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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-14-1707

Applicant: California Department of Transportation (Caltrans)

Agent: Kim Smith

Location: South of Via Hinton and Via Marta, along northeastern end of Agua Hedionda Lagoon, Carlsbad, San Diego County (APNs 207-101-33-00, 208-020-43-00)

Project Description: Establishment, restoration, enhancement and preservation of coastal habitats, including southern willow scrub, brackish/freshwater marsh and coastal sage scrub at the 8.2 acre Hallmark East Mitigation Site. Temporary irrigation installation and fencing are also components of the proposed project.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to establish, restore, enhance and preserve coastal habitats, including southern willow scrub, brackish/freshwater marsh and coastal sage scrub, at the Hallmark East Mitigation Site to provide mitigation for impacts that are anticipated to occur from future transportation projects along the I-5 highway and the Los Angeles to San Diego to San Luis Obispo (LOSSAN) rail corridor all located within the North Coast Corridor (NCC) of San Diego County ([Exhibit 1](#)). This program of transportation projects was approved by the Commission in August 2014 as part of the NCC Public Works Plan and Transportation and Resource Enhancement Program (PWP/TREP); however, each project will require future Commission review through the Notice of Impending Development (NOID), coastal development permit, and/or federal consistency review process.

The proposed project would retire the existing development potential on the site and restore native wetland and upland habitat. The major issues associated with this project include adherence to the final mitigation plan, the accounting mechanics for the mitigation acreages, construction methods and timing, public access, and cultural resources. Potential adverse impacts to coastal resources are avoided and/or minimized through the attached special conditions. In addition, upon completion of the restoration project, the larger contiguous area of restored and enhanced habitat will become part of the Ecological Reserve that is owned and managed by the California Department of Fish and Wildlife (CDFW). The proposed project will provide habitat for sensitive species such as the yellow warbler (*Dendroica petechial*) and coastal California gnatcatcher (*Polioptila californica californica*), as well as higher quality upland habitat as a buffer to the existing residential development on Via Hinton and Via Marta.

Commission staff recommends **approval** of coastal development permit application #6-14-1707 with **ten (10) special conditions** addressing potential adverse impacts. Impacts to biological resources are addressed through **Special Conditions 1** and **2** which require adherence to the Final Habitat Mitigation and Monitoring Plan (HMMP) and ensure that future mitigation acreages will be appropriately accounted and reported to the Commission. In addition, timing of construction is restricted to occur outside of the bird nesting season by **Special Condition 3**. **Special Condition 4** would protect water quality by requiring the applicant to adhere to the prescribed BMPs and construction methodologies. **Special Condition 5** would protect public access through a Public Access and Signage Plan with provisions for interpretive signage, potential fencing, and public access to the planned trail along the site. The cultural resources located on the site would be protected by **Special Condition 6** which requires the applicant to comply with all recommendations and mitigation measures in the approved action plan prepared for the project in compliance with Section 106 of the National Historic Preservation Act of 1966. **Special Conditions 7** and **8** require compliance with the NCC PWP/TREP's Resource Enhancement and Mitigation Program (REMP) requirements and the submittal of all other state or federal discretionary permits necessary for the proposed project. **Special Condition 9** addresses the proper disposal of any vegetation or construction debris as a part of the project. Finally, **Special Condition 10** protects the right of the public to access the planned trail along the site.

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EXHIBITS

[Exhibit 1 – NCC REMP Vicinity Map](#)
[Exhibit 2 – Site Location](#)
[Exhibit 3 – Restoration Plan](#)
[Exhibit 4 – Vegetation & Cultural ESA Map](#)
[Exhibit 5 – Sensitive Species Map](#)
[Exhibit 6 – Citywide Trail System](#)
[Exhibit 7 – Fence & Trail Plan](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit 6-14-1707 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit 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 Coastal Development Permit 6-14-1707 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 permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Habitat Mitigation and Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Final Habitat Mitigation and Monitoring Plan that is in substantial conformance with the Habitat Mitigation and Monitoring Plan for the Hallmark East Mitigation Site dated August 2014. Said plan shall be revised to include the following:
 - a. Brackish/freshwater wetlands shall not be used to mitigate impacts to tidally influenced wetlands.
 - b. Remove provision that maintenance may cease if the site meets all of its ecological performance standards. Maintenance shall continue for a minimum of 5 years.
 - c. Add requirement that final performance monitoring for success shall take place no sooner than three (3) years following the end of all remediation and other maintenance activities, other than weeding.
 - d. For each performance criterion, describe the statistical test that will be used to evaluate success.
 - e. The number of replicate samples shall be the same in the restored area and the reference site, or a rationale for using different sample sizes shall be provided. Prior to final monitoring for success, a statistical power analysis shall be conducted to ensure that there is adequate replication to provide 90% power to detect an absolute difference of 10% ground cover with $\alpha=0.1$.
 - f. Table 7 contains ranges that appear to be absolute success standards, while the text states that success will be determined relative to the reference site. Table 7 and/or text shall be revised to clarify which standard applies.
 - g. Revise Figure 1 to depict Hallmark East Mitigation Site.
 - h. Revise relevant figures to depict public access trail from Via Hinton and Via Marta that travels south and then west through the site.

The permittee shall undertake the development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan 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. **Mitigation Acreage Accounting.** In order to provide updated and accurate mitigation acreage amounts utilized as a part of the Hallmark East Mitigation site, the permittee shall provide written notification to the Executive Director describing final mitigation acreage amounts to be utilized on-site associated with the impacts from each individual transportation project identified within the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program. This information shall be provided when final permits with required mitigation amounts are issued by the relevant state and federal agencies.
3. **Timing of Construction.** To avoid potential impacts to the nesting season of sensitive bird species, initial removal of vegetation in the restoration area is not permitted between the dates of March 15th and September 15th of any year unless approved in writing by the Executive Director, in consultation with the California Department of Fish and Wildlife and/or the U.S. Fish and Wildlife Service.
4. **Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements:
 - a. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-sets of such activity;
 - b. No construction materials, debris, or waste shall be placed or stored where it may enter the lagoon or storm drain;
 - c. All trash and debris shall be disposed in the proper trash or recycling receptacle at the end of every construction day;
 - d. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - e. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - f. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - g. A pre-construction meeting shall be held for all personnel to review procedural and BMP/GHP guidelines; and

- h. All BMPs shall be maintained in a functional condition throughout the duration of the project.
5. **Public Access and Signage Plan.** PRIOR TO THE TRANSFER OF OWNERSHIP TO THE LONG TERM MANAGER OF THE MITIGATION SITE, the applicant shall submit to the Executive Director for review and written approval, a Public Access and Signage Plan that includes, at a minimum, the following:
- a. Interpretive signage to inform the public of the habitat restoration project, including acknowledgement of the Coastal Commission's involvement.
 - b. Coordination with the long term manager, Native Americans, and Commission staff to determine the appropriate type of potential fencing around proposed restoration site.
 - c. Evaluation of a potential viewing area located along Via Marta and Via Hinton that would be sited to maximize views of the site while not adversely impacting the sensitive coastal habitats restored on-site. If the viewing area that meets this standard is feasible, construction shall be completed prior to the transfer of ownership to the long term manager.

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

6. **Compliance with Section 106 Requirements.** The applicant shall comply with all recommendations and mitigation measures contained in the approved action plan prepared for the project in compliance with Section 106 of the National Historic Preservation Act of 1966. The permittee shall undertake the development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
7. **Compliance with REMP Requirements.** By acceptance of this coastal development permit, the applicant agrees to comply with all requirements of the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program's (NCC PWP/TREP) Resource Enhancement and Mitigation Program (REMP), including, but not limited to: a Final Habitat Mitigation and Monitoring Plan (HMMP), a Final Long Term Management Plan (LTMP), and the establishment of an endowment to guarantee the successful implementation, maintenance, and monitoring of the proposed mitigation project.
8. **Other Agency Permits.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director all other required state and/or federal discretionary permits. The applicant shall inform the Executive Director of any changes to

the project required by said permits. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. **Disposal of Excavated Material.** The applicant shall dispose of all excess vegetation and construction debris from the site either (1) at a licensed/designated disposal site located outside of the Coastal Zone, or (2) if the disposal site is located in the Coastal Zone, at a disposal site with a valid coastal development permit for the disposal of fill material and/or construction debris. If the disposal site in the Coastal Zone does not have a coastal development permit, such a permit will be required prior to the disposal of material.
10. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist on the property including, but not limited to, the public trail that travels along the easterly and southerly perimeters of the site as generally depicted in [Exhibit 7](#). The permittee shall not use this permit as evidence of a waiver of any public rights that exist on the property and the development approved under this permit shall not interfere with reasonable use of the public trail on the property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & HISTORY

The subject site is located to the south of Via Hinton and Via Marta, along the northeastern end of Agua Hedionda Lagoon in the City of Carlsbad ([Exhibit 1](#)). The Hallmark East Mitigation Site is 8.2 acres in area, of which 2.2 acres has been designated as a fire maintenance area, leaving 5.5 acres available for compensatory mitigation. The site is bounded to the south by the Agua Hedionda Ecological Reserved owned by the California Department of Fish and Wildlife (CDFW), to the east and west by sloped open space, and to the north by residential development ([Exhibit 2](#)). The subject site consists of open space with coastal sage scrub, coastal brackish marsh, freshwater marsh, riparian forest, salt marsh transition, ornamental vegetation, non-native woodland, disturbed habitat, and bare ground. The site has been graded in the past and there is an existing culvert and overside drain onsite that provide additional flows to the brackish marsh and habitat surrounding it. The cattails onsite have developed over time from the freshwater flows.

Based on the certified Agua Hedionda Land Use Plan, residential development is permitted by the subject site's Residential Medium-High (RMH) designation. In addition, as part of the Kelly Ranch Project approved by the Commission (ref to CDPs #6-84-617 and #6-84-617-A), while open spaces adjacent to the subject site were reserved and approved for future restoration, the subject site, referred to as Village C, allowed residential development. However, Caltrans' purchase and subsequent use of the property for the subject restoration project would extinguish the development potential of the site. The site provides some good quality coastal sage scrub habitat and moderate quality wetlands; however, the proposed restoration will increase the quality of both wetland and coastal sage scrub habitats onsite.

The applicant proposes to restore native habitats onsite as a part of the Hallmark East HMMP in order to mitigate for unavoidable impacts that are anticipated to occur from several future transportation projects that Caltrans and SANDAG are planning within San Diego's NCC, an area within the Coastal Zone extending from La Jolla Village Drive in San Diego, 27 miles north to Harbor Drive in Oceanside. The Hallmark East Mitigation Site is identified within the NCC PWP/TREP as a mitigation site necessary to mitigate for future impacts associated with planned infrastructure projects along the I-5 highway and LOSSAN rail corridors that were approved by the Commission in August 2014 as part of the NCC PWP/TREP. REMP projects include the establishment, restoration, enhancement and preservation of coastal wetland and upland habitats. Participating agencies in the REMP include the Coastal Commission, Coastal Conservancy, California wildlife Conservation Board, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, National Marine Fisheries Service and San Diego Regional Water Quality Control Board.

The proposed project includes a total of 0.74 acres of southern willow scrub (0.38 acres of ACOE jurisdictional wetland) that will be re-established and 0.57 acres of coastal brackish marsh and freshwater marsh that will be enhanced through weed eradication. In addition, 0.9 acres of coastal sage scrub will be re-established/restored, 1.54 acres of disturbed coastal sage scrub will be restored (through weeding and seeding), and 1.0 acres of coastal sage scrub will be enhanced (through weeding) ([Exhibit 3](#)). No grading is proposed as part of this project. Following vegetation clearing, an on-grade irrigation system will be installed for temporary irrigation of the site.

The objective of the proposed project and associated HMMP is to remove nonnative exotic species, re-establish southern willow scrub habitat in the drainage and restore/enhance the existing freshwater marsh and coastal brackish marsh onsite that have been overtaken by nonnative species. The restoration of these native habitats would provide wildlife habitat for sensitive species such as the coastal California gnatcatcher (*Polioptila californica californica*) and the yellow warbler (*Dendroica petechial*). The restored habitat would also provide an enhanced buffer habitat to the adjacent riparian habitat within CDFW's Ecological Reserve.

The Hallmark East Mitigation Plan includes a five year monitoring and maintenance program, with scheduled annual reporting requirements to all relevant resource agencies. The proposed mitigation plan includes detailed monitoring protocols and performance standards that must be achieved before final sign-offs for plan success can be issued. After performance standards have been achieved and final sign-off provided, the property would be given to the CDFW to manage and preserve the site as wildlife habitat in perpetuity as a part of its Ecological Reserve, and an endowment for land management would be finalized. Since the Hallmark East Mitigation Site will become part of the Ecological Reserve of Agua Hedionda protected under the same requirements as the remainder of the lagoon, no conservation easement will be recorded; however, a deed restriction or some other protection instrument determined appropriate by the Army Corps of Engineers on the parcel will be recorded to ensure the preservation of the wildlife habitat.

The subject site is located in the City of Carlsbad; however, it is not part of the City's certified Local Coastal Program (LCP) because it is located in an area of deferred certification. As such,

the standard of review is the Chapter 3 policies of the Coastal Act with the certified Agua Hedionda Land Use Plan used as guidance.

B. BIOLOGICAL RESOURCES

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 30240 of the Coastal Act states:

(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 proposed project is anticipated to take four to five months to complete and would establish 0.74 acres of southern willow scrub that is currently dominated by black mustard; enhance 0.57 acres of coastal brackish marsh and freshwater marsh; re-establish 0.9 acres of coastal sage scrub; restore 1.54 acres of disturbed coastal sage scrub; and enhance 1.0 acres of coastal sage scrub, through the removal of invasive exotic plants and replacement with native species ([Exhibit 3](#)). The restoration of these native habitats would provide wildlife habitat for sensitive species such as the coastal California gnatcatcher (*Polioptila californica californica*) and the yellow warbler (*Dendroica petechial*). The restored habitat would also provide an enhanced buffer habitat to the adjacent riparian habitat within CDFW's Ecological Reserve

Sensitive species, including the federally-listed coastal California gnatcatcher have been observed onsite ([Exhibit 4](#)). The California gnatcatcher has been observed onsite over several years. There are two or more pairs of gnatcatchers that generally reside in the coastal sage scrub on both the disturbed slopes to the west and within the better quality coastal sage scrub at the base of Via Hinton. Thus, these portions of the subject site are considered an environmentally sensitive habitat area (ESHA) and only uses dependent on those resources are allowed. As such, the proposed mitigation project would involve restoration – a resource dependent use – and has been designed to avoid and/or minimize the significant disruption of habitat values, consistent with Section 30240. [Special Condition #3](#) restricts the timing of vegetation removal so that it would only occur outside of the nesting season for sensitive bird species such as the California gnatcatcher and the yellow warbler to avoid impacts to these species.

The proposed mitigation plan includes a detailed planting plan for the included habitat areas that describes the selected species compositions, distributions and densities. The proposed mitigation plan also includes maintenance and monitoring requirements for the site as well as specific performance standards that will need to be achieved prior to final sign-off of plan success. The proposed plan has been reviewed by the Commission's staff ecologist and has been found generally acceptable with the additional requirements described in [Special Condition #1](#). The primary changes to the HMMP include: requirement that final performance monitoring for success shall take place no sooner than three years following the end of all remediation and other maintenance activities (other than weeding) and requirement that maintenance shall take place for a minimum of five years. [Special Condition #1](#) requires adherence to the Final HMMP as altered by these additional requirements identified by the Commission.

As mentioned previously, the purpose of the Hallmark East Mitigation Site is to serve as mitigation for future impacts that are anticipated to result from planned transportation infrastructure improvement projects located along the I-5 highway and LOSSAN rail corridors within the North San Diego County Coastal Zone. These transportation projects are included in the approved NCC PWP/TREP prepared by Caltrans and SANDAG, and certified by the Commission in August 2014. No approvals for anticipated impacts associated with these future projects are considered as a part of the proposed mitigation plan, and these anticipated impacts will require future project-specific review by the Commission through the NOID, CDP, and/or federal consistency review process. In order to ensure that sufficient mitigation acreages are available to mitigate for the expected impacts associated with the NCC PWP/TREP projects, [Special Condition #2](#) requires that a final mitigation acreage allocation be submitted for review by the Executive Director each time that final permits have been issued in association with each individual project that would utilize mitigation acreages provided under the plan.

Therefore, the Commission finds that only as conditioned and described above, can the proposed project be found consistent with Sections 30230 and 30240 of the Coastal Act, which requires the protection, and where feasible, enhancement of biological resources. As conditioned, the project will not have an adverse impact on any sensitive habitats. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

C. WATER QUALITY

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

Agua Hedionda Lagoon is located within the Carlsbad Watershed of the San Luis Rey/Escondido Hydrologic Unit. More specifically, the lagoon is within the Agua Hedionda Creek watershed. The watershed is the third largest within the Carlsbad Hydrologic Unit and comprises 18,837 acres. The watershed is primarily urban with scattered areas of native habitat and agricultural areas. The biggest threats are stream channel modification and loss of natural habitats due to development.

The site has consisted primarily of slopes with native vegetation down to the wetland at the base; however, in the mid-1970s considerable grading was completed and drains were added when the surrounding homes were constructed. Seasonal wetlands at the base of the slope have historically been onsite. However, with increased urban runoff and storm drains that discharge from neighboring residential development, the amount of water onsite has increased significantly. The storm drain that discharges to the site just west of Via Hinton has resulted in additional habitat that could support wetlands if the nonnative species dominating the outfall and downstream of the drain were to be removed. The drainage onsite is also fed by a high groundwater table near the edge of the riparian habitat.

Following the proposed vegetation clearing, an on-grade irrigation system will be installed for temporary irrigation of the site. A temporary meter will be installed at the end of Via Hinton and an irrigation mainline will be trenched through the disturbed area. Then, on grade irrigation will be installed in the re-establishment/restoration areas for temporary overhead irrigation. Temporary irrigation will be used for the first two years to establish the plants. All irrigation will be removed prior to final mitigation sign off.

During the construction phase, potential pollutant sources could include fuel and lubricants from construction trucks and/or equipment. Standard erosion control practices are proposed to minimize adverse impacts to coastal resources prior to, during, and following construction activities. [Special Condition #4](#) requires the applicant to include erosion control/water quality management measures to avoid potential adverse impacts to the nearby riparian habitat and lagoon, including prohibiting any construction materials or debris from entering the storm drain or lagoon. In addition, [Special Condition #9](#) requires the applicant to dispose of excess vegetation and construction debris at either a designated disposal site located outside the Coastal Zone or, if the disposal site is located in the Coastal Zone, at a disposal site with a valid coastal development permit.

Therefore, the Commission finds that only as conditioned as described above, can the proposed project be found consistent with Section 30231 of the Coastal Act which requires that the quality of coastal waters appropriate to maintain optimum populations of marine organisms be maintained and, where feasible, restored through controlling runoff. As conditioned, the project will not result in erosion or adverse impacts to coastal water quality.

D. PUBLIC ACCESS & RECREATION

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 30212(a) of the Coastal Act states:

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.

Section 30214 of the Coastal Act states, in part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

In addition, the certified Agua Hedionda Land Use Plan contains public access policies. Policy 7.6 states, in part:

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use...

The applicant proposes to install a wood rail fence along the edge of the site by Via Hinton to deter bicycles and off road vehicles from driving down the slope in that location. Also, in coordination with CDFW, the long-term manager of the site, as well as Native Americans and Commission staff, the applicant is in the process of evaluating whether the site should be fenced where it intersects with the future unpaved open space trail planned by the City of Carlsbad. The purpose of a potential fence would be to prevent additional disturbance, degradation, and/or loss of ESHA that has resulted from illegal dumping, bonfires, and off-road vehicle activity on the site.

Potential fencing is intended to restrict public access through the site in order to protect the sensitive biological resources described previously; however, there is a planned open space trail at the base of the slope that would allow public access along the site ([Exhibit 7](#)). Future trails planned by the City along the northern shore of Agua Hedionda Lagoon would connect at this site to help create contiguous public access around the lagoon, consistent with Policy 7.6 of the certified Agua Hedionda Land Use Plan ([Exhibit 6](#)). A Public Access and Signage Plan is required by [Special Condition #5](#) that requires the installation of interpretive signage to inform the public of the habitat restoration project. In addition, it requires the applicant to coordinate with CDFW, Native Americans, and Commission staff to determine if fencing is necessary on the subject site. Any fencing would need to be designed to minimize visual, biological, and cultural impacts onsite. In addition, [Special Condition #10](#) protects the right of the public to access the trail along the site.

Therefore, the Commission finds that only as conditioned and described above, can the proposed development be found consistent with Sections 30210 through 30214 of the Coastal Act. The proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities.

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

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, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation

and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Views of the Agua Hedionda Ecological Reserve are available from Via Hinton and Via Marta across the subject site ([Exhibit 6](#)). The proposed project would not alter or distract from the existing views of coastal resources such as the Ecological Reserve. In fact, the preservation of the site as open space and transference of management to CDFW as part of their larger adjacent Ecological Preserve will maintain and enhance the existing open space and natural character of this area in perpetuity. However, [Special Condition #5](#) requires the applicant to consult with the long term manager, Native Americans, and Commission staff to determine appropriate fencing design that restricts access but maintains views.

In addition, the Public Access and Signage Plan required by [Special Condition #5](#) requires the applicant to determine whether a viewing area or scenic overlook located along Via Marta and Via Hinton could be included to further enhance public views at the subject site. As part of this evaluation, the applicant would need to identify the trade-offs of potential impacts to biological resources associated with a viewing area against the benefits that increased visual access to the site would provide. This potential viewing area would need to be sited in such a manner to maximize views across the site while avoiding and/or minimizing adverse impacts to sensitive coastal habitats restored onsite. Construction of a potential viewing area shall be completed by the applicant prior to the transfer of ownership to the long term manager.

Therefore, the Commission finds that the project, as conditioned, conforms to Section 30251 of the Coastal Act.

F. CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

A cultural resource site has been identified within the subject site ([Exhibit 4](#)) and has been recognized as an environmentally sensitive area (ESA). Investigations in 2009 identified a small midden deposit within the area. This ESA is located outside of the area where mitigation work will take place; however, as part of Caltrans' compliance with Section 106 of the National Historic Preservation Act of 1966, an archaeological monitor will be onsite if ground-disturbing activities occur within 50 feet. To avoid any impacts to cultural resources, no soil will be disturbed in this area and nonnative vegetation will be sprayed with herbicides. No container planting will occur in this area – only seeding. [Special Condition #7](#) requires the applicant to comply with all recommendations and mitigation measures contained in the approved action plan prepared for the project in compliance with Section 106.

Therefore, the Commission finds that the project, as conditioned, conforms to Section 30244 of the Coastal Act.

G. LOCAL COASTAL PLANNING

The subject site is located in the City of Carlsbad; however, it is not part of the City's certified Local Coastal Program because it is located in an area of deferred certification. Therefore, the Coastal Commission retains permit authority in this area and Chapter 3 of the Coastal Act remains the legal standard of review with the certified Agua Hedionda Land Use Plan used as guidance. As conditioned, the proposed development is consistent with all applicable Chapter 3 policies of the Coastal Act and does not conflict with the Land Use Plan. Approval of the project, as conditioned, will not prejudice the ability of the City of Carlsbad to obtain a fully certified Local Coastal Program for the Agua Hedionda plan area.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Draft Final Habitat Mitigation and Monitoring Plan for the Hallmark East Mitigation Site, prepared by Sue Scatolini, dated August 2014; Coastal Development Permit #6-88-477; Coastal Development Permit #6-00-72; Coastal Development Permit Application #6-12-007; Coastal Development Permit #6-14-1589; certified Agua Hedionda Land Use Plan, prepared by the City of Carlsbad; North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program

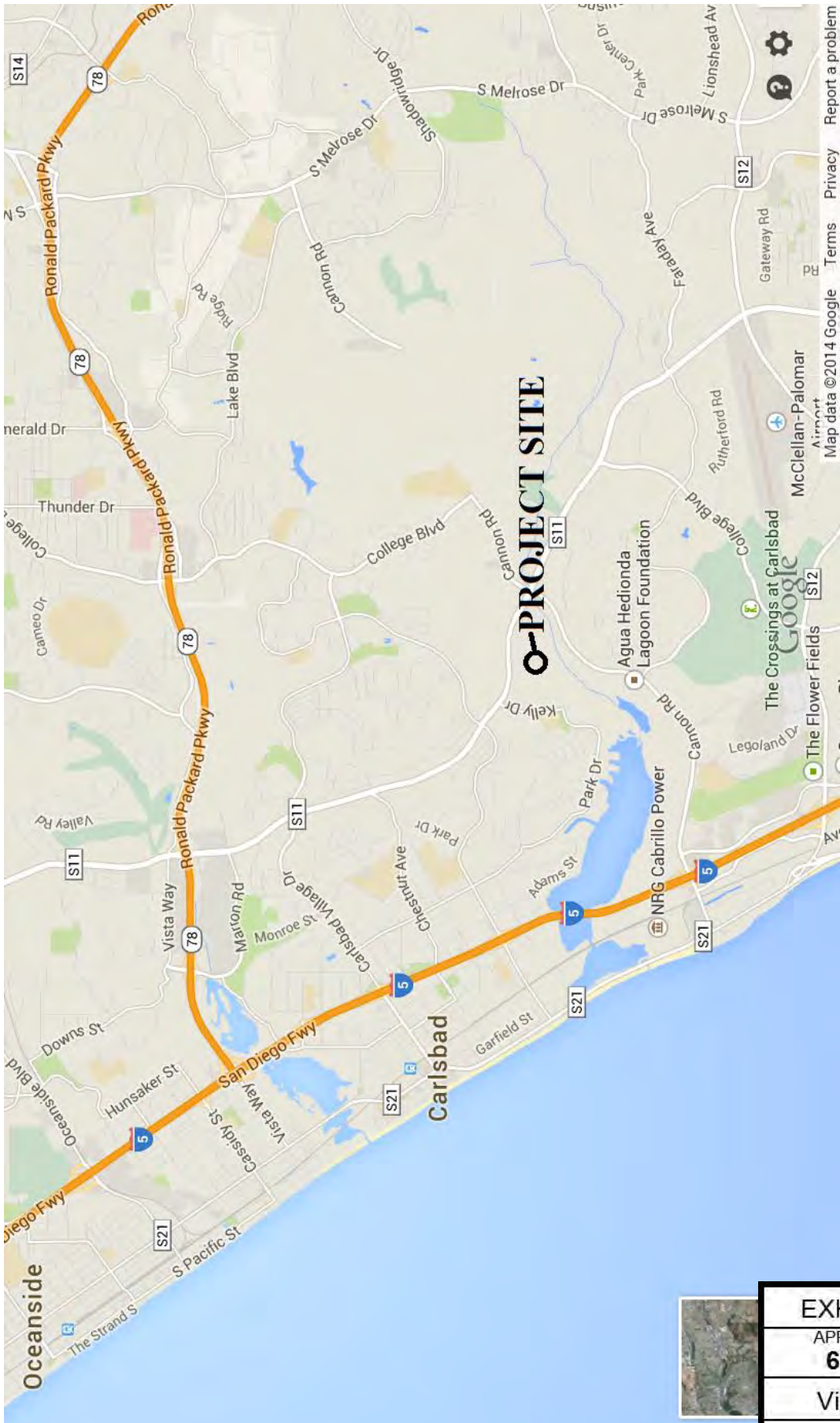
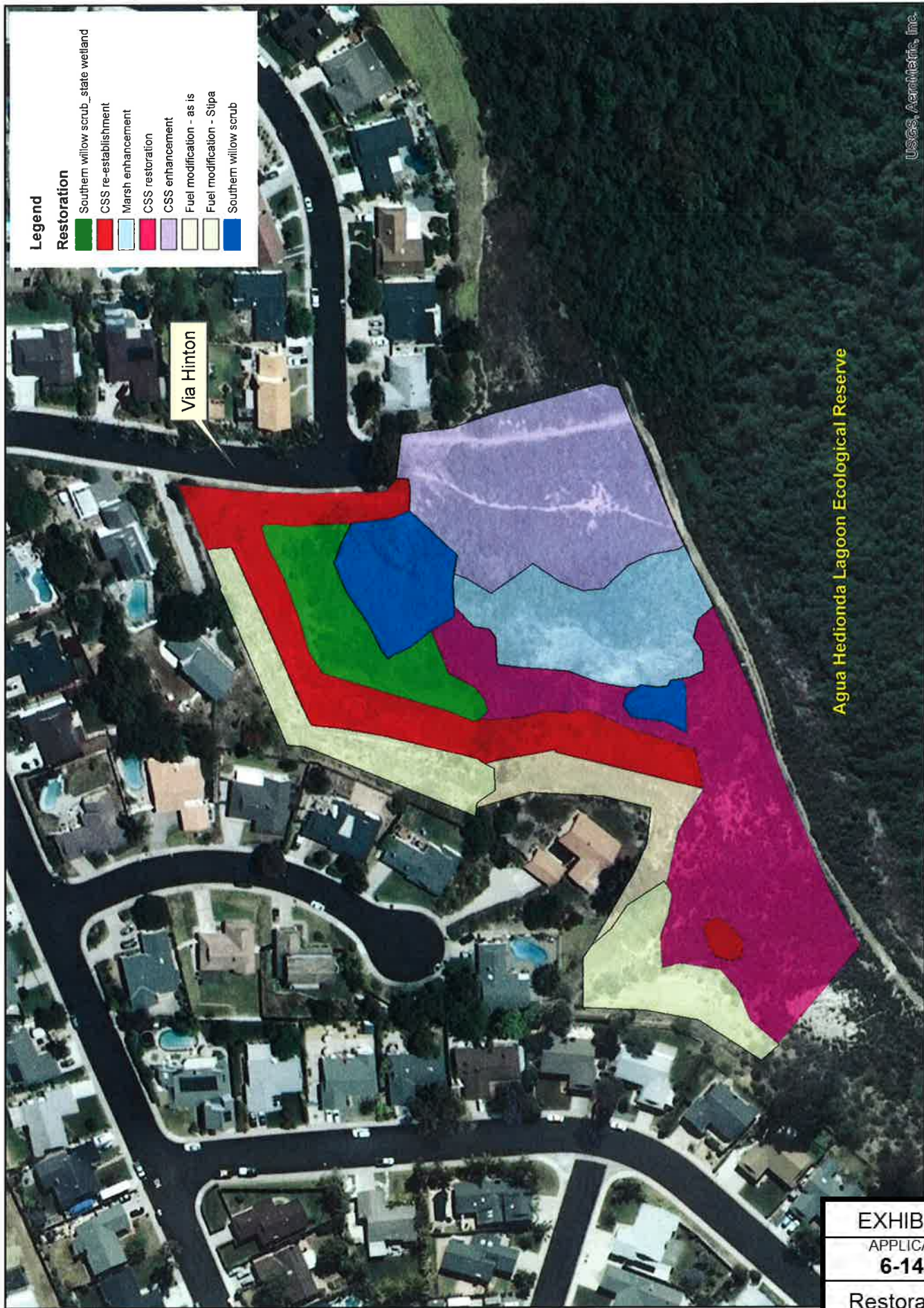


EXHIBIT NO. 1
APPLICATION NO. 6-14-1707
Vicinity Map
 California Coastal Commission



Figure 2. Hallmark East Mitigation Site Location

<p>EXHIBIT NO. 2</p> <p>APPLICATION NO.</p> <p>6-14-1707</p> <p>Location Map</p> <p>California Coastal Commission</p>



105 0 210 Feet



USGS, AerialMetrics, Inc.

Agua Hedionda Lagoon Ecological Reserve

Via Hinton

- Legend**
- Restoration**
- Southern willow scrub (state wetland)
 - CSS re-establishment
 - Marsh enhancement
 - CSS restoration
 - CSS enhancement
 - Fuel modification - as is
 - Fuel modification - Stipa
 - Southern willow scrub

Figure 3. Hallmark East Re-establishment, Restoration, and Enhancement

EXHIBIT NO. 3
APPLICATION NO. 6-14-1707
Restoration Plan
California Coastal Commission



Legend

Hallmark_East_Cultural_ESA_7/15/2014

- Bare ground
- Coastal brackish marsh
- Coastal sage scrub
- Disturbed coastal sage scrub
- Disturbed habitat
- Freshwater marsh
- Nonnative woodland
- Ornamental
- Riparian forest
- Salt marsh transition

Via Hinton

Agua Hedionda Ecological Reserve



USGS, AeroMetric, Inc.

EXHIBIT NO. 4
APPLICATION NO. 6-14-1707
Veg. & Cultural Map
California Coastal Commission

Figure 5. Existing Vegetation Communities and Cultural Resource ESA at the Hallmark East Mitigation Site

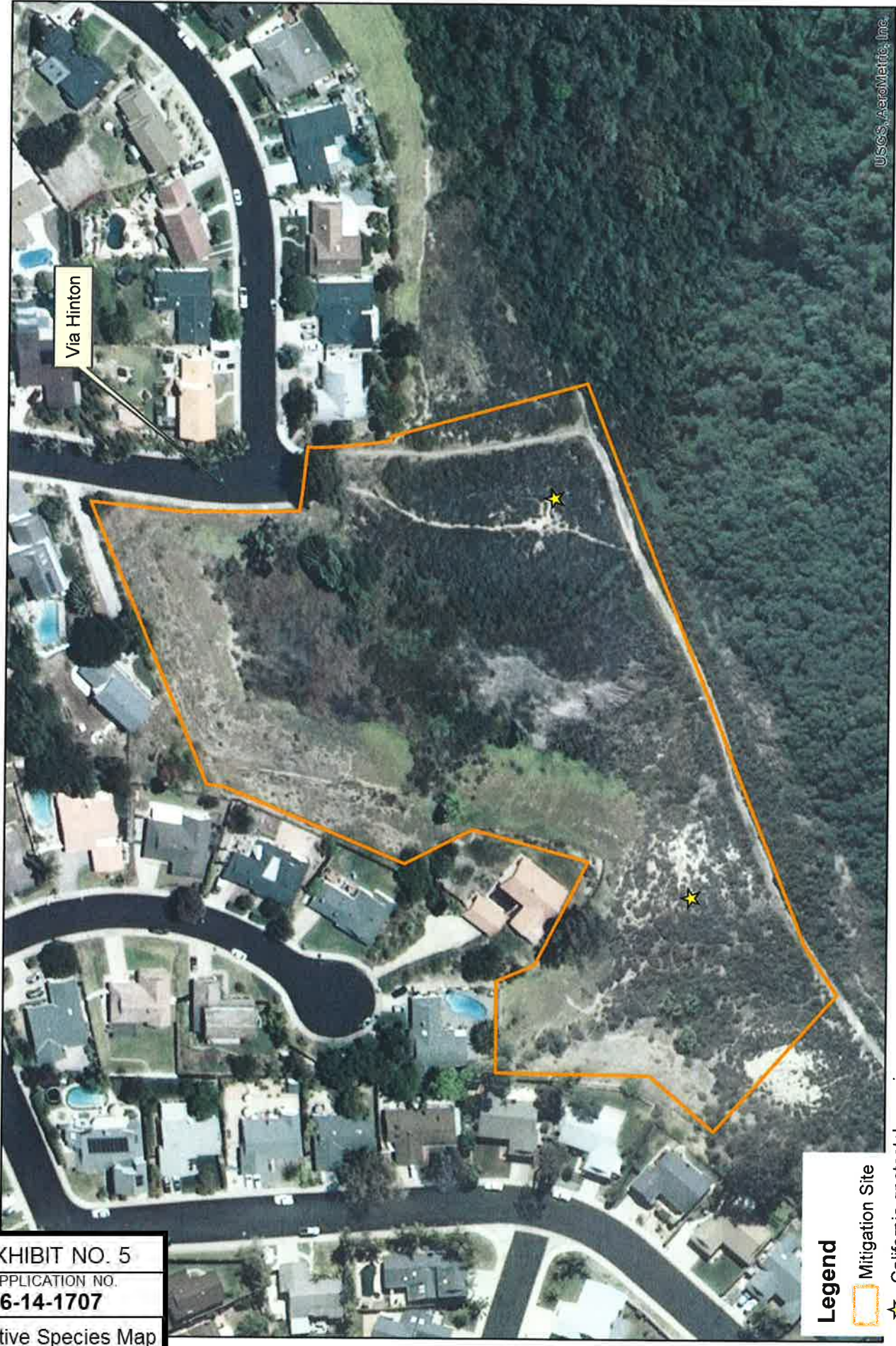
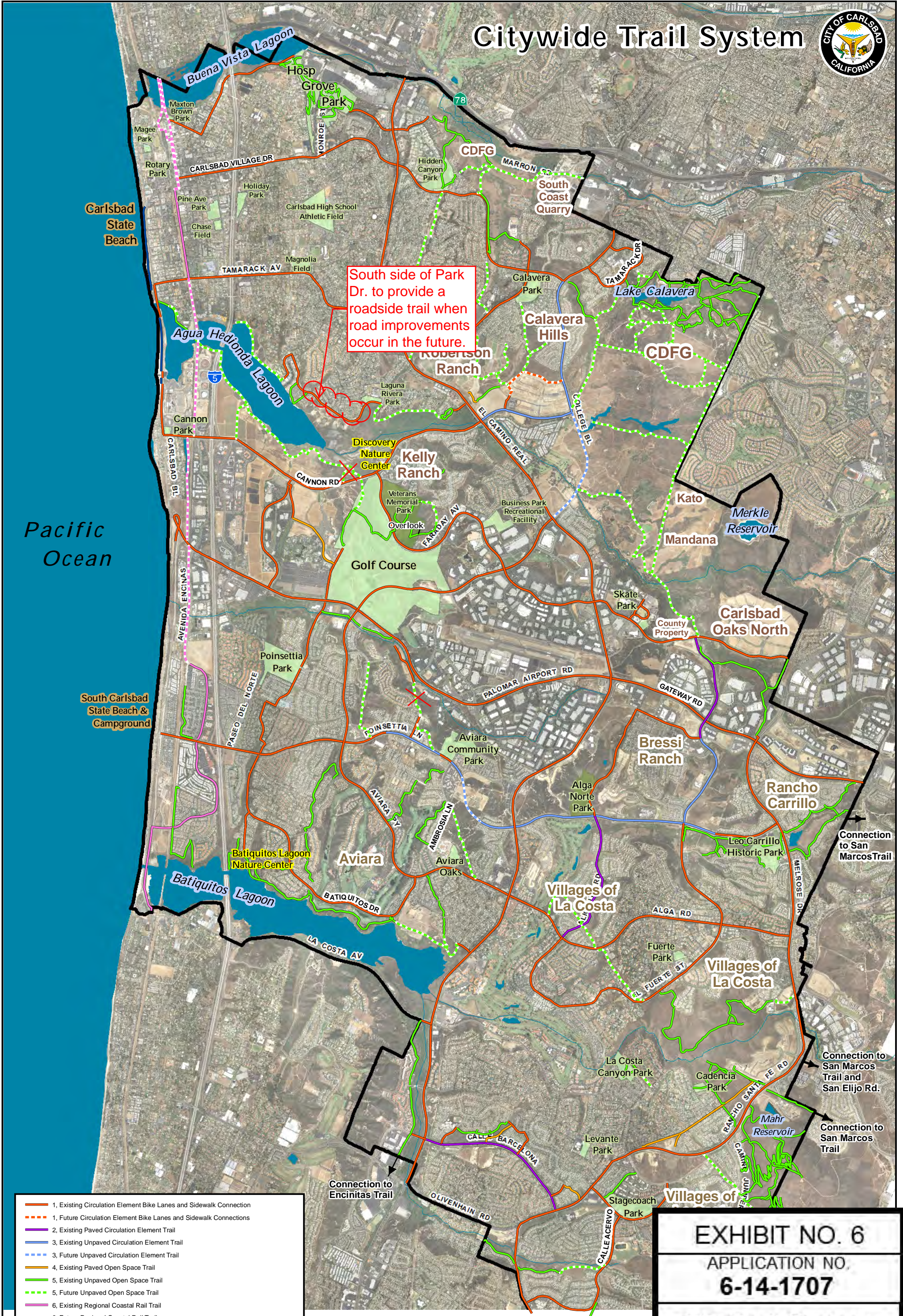


Figure 6. Sensitive Species Locations at the Hallmark East Mitigation Site

Citywide Trail System



South side of Park Dr. to provide a roadside trail when road improvements occur in the future.

Pacific Ocean

South Carlsbad State Beach & Campground

- 1, Existing Circulation Element Bike Lanes and Sidewalk Connection
- 1, Future Circulation Element Bike Lanes and Sidewalk Connections
- 2, Existing Paved Circulation Element Trail
- 3, Existing Unpaved Circulation Element Trail
- 3, Future Unpaved Circulation Element Trail
- 4, Existing Paved Open Space Trail
- 5, Existing Unpaved Open Space Trail
- 5, Future Unpaved Open Space Trail
- 6, Existing Regional Coastal Rail Trail
- 6, Future Regional Coastal Rail Trail
- 7, Existing Carlsbad Seawall
- Existing Park
- Future Park



Map created by City of Carlsbad GIS.
 Aerial Photo Date: 2009
 Printed July 21, 2011
 J:\cbgis\products\Standard Maps\RECREATION

EXHIBIT NO. 6
 APPLICATION NO.
6-14-1707

City Trail System

California Coastal Commission

Connection to San Marcos Trail

Connection to San Marcos Trail and San Elijo Rd.

Connection to San Marcos Trail

Connection to Encinitas Trail



Via Hinton

PUBLIC TRAIL

Agua Hedionda Lagoon Ecological Reserve

- Legend**
- Hallmark_East_Cultural_ESA_5.14.2014
 - parcel2
 - Fence



EXHIBIT NO. 7
APPLICATION NO. 6-14-1707
Fencing Plan
California Coastal Commission

Hallmark East Cultural ESA and Proposed Fence