

**CALIFORNIA COASTAL COMMISSION**

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# W18c

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Staff: A. Llerandi-SD  
Staff Report: 5/20/13  
Hearing Date: 6/12-14/13

**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 6-13-009

**Applicant:** 22<sup>nd</sup> District Agricultural Association

**Agent:** Dustin Fuller

**Location:** Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, San Diego, San Diego County (APN No. 299-030-01)

**Project Description:** Replace 120 feet of deteriorated 12-inch diameter storm drain pipe in the Golf Driving Range of the Del Mar Fairgrounds in-kind with 120 feet of new 12-inch diameter pipe.

**Staff Recommendation:** Approval with Conditions

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**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of this project, with conditions. The proposed project is to replace 120 feet of deteriorated 12-inch diameter storm drain pipe in-kind with 120 feet of new 12-inch diameter pipe. The project site is the Del Mar Fairgrounds Golf Driving Range ("GDR").

The proposed project raises issues of water quality and wetland impacts. Water quality issues arise due to the project site's location within the San Dieguito River floodplain and the GDR's proximity to the San Dieguito River. Issues of wetland impacts arise due to the project site's location within and adjacent to delineated wetlands within the GDR. In this case, the Commission approved the GDR in Coastal Development Permit ("CDP") No.

F2379. The existing pipe drains this area in order to reduce flooding and to allow the golf balls to be picked up by machine, but is damaged and in need of repair. While the area in and around a portion of the storm drain has been delineated as wetland (non-vegetated), all proposed repair work will be done by hand and one Bobcat skid-steer loader/compact excavator, and no permanent impacts to the wetland are anticipated.

Special conditions mandating adherence to revised final site and BMP plans will mitigate impacts to water quality by preserving the natural features of the river valley and reducing the likelihood of flooding and spillover into adjacent wetlands.

Commission staff recommends **approval of** coastal development permit application 6-13-009, as conditioned.

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**EXHIBITS**

- Exhibit 1 – Location Map
- Exhibit 2 – Aerial View
- Exhibit 3 – Site Plan
- Exhibit 4 – Site Photo

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 6-13-009 pursuant to staff recommendation.*

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

### Resolution:

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

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

### **III. SPECIAL CONDITIONS**

The permit is subject to the following conditions:

1. **Revised Final Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final project and BMP plans. Said plans shall be in substantial conformance with the plans submitted by Dustin Fuller on April 8, 2013, but shall be revised to incorporate the following.
  - a. The applicant shall lay down 1” plywood sheets in the project area around the storm drain pipe in all areas where use of the Bobcat skid steer loader/compact excavator is proposed to be used.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### **2. Assumption of Risk, Waiver of Liability, and Indemnity Agreement**

- i. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project against any and all liability, claims, demands, damages, costs, (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- ii. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants,

conditions, and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also include that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION/HISTORY.**

The proposed project is to replace 120 feet of deteriorated 12-inch diameter storm drain pipe in-kind with 120 feet of new 12-inch diameter pipe. The project site is the Del Mar Fairgrounds Golf Driving Range (“GDR”), adjacent to the San Dieguito River to the south and I-5 freeway to the east.

The Del Mar Fairgrounds is a state-owned and operated facility originally built to support agricultural activities and horse racing. It hosts an annual fair and annual thoroughbred horse-racing meet, along with a variety of smaller events year round. The facility includes exhibit buildings, a grandstand, barns, stables, a show arena, a satellite wagering building, maintenance areas, parking lots, and the horse racing track, that facility being located within the west-central area of the overall complex. On the eastern side of the fairgrounds, across Jimmy Durante Boulevard and adjacent to the I-5 freeway and the San Dieguito River, the Del Mar Fairgrounds operates a golf driving range for members of the public to use, which is part of a larger, approved “Surf & Turf” sports and recreation facility.

The GDR was permitted by the City of San Diego in a Conditional Use Permit in March 26, 1975. At that time, only the southern-most portion of the GDR was believed to be within the jurisdiction of the California Coastal Zone Conservation Commission, as the current Coastal Act had not yet come into effect. The San Diego Regional Commission approved an administrative permit for work related to the construction of the GDR on May 3, 1975 (CDP No. F2379).

The Del Mar Fairgrounds is located both within the Cities of Del Mar and San Diego. The project site is geographically within the City of San Diego, which has an effectively certified LCP and issues its own coastal development permits. However, the Fairgrounds represents an area of deferred certification. Moreover, it was principally built on filled tidelands. Thus, the vast majority, if not the entirety, of the site is within the Coastal Commission’s area of original jurisdiction, with Chapter 3 of the Coastal Act being the legal standard of review for permits.

### **B. PUBLIC ACCESS.**

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

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30213 of the Coastal Act states, in part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

[...]

Section 30604 of the Coastal Act states, in part:

[...]

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



The Del Mar Fairgrounds is located near the mouth of the San Dieguito River, west of the I-5 and east of Camino del Mar (Old Highway 101). It is between the river to the south and Via de la Valle, which is the first public east-west road north of the river. Thus, the entire fairgrounds complex, including the project site, is located between the sea and first public roadway, where maintaining shoreline public access to the river/lagoon and west to the municipal beaches is of greatest concern. As the property owner is another state agency, the property is in public ownership, and, for the most part, the public can freely access various portions of the grounds, including the riverfront, particularly when no formal events are taking place. In addition, a portion of the Coast to Crest Trail is sited on fairgrounds property, which further enhances public access in this area.

However, the entirety of the 120-foot section of pipe to be replaced is located within the boundaries of the GDR, in the area into which patrons hit their golf balls. As such, public access through the project site is not permitted due to the danger from impacts from golf balls. The Coast to Crest Trail meanders east-west to the south of the GDR, between the GDR and the San Dieguito River. The proposed project will not interfere with the public's use of the trail or their access to surrounding coastal resources.

In summary, the Commission finds the proposed pipe replacement will not result in adverse impacts to coastal access. Parking remains adequate for approved uses, and the public can access the shoreline of both the San Dieguito River and Pacific Ocean through various other areas of the fairgrounds. Therefore, the Commission finds that all access and resource concerns associated solely with proposed maintenance activities approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the cited policies of the Coastal Act.

### **C. HYDROLOGY/FLOOD HAZARDS**

Section 30236 of the Act addresses natural hazards, and states, in part:

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

[...]

Section 30253 of the Act states, in part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

- (2) *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 devices that would substantially alter natural landforms along bluffs and cliffs.*

[...]

The Del Mar Fairgrounds is located within the 100-year floodplain of the San Dieguito River, and is thus subject to flooding during storm events. However, a large number of permanent and temporary structures already exist on the site, many of them pre-dating the Coastal Act. 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. On the other hand, structures that can accommodate periodic inundation without being damaged do not cause flood waters to be redirected and therefore can be found consistent with 30236. The entire Fairgrounds complex is comprised of structures which are, and will continue to be, able to withstand periodic inundation occasionally during severe rain events. **Special Condition No. 2** requires the applicant to accept full liability for the construction of development in a hazardous location.

Any additional fill or net increase in building footprints could result in changes in the hydrology of the adjacent San Dieguito River and Stevens Creek. Modifications to the current flooding patterns, in which a large portion of the 100-year flood waters are contained on the Fairgrounds property, could result in increased flood hazards to existing up- and downstream developments. This could, in turn, lead to proposals for further channelization of the river. In this particular case, the proposed improvements are not adding new structures to the floodplain, they are replacing portions of a damaged below-grade storm drain pipe in-kind. The applicant is proposing to conduct the development in the course of a single day, with no importation of fill or exportation of cut. The applicant would unearth the 120-foot stretch of deteriorated pipe by hand and using one Bobcat skid steer loader/compact excavator, remove the deteriorated pipe, install the new pipe of same length and diameter, and cover the newly installed pipe with the previously removed dirt.

In summary, the Commission finds that the removal of the deteriorated storm drain pipe and installation of a new drainage pipe will not result in a significant change to current flood flows across the site. The amount of impermeable surfaces will not increase, and storm drain, as always, will continue to allow the passage of flood waters. Therefore, the Commission finds the proposed development, as conditioned, consisted with Chapter 3 of the Coastal Act.

## D. WATER QUALITY

The following Coastal Act Policies are most pertinent and state:

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed project site is designated as “Basin 16” in the Erosion Control Water Quality BMP Plan, Del Mar Fairgrounds, April 2012. Basin 16 is described as consisting of both the unpaved and paved parking in the East Overflow Lot (“EOL”), the GDR, recreational vehicle lot, and tennis courts. There is a berm located along the southern boundary of the EOL, and thus runoff collects in a local depression area in the southeast area of the basin – the GDR. The existing storm drain captured this runoff and drained most of it into the San Dieguito River. The proposed storm drain replacement will better capture this runoff compared to the currently deteriorated storm drain pipe and then direct water flow into an existing 3 square foot concrete catch basin and thence into the San Dieguito River.

To control construction runoff, the applicant will institute construction BMPs. These BMPs will constitute fiber rolls forming a barrier between the project site and the river to the south so as to capture runoff that may occur from the site and placement of 1” plywood sheets to limit ground disturbance by the Bobcat excavator. The pipe replacement will be conducted during a single day, greatly reducing the risk of a storm event causing runoff from the project site to enter the nearby river.

To ensure that the applicant constructs the proposed development in conformance with approved methods, **Special Condition No. 1** requires the applicant to submit and adhere

to revised final construction and site plans that are in substantial conformance with Commission-approved plans.

Thus, as proposed and conditioned, impacts to water quality are avoided or mitigated and the proposed project can be found in conformance with the policies of Chapter 3 of the Coastal Act.

## **E. WETLANDS**

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act States:

*(a) 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:*

*[...]*

*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.*

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930's. Although most of the site is now developed, there are several areas which still contain seasonal wetland resources, including the East and South Overflow Parking Lots and much of the GDR. In addition, all of these areas are within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons.

The Surf & Turf property is comprised of all the fairgrounds holdings between Jimmy Durante Boulevard and I-5. To the north of the site, beyond a fence and a row of shrubbery, is a large paved parking lot associated with the adjacent Del Mar Hilton Hotel.

The eastern border of the site consists of a vegetated concrete drainage channel within the fenced I-5 right-of-way, and then the freeway itself.

The project site within the GDR of the Surf & Turf facility is located partially within and partially adjacent to delineated wetlands in the form of disturbed alkali playa (non-vegetated), as mapped by the firm AECOM in a September 2012 jurisdictional delineation report for the applicant pursuant to a Consent Cease and Desist Order issued by the Coastal Commission (CCC-12-CD-02). The length of pipe to be replaced within the wetland is approximately 50 feet while the remaining 70 feet being replaced is outside of the mapped wetland.

The subject storm drain proposed to be replaced serves an existing permitted use within the fairgrounds – the Golf Driving Range (CDP No. F2379). The Surf & Turf facility is a public facility operated by the 22<sup>nd</sup> District Agricultural Association, a state agency. The storm drain in question drains excess runoff from the area of the GDR into which golf balls land and in which motorized ball-collecting vehicles must be able to operate.

Due to the location of the project site, there is no feasible way to remove and replace the storm drain pipe without disturbing the soil covering the pipe. To minimize potential impacts, the applicant proposes to conduct the removal and development within a single day, and all work will be done by hand and using one Bobcat skid steer loader/compact excavator. The soil removed from atop the existing deteriorated pipe would be stored nearby so as to be replaced over the new pipe once installation is complete. No change in grade or elevation is proposed, and the project is an in-kind replacement of the existing pipe. Thus, the project will not result in either new fill of the disturbed alkali playa or the permanent removal of dredged non-vegetated hydric soils. As such, the project doesn't warrant review under the protections afforded by Section 30233 of the Coastal Act. Nonetheless, Section 30231 of the Coastal Act requires that development be conducted in a manner that maintains the hydrology and biological productivity of coastal waters, including a wetland system. Therefore, BMPs in the form of fiber rolls and 1" plywood sheets will be placed at various points around the project site so as to capture sediments that may be transported by runoff and limit ground disturbance by the tracks of the Bobcat machine. Because the project is predicted to be completed in a single day, the applicant will be able to avoid storm events fairly easily.

To ensure that the applicant carries out the proposed repair activities in conformance with approved methods, **Special Condition No. 1** requires the applicant to submit and adhere to revised final construction and site BMP plans that are in substantial conformance with the conceptual plans submitted with the application and the requirements of this permit.

Therefore, as proposed and conditioned, impacts to wetlands are avoided and the proposed project is in conformance with the policies of Chapter 3 of the Coastal Act.

## F. LOCAL COASTAL PLANNING

Section 30604(a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the

local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

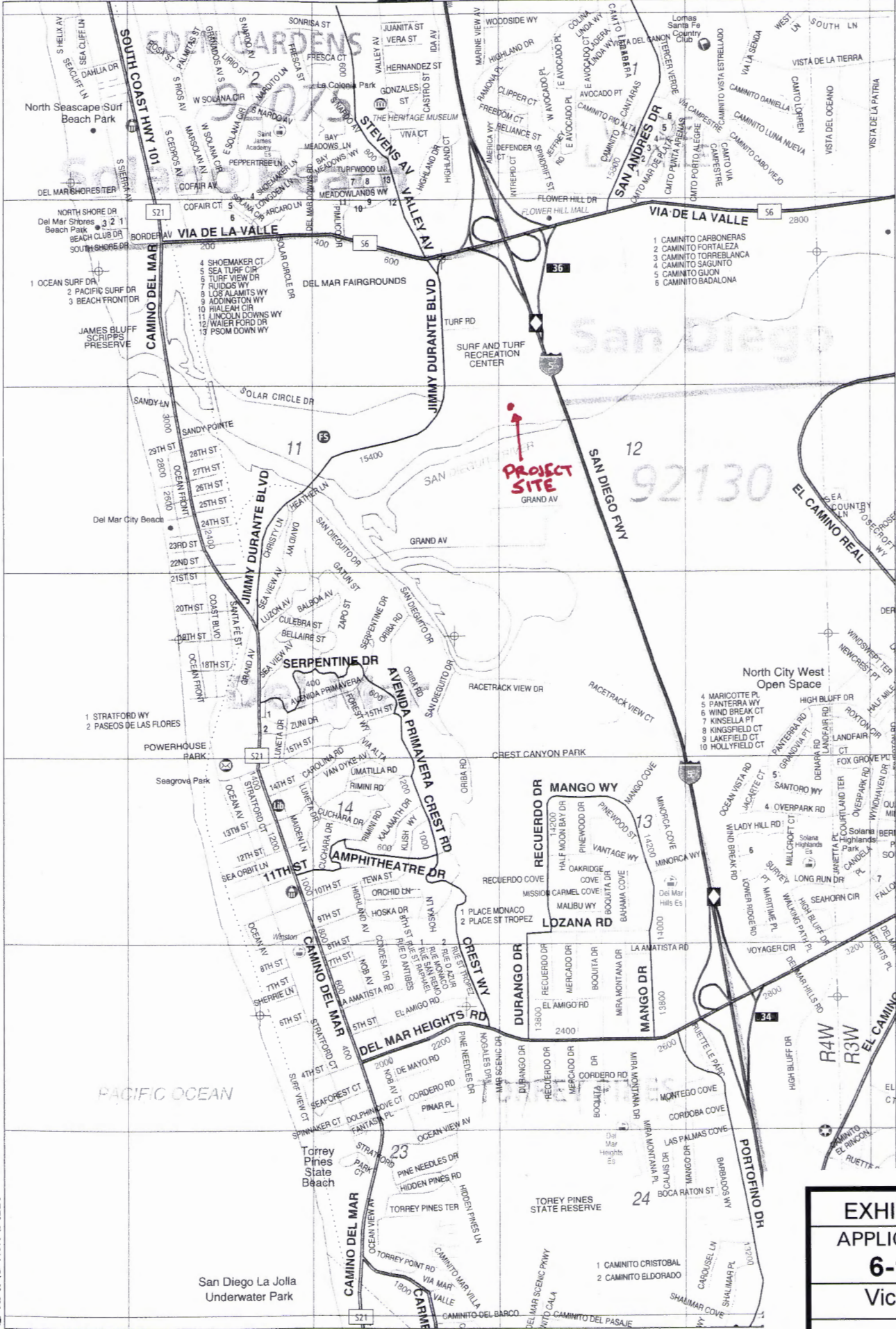
Although the project site is in an area of original jurisdiction and thus not subject to the policies and regulations of San Diego's certified LCP, it is nonetheless consistent with the Fairgrounds/Racetrack land use designation and zone of that plan. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP.

#### **G. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The 22<sup>nd</sup> District Agricultural Association is the lead agency for purposes of CEQA review for this project, and the Coastal Commission is a responsible agency. Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing water quality, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

SAN DIEGO CO.



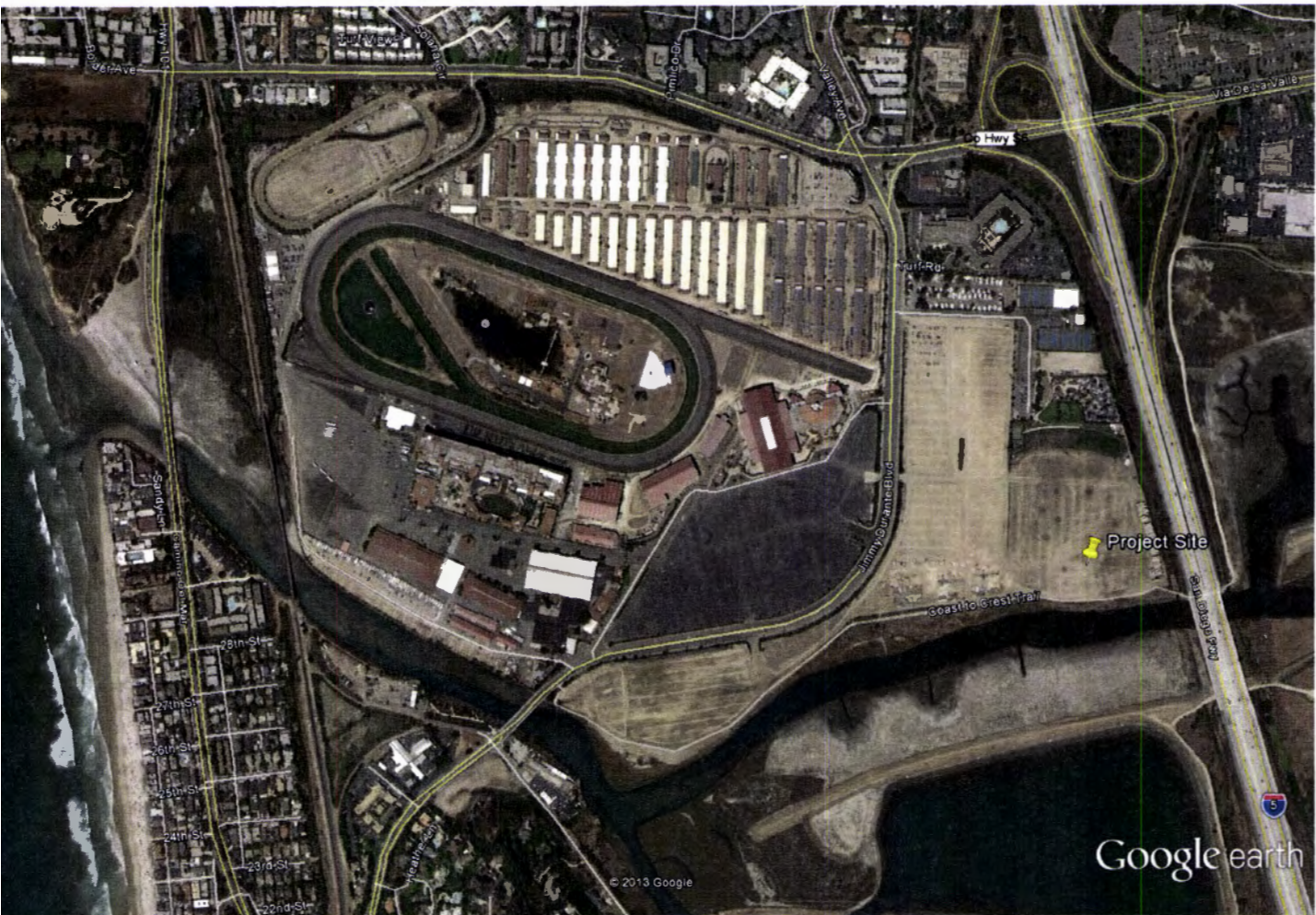
PROJECT SITE  
GRAND AV

92130

SEE 1188 MAP

**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-13-009**  
 Vicinity Map

RAND M: NALLY



Google earth



EXHIBIT NO. 2
APPLICATION NO.
<b>6-13-009</b>
Aerial View
 California Coastal Commission



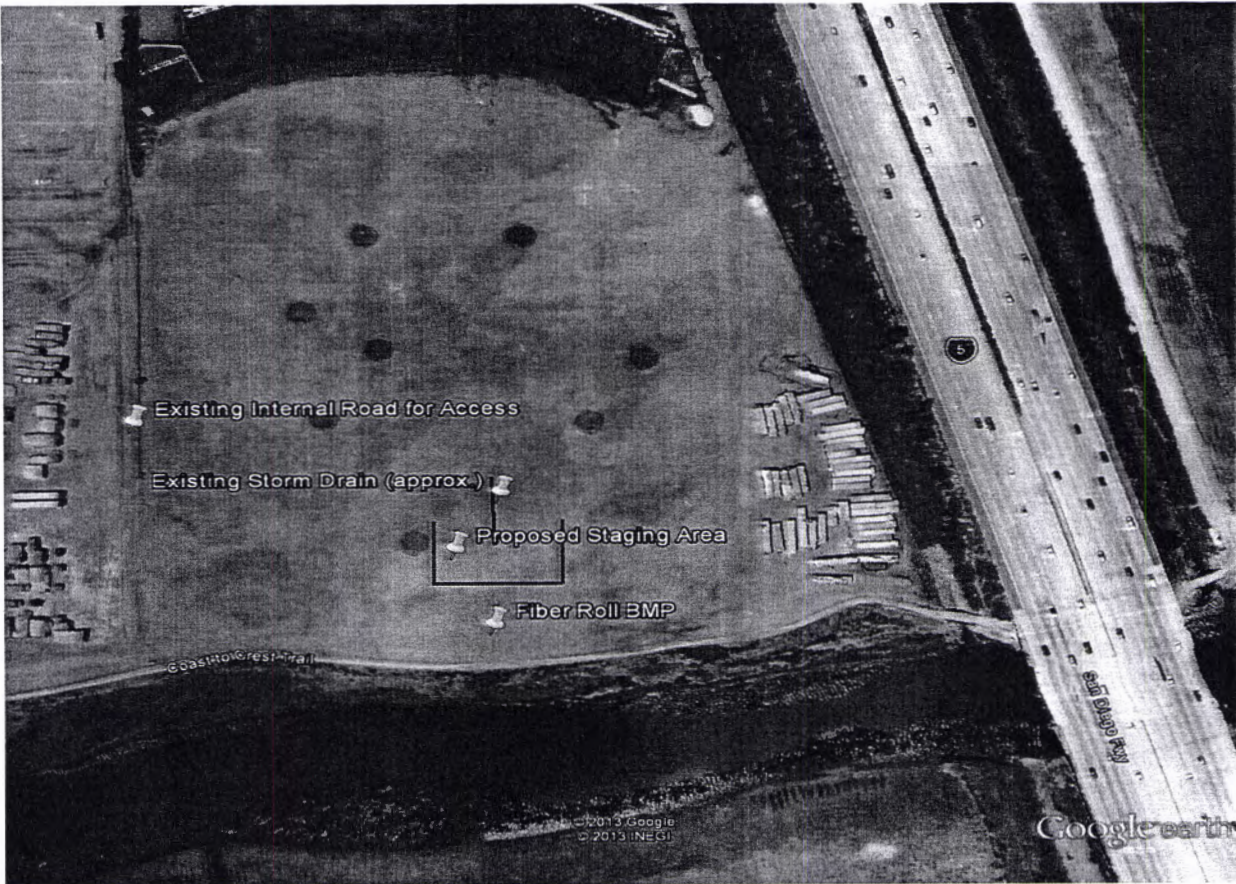


EXHIBIT NO. 3
APPLICATION NO.
<b>6-13-009</b>
Site Plan
 California Coastal Commission

Attachment 2 - 22<sup>nd</sup> DAA CDP Application #6-13-009



EXHIBIT NO. 4
APPLICATION NO. <b>6-13-009</b>
Site Photo
 California Coastal Commission