section shall limit DAA's ability to perform the development discussed in Section 3.2.B.3.a of these Consent Orders, if authorized by the Commission and undertaken concurrently with the implementation of the SOL Restoration Plan.
4. Removal of materials from, and restoration of, the one hundred (100) foot wide buffer along the southern edge of the EOL, GDR, and SOL shall be undertaken pursuant to an approved Restoration Plan consistent with the provisions of Section 4.0.
5. The Buffer Restoration Plan shall include authorization to allow future development within the buffer by an easement holder if approved in a subsequent coastal development permit by the easement holder and limited to public access and recreational improvements.

- G. Within one (1) year of the effective date of these Consent Orders, DAA shall record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the San Dieguito River Park Joint Powers Authority (“JPA”) or other public agency or private association approved by the Executive Director an open space and conservation easement(s) over buffer areas associated with the EOL, SOL, and GDR, as described in Section 3.2.F. The easement(s) shall prohibit development, as defined in PRC Section 30106, except for development authorized pursuant to the Coastal Act necessary for resource management, restoration, and public access projects. The offer to dedicate (“OTD”) shall include a graphic depiction and narrative legal descriptions of the parcels on which the easements are to be located and the easement areas. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of twenty-one (21) years, such period running from the date of recording.
- H. Within (six) 6 months of the effective date of these Consent Orders, DAA shall submit, for the review and approval of the Commission’s Executive Director, a Removal, Restoration, Revegetation, and Monitoring Plan (“SOL Restoration Plan”) for the restoration of the SOL to a fully tidal saltmarsh within thirty (30) months of Commission approval of a CDP for development or use on the EOL. DAA suggests that Coastal Commission support/approval of a temporary or permanent rail platform may allow the required restoration to occur earlier than identified above. This SOL Restoration Plan shall be harmonious with the San Dieguito Restoration Plan detailed in CDP 6-04-088, and shall be prepared in accordance with Section 4.0 below, except as specifically exempted.
1. If the permit application discussed in 3.2.B is approved, within thirty (30) days of commencement of the SOL Restoration Plan and Monitoring Program, DAA shall record a document, in a form and content acceptable to the Executive Director, amending the offer to dedicate an easement (if not yet accepted) or the easement (if it has been accepted), described in Section 3.2.G above, to record an open space and conservation easement over all portions of the SOL held by the DAA. The easement shall preclude all development, as defined in PRC Section 30106, except for development, authorized pursuant to the Coastal Act,

necessary for resource management, restoration, and public access projects.

- a. The offer to dedicate (“OTD”) shall include a graphic depiction and narrative legal descriptions of the parcel(s) on which the easement is to be located and the easement area. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of twenty-one (21) years, such period running from the date of recording.
- I. If the Commission approves the CDP application identified in Section 3.2.B of these Consent Orders, DAA shall undertake all of the development authorized by that permit and identified in Section 3.2.C of these Consent Orders no later than two (2) years from approval and comply with all terms, conditions, and deadlines of the approved CDP.
 1. Development authorized by Section 3.2.B.3.a of these Consent Orders shall be excepted from this requirement; DAA shall undertake development pursuant to Section 3.2.B.3.a concurrently with the SOL Restoration Plan.

3.3 Fairgrounds

- A. Within six (6) months of the effective date of these Consent Orders, DAA shall submit a complete Restoration Plan (the “Rip-Rap Restoration Plan”) in accordance with Section 4.0 of these Consent Orders for the following development:
 1. Removal of rip rap placed on the northern shore of the San Dieguito River east of the Railroad and west of the Jimmy Durante Bridge³; and
 2. Restoration of the area impacted by the unpermitted rip rap.

B. Comprehensive Permit:

Within twelve (12) months of the effective date of these Consent Orders, DAA shall submit, and allow to be processed to Commission

³ Removal of rip rap may precede submittal of the Restoration Plan.

hearing under its normal procedures, a complete coastal development permit application for permanent authorization of typical short-term events to be held within the Fairgrounds that DAA wishes to retain or continue to perform and for which CCC staff has determined, after consultation with DAA, a permit to be necessary.⁴ This comprehensive permitting requirement excludes the Fair and Races as defined in Section 3.2.A.3 of these Consent Orders.

1. Prior to the submittal of the permit application as required by this Section, DAA shall consult with San Diego Coastal Commission permitting staff to determine the scope of events, undertakings, and structures that will require a permit and therefore must be included in the aforementioned application, based on the nature and location of each event etc.
2. In addition to all information and requirements of the Commission's permit application form, DAA shall include the following documents and information as part of the permit application:
 - a. A description of the typical short-term events to be conducted including the timing and duration of each;
 - b. A scaled map of the Fairgrounds depicting the location of the events described in 3.3.B.2.a within the Fairgrounds including, but not limited to an analysis of measures to avoid sensitive habitat areas and to minimize impacts to species that use such habitat; and
 - c. A description of the measures to accommodate and mitigate for the increased parking and traffic demands resultant from the temporary events described in 3.3.B.2.a above.

3.4 Interim Use

A. Definitions

1. Interim Use Period: The period of time from the effective date of these Consent Orders until the Commission takes final action on the abovementioned CDPs described in Sections 3.2.B and 3.3.B, or twenty-one (21) months for the Fairgrounds and fifteen (15) months for the remainder of the Subject Properties, whichever is less.

⁴ The parties acknowledge that nothing herein is intended to constitute pre-approval of any of the below-mentioned development.

2. **Current Operational Activities:** Those ongoing and planned events and corresponding development, as itemized pursuant to Section 3.4.B of these Consent Orders, which do not expand current operations and which conform to the resource protection measures set forth in Section 3.4.C below.
- B. Within forty-five (45) days of the effective date of these Consent Orders, DAA shall submit, for review by the Commission's Executive Director, a list of all planned activities and events to be undertaken on the Subject Properties during the Interim Use Period.
1. Any activities not captured by the above mentioned list shall be submitted for the review and approval of the Commission's Executive Director at least thirty (30) days in advance of the planned event.
- C. During the Interim Use Period, the DAA shall take steps to minimize impacts to coastal resources, including implementing the following measures to minimize potential resource impacts to water quality, environmentally sensitive habitat, coastal views, and biological productivity.
1. **Coastal Views:** For the purposes of these Consents Orders, to abate impacts of temporary events on coastal views, no temporary structures greater than twenty-five (25) feet tall, installed for activities and events itemized pursuant to Section 3.4.B of these Orders, shall be located on the EOL south of the Crosby Gate entrance to the Fairgrounds from Jimmy Durante Blvd.
 2. **Water Quality:** To prevent the degradation of water quality in the San Dieguito River, within forty-five (45) days of the effective date of these Orders, DAA shall submit for the review and approval of the Commission's Executive Director a plan depicting erosion control measures and water quality BMPs to be employed on the Fairgrounds, EOL and SOL. This plan shall detail types and locations of each measure.
 - a. DAA shall implement approved erosion control measures and BMPs within fifteen (15) days of approval by the Commission's Executive Director.
 - b. Should approvable plans fail to be submitted pursuant this Section within forty-five (45) days, DAA shall

implement erosion control measures and BMPs at the direction of Commission staff biologists.

3. **Environmentally Sensitive Habitat:** To ensure protection of biological productivity and environmentally sensitive habitat within and along the San Dieguito River and Stevens Creek, within thirty (30) days of the effective date of these Consent Orders, DAA shall demarcate a buffer of varying width , averaging twenty-five (25) feet, from the riparian vegetation of Stevens Creek from Point C to Point B (see Attachment 2) and along the San Dieguito River west of Jimmy Durante Boulevard, and a one hundred (100) foot wide buffer from wetlands and/or the San Dieguito River east of Jimmy Durante Boulevard. No development shall be placed nor events held within the buffer.

All temporary lighting installed on the EOL, SOL, and within twenty-five (25) feet of the riparian vegetation associated with Stevens Creek, shall be shielded at time of installation to prevent spillover impacts to biota.

Within forty-five (45) days of the effective date of these Consent Orders, DAA shall submit a sound control plan for the review and approval of the Commission's Executive Director, to minimize adverse impacts on biological resources within and adjacent to the Subject Properties.

- a. DAA shall implement the approved sound control plan within fifteen (15) days of approval by the Commission's Executive Director.
- b. Should approvable plans fail to be submitted pursuant this Section within forty-five (45) days, DAA shall implement sound control measures at the direction of a Commission staff.

3.5 Horsepark

On March 22, 2005, the Commission granted DAA CDP 6-04-29 for the after-the-fact authorization of unpermitted development, and DAA fulfilled the prior-to-issuance conditions such that the permit was issued on February 16, 2007. As of the effective date of these Consent Orders, DAA is in compliance with its obligations under CDP 6-04-29. Therefore, to ensure the continued compliance with CDP 6-04-29, DAA agrees to continue its compliance with the terms and conditions of CDP 6-04-29,

including the completion of the wetland buffer establishment/enhancement plan.

3.6 Mitigation

- A. DAA shall include the alignment of the Trail, from its terminus at the existing Boardwalk through the northern portion of the SOL, in the CDP application identified in Section 3.2.B of these Consent Orders. DAA will be responsible for construction of the trail, which shall be completed within thirty (30) days of completion of revegetation of the SOL pursuant to Section 4.4 of these Consent Orders. Within thirty (30) days of the completion of the Trail, DAA shall submit a document to California Department of General Services (DGS), in a form and content acceptable to the Commission's Executive Director, irrevocably offering to dedicate to the San Dieguito River Park Joint Powers Authority ("JPA") or other public agency or private association approved by the Executive Director, an easement over the Trail in compliance with the requirements, excluding the timing provision, imposed for the OTD discussed in Section 3.2.G above. Within thirty (30) days of approval of the document by DGS, DAA shall record said offer to dedicate. If DGS rejects the offer to dedicate, DAA shall work with DGS and the Commission's Executive Director to develop terms of an offer to dedicate that is acceptable to both agencies, and shall record the offer to dedicate within thirty (30) days of approval. The conservation easement granted would only allow the easement holder to undertake resource management, restoration, and public access projects authorized pursuant to the Coastal Act, and which are consistent with and necessary for the purposes enumerated in the easement.
- B. Within thirty (30) days of the effective date of these Consent Orders, DAA shall submit a document to DGS, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the San Dieguito River Park Joint Powers Authority ("JPA") or other public agency or private association approved by the Executive Director, an easement over a varying width buffer area, in compliance with the requirements, excluding the timing provision, imposed for the OTD discussed in Section 3.2.G above. Within thirty (30) days of approval of the document by DGS, DAA shall record said offer to dedicate. If DGS rejects the offer to dedicate, DAA shall work with DGS and the Commission's Executive Director to develop terms of an offer to dedicate that is acceptable to both agencies, and shall record the offer to dedicate within thirty (30) days of approval. The offer to dedicate an easement shall be for a varying width buffer area averaging thirty (30) feet, on the southern side of the property running

from the Jimmy Durante Bridge (refer to Point A in Attachment 2) west to the end of the property (Point B). The conservation easement granted would only allow the easement holder to undertake resource management, restoration, and public access projects authorized pursuant to the Coastal Act, and which are consistent with and necessary for the purposes enumerated in the easement.

1. As the exhibit halls on the Subject Properties are redeveloped and facilities reworked, the parties agree that the buffer in this area shall be conformed to the one hundred (100) foot standard.
- C. Within thirty (30) days of the effective date of these Consent Orders, DAA shall submit a document to DGS, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the San Dieguito River Park Joint Powers Authority (“JPA”) or other public agency or private association approved by the Executive Director an easement for a varying width buffer, from 8-feet to 25-feet, area on the western edge of the property running from the end of the area described in 3.6.B (refer to Point B in Attachment 2) to Point C, in compliance with the requirements, excluding the timing provision, imposed for the OTD discussed in Section 3.2.G above. Within thirty (30) days of approval of the document by DGS, DAA shall record said offer to dedicate. If DGS rejects the offer to dedicate, DAA shall work with DGS and the Commission’s Executive Director to develop terms of an offer to dedicate that is acceptable to both agencies, and shall record the offer to dedicate within thirty (30) days of approval. The conservation easement granted will total 35,000 sq feet and would only allow the easement holder to undertake resource management, restoration, public access projects authorized pursuant to the Coastal Act, and which are consistent with and necessary for the purposes enumerated in the easement.
- D. DAA shall include a plan to install five (5) interpretive signs along buffer areas and/or restoration areas on the Subject Properties in the CDP application identified in Section 3.2.B of these Consent Orders.
- E. To help address the funding shortfall in the San Dieguito River Park JPA budget, experienced when the City of San Diego withdrew its annual funding, DAA shall provide \$20,000 per year funding to the San Dieguito River Park JPA for five (5) years commencing in 2013. This funding shall be for the fulfillment of the JPA’s mandate to preserve open space, protect and interpret biological and cultural resources, and provide and maintain a public access trail.

- F. To provide a cost and personnel savings to the San Dieguito River Park JPA, DAA shall undertake trash pick-up and removal along the Trail on the Subject Properties.
- G. Pursuant to its suggestion, DAA shall provide several projects to promote coastal awareness and education including:
1. a complimentary booth space at the San Diego County Fair for the California Coastal Commission's public education program, to use for educational and outreach purposes regarding coastal resources;
 2. a coastal conservation component on the Del Mar Fairgrounds website, including a link to the California Coastal Commission's public education website; and
 3. adding a coastal conservation component, developed in consultation with California Coastal Commission's public education program, to the educational curriculum to be integrated into the DAA's Plant/Grow/Eat program and/or School Tours program.
- H. DAA shall sponsor an annual San Dieguito River Park cleanup west of Interstate 5.
- I. DAA shall provide office space/trailer at the Fairgrounds for the San Dieguito River Park JPA Ranger until such time as permanent facilities are developed.

4.0 RESTORATION PLAN

These Consent Orders require the preparation and implementation of three restoration plans applicable to the Subject Properties as follows: (1) the Buffer Restoration Plan, (2) the Rip-Rap Restoration Plan, and (3) the SOL Restoration Plan (collectively "Restoration Plans"). Each provision set forth in this section shall apply to the Restoration Plans, except that the timing requirements set forth in Section 4.2.C, 4.3.B, 4.4.H and 4.6 shall not apply to the SOL Restoration Plan, which is governed by the timing requirements set forth in Section 3.2.H. The Restoration Plans shall outline all proposed removal activities, proposed remedial grading, and proposed vegetation restoration activities, in the subject area, as well as monitoring plans, and shall include the following elements and requirements:

4.1 General Provisions

Appendix A

CCC-12-CD-02 & CCC-12-RO-02

22nd DAA

Page 15 of 30

- A. The Restoration Plans shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) (“Specialist”). Prior to the preparation of the Restoration Plans, DAA shall submit for the Executive Director’s review and approval the qualification of the proposed Specialist, including a description of the proposed Specialist’s educational background, training and experience.
- B. The Restoration Plans shall include a schedule/timeline of activities, the procedures to be used, and identification of the parties who will be conducting the restoration activities.
- C. The Restoration Plans shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation.
 - 1. If the use of mechanized equipment is proposed, the Restoration Plans shall include limitations on the hours of operation for all equipment and a contingency plan that addresses: 1) impacts from equipment use; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns. The Restoration Plans shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.
- D. The Restoration Plans shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- E. The Restoration Plans shall specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Restoration Plans shall specify the type and location of erosion control measures that will be installed on the subject properties and maintained

until the impacted areas have been revegetated to minimize erosion and transport of sediment.

- F. The Restoration Plans shall identify all areas on which the Restoration Plans are to be implemented, and upon which the restoration will occur (“Restoration Area”). The Restoration Plans shall also state that prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. The Restoration Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurred.

4.2 Removal Plan

- A. DAA shall submit a Removal Plan, prepared by a qualified Specialist, as part of each of the Restoration Plans, to govern the removal and off-site disposal of all unpermitted development, which the parties currently understand to be limited to rip-rap, required to be removed pursuant to these Consent Orders, unpermitted development for which no authorization is sought by the deadlines established in these Consent Orders, and unpermitted development for which authorization is denied by the Commission.
1. The Removal Plans shall include a site plan showing the location and identity of all unpermitted development to be removed from the subject properties.
- B. The Removal Plans shall indicate that removal activities shall not disturb areas outside the Restoration Area. Measures for the restoration of any area disturbed by the removal activities shall be included within the Revegetation Plans. These measures shall include the restoration of the areas from which the unpermitted development was removed, and any areas disturbed by those removal activities.
- C. The plan shall indicate that DAA shall commence removal of the unpermitted development by commencing implementation of the Removal Plan no more than fifteen (15) days of approval of the Restoration Plan, or if State law bidding requirements are applicable, the DAA shall inform the CCC and this deadline shall commence within fifteen (15) days of the awarding of the bid for the removal.

4.3 Remedial Grading Plan

- A. The Remedial Grading Plan shall include sections showing original and finished grades, a quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the topography necessary to achieve a fully tidal saltmarsh for the SOL Restoration, and appropriate transitional topography within the buffer areas and along the area impacted by the removal of rip-rap. The Remedial Grading Plan shall demonstrate how the proposed remedial grading will restore the subject properties to their original, pre-development topography, as determined in consultation with Commission staff biologists.
1. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the wetland habitat, the Remedial Grading Plan shall also include this proposed topography and a narrative report that explains the justification for needing to alter the topography from the original contours.
- B. The plan shall indicate that DAA shall commence restoration of the properties' topography by implementing the Remedial Grading Plan no more than forty-five (45) days of approval of the Restoration Plan, or if State law bidding requirements are applicable, the DAA shall inform the CCC and this deadline shall commence within forty-five (45) days of the awarding of the bid for the remedial grading.

4.4 Revegetation Plan

- A. DAA shall submit a Revegetation Plan, prepared by a qualified Specialist, as part each of the Restoration Plans, outlining the measures necessary to revegetate the Restoration Area(s). The Revegetation Plans shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of vegetation in the Restoration Area prior to any development undertaken on the subject properties, to the extent records are available, and the current state of the subject properties. The Revegetation Plan shall demonstrate that the areas impacted by development on the subject properties will be restored using plant species endemic to and appropriate for the subject site.
- B. The Revegetation Plans shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. This section shall explicitly lay out the restoration goals and objectives for the revegetation. Based on these goals, the plan shall identify the species that are to be planted (plant "palette"), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The

Revegetation Plan shall indicate that plant propagules must come from local native stock.

1. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars and the Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g., spacing, micorrhyzal inoculation, etc.) shall be included.
- C. The Revegetation Plans shall include a detailed description of the methods that shall be utilized to restore the pre-development habitats on the subject properties to the condition in which it existed prior to development to the extent records are available.
- D. The Revegetation Plans shall include a map showing the type, size, and location of all plant materials that will be planted in the restoration area; the location of all invasive and non-native plants to be removed from the restoration area; the topography of all other landscape features on the site; and the location of photograph site that will provide reliable photographic evidence for annual monitoring reports, as described in Section 4.5.B below.
- E. The Revegetation Plans shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The description of restoration success analysis shall be described in sufficient detail to enable an independent specialist to duplicate it.
- F. The Revegetation Plans shall include a schedule for installation of plants and removal of invasive and/or non-native plants. DAA shall not employ invasive plant species, which could supplant native plant species in the Restoration Area.
1. If the planting schedule requires planting to occur at a certain time of year beyond deadlines set forth herein, the Executive Director may, at the written request of DAA, extend the deadlines as set forth in Section 14.0 of these Consent Orders in order to achieve optimal growth of the vegetation.
 2. The Revegetation Plans shall demonstrate that all non-native vegetation within the areas subject to the revegetation will be eradicated prior to any remedial grading and revegetation activities on the subject properties. In addition, the Plan shall

specify that non-native and invasive species removal shall occur on a monthly basis during the rainy season (January through April) for the duration of the restoration project, pursuant to Section 4.5.B.

G. The Revegetation Plans shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first.

1. If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation Plans has not become established, the Executive Director may, upon receipt of a written request from DAA, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and duration of the proposed extension.

H. DAA shall commence revegetation by implementing the Revegetation Plans no more than sixty (60) days after approval of the Restoration Plans, or if State law bidding requirements apply, the DAA shall inform the CCC and this deadline shall commence within sixty (60) days of the awarding of the bid for the revegetation.

4.5 Monitoring Plan

A. The plan shall indicate that DAA shall submit a Monitoring Plan, as part of each of the Restoration Plans, that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the restoration Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 4.5.B, at intervals specified in the Restoration Plans, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native and invasive species eradication; trash and debris removal; original and/or replacement plantings.

B. DAA shall submit, on an annual basis and during the same one-month period of each year (no later than December 31st of the first year), for five (5) years from the approval date of each of the Restoration Plan, according to the procedure set forth under Section 4.8, a written report,

for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with each the approved Restoration Plan. The annual reports shall include notes from the Specialist's periodic inspections and recommendations and requirements for additional restoration activities, as necessary, to meet the objectives of the Restoration Plan. These reports shall also include photographs taken annually, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 4.4.D) indicating the progress of recovery in the Restoration Area.

1. The locations from which the photographs are taken shall not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 14.0 of these Consent Orders.
- C. If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the applicable Restoration Plan or has failed to meet the goals and/or performance standards specified in the Plan, DAA shall submit a revised or supplemental Restoration Plan for review and approval by the Executive Director. The revised Restoration Plan shall be prepared by a qualified Specialist, and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Plan. The Executive Director will then determine whether the revised or supplemental Restoration Plan must be processed as a modification of these Consent Orders, new Restoration Order, or a new or amended CDP. After the revised or supplemental Restoration Plan has been approved, these measures, and any subsequent measures necessary to carry out the original approved Plan, shall be undertaken by DAA in coordination with the Executive Director until the goals of the original approved Restoration Plan have been met. Following completion of the revised Restoration Plan's implementation, the duration of the monitoring period, as set forth in Section 4.5, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two reporting periods.
- D. At the end of the five (5) year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 4.5.C), DAA shall submit, according to the procedure set forth under Section 4.8, a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director.
1. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the requirements of

the approved Restoration Plans, DAA shall submit a revised or supplemental Restoration Plans, in accordance with the requirements of Section 4.5 of these Consent Orders, and the monitoring program shall be revised accordingly.

- 4.6 Upon approval of the Restoration Plan (including the Removal, Remedial Grading, Revegetation, and Monitoring Plans) by the Executive Director, DAA shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. DAA shall complete implementation of each phase of the Restoration Plan within the schedule specified therein, and by the deadlines included in Sections 4.2.C, 4.3.B and 4.4.H of these Consent Orders. At a minimum, DAA shall complete all work described in the Restoration Plan no later than seventy five (75) days after the Restoration Plan is approved. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 14.0 of these Consent Orders.
- 4.7 Within thirty (30) days of the completion of the work described in the Removal Plan, Remedial Grading Plan, and Revegetation Plan, DAA shall submit, according to the procedure set forth under Section 4.8, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the subject properties. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Sections 4.4.D) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the subject properties before the work commenced and after it was completed.
- 4.8 All plans, reports, photographs and other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Attn: Heather Johnston
45 Fremont Street, Ste 2000
San Francisco, CA 94105

With a copy sent to:

California Coastal Commission
Attn: N. Patrick Veasart
89 S. California Street, Ste 200
Ventura, California 93001

5.0 REVISIONS OF DELIVERABLES

Appendix A

CCC-12-CD-02 & CCC-12-RO-02

22nd DAA

Page 22 of 30

The Executive Director may require revisions to deliverables required under these Consent Orders, and DAA shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 14.0 of these Consent Orders.

6.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of these Consent Orders is the 22nd District Agricultural Association's facility at the Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, California, including the main fairgrounds to the west of Jimmy Durante Blvd., the South Overflow Lot to the west and south of Jimmy Durante Blvd., and the East Overflow Lot and Golf Driving Range to the east of Jimmy Durante Blvd, which are also identified by APNs 302-090-011; 298-260-015; 298-260-035; 298-271-03; 299-030-01; 299-030-04; 299-030-05; 299-042-02; and 299-042-01.

7.0 PERSONS SUBJECT TO THIS ORDER

22nd District Agricultural Association owns and operates the subject properties and has taken responsibility for the violations alleged in Section 8.0, below. By executing these Consent Orders, 22nd District Agricultural Association attests that it has the authority to conduct the work on the subject properties required by these Consent Orders and agrees to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein. 22nd District Agricultural Association; its current and future employees and agents; and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders. DAA agrees to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders.

8.0 DESCRIPTION OF THE UNPERMITTED DEVELOPMENT⁵

8.1 Fairgrounds

⁵ The description herein of the violation at issue is not necessarily a complete list of all development on the subject properties that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, Commission's silence regarding (or failure to address) other development on the subject properties is not indicative of Commission acceptance of, or acquiescence in, any such development.

- A. Change in the intensity of use of the EOL, SOL and the GDR from their pre-Coastal Act use, including:
1. parking during times of the year except historic Fair and Race usage;
 2. various impermanent events year-round on the EOL;
 3. year-round truck and trailer storage on the EOL and Golf and GDR; and
 4. placement of billboards and other forms of advertising (including banners and signage attached to truck trailers) visible from Interstate-5 on the GDR.
- B. Landform alteration within wetlands related to the operation of an unpermitted truck driving school in the SOL, as well as the operation of a truck driving school on the SOL.
- C. Placement of riprap in two locations along the northern shore of the San Dieguito River on Del Mar Fairgrounds property, east of the railroad and west of the Jimmy Durante Bridge.
- D. Construction of concert stage at western end of Fairgrounds adjacent to wetlands.

8.2 Surf and Turf

- A. Use of a previously permitted (permit expired) 13,500 square foot fabric tent for youth volleyball activities; construction of an ADA compliant restroom; construction of swimming pool (in the early 1980s); operation of a swimming school and associated 2,500 square foot fabric tent, placement of billboards and other forms of advertising (including banners and signage attached to truck trailers) visible from Interstate-5 at Del Mar Fairgrounds “Surf & Turf” facility, at 15555 Jimmy Durante Blvd., San Diego County, also identified by APN 299-042-01.

9.0 EFFECTIVE DATE

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

10.0 COMMISSION JURISDICTION

Appendix A

CCC-12-CD-02 & CCC-12-RO-02

22nd DAA

Page 24 of 30

The Commission has jurisdiction over resolution of the alleged Coastal Act violations described in Section 8.0 pursuant to PRC section 30810 and section 30811. In light of the desire to settle these matters, DAA agrees to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

11.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its March 08, 2012 meeting, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-02 and Restoration Order No. CCC-12-RO-02." The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12.0 SETTLEMENT OF MATTER PRIOR TO HEARING/NONSUBMISSION OF STATEMENT OF DEFENSE

In light of the intent of the parties to resolve these matters in settlement, DAA has elected not to submit a "Statement of Defense" form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations identified in Section IV of the Consent Orders. Specifically, DAA has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

13.0 IMPLEMENTATION OF THE ORDER

In the interest of resolving these issues expeditiously, and settling this matter in this Consent Order, strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of these Consent Orders including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under 14.0, will constitute a violation of these Consent Orders and shall result in the DAA being liable for stipulated penalties in the amount of \$1000 per day per violation. DAA shall pay stipulated penalties within 15 days of the date of written demand by the Commission for such penalties regardless of whether DAA has subsequently complied and shall be made payable to the account designated under the Coastal Act. Stipulated penalty payments shall be sent to the Commission to the attention of Heather Johnston at the address listed in Section 13.1, above. If DAA violates these Consent Orders, nothing in these Consent Orders shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek

any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC Section 30820, 30821.6, and 30822 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violation as described herein.

14.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, DAA may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing ten days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director may grant an extension of any deadline upon a showing of good cause, if the Executive Director determines that DAA has diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond their control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 13.0, above.

15.0 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, DAA hereby agrees not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

16.0 GOVERNMENT LIABILITY

Neither the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by DAA in carrying out activities pursuant to these Consent Orders, nor shall the Commission or its employees be held as a party to any contract entered into by DAA or its agents in carrying out activities pursuant to these Consent Orders.

17.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding DAA and all successors in interest, future owners of the subject properties, heirs, and assigns. DAA shall provide notice to all successors in interest, heirs, assigns, and future owners of the subject properties, of any remaining obligations under these Consent Orders.

18.0 MODIFICATIONS AND RESCISSION

Except as provided for in Section 14.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and DAA, these Consent Orders may be modified or amended only in accordance with the standards and

procedures set forth in section 13188(b) of the Commission's administrative regulations.

19.0 GOVERNING LAW

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

20.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

Correspondingly, DAA has entered into these Consent Orders and waived their right to contest the factual and legal basis for issuance of these Consent Orders, and the enforcement thereof according to their terms. DAA has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

21.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

22.0 SITE ACCESS

DAA shall provide access to the subject properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any entity may otherwise have by operation of any law. The Commission staff may enter and move freely about the subject properties for purposes including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; inspecting records, operating logs, and contracts relating to the site; and overseeing, inspecting and reviewing the progress of DAA in carrying out the terms of these Consent Orders.

23.0 ACKNOWLEDGEMENT OF NOTICE

DAA acknowledges receipt of the Notice of Intent to Commence Cease and Desist Order Proceedings dated October 20, 2011, pursuant to Sections 13181 and

13191 of the Commission's regulations (codified in California Code of Regulations, Title 14, Division 5.5).


24.0 SETTLEMENT OF CLAIMS

Upon completion of all requirements of these Consent Orders, including restoration of the SOL, the Commission and DAA agree that these Consent Orders settle all monetary claims for relief for those violations of the Coastal Act identified in Section 8.0 of the Consent Orders (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if DAA fails to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. However, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject properties other than those that are the subject of this order. Additionally, this release does not apply to any future development or the continuation of past development for which Coastal Act authorization is required (including that development addressed in these Consent Orders), and for which complete authorization is not sought, or for which authorization is denied by the Commission.

25.0 STIPULATION

DAA attests that they have reviewed the terms of these Consent Orders and understand that its consent is final, and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:



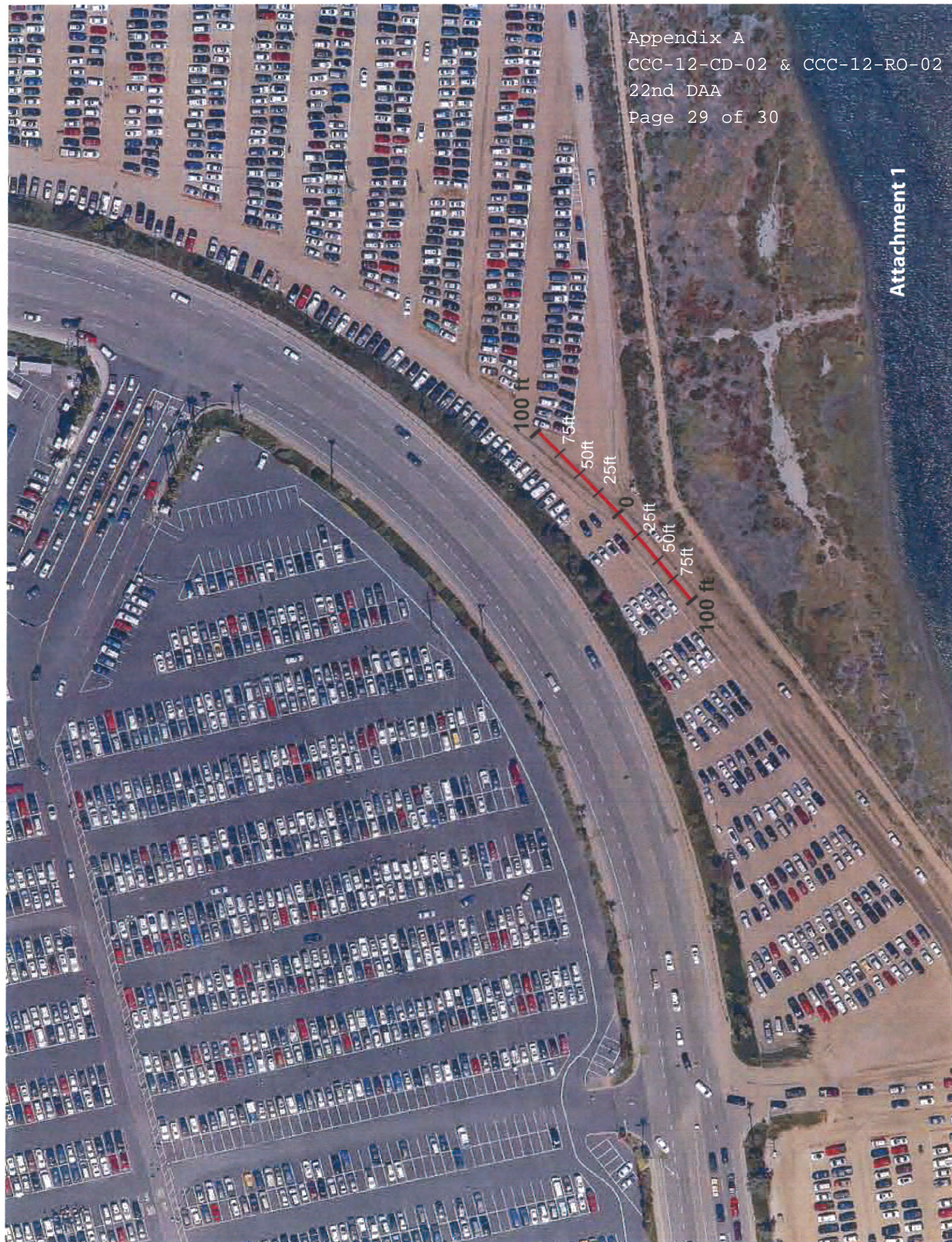
Adam Day
President
22nd District Agricultural Association

2 / 15 / 12

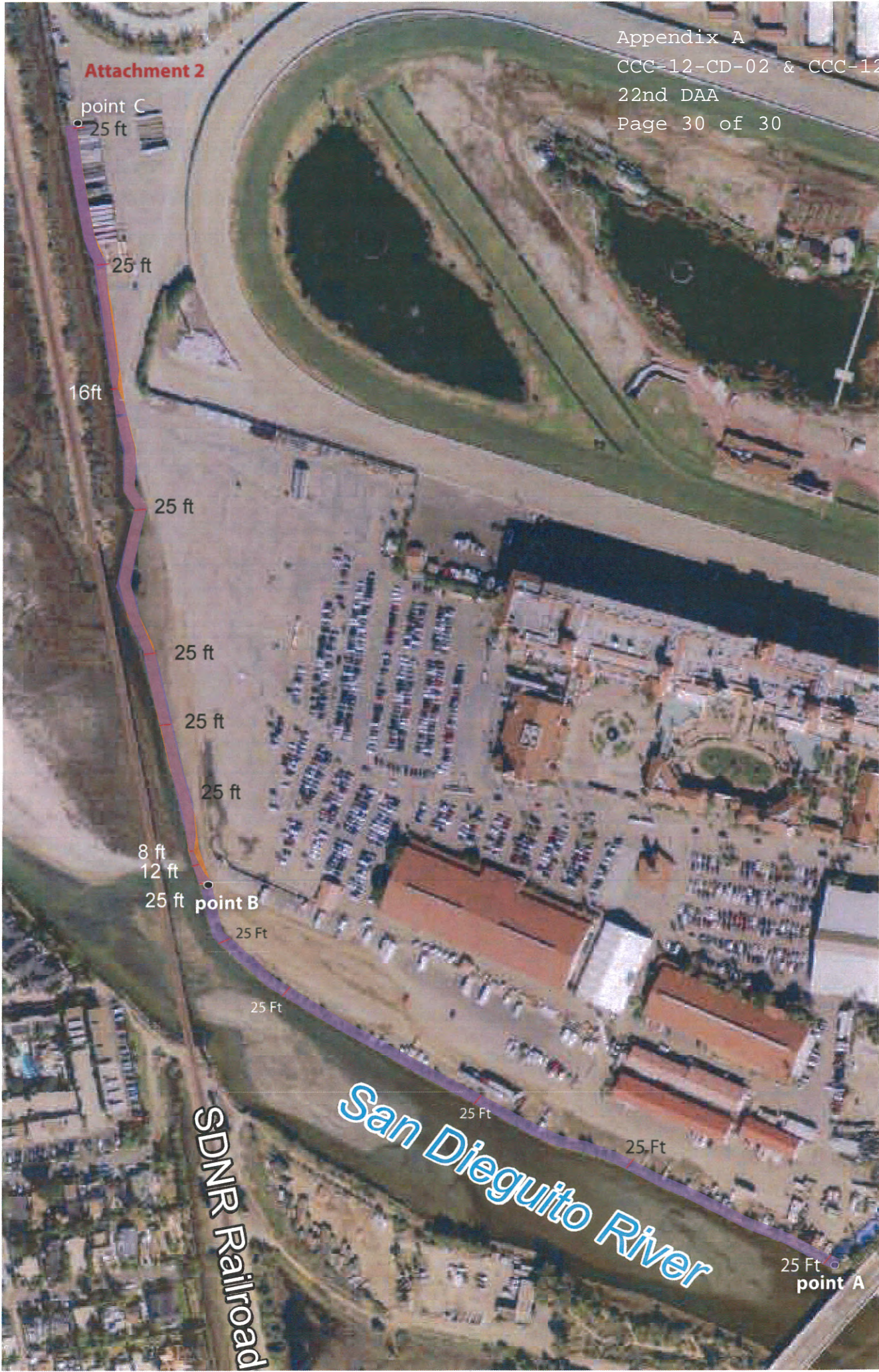
Dated

Charles Lester
Executive Director
California Coastal Commission

Dated



Attachment 2



point C
25 ft

25 ft

16ft

25 ft

25 ft

25 ft

25 ft

8 ft

12 ft

25 ft

point B

25 Ft

25 Ft

25 Ft

25 Ft

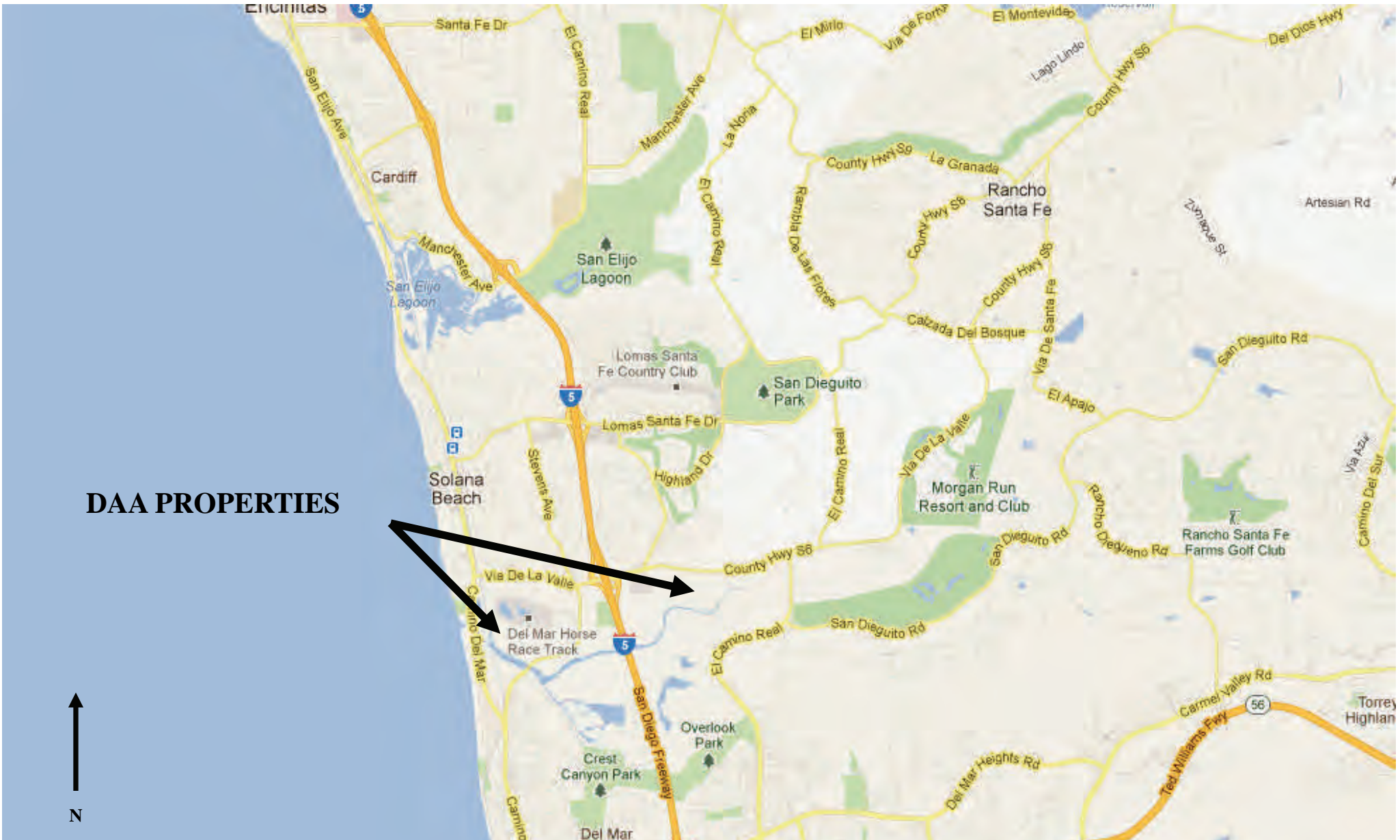
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point A

SDNR Railroad

San Dieguito River

REGIONAL MAP DEPICTING LOCATION OF DAA PROPERTIES



DAA PROPERTIES

MAP OF SUBAREAS WITHIN THE SUBJECT PROPERTY



**MAP OF SUBJECT PROPERTY RELATIVE TO HORESPARK PROPERTY
AND
WETLANDS RESTORATION PROJECT**



**SEASONAL WETLAND RESOURCES
ON THE
SOUTH OVERFLOW LOT**



EXAMPLES OF UNPERMITTED DEVELOPMENT ON THE SUBJECT PROPERTY

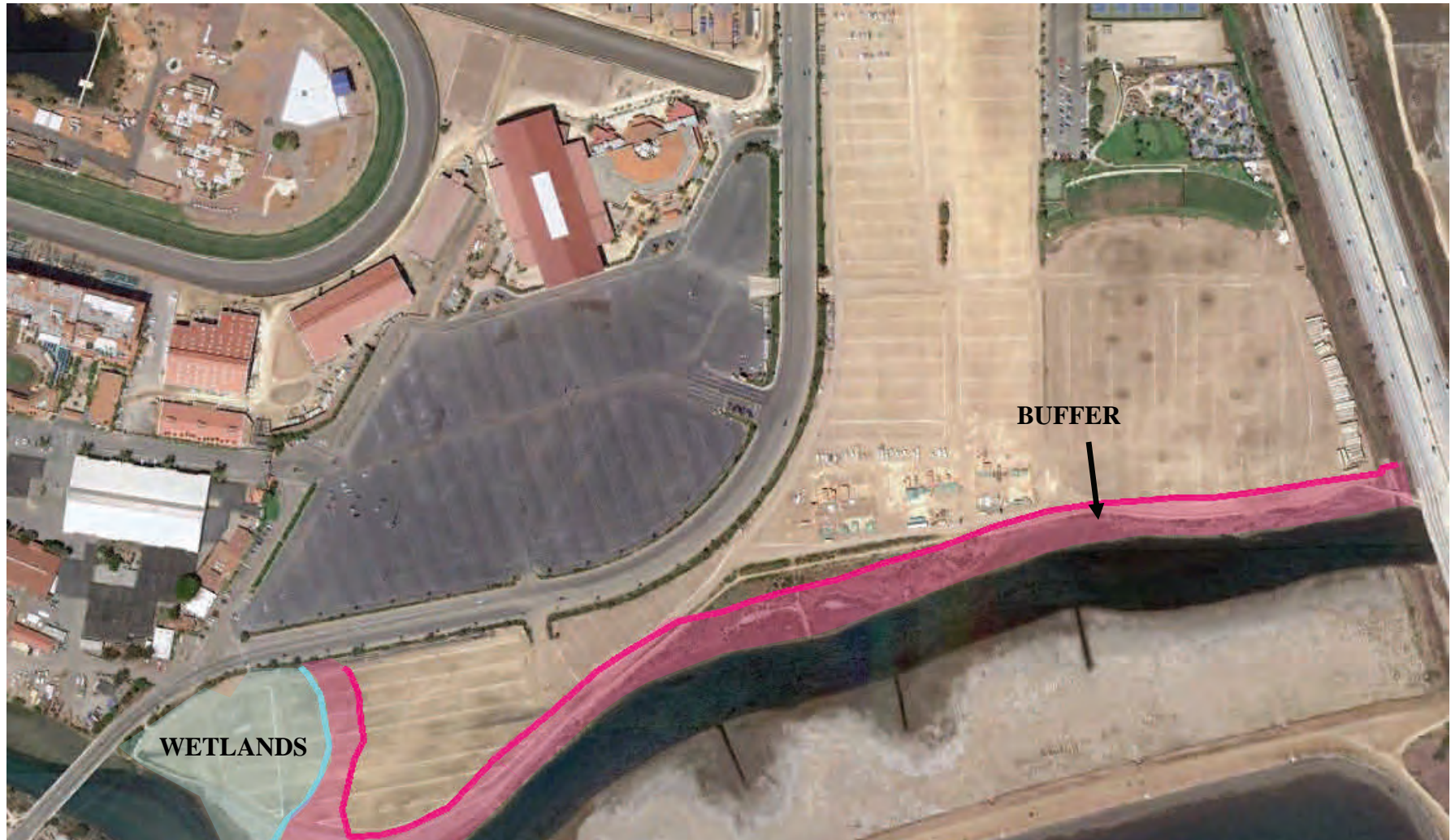


TRUCK DRIVING SCHOOL ADJACENT TO SAN DIEGUITO RIVER



SEMI TRUCK TRAILER PARKING AND ADVERTISING

RESTORATION AND EASEMENT AREAS



**APPROXIMATE FUTURE LOCATION OF RESTORED WETLANDS
(AS REQUIRED BY UNITED STATES ARMY CORPS OF ENGINEERS)
AND LOCATION OF RESTORED 100 FOOT BUFFER**

BUFFER EASEMENT AREAS



CALIFORNIA COASTAL COMMISSION

Page 1 of 7



45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200
 FAX (415) 904-5400

VIA CERTIFIED AND REGULAR MAIL
 Certified Mail No. 7003 1010 0005 0457 5172

October 20, 2011

22nd DAA/Del Mar Fairgrounds
 Tim Fennell, CEO
 2260 Jimmy Durante Blvd.
 Del Mar, CA 92014

Subject: Notice of Intent to Commence Cease and Desist Order and
 Restoration Order Proceedings

Violation File Number: V-6-01-004, V-4-90-009, V-6-10-011, V-6-11-006, V-6-11-009

Property Location: 2260 Jimmy Durante Blvd and 14550 El Camino Real, Del Mar,
 CA 92014; San Diego County Assessor's Parcel Numbers 302-
 090-011; 298-260-015; 298-260-035; 298-271-003; 299-030-011;
 299-030-004; 299-030-005; 299-042-001; 299-042-002; 299-042-
 010.

Unpermitted Development: Change in the intensity of use of the East and South Overflow Lots
 and the Golf Driving Range, grading and placement of fill within
 wetlands and river channel related to the operation of an unpermitted
 truck driving school in the South Overflow Lot, placement of riprap
 in two locations along the northern shore of the San Dieguito River
 on Del mar Fairgrounds Property, construction of concert stage at
 western end of Fairgrounds adjacent to wetlands and associated
 change in intensity of use of said area, use of a 13,500 square foot
 fabric tent for youth volleyball activities, operation of a swimming
 school and construction of associated 1,500 square foot fabric tent,
 and placement of billboards and other forms of advertising visible
 from Interstate-5.

Dear Mr. Fennell:

This letter follows up the October 12th telephone conversation you, Becky Bartling and others of
 your staff had with Heather Johnston, Aaron McLendon, Lee McEachern, and Deborah Lee of
 Commission staff, regarding unpermitted development on property owned by the 22nd District
 Agricultural Association ("DAA"), at 2260 Jimmy Durante Blvd and 14550 El Camino Real, in San
 Diego County ("subject property"). We are very encouraged by your stated willingness to take the
 steps necessary to bring the subject property into compliance with the Coastal Act and are happy to
 continue working with you to achieve that end. As staff mentioned in that discussion, this letter is
 intended to provide you notice, as required by Commission regulations, of my intent, as the
 Executive Director of the Commission, to commence proceedings for issuance of Cease and Desist

and Restoration Orders to address violations of the Coastal Act in the form of unpermitted development on the subject property. Moreover, this letter provides some background on the Commission and its function, addresses the specific items of unpermitted development at issue on the subject property, and describes our proposed course of action for resolving these violations. This does not preclude in any way our ability to resolve these matters through a Consent Order, of course, and we still hope to do so.

The California Coastal Act¹ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore environmentally sensitive habitats, such as the wetland habitat that exists on the property; protect natural landforms, including coastal bluffs; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

The San Dieguito River Valley, where the subject property is located, contains both current and historic wetlands and a link to other wetlands in the area as well as to the Pacific Ocean. Wetlands are extremely rare and important ecosystems. Less than 25 percent of the original coastal wetland area remains in Southern California, and much of the remaining wetlands are degraded. Despite their rarity, they remain extremely important from an ecological standpoint, and southern California's coastal wetlands continue to support numerous plant species found only in wetlands and resident and migrant wildlife species, including birds migrating along the Pacific Flyway. Wetlands often provide critical habitat, nesting sites, and foraging areas for threatened or endangered wildlife and bird species.

Environmentally sensitive habitat areas (ESHIA), including areas that are home to certain plant and animal life and their habitats and often so designated "because of their special nature or role in an ecosystem and [potential to]...be easily disturbed or degraded by human activities and developments" (see Section 30107.5), are afforded special protection under the Coastal Act. Only certain types of development are permissible in ESHIA. For example, under Section 30240 of the Coastal Act, only resource-dependent uses are permitted within ESHIAs. The development at issue appears to have occurred at least partially within and adjacent to ESHIA, not only causing detrimental impacts to those areas, but also precluding their recovery. As discussed briefly below, for these reasons and others, the development at issue is not only unpermitted, it is also inconsistent with certain resource protection policies of the Coastal Act.

Unpermitted Development

As noted in staff's prior communications with you, the development subject to this action includes the unpermitted change in the intensity of use of the East and South Overflow Lots and the Golf Driving Range from their pre-Coastal Act use, including: increased use for parking (specifically during times of the year other than during the historic Fair and Race usage); various impermanent events year-round on the East Overflow Lot; year-round truck and trailer storage on the East

¹ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Overflow Lot and Golf Driving Range; and placement of billboards and other forms of advertising visible from Interstate-5 on the Golf Driving Range.

Additional unpermitted development on the subject property includes the grading and placement of fill within wetlands and the river channel for the purpose of operating an (unpermitted) truck driving school in the South Overflow Lot, as well as the operation of a truck driving school on the South Overflow Lot; placement of riprap in two locations along the northern shore of the San Dieguito River on Del mar Fairgrounds Property, east of the railroad and west of Jimmy Durante Bridge; construction and use of a concert stage at western end of Fairgrounds adjacent to wetlands; use of a 13,500 square foot fabric tent for youth volleyball activities; swimming school and construction of associated 1,500 square foot fabric tent; and placement of billboards and other forms of advertising visible from Interstate-5 on the "Surf and Turf" facility.

On October 13, 2005, CDP amendment 6-84-525-A1 was issued by the Commission and served to supersede and replace Special Condition 1 of CDP 6-84-525. Special Condition 1 of CDP 6-84-525 required the dedication of 16 acres of the South Overflow Lot to the State Coastal Conservancy for wildlife enhancement. This condition was never fulfilled, and CDP 6-84-525-A1 was issued to modify this original condition to reflect the extant nature of the San Dieguito River and associated restoration projects and to provide a resolution of the violation. Because work is presently underway to achieve compliance with this permit, as amended, a requirement for continued compliance with CDP 6-84-525, as amended, is included in this action to the extent that work remains to be performed pursuant to the permit to resolve the violation relating to the original coastal development permit.

Similarly, on March 22, 2005, the Commission granted CDP 6-04-29, providing for after-the fact authorization of unpermitted development on the "Horsepark" property, and prior-to-issuance conditions were fulfilled such that the permit was issued on February 16, 2007. As work is being undertaken in conformity with this permit, compliance with CDP 6-04-29 is included in this action to the extent that remaining work is to be performed pursuant to the permit to resolve the violation addressed by the granting of after-the-fact authorization.

Additionally, development on the subject property is inconsistent with the terms and conditions of at least two permits previously issued by the Commission. CDP 6-02-020 authorized the construction of a 13,500 sq foot tent on the "Surf and Turf" portion of the subject property. The CDP provided that the term of use of the tent would be a total of 6 years: 1 year of non-volleyball activities, and 5 years of volleyball activities, at which point the tent was to be removed. The aforementioned authorization terminated in September of 2008; however, the tent remains in place on the property. CDP application 6-11-059 seeks to authorize the permanent retention of the tent but has not been heard by the Commission. Therefore, the tent remains in violation of CDP 6-02-20.

Moreover, Special Condition 1 of CDP 6-04-049 provided that DAA waived any rights it might otherwise have acquired pursuant to Public Resources Code section 30236 to construct some form of channelization or substantial alteration of a river or stream for the purpose of protecting the barns to be replaced on the Fairgrounds property pursuant to the permit. However, in January of 2010, unpermitted riprap placed was placed within the San Dieguito River in violation of Special Condition 1 of CDP 6-04-049.

Under Section 30600 of the Coastal Act, all development within the Coastal Zone not otherwise exempted under the Coastal Act requires a CDP. The term "development" is defined broadly in Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure...grading...change in the density or intensity of use of land...construction, reconstruction, demolition, or alteration of the size of any structure...and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...

The above-described development on the subject property constitutes "development" as defined by Section 30106, is not exempt, and is within the Coastal Zone. As such, it is subject to Coastal Act permitting requirements. We have researched our permit files and found that the above-mentioned development has not been authorized by a CDP as required by law. Any non-exempt development activity conducted in the Coastal Zone without a valid CDP constitutes a violation of the Coastal Act. Moreover, any development conducted that is inconsistent with any permit previously issued by the Commission is also a violation of the Coastal Act.

Site History

The historic Del Mar Fairgrounds was created by the import of fill in the early 1900s, and an annual fair, generally held in mid June has been held on the subject property since 1946. Prior to the effective date of the Coastal Act, two annual events were held each year at the Del Mar Fairgrounds, the Del Mar County Fair in mid June, and thoroughbred horseracing from mid June through early September.

Since the effective date of the Coastal Act, the size and scope of events held on the subject property began to expand, and the DAA began to engage in additional development to accommodate the increased demand, in terms of both aerial extent and the length of time used, for facilities and parking associated with this more year-round usage. Where the overflow parking areas had previously been utilized a few weeks of the year for Fair and Races events, they eventually became used for parking nearly every weekend of the year, and DAA additionally began using the East Overflow Lot for short-term events. To accommodate this increase and diversification of events on the subject property DAA also constructed numerous facilities during this period, including barns, arenas, and exhibit halls, none of which was permitted by the Commission prior to their construction, as is required by the Coastal Act. As staff has discussed with you, the change-of-use, facilitated by physical development and the increase and diversification of uses, has been conducted without benefit of a CDP, in violation of the Coastal Act, and raises a number of concerns under the resource protection provisions found in Chapter 3 of the Coastal Act, including: impacts on scenic and visual qualities of coastal areas (§30251), development adjacent to environmentally sensitive habitat (§30240), fill of wetlands (§30233), and impacts to the biological productivity and quality of coastal waters (§30231).

Notice of Intent to Commence Cease and Desist Order Proceeding

As Ms. Johnston explained during your recent conversations with my staff, the violations at issue would be most expeditiously resolved through Consent Cease and Desist and Restoration Orders, which would outline the terms of the development removal and restoration of the site. On September 30th, 2011, my staff sent you a proposed Consent Cease and Desist and Restoration Order for your review. In an October 12, 2011 telephone conversation, representatives from DAA, including you, discussed the proposed terms and conditions of the Consent Orders and attempted

to work through any issues that the DAA might have. As you know, Commission staff made a number of changes to the proposed Consent Orders based on the issues raised by the DAA and in response to requests made by the DAA, and on October 14, 2011, sent you an updated draft of the Consent Orders for your review and, hopefully, signature. We look forward to talking to you soon to discuss this latest proposal in our ongoing desire to resolve these issues amicably through the "Consent" Order process. As we have indicated a number of times, we would like to do this as quickly as possible.

The standards for the Commission's issuance of a Cease and Desist Order are discussed here.

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a), which states, in part, the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

Section 30810(b) states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material.

Section 30600(a) states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. As noted previously, "development" is defined by Section 30106 of the Coastal Act. The activities at issue here clearly constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of Section 30600(a).

A CDP was not issued to authorize the subject unpermitted development. In addition, certain items of development listed above is also inconsistent with a previously issued CDP. For these reasons, the criteria of Section 30810(a) have been met. Therefore, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

The unpermitted development at issue in this matter includes, but is not limited to: Change in the intensity of use of the East and South Overflow Lots and the Golf Driving Range from their pre-Coastal Act levels of use; grading and placement of fill within wetlands and river channel related to the operation of an unpermitted truck driving school in the South Overflow Lot; placement of riprap in two locations along the northern shore of the San Dieguito River on Del mar Fairgrounds Property, construction of concert stage at western end of Fairgrounds adjacent to wetlands, use of a 13,500 square foot fabric tent for youth volleyball activities, swimming school and construction of associated 1,500 square foot fabric tent, and placement of billboards and other forms of advertising visible from Interstate-5 on the "Surf and Turf" facility.

The proposed Cease and Desist Order will direct you to 1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; 3) pursue obtaining a CDP to authorize, both retrospectively and prospectively, the

changed intensity of use and associated physical development, consistent with the Coastal Act, and agree to comply with the permits, if any, and conditions as issued by the Commission; 4) remove unpermitted development inconsistent with the Coastal Act; 5) comply with all previously issued permits and conditions; and 6) take all steps necessary to comply with the Coastal Act.

Restoration Order Proceedings

Due to the sensitive nature of the wetlands ecosystem adjacent to and within which the development occurred, and the impacts resulting therefrom, restoration of the impacted areas will be part of any Restoration Order. Section 30811 authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the . . . , the development is inconsistent with this division, and the development is causing continuing resource damage.

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development has occurred on the property without a permit from the Commission, in violation of Section 30600(a) of the Coastal Act;
- 2) Development is inconsistent with numerous provisions of the Coastal Act, including Sections 30240 (protection of environmentally sensitive habitat); 302531 (protection of biological productivity and water quality); 30251 (preservation of coastal views); and 30253 (minimizing of hazards);
- 3) The unpermitted development remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development continue and remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, it is necessary to commence proceedings for the Commission's issuance of a Restoration Order in order to restore the subject property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations. The proposed Restoration Order would provide for removal of the unpermitted development and to return the site to its pre-violation condition.

Civil Liability and Response Procedure

As you may be aware, the Coastal Act includes a number of penalty provisions for violations of the Coastal Act. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such

development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order, including an Executive Director Cease and Desist Order, or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages.

As staff has discussed with you, the most expeditious way of resolving this matter would be through a Consent Cease and Desist Order and a Consent Restoration Order ("Consent Orders"). Consent Orders are like a settlement agreement and would outline the terms and conditions of removal of the unpermitted development and restoration of the property. Such an approach would help to resolve the violations at issue without the need for contested enforcement order proceedings before the Commission or litigation. As discussed above, my staff has prepared and sent draft Consent Orders to you for your review and will make themselves available to discuss the content and any questions you may have.

In accordance with Sections 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. The Commission's regulations provide 20 days for your completion and submission of the Statement of Defense form, or until November 9, 2011. However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

As my staff has explained, we would much prefer to work cooperatively with you to resolve the above-mentioned Coastal Act violations expeditiously, and without the need for a contested enforcement hearing and/or litigation, and we are happy to do what we can to help make this happen. Of course, any such resolution will also require your immediate attention and proactive efforts to take all steps necessary to comply with the Coastal Act. Should you have any questions regarding this letter or the pending enforcement case, please feel free to contact Heather Johnston at 805.585.1815.

Sincerely,



CHARLES LESTER
Executive Director
California Coastal Commission

Enclosure: Statement of Defense form

cc without encl.: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
N. Patrick Veasart, Southern California Enforcement Supervisor
Aaron McLendon, Statewide Enforcement Analyst
Heather Johnston, South Central Coast Enforcement Analyst

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

22nd DAA

Page 1 of 2

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

July 18, 2001

Mr. Tim Fennel
CEO/General Manager
22nd District Agricultural Association
2260 Jimmy Durante Boulevard
Del Mar, CA 92014

FILE COPY

Violation File Number: V-6-01-004

Property location: Del Mar State Fairgrounds East Overflow Parking Lot
and the vacant lot located immediately east of Interstate
5 adjacent to the fairgrounds.

Unpermitted development: Placement/storage of truck trailers with attached
advertising billboard signs.

Dear Mr. Fennel

Thank you for meeting with our staff on April 25, 2001, to discuss the above matter. As discussed during our meeting, Commission staff has concluded that the truck trailers with attached advertising billboard signs which have been placed/stored by the 22nd Agricultural District within and to the east of the East Overflow Parking Lot and on the vacant lot located immediately east of Interstate 5 adjacent to the Del Mar Fairgrounds constitute development as defined by the Coastal Act and, therefore, require a Coastal Development Permit (CDP). As a result, we have instructed you to either remove the truck trailers or obtain a Coastal Permit authorizing the truck trailers after-the-fact. However, we understand that the 22nd Agricultural District takes the position that placement or storage of the truck trailers with attached advertising billboard signs does not constitute development and, therefore, no coastal permit is required.

As we have previously indicated to you, we would prefer to work together with you and your staff to resolve this matter cooperatively. We do not wish to take formal administrative action against another state agency. You expressed the same interest during our meeting. Although responsibility for the interpretation of the policies of the Coastal Act rests with the California Coastal Commission and not with the 22nd Agricultural District, in order to foster cooperation between our two agencies and avoid the potential necessity for further enforcement action, we propose that both our agencies jointly request the assistance of the Attorney General's Office in resolving this matter. In particular, we propose that the Coastal Commission and the 22nd Agricultural District submit a joint request to the Attorney General for an opinion as to whether the above mentioned truck trailers with attached advertising billboards constitute development as defined in the Coastal Act, and that our agencies agree to abide by such opinion. This course of action would allow for fair and timely resolution of this matter. Please let us know by **July 31, 2001**, whether you agree to

July 18, 2001
Page 2

Exhibit 8
CCC-12-CD-02 & CCC-12-RO-02
22nd DAA
Page 2 of 2

resolve this issue in this manner and to coordinate our joint request to the Attorney General.

In addition, in regards to other development that has occurred on site without the required Coastal Development Permits, we are awaiting the submittal of your comprehensive Use Management Plan for the fairgrounds. During our meeting, you agreed to submit a draft of the Use Management Plan our office by July 10, 2001. However, as of this date, we have still not received your submittal. Specifically, we agreed the Use Management Plan will identify:

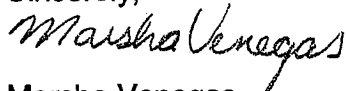
- **Alternative locations for storage of truck trailers.**
- **Alternative forms of advertising to the truck trailer advertising billboards.**
- **Uses of east overflow parking lot (Circus Vargas, pumpkin patch, parking, south overflow parking lot, etc.).**
- **Previously required wetland restoration projects.**

As discussed during our meeting, the purpose of the Use Management Plan is to identify all development on the fairgrounds in a comprehensive manner and facilitate cooperation between our staffs in order to avoid future misunderstandings. Preparation and submittal of the plan would also allow our staff to identify those activities on site which are either planned for future development or have already occurred that require a Coastal Development Permit. As mentioned above, you agreed to submit the Use Management Plan to our office by July 10, 2001. If a draft of the Use Plan is completed, please submit the plan to us immediately. In the event that the plan is not yet completed, please contact me by **July 31, 2001**, to discuss the future submittal of the plan.

We hope that you will choose to cooperate in resolving the above mentioned violations. If you do not, we will consider pursuing additional enforcement action against you. This may include issuance of a cease and desist order or restoration order. Violation of such orders can result in penalties of up to \$6,000 per day. We trust that you will agree that our proposal for resolving this matter is an acceptable and appropriate resolution.

We look forward to hearing from you. If you have any questions regarding this matter, please feel free to contact me at (619) 767-2370.

Sincerely,



Marsha Venegas
Enforcement Officer

Enclosures: Coastal Development Permit Application

**cc: Steve Hudson, Enforcement Supervisor, Southern Districts, CCC
Amy Roach, Enforcement Chief, CCC
Sherilyn Sarb, District Manager, San Diego District, CCC
Lee McEachern, Supervisor, San Diego District, CCC**

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

22nd DAA

Page 1 of 4



May 13, 2003

BRG Consulting, Inc.
Attn: Patricia A. Butler
304 Ivy Street
San Diego CA 92101

Re: Coastal Development Permit Application #6-02-161

Dear Ms. Butler:

Commission staff has reviewed the above cited permit application for additional box seating and outdoor dining area at the existing grandstand building on the 22nd District Agricultural Association property (Fairgrounds) in Del Mar. The proposal would increase permanent floor area by 17,204 sq.ft. and increase permanent seating by approximately 1,284 seats. Staff had developed a preliminary recommendation of denial, based upon intensification of use of the site through the proposed additional seating, which would potentially increase use of the south and east overflow parking lots (SOL and EOL, respectively). The applicant asserts that there is no correlation between formalization of additional grandstand and clubhouse seating and increased use of the overflow lots, since the original permit for the grandstand indicated a capacity of approximately 15,000 seats, and with the proposed improvements, maximum capacity will still be below that figure. Moreover, the applicant maintains that the proposed seating will serve the same clientele that now stand to watch the races and that it only replaces temporary facilities used seasonally with permanent ones.

The matter was scheduled on the Commission's April agenda and the public hearing was opened and testimony taken. The Commission determined that additional time was needed to analyze new, supplemental, and, in some cases, conflicting information provided at the hearing, and continued the matter to a future hearing. Subsequent to that, you submitted a 90-day time extension to provide time to work with staff on addressing the Commission's concerns. We met on April 29, 2003 and discussed what items and information are needed to aid staff in preparing its recommendation, and ultimately, the Commission in reaching a decision on the proposed development. We also discussed why this information is necessary, as follows.

The primary concern for both the Commission and staff is whether this proposal will result in increased use of the two unimproved overflow parking lots at the Fairgrounds. It is understood that these parking areas have been used historically during the fair and horse racing events, and it is acknowledged that the east overflow lot (EOL) was purchased for that purpose prior to adoption of the Coastal Act. However, when the

Coastal Commission was formed through the passage of Proposition 20 in 1972, the level of use at the Fairgrounds was significantly different than it is today. At that time, there were two main annual events, the fair and the horse races. There was no satellite wagering, although interim events such as home and flower shows may have been on the calendar, along with some equestrian events. However, when compared to today's usage, the Fairgrounds was relatively unused for the greater part of the year.

For purposes of the subject application, the Commission must know how the proposed grandstand improvements relate to use of the overflow lots outside the limited times of the fair and race meet. If the availability of this permanent seating results in greater use of the grandstand facilities all year long, it could also increase use of the overflow lots at times they are not currently needed. This could lead to changes in the levels and patterns of use (how many vehicles and where they are parked). As you know, our concerns regarding use of these parking lots relate to potential direct and indirect effects on the on-site wetlands and the environmentally sensitive habitat areas within the San Dieguito River valley. These are the specific concerns to be addressed in the subject permit review.

With respect to the broader issue of overall increases in the intensity of use of the fairground facilities, Commission staff makes the following observations. Now, although occasional weekdays may be without events, it appears multiple events are scheduled for every weekend, all year long. The change in intensity of use of the EOL and SOL from their pre-Coastal Act use for overflow parking no more than twice a year for the race and annual fair season events to (1) a continuously used year-round parking facility and (2) a facility for temporary events involving the placement of structures including an annual pumpkin patch, annual Christmas tree lot and Circus Vargas, as examples constitutes development under the Coastal Act and requires a coastal development permit. Moreover, as identified in past permit applications, it appears the Fairgrounds management directs its employees to park in these lots, so that the large areas of paved parking are first available for Fairgrounds patrons. No coastal development permits for these increased uses have been sought or granted.

Commission staff has requested, on several occasions, a complete list of year-round events at the Fairgrounds complex, beginning in 1990 as a condition of approval of the new grandstand. There is also a condition requirement for annual reporting of the traffic circulation patterns and on and off-site parking and shuttle usage. You have recently submitted a report for the years 1999, 2000, 2001 and 2002. In order to use this information in permit application analyses, staff needs to know not only what events are being held, but when the events occur and how many events occur simultaneously. The applicant has identified its repeating annual events, but always qualifies this by saying that no other events, annual or one-time, come close to generating the parking needs of the fair and horseracing. The staff requires information regarding all events in order to assess the difference between peak/maximum use versus cumulative impacts associated with event schedules at the fairgrounds.

The Fairgrounds website identifies ten events at the Fairgrounds in May alone, including four multi-day events. In one instance, as many as four different events are scheduled on the same day. There are also three multi-day events occurring at Showpark on some of the same days, obviously reducing or eliminating the potential to use that site for overflow parking. It is the cumulative effect of these events, coupled with the relatively recent practice of diverting daily employee parking to the EOL and SOL, that most concerns Commission staff.

Therefore, at our meeting, you agreed to provide the following information:

- As-built, fully-dimensioned drawings of the grandstand, including the locations and maximum capacities of all viewing areas, i.e. both fixed and moveable seating, box seating, lounges, group sales areas, etc.;
- As-built plans for the in-field plaza that include the same detail regarding location and estimated or known capacity of all fixed seating, moveable seating, group sales, picnic and trackside viewing areas;
- Fire capacity figures for occupancy of individual viewing areas;
- Identification of the source of the projected grandstand seating figure of 15,000 seats, given that more than that number of patrons are routinely accommodated at a race or fair event;
- A list of other events that use, or will use, the grandstand;
- A comparison of the capacity and space occupied by the existing pull-out bleachers when fully extended, the existing unauthorized clubhouse terrace seating, and the proposed terrace box/dining seating in front of the grandstand and clubhouse, with the standing room capacity and area of the asphalt remaining clearly identified;
- A full calendar of events occurring on the Fairgrounds and overflow lots, listing the dates, locations, attendance figures, and parking areas utilized including, to the extent possible, a detail of use of both the SOL and EOL (# of days, percentage or area of use, type/purpose of use) with an estimate of the number of parking spaces provided by lot per day of use, and the off-site parking and shuttle arrangements available for each particular event.

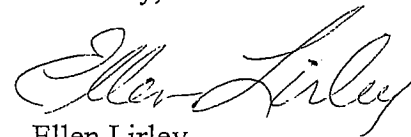
Any information you can provide addressing the broader issues identified above will also be appreciated, whether or not it relates directly to the proposed project, so we can move toward resolution of our long-standing issues regarding the intensity of use of the Fairgrounds and the overflow parking lots. Also, please identify what level of attendance typically requires use of these areas for overflow parking, and your current employee parking policy.

BRG Consulting/Patricia Butler
May 13, 2003
Page 4

Exhibit 9
CCC-12-CD-02 & CCC-12-RO-02
22nd DAA
Page 4 of 4

When the project-specific requested information is received and reviewed by staff, this item will be scheduled on the next available Commission agenda (no later than August, 2003, per the 90-day extension). If you have any questions, please feel free to call me.

Sincerely,



Ellen Lirley
Coastal Planner

cc: Tim Fennell
Rebecca Bartling
Craig Fravel
Deborah Lee
Sherilyn Sarb
Lee McEachern



©22nd D.A.A.

RECEIVED

FEB 28 2001

22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 23, 2001

Mr. Chris Darnell, Environmental Analyst
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: TRUCK TRAILERS PARKED ON 22ND DISTRICT PROPERTY

Dear Mr. Darnell:

The 22nd District Agricultural Association (22nd DAA) acknowledges receipt of your letter dated February 7, 2001. In short, your letter states that the District's placement of trailers at two locations on District owned property near Interstate 5 requires a coastal development permit; and that the absence of such permit for the placement of these trailers violates the Coastal Act.

The 22nd DAA respectfully disagrees. It is the 22nd DAA's position that the use and storage of these trailers on District owned property do not constitute "development" as defined by the Coastal Act. Consequently, we believe that no coastal development permit is required; and therefore, no violation of the Coastal Act has occurred.

Notwithstanding our respective legal interpretations of the Coast Act, the 22nd DAA believes we can amicably resolve this difference of opinion without resort to formal legal proceedings. With this in mind, the 22nd DAA invites you and your staff to visit the Del Mar Fairgrounds to review, discuss, and perhaps resolve this alleged violation.

If this approach is agreeable, please contact me at your earliest convenience so that a meeting can be arranged.

Sincerely,

Timothy J. Fennell
CEO/General Manager

cc: Jerry Blair, Deputy Attorney General
Ms. Amy Roach, Chief Statewide Enforcement Unit
Ms. Susan Hansch, Deputy Director
Ms. Ellen Lirley, Coastal Permit Analyst, San Diego Coast District

Exhibit 10

CCC-12-CD-02 & CCC-12-RO-02

22nd DAA

Page 1 of 1



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November 7, 2001

22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California*Via Fedex*

Ms. Marsha Venegas
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego CA 92108-4402

SUBJECT: PROPOSED RESOLUTION OF V-6-01-004, DEL MAR FAIRGROUNDS/RACETRACK

Dear Ms. Venegas,

The 22nd District Agricultural Association (22nd District) has been working diligently to develop a proposed solution to the referenced case regarding the alleged violation associated with the District's placement of signage on truck trailers on its property adjacent to Interstate 5. This letter summarizes the District's proposed solution for your consideration.

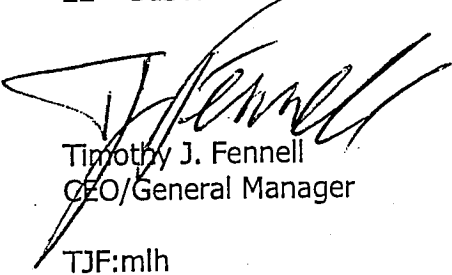
1. The District will remove the two trailers from the east side of the I-5, upon the Commission's acceptance of this entire proposal. This action is not an indication that the District acknowledges that any violation of the Coastal Act has occurred as a result of its placement of the trailers or the signage on the subject property. The District offers removal of the trailers from the east side of the I-5 as a sign of its good faith in response to concerns expressed by the community regarding the aesthetics of the property. This action shall be undertaken in concert with, and is dependent on, the following activities.
2. The District shall submit a coastal development permit application for a permanent signage facility in the northeasternmost quadrant of the Surf & Turf property on the west side of the freeway. This permanent signage is addressed in the "Interim Use Management Plan" the District submitted in good faith to the Commission on August 7, 2001, as agreed at our previous meeting with Coastal Commission staff.
3. Upon approval of a coastal development permit for permanent signage on the Surf & Turf property, the District will remove the signage from the trailers in the Surf & Turf driving range and parking lot.
4. Notwithstanding the District's interest in working cooperatively with the Commission, the District maintains that its right to store and locate equipment and vehicles on its property is directly related to its ongoing operations on the property that pre-date the Coastal Act, and that such uses are therefore not subject to obtaining a coastal development permit. Therefore, the District does not propose to submit a coastal development permit application to retain trailers on the "Surf & Turf" portion of its property west of the I-5. The "Interim Use Management Plan" submitted to the Commission on August 7, 2001 is an accurate general description of the ongoing uses and activities that have historically taken place and will continue to take place on this portion of the Fairgrounds/Racetrack property.

Thank you for your patience as the District has needed this time to apprise the new members of our Board of Directors on these issues and receive Board direction on our response to the Commission.

I look forward to discussing this proposal with you at your earliest convenience. You may contact either Trish Butler at (619) 298-7127 or me at (858) 792-4200 to arrange a meeting.

Sincerely,

22ND DISTRICT AGRICULTURAL ASSOCIATION



Timothy J. Fennell
CEO/General Manager

TJF:mlh

cc: Jerry Blair, Office of the Attorney General
Trish Butler, BRG Consulting